Collecting Evidence in the Investigation of Crimes Committed in the Field of Sports: International and European Standards

Recopilación de pruebas en la investigación de delitos cometidos en el ámbito deportivo: normas internacionales y europeas

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Abstract. Sport plays an important role in modern society. Its legal regulation is complicated by the peculiarities of the structure of sport, its participants, types of illegal encroachments, and influence measures to eliminate them. Currently, various legal relations are being encroached on in the field of sports: from the field of e-sports to corruption and doping during sports competitions. In view of this, it is important to analyze the international legal regulation regarding the investigation of crimes in the field of sports and to understand the problematic issues of proving this type of crime and the implementation of international standards in national regulation. The purpose of the work is the research of crime in the field of sports from the point of view of its proof, as well as the analysis of international and European standards on this issue. The object of the study is international and European standards for gathering evidence in the investigation of crimes committed in the field of sports. The subject of the study is social relations that arise, change and cease and influence the establishment of standards for the investigation of crimes at various stages of the pre-trial investigation of crimes in the field of sports. The research methodology consists of such methods as: dialectical, metaphysical, systemic, synergistic, anthropological, logical, historical, systemic-structural, structural-functional, formal-legal, and comparative-legal methods. As a result of the conducted research, it was possible to understand the peculiarities of the international legal regulation of criminal activity in the sports sphere. Particular attention is paid to the peculiarities of proving crimes committed in the field of sports. Also, attention is paid to the experience of creation, formation, and application of international measures to combat crime in the field of sports and sports law, their implementation in national legal systems, and problematic issues in the appropriate context.

Keywords: evidence, proof, international legal experience, crime investigation, collection of evidence.

Resumen. El deporte juega un papel importante en la sociedad moderna. Su regulación legal se complica por las peculiaridades de la estructura del deporte, sus participantes, los tipos de usurpaciones ilegales y las medidas de influencia para eliminarlas. En la actualidad, se están invadiendo diversas relaciones jurídicas en el ámbito deportivo: desde el ámbito de los e-sports hasta la corrupción y el dopaje durante las competiciones deportivas. Frente a ello, es importante analizar la regulación jurídica internacional en materia de investigación de delitos en el ámbito del deporte y comprender la problemática de la prueba de este tipo de delitos y la implementación de los estándares internacionales en la regulación nacional. El objeto del trabajo es la investigación de la delincuencia en el ámbito del deporte desde el punto de vista de su prueba, así como el análisis de los estándares internacionales y europeos en esta materia. El objeto de estudio son las normas internacionales y europeas para la obtención de pruebas en la investigación de delitos cometidos en el ámbito del deporte. El objeto de estudio son las relaciones sociales que surgen, cambian y cesan e influyen en el establecimiento de normas para la investigación de los delitos en las diversas etapas de la investigación preliminar de los delitos en el ámbito del deporte. La metodología de investigación consta de métodos tales como: dialéctico, metafísico, sistémico, sinérgico, antropológico, lógico, histórico, sistémico-estructural, estructural-funcional, formal-legal y comparativo-legal. Como resultado de la investigación realizada, fue posible comprender las peculiaridades de la regulación jurídica internacional de la actividad delictiva en el ámbito deportivo. Se presta especial atención a las peculiaridades de la prueba de los delitos cometidos en el ámbito del deporte. Asimismo, se presta atención a la experiencia de creación, formación y aplicación de medidas internacionales para combatir la delincuencia en el campo del deporte y el derecho deportivo, su implementación en los ordenamientos jurídicos nacionales y las cuestiones problemáticas en el contexto ade-

Palabras clave: prueba, prueba, experiencia jurídica internacional, investigación de delitos, recolección de pruebas.

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Introduction

The constitutions of many states have declared that human rights and freedoms and their guarantees determine the content and direction of the state. Such consolidation placed an obligation on states to combat crime in the field of sports and to take effective measures to prevent, detect and investigate crimes. As a result of such activities, the question arose both at the national and international levels of establishing uniform standards and definitions regarding the negative phenomenon of crime in sports.

For example, in Ukraine, to combat certain areas of

crime in the field of sports, legislative acts have been adopted, such as the Law of Ukraine "On the Prevention of the Influence of Corruption Offenses on the Results of Official Sports Competitions of Corruption Offenses" (Ukraine, 2015), which aims to combat corruption in the field of sports, and also provides for criminal liability for unlawful influence on the results of official sports competitions (Criminal Code of Ukraine, 2001).

