

CONSIDERATIONS ON THE REALIZATION OF THE LAW IN THE MATTER OF ANTI-DOPING REGULATIONS IN SPORT ACTIVITIES IN ROMANIA

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ABSTRACT. The treatment of such topics could not be sufficiently covered by the content of a single scientific paper - but at least we can present its complexity. The theme of the paper, can offer us the percentage between un-clarity (existence) and the effectiveness of the law - that is the extent in which the law is realized under the doping policies in Romania. Our considerations will highlight the fact that we are in the presence of an object of regulation of a new branch of law - imposed by social-economic reality of today - namely "sports law" - belonging both to the field of sports science and science of law. We can relate to legal values with the values of sport - so in this way we can highlight the state of realization of the rights in the matter doping in sport in Romania.

Keywords: *sports law, the fundamental right to practice sports activities, right to life, right to health, the right to physical and mental integrity of the person, the right to dignity, the achievement of law, transparency of decision*

REZUMAT. *Considerații privind realizarea dreptului în materia reglementărilor antidoping în activitățile sportive din România.* Tratarea unei astfel de tematici nu ar putea fi suficient acoperită prin conținutul unei singure lucrări - dar, cel puțin, ne poate oferi măsură complexității acesteia. Tematica lucrării, ne poate oferi și procentajul între declararitatea (existența) și efectivitatea legii - adică măsura în care se realizează dreptul în cadrul politicilor antidoping din România. Considerațiile noastre vor evidenția și faptul că suntem și în prezența unui obiect de reglementare a unei noi ramuri de drept - impusă de realitatea vieții social-economice contemporane - și anume a „dreptului sportului” - aparținătoare atât științei sportului cât și științei dreptului. Nu vom putea să nu relaționăm valorile juridice cu valorile sportului - numai astfel vom putea evidenția starea de realizare a dreptului în materia reglementărilor antidoping în activitățile sportive din România.

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Cuvinte cheie: dreptul sportului, dreptul fundamental de a practica activități sportive, dreptul la viață, dreptul la sănătate, dreptul la integritate fizică și psihică a persoanei, dreptul la demnitate, realizarea dreptului, transparența decizională

Introduction

In a paper published in the journal, Science of Sport stated that, "Perhaps those who are concerned by the analysis of the values of physical education and sport, in today's Romania, would be tempted to withdraw from the field to devote to some abstract existential meditation" (Voicu, 2007)- meaning, to be able to make such an analysis, you have to rise above the phenomenon - to become even "irrational" to be able to make a such valorization of patterns made by the onstuporous proto-ideology of the contemporary sport. For, is not it, "... in the knowledge process of values it is about of determination of a value in a general consciousness, the value of knowledge and we had characterized this value as necessary, objective, independent of our subjectivity" (Petre, 1945, p.111) - thus initiating a profane approach to the sport.

About realization of the law

Law is an important factor for progress and act as a powerful tool of social control. The existence and implementation of law is a condition for the public order. In general, the idea of order means a specific sequence in time or in space of things. Order represents an essential prerequisite for social cohesion, being conditioned by the existence of the normative systems and by the content perception of translation in their life. In this context it is placed also the order of law, which represents the conduct of social life in accordance with the legal norms. Given the importance of the legal system, as the core of social order, in which the perception of the essence of law regulations are translated, also including those governing the sport, to achieve legal commands is a crucial moment in the life of the law. Far from being just a matter of legal technique, achieving the law, by its social implications, is a constituent of leading the society. The analyzes of the process of realization of the law cannot omit to emphasize the general features of the social system whom is a guarantee of the integrity of rule of law, of the effectiveness of legal norms, the correspondence between abstract and general provisions of the legal norm and concreteness of social relations. The analysis of the concept (realization of the law) is actually the analysis of the implementation of the rule of law in society, the way in which the society receives the rule of law, incorporating in the psychological heritage of individuals.