Also, Ukraine ratified the Council of Europe Convention against the manipulation of sports competitions, which aims to combat the manipulation of sports competitions in order to protect the integrity of sports and sports ethics in

accordance with the principle of the autonomy of sports (Council of Europe, 2014). No less significant role in this aspect is played by the ratification of the Convention on Cybercrime (Ukraine, 2005). So, as can be seen from the above, combating sports crime at the legislative level is enshrined in the legislation of Ukraine.

At the same time, combating crimes in the field of sports is under the close attention of not only Ukraine but also the European Union and international organizations. Therefore, this article analyzes international legal acts and national legislative acts of individual states that regulate the issue of gathering evidence in the investigation of crimes committed in the field of sports. In particular, attention was drawn to the peculiarities of evidence collection and procedural difficulties in this issue of proving the existence of the composition of the offense. As a result, ways of solving problematic issues are proposed, taking into account positive international experiences.

Therefore, from the above, we can come to the conclusion that the topic under consideration is relevant and promising for further scientific research.

Material & Methods

European and international standards for collecting evidence in the investigation of crimes committed in the field of sports were studied using the dialectical method, which allows to characterize evidence as a legal phenomenon that functions and develops and to reveal the patterns of its formation and use in criminal final proceedings.

The use of a metaphysical approach provided a literal interpretation of the norms of criminal procedural legislation, devoted to the definition of the concept and types of evidence, the peculiarities of their collection and use.

The formation of an understanding of evidence collection as a systemic phenomenon, which is a system of elements and connections between them, which constitute its stable structure and ensure integrity, took place with the help of a systemic method.

The synergistic method made it possible to determine the dynamic properties of evidence as a system, to study changes in the collection of evidence during the investigation of crimes committed in the field of sports, and to determine the patterns of development of the normative-legal regulation of the concept and features of the collection of evidence, the order of their formation and use.

The application of the anthropological approach contributed to a more complete study of the methods and procedure of collecting physical evidence in the context of ensuring the appropriate rights of the parties to criminal proceedings and the terms and procedure of collecting evidence, methods, and the procedure of deciding their fate in the context of ensuring the inviolability of the ownership rights of persons to material objects seized as physical evidence in criminal proceedings.

The application of the techniques of the logical method in research involves the use of techniques of ascent from the abstract to concrete and from concrete to abstract, analysis and synthesis, generalization, comparison, abstraction, induction and deduction, analogy, and modeling and allows to determine the peculiarities of evidence collection in the investigation of crimes in the field of sports.

Characterizing the history of formation and development of the normative establishment of the concept of evidence, the order of their formation and use in criminal proceedings, as well as scientific ideas on this issue became possible using the historical method.

The systemic-structural method made it possible to reveal the evidence in the integrity of its structural elements by identifying existing connections between them, characterizing the types of evidence that are necessary to prove the commission of crimes in the field of sports, identifying and investigating the patterns of formation and use of evidence during pre-trial investigation and court proceedings.

Determining the functional purpose of the process of gathering evidence in criminal proceedings to establish facts and circumstances to be proven, taking into account the international legal experience, the structural-functional method contributed.

The formal legal method made it possible to determine the formal content of the norms of the criminal procedural law, including foreign legislation, which regulates the procedure for their formation and use, the terms, procedure, and conditions of storage of material evidence, and the methods and procedure for deciding their fate during criminal proceedings, contributes to the disclosure of internal the structure of evidence as a legal phenomenon.

The application of the comparative legal method involves the implementation of diachronic and synchronous structuring: a diachronic comparison allows comparing the collection of evidence as a legal phenomenon that existed in the domestic criminal process during different historical periods and to identify the patterns of development of this legal phenomenon, while a synchronous comparison involves comparing the collection of evidence as a legal a phenomenon that exists in various legal systems during a specific historical period, and to determine the expediency of taking into account the foreign experience of the normative definition of the concept of evidence and the order of their formation and use in criminal proceedings, and the doctrinal approaches and practices formed in foreign countries on these issues.

Results

Recent Research on the Investigation of Crimes Committed in the Field of Sports

The foreign experience of individual countries regarding criminal liability for unlawful influence on the results of official sports competitions is considered in the work of Anisimov (2020).

The peculiarities of the formation of sports law in Ukraine as a branch of legal science in the context of the development of international sports law were analyzed by Vasylenko (2017). The author concluded that the process of drafting international sports law, which is a complex entity in the form of a system of various norms regulating sports relations, goes beyond the borders of one country and includes norms of international public and international private law, as well as corporate norms of international organizations.

The international experience of combating signs of corruption in sports became the object of research by Oliynyk and Bashta (2019). In particular, the authors analyzed the experience of the creation, formation, and application of international anti-corruption measures in the field of sports and sports law. Their implementation into national legal systems involves, first of all, the study of international and national sports legislation aimed at the problem of corruption.

Peculiarities of the legal as well as non-legal regulation of physical culture and sports in Ukraine and some European states were analyzed by Kharytonov, E (Kharytonov, Evgen) [1]; Kharytonova, O, Kostruba, A., Tkalych, M., & Tolmachevska, Yu. (2021) in the article «To the Peculiarities of Legal and Non-Legal Regulation of Social Relations in the Field of Sport».

Kolomoiets, T., Tkalych, M., Melnyk, P., Panchenko, B. & Tolmachevska, Y. (2021) in their article "Combating Corruption in Sport: Legal Aspect" investigated various manifestations of corruption in sports. The authors aim to establish legal mechanisms to combat corruption in sports at both national and international levels.

«Sanctions in Sport: The Relationship Between Legal and Local Regulation» is an article written by Bolokan, I., Samoylenko, G., Tkalych, M., Panchenko, B., & Dmytriv, V. (2021). As a result of the work, the general features of legal regulation of sports sanctions in different countries were established, the terminology and conceptual schemes fundamental for legal doctrine were analyzed, the description of the state of research of the problem in the scientific environment was given, the national situation on responsibility in the field of sports was analyzed, typical examples of court cases in the researched aspect are specified, and also recommendations on improvement of the legal base were given.

Concepts and types of crimes in the field of physical education and sports were analyzed by Petrenko (2014). The researcher concluded that when formulating the concept of "crime in the field of physical culture and sports" it is necessary to proceed from the fact that it is specific to the generic concept of the general definition of crime, and therefore it should reflect both the features that define the act as a crime and the features that reflect properties specific to this group of criminal acts. Therefore, in the opinion of the author, a crime in the field of physical culture and sports can be defined as a socially dangerous criminal act provided for by the Code of Criminal Procedure of Ukraine, which causes damage, or creates a threat of causing it to social relations, which ensure the full development of physical culture and sports in the country and which, at the same time,

are protected by the law on criminal liability. The classification of crimes in the field of physical culture and sports, taking into account the multiplicity of actions that can be attributed to this group, involves their distribution into groups according to the following criteria: as the generic object of the crime, the subject of the crime, the form of guilt and the internal structure of social relations.

The basics of the methodology of investigating crimes committed in e-sports are analyzed in the work of Samoilenko (2020). The author highlighted the basics of the method of investigation of crimes committed in cyberspace, examined the elements of the forensic characteristics of crimes that are determined by the specifics of cyberspace as a crime situation, and emphasized the problematic aspects of the initiation of criminal proceedings, determined the specifics of the use of special knowledge during the investigation of crimes committed in cyberspace, typified investigative situations and tactical operations of their investigation

Sokurenko (2019) investigated the criminological analysis of the state of illegal influence on the results of official sports competitions. The author states that there is an extremely high level of latency of the crimes provided for in Art. 369-3 of the Criminal Code of Ukraine, which is at least 99% of their actual volume, as well as the structure of match-fixing depending on the type of sport, the method of illegal influence on the results of official sports competitions, and the subjects of bribery were identified and analyzed.

Stolyar (2017) investigated the international legal problems of defining and classifying cybercrimes.

Shvets (2019) drew attention to the current problems of procedural and technical forensic support of a pre-trial investigation. The author concluded that science and practice should closely interact with the aim of the most rational and legal solution to problems that arise during pre-trial investigation and trial of criminal proceedings.

Engelberg and Moston (2020) focused on the study of crime and illegal behavior in sports.

Some aspects of the application of criminal liability for crimes related to corruption in sports were considered by Shchokin, R., Oliinyk, V., Bondarenko, O., Kyslenko, D., Kolos, O., & Tymoshenko, Yu. (2023) in their article «Sport Management in the Context of Criminal Liability for Corruption».

Tkalych, M., Davydova I., & Tolmachevska, Yu. (2020) in their article «Current State and Prospects of Development of the Sports System of Ukraine: Legal Aspects» also touched on issues of legal responsibility in sports.