The general conditions that characterize the social-political and ideological climate determine the efficiency of immediate legal forms of the realization of the law. The role of these conditions (economic, political, spiritual, and ideological) are crucial in the process of transformation the principles of the law in intimate structures of human personality and in criteria for assessing the proper conduct in relations in society. Legal Sociology and Criminological studies, studying the social condition of the law, knowledge of the law by its receivers, etc., have revealed an important theoretical and practical finding regarding the dependence between the realization of the law and the general socio-economic and cultural conditions. These researches highlights the peculiarities of how the major social processes exert their influence on the juridical behavior of the citizens and upon the legal application of the law by state bodies. Thus, finally, we believe that "realization of the law can be defined as the process of transposition in life of the content of legal norms in which people, as subjects of law, respects and implements the legal provisions" (Popa, 2008, p.186-187).

Possible limiting factors in realizing the law in doping policies in Romania

Persevering in the pursuit of identifying possible new assessment of the values of sport, it can be seen that, in contemporary society, perception of the value of sport in the collective mind, including lawyers produced no changes. So we formulated, for now, the following questions:

1. How do you assess the realization of the law in the field of sports since its current social values do not cover the content dedicated to sports functions?

2. How to realize the law in a field that is not yet defined in accordance with the European Union's documents?

The first two questions will be answered only after a preliminary bending the definitions of sport in EU documents - informed about the fact that: a) the right to practice the sport was elevated to a fundamental human right (Voicu et al., 2011, p.157-162); b) In art. 4 of the Preliminary Title - About the New Civil Code (NCC) civil law should be applied "priority of the international human rights treaties, and enshrined at the constitutional regulation" (art. 16 and 21 of the Constitution), paragraph (2) of art. 4, to which we refer, states that where there is inconsistency between them and national law, regarding the fundamental human rights, the international treaties and pacts have precedence unless there are more favorable provisions in the Civil Code; c) According to art. 5 entitled Priority Application of EU law, in matters governed by the NCC, the rules of EU law applies in priority, regardless of the quality or status of the parties. With regard to European Union law, we specify that the constitutive treaties or original law and also the Lisbon Treaty entered into force on November 1, 2009, have the

significance of a Constitution of the European Union. The White Paper on sport, gaining legal force with the entry into force of the Lisbon Treaty took full definition of sport as worded in the European Charter of Sport (art. 2, paragraph 1, letter a) – “all forms of physical activity which, through participation in organized or unorganized form, aim at expressing or improving physical fitness and mental, social relationships or obtaining results in competitions at all levels”, while, Law no. 69/2000 regarding Physical Education and Sport in Romania, regulating the organization and functioning of the national system of physical education and sport in Romania, contains a definition of physical education (note - not the sport): “the physical education means all forms of physical activity aimed, through an organized or self-expressing or improving physical fitness and spiritual comfort, establish civilized social relations and lead to obtaining results in competition at all levels“. (Law no 69/2000, art. 1, paragraph 2), also stating that: “physical education and sport include the following activities: physical education, school and university sports, sport for all, sport performance, exercise practiced for maintenance, prophylactic or therapeutic.” (Law no 69.2000, art. 2, paragraph 3).

3. How to realize the law in the field of preventing and combating doping in sport regulated in Romania by the Law no. 227 of 7 June 2006 and updated and republished and Law no. 104 of May 9, 2008, republished and updated on preventing and combating illicit production and trafficking of doping substances with high risk - in parallel with the existence of the Law on preventing and combating illicit drug trafficking no. 143 of July 26, 2000, republished and updated - knowing that many doping substances on the banned substances list for athletes, are also on the list of drug substances?