Organized crime in sports was also analyzed by Eaton (2018). Masoero (2022) analyzed Brazil's experience of criminal activity in sports. Also, problematic issues of football hooliganism in some European countries were analyzed by Milojevic and Jankovis (2012). The relationship between crime in sports and brutality and punishment is explored in the work of Falck (2015).

As can be seen from the literature analysis carried out above, the issue of crime in the field of sports arouses interest among scientists and lawyers. At the same time, collecting evidence during the investigation of criminal activities carried out in the field of sports from the context of international, including European, experience was not carried out, which causes interest and determines the relevance of this topic.

Discussion

In modern conditions crimes in sports are extremely common. Sports are related to profitable activities and are therefore very attractive to criminals. At the same time, the relevance of this topic is due to the fact that criminal activity in sports, especially corrupt activity, is not so important from the point of view of the financial component, as it is important in view of the need to ensure fair play and justice.

Manipulation of sports results, including in an organized manner, both at the international level and at the national level, poses a threat to the integrity of sports.

In general, criminal activity in the field of sports can be as follows:

- 1. Frauds with the construction of sports facilities.
- 2. Abuse by officials and administrative staff of international sports organizations during the selection of cities for the Olympic Games (bribery of organizers and other electoral procedures in the field of sports).
- 3. Bribery of athletes, sports judges, coaches, team managers, and other participants or organizers of sports competitions in order to exert the necessary influence on their results.
- 4. The use of prohibited methods of increasing the performance of an athlete (doping, unauthorized interference in the operation of electronic computing machines (computers), automated systems, computer networks or telecommunication networks, etc. cybersport) (Oliynyk, Bashta, 2019).

All the above-mentioned crimes are intended to violate the principle of fair play.

Let's consider crime in the field of sports, taking into account some examples. At the 1912 Olympics in Stockholm, referees openly helped the hosts of the competition. So, for example, the judges immediately forced the strongest opponents to fight against each other, and if the score was even, both were awarded defeat. At the 2004 Games in Athens, the American Paul Hamm became the champion in gymnastics. However, according to experts, the Korean Tae Yeung Young performed much brighter and better. The first place among referee scandals in winter sports is occupied by figure skating, as the ease of subjectivism and corrupt assessment is obvious here.

In 2018, Europol released interesting data from their investigations into match-fixing, which they conducted over a year and a half. According to these results, over the past few years, about 380 fixed matches in football have been played in Europe, and more than 420 football players and

officials, including presidents and coaches from 15 countries, were aware of them.

So, as we can see, at the international level, crime in the field of sports exists. Therefore, it is important to analyze the normative and legal consolidation of crime-fighting tools, including the proof of such crimes.

An important act in the field of combating crime in sports is the United Nations Convention against Corruption (adopted in New York on October 31, 2003, by Resolution 58/4 at the 51st plenary meeting of the 58th session of the UN General Assembly) (Oliynyk, Bashta, 2019) This document states the connection between corruption and other forms of crime, in particularly organized crime and economic crime, including money laundering, and indicates that large amounts of assets have so far been found in the field of corruption, which may constitute a significant share of the state's resources and endanger political stability and sustainable development.

The Convention calls for the prevention, investigation, and prosecution of corruption in both the public and private sectors, as well as the suspension of operations (freeze), seizure, confiscation, and return of proceeds from crimes recognized by the Convention. The Convention prohibits bribery of national public officials, as well as foreign public officials and officials of public international organizations. The Convention obligates to criminalize as criminally punishable such actions as promising, offering, or providing, personally or through intermediaries, any undue advantage to the official himself or another natural or legal person, as well as soliciting or accepting, personally or through intermediaries, any undue advantage for the official himself or another natural or legal person, so that the official performs any act or omission in the performance of his official duties. At the same time, to understand crime in the field of sports, it is important to understand the structure of international sports organizations. Currently, there is a dual structure: on the one hand, there is a general system linking (in a simplified form) the International Olympic Committee and the National Olympic Committees, and on the other hand, in each sport, there is an international sports federation that governs the national sports federations of this type of sport. Such a relationship has a subordinating) character. Yes, the IOC (in the Olim PI movement) and the ISF in each specific sport (for example, FIFA - in football, FIBA - in basketball) have become monopolistic organizations that fully control the Olympic movement and provide opportunities for corruption. This circumstance is important to take into account when investigating crimes and establishing a causeand-effect relationship and proving the real possibility of influencing the result in sports (sports competitions) (Eaton, 2018).

Regional anti-corruption agreements operating on the European continent are of particular interest in this regard. In particular, normative legal acts of the Council of Europe.

The Code of Conduct for Public Officials, Approved by Resolution (2000) of the Committee of Ministers of the Council of Europe Created to monitor compliance with anti-corruption treaties of the Council of Europe.

Convention on Criminal Liability for Corruption (Council of Europe Convention 1999) Establishes a more detailed list of persons whose actions should be punished and distinguishes between active and passive bribery, the Convention obliges sports organizations to implement the principles of good governance in their practice. It is proposed to create a special committee for the implementation of the Convention, which forms a list of sports organizations that manage sports or any single sport at the national level, makes changes to it, and ensures its publication in the proper form.

Council of Europe Convention on the Manipulation of Sports Competitions (2014). From the content of this Convention, it can be seen that its main tasks are to prevent, detect and stop the manipulation of national and international sports competitions at the national or international levels; promote cooperation at the national and international levels between interested state authorities, as well as with sports organizations and operators of bookmaking services in the fight against the manipulation of sports competitions. The Convention, in particular, provides for establishing the rights and obligations of states to exercise jurisdiction over crimes related to the manipulation of sports competitions) and sports organizations to prevent the spread of match-fixing; definition of the role of bookmakers and the principles of their interaction with authorities and sports organizations; creation of international standards for preventing match-fixing, including sports, legal and technical tools for their detection; establishment of criminal, administrative and disciplinary liability measures for the organization of contractual matches and participation in them. The convention provides for the creation of an international control body - a committee that will make recommendations to member states regarding what should be monitored in this area, as well as determine other ways of interaction between authorities, sports organizations, and bookmakers (Council of Europe Convention against manipulation of sports competitions, 2014).

So, international organizations regulate the issue of combating crime in the field of sports.

But within the framework of the international fight against crime in the field of sports, the role and contribution of the International Criminal Police Organization (Interpol) should be noted, which in its Reports publishes specific information about the work performed in the specified field. (Corruption and crimes linked to the transfer of athletes increase risk among minors and vulnerable adults: new UNODC research, 2022). The main focus is on the activities of illegal bookmakers, countering Internet gambling networks, and betting on matches.

To solve the outlined problems, Interpol created the "Fair Sport" program, which is global in the field of training, education, and initiative for the prevention of fixed matches, as well as irregular and illegal bets. Interpol and the International Olympic Committee jointly identify and solve problems, including those related to doping, match-

fixing and illegal betting on sports events, as well as corruption of referees and players. Interpol units also conducted an operation aimed at disrupting illegal football games by criminal organizations in Asia during the World Cup in Brazil. Given the fact that match-fixing is dealt with by the network's target group of specialists, consisting of investigators, their activities enable member states to exchange intelligence and experience, as well as to develop cross-border strategies in the fight against international match-fixing (Global report of corruption in sport, 2021).

In view of the above, it is important to use the domestic and foreign experience to implement changes in the fight against criminal activity in the field of sports, including at the stage of gathering evidence. Within the framework of this activity, it is expedient to expand international cooperation regarding the collection of evidence and exchange of information and to create a system of anti-corruption control. This will contribute to the achievement of high results by athletes from all over the world, which are based on honesty and transparency of the ways and means of achieving them.

Conclusions

As a result of the study of European and international standards regarding the investigation of crimes committed in the field of sports, the following conclusions were made:

- 1. At the international level, fundamental standards regarding the investigation of crimes in the field of sports have been established, and the guiding principles of the investigation of such crimes have also been determined. At the same time, at the national level, countries resolve the issue of combating this type of crime by ratifying the provisions of international legal acts and adopting separate laws.
- 2. A significant role among foreign countries is given to the fight against corruption in the field of physical education and sports and the creation of economic, social-psychological, and legal mechanisms to counter the spread and selfreproduction of corruption.
- 3. In Ukraine, combating crime in the field of sports is enshrined at the legislative level, in particular, activities for unlawful influence on the results of official sports competitions, cybercrime, and manipulation of sports competitions are criminalized. However, there are currently no verdicts that would confirm the proper investigation of these crimes and the reality of their proof.

Regarding further scientific research, we consider it necessary to study the international experience regarding the regulation and consolidation of criminal offenses in the field of sports.

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