4. How to qualify the express repeal of the text from the Law no 227/2006 republished in the Official Gazette of Romania, Part I, no. 485 of July 14, 2009, the provision contained in (repealed) Law no. 552/2004 on preventing and combating doping in sport, published in the Official Gazette of Romania, Part I, no. 1215 of December 17, 2004, (to amend the Law 227/2006 by Law no. 128 of 8 October 2014 amending and supplementing Law no. 227/2006 on preventing and combating doping in sport, and for the amendment of Law no. 104/2008 on preventing and combating illicit production and trafficking of doping substances with high risk) the provision that express. If the substances discovered during doping control fall under Law no. 143/2000 on preventing and combating illicit drug trafficking and consumption, republished, with subsequent amendments, or Government Emergency Ordinance no. 121/2006 on the legal regime of drug precursors, approved with amendments by Law no. 186/2007, as amended, the Agency is required to notify the National Antidrug Agency and prosecution” (art. 52 ^ 7) - actually I signaled policy factors in the field, through an published article. (Voicu, 2007, p.137-142)

5. How to qualify the introduction into the text of the Law no. 227/2006, only in Official Gazette no. 744 of 13 October 2014, with a delay of approx. 8 years after the first publication of this law the provisions of art. 36 of the Law stipulate the responsibility of the Agency to make the following obligations: (1) the identity of the athlete or support personnel thereof, who is suspected of one of the offenses referred to in art. 2 paragraph (2) shall be made public by the agency, after notification thereof, in accordance with art. 28 paragraph (5) and (9); paragraph (2) within 20 days of the delivery of the Commission's decision of the hearing, subject to appeal, according to art. 49, or the date on which the appeal procedure was abandoned or waived the hearing, in accordance with art. 33 paragraph (2) letter i) the agency must publish the decision; (3) The public agency must report within 20 days, the Board of Appeal decisions on violations of anti-doping regulations; (4) The identity of the athletes and their support personnel after the final resolution of the case, have not been found guilty of one or more violations of anti-doping regulations laid down in art. 2 paragraphs (2) may be made public only with their written consent; (5) the information disclosed under paragraph (1) - (3) are presented and preserved during the suspension, but not less than one year, and on the Agency's website and national sports federations responsible, where they exist; (6) Notwithstanding the provisions of paragraph (1) and (4) Agency Chairman or, in his absence, his replacement may make public comment about a pending case out if they are needed in response to public comments of athletes or support personnel concerned; (7) Public Information mandatory under paragraph (2) and (3) is not required if the athlete or other person is a minor? - I actually reported these that in the fact the National Anti-Doping Agency do not assume transparency of its decisions in accordance with the provisions of Law no. 52 of 21 January 2003 on transparency in public decision republished and updated (Voicu, 2007b).

Conclusions

We can state that the legal reality of the European Union helps to achieve uniformity in a democratic system of fundamental cultural differences. Differences resulting from the disposition of systems, to political events which occurred in the Europe of the 1990s, on each side of the "iron curtain". In this context, but also in the conditions of the adoption of the beneficial aspects of each of the two systems, we consider that the mutual influence of the two creates benchmarks for developing a new theory in Comparative Law regarding contemporary judicial geography. As far as we are concerned, we consider that although there are peculiarities of interpretation of the values of sport for those

belonging to each of the two systems, we cannot speak with the same intensity of the fundamental differences on these perceptions. In our case - we can say that Sport Law can be seen, equally, as a part of the science of Sport as well as of the science of Law. We can appreciate the illegality or legality of the facts that occurred in the field of Sport according to the following sociological criteria - legal norms, rules and regulations, customs, traditions, manners and habits (Gavriliuță & Gavriliuță, 2010, p.88) – this assertion is also justified by the classification given by the legal doctrine to the areas of legality of Sport: 1. The area of state order; 2. The area of the sport field; 3. The area of the international structures of sport. For those who still have not decided to decipher Sport in depth, which has become and is considered the notable social-economic phenomenon whose legalization is a necessity, in order to bring it as a possible object of work and of their professional concerns (Voicu, 1999), we remind them that Sport Law has assumed, with reasons and arguments, the quality of branch of Law and sub-branch of the sciences of Law and Sport (Voicu, Fildan & Voicu, 2009)

We must also agree with the fact that the instrumentalization of Law (similar to the social phenomenon of Sport), its transformation into an instrument of politics, can be a real threat for the rule of law - but the threats of the current conditions (the legislative inflation, the excess of normativism as a tendency towards self-destruction, the possibility of separation and aggravation of the conflict between the values of public order and the rule of law in the process of application of the law) to the existence of the rule of law must not alter the normativity of Law, nor that of Sport. Thus, Law, seen as a normative phenomenon must also represent the implementation of law in an ample social phenomenon like sport. We must promote the legal safety of all participants to these activities influencing behavior, on the basis of value requirements which should address equally the values of Law and the positive values of Sport - especially in the current situation of excessive commercialization of sport and its transition to an instrument of political manipulation (Marțian, p.80-81) which can lead to the legitimization of illegal behavior on the sport field and related places. In this context, we must also mention the utility of the formulation of the arguments above. Admitting that the Sport Law was formed as a separate branch of Law in the Romanian legal system (as well) we can "enhance the scientific research tasks both in the general theory as well as in the plane of sectoral knowledge". In the conditions of globalization, and sport is fully a globalized phenomenon, lawyers can no longer afford the luxury of approaches made only strictly from the local perspective. (Popa, 2008, p.11)

The approach of desecration of sport was not initiated by the authors of this article - we only continue to place a social phenomenon such as sport as a possible object of legal liability - because, after all, no-one is above the law. No individual or legal person, no object or field of activity.

Specialists the field of sport, directly confronted with the many problems with regard to moral judgment, the responsibility and irresponsibility of sports bodies and those having related activities seem more and more interested to form a concrete and coherent vision in this field. It is said that sport was professionalized and commercialized excessively - in this sense can answer that professional activities understood in terms of the New Civil Code must obey legal regulations. It is said that sport carries the message of interest groups - independently of this reason; we must affirm that the existence of interest groups provides for the functionality of a society. Pressure groups, along with the ineffectiveness of coercive forces of the state and the passivity of citizens representing civil society or not, can cause the illegality of interest groups. Realizing a brief diagnosis of unlawful conduct causing injury occurred in sports and related activities we can ascertain - that some authors of harmful events, invoke, in their defense, as "clause of removing legal liability" the need for the operationalization of the functions of sport without control and limitations. The basis of such reasons is anchored in the ancestral need of a part of the population to be satisfied, in the case of its material and spiritual unfulfillment by the circus spectacle, the game in which it manifests its ego and the spirit of justice without foundations of social normativity - was formed as a fundamental principle of a current or future government "Panem et circenses" (bread and circus/game) - expression considered to be coming from the Latin poet Decimus Juvenalis who lamented, addressing a friend, the decay of the Roman people.

The permissiveness of natural and human preprogrammed antisocial manifestations, untamed by the imperatives of civic culture, allow maintaining a high rate of popularity of those who hold or aim to hold political power - especially in situations of material and spiritual precariousness of society. An illusion is created, that for the population dissatisfied with the bad management of the country's affairs, represented by the so-called sports fans, there is no greater happiness than the victory or their favorite athletes. It is necessary to know other opinions regarding the values of sport today, others than those invoking the values of sport without knowing and being aware of them. Perhaps, if the extent of this paper allowed us, it might prove necessary to develop the issue of morality in general and morality in sport in particular - and to relate to its instances of manifestation: morality, immorality and amorality - the last two equally dangerous, taking into account that legal norms are grounded in the moral ones. And we know that where moral decays - as a natural consequence - the power law also decays. Only then we probably could generate an understanding of the need to restore the values of sport which originally made it famous. Thus we can combat the possible effects of a spiral of silence induced to achieve a certain optic related to valuing sports activities. Specialists the field of

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"The professionalization of sport makes it no longer emit spontaneity and nonchalance... In modern society, sport gradually departs from the purely ludic sphere and becomes a *sui generis* element: there's no more game, although no seriousness either. In today's society, the phenomenon of sport is detached from the process of culture itself, which takes place outside it. ... Sport has become completely profane and has no organic connection or other with the structure of society, even if its exercise is required by authority..." (Huizinga, 2003, p. 289-311).

The construction of an ideology of sport in agreement with the ideologies of this field in democratic countries should be constructed in the spirit of achieving Law, according to the legal conscience of the citizens of those states. Can we accept a separation of state powers, namely - the legislative, the executive, the judiciary, the power of sport, media power and religious power?

Fulfillment of the Law relating to the fight against doping in sport involve the Court of Arbitration of Sport in Lausanne - thus, Law no. 227/2006, republished and updated states: Article 58 - Decisions of the Appeals Board may be appealed to the Court of Arbitration for Sport in Lausanne, within 21 days of notification; Article 59 - The decisions referred to in Article 55 Letters a) to e)

and g), taken in connection with a competition within an international sports event or involving athletes of international level, can be appealed to the Court of Arbitration for Sport in Lausanne, within 21 days from the date of communication, by the following persons: a) international-Level Athletes or another person who is the subject of the contested decision; b) the sport structure to which the athlete belongs or other party in connection with which the contested decision was taken; c) the International Federation responsible; d) the anti-doping organization of the country of domicile of the person/athlete; e) an Agency; f) the World Anti-Doping Agency; Article 60 - The decisions referred to in art. 55 Letter f) can be challenged only by the athletes or persons against whom the sanction of provisional suspension was imposed, in accordance with Article 57, respectively Article 59, as applicable; Article 61 - If the committee hearing the athletes and athlete support personnel who violated anti-doping regulations, during the hearing procedure, does not issue a decision within the period referred to in Article 33 Paragraph (3), the World Anti-Doping Agency can appeal to the Court of Arbitration for Sport in Lausanne. If the Court of Arbitration for Sport in Lausanne determines that a violation of anti-doping regulations was committed and that the World Anti-Doping Agency acted correctly in choosing to appeal, the costs incurred by the World Anti-Doping Agency in resolving the appeal shall be borne by the Agency; Article 62 - The contested decisions retain effects during the proceedings referred to in Articles 57 and 59, excepting the situation when the Board of Appeal or the Court of Arbitration for Sport decides to suspend them.

In this regard Decision no. 560 of 29 May 2012 of the Constitutional Court on the plea of unconstitutionality of Article 61 of Law no 227/2006 on preventing and combating doping in sport, published in the Official Journal of Romania, Part I, no 537 of 1 August 2012, rejected as unfounded the plea of unconstitutionality of Article 61 of Law no 227/2006 on preventing and combating doping in sport, objection raised ex officio by the Cluj Court of Appeal - The Commercial, Contentious Administrative and Tax Division, file no 131/33/2011, on the grounds that during the arbitration proceedings, the Court, by Decision no 203 of 7 March 2006, published in the Official Gazette of Romania, Part I, no 267 of 24 March 2006, held that arbitration is an exception to the principle that justice is done by courts and represents that efficient legal mechanism designed to ensure a fair trial, faster and less formal, confidential, completed by enforceable judgments. Moreover, the Court notes that Romania agreed, by Law no 367/2006, published in the Official Journal of Romania, Part I, no 828 of 9 October 2006, the International Convention against Doping in Sport, adopted by the General Conference of the United Nations Organization for Education, Science and Culture

in Paris on 19 October 2005. World Anti-Doping Code is an integral part of this Convention. Thus, in Part I of the World Anti-Doping Code, Article 13 expressly provides the jurisdiction of the Court of Arbitration for Sport in Lausanne in cases of doping in sport. The Court found that the doping in sport, the Court of Arbitration for Sport in Lausanne functions as a disciplinary court, especially after the adoption of the World Anti-Doping Code, which in this case gives the direct jurisdiction to this court. Thus the Court found that the criticism according to which the criticized provisions of the law are contrary to the constitutional provisions of Articles 20, 21, 124 and 126 cannot be accepted.

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