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HISTORY OF THE LAW ON CRIMINAL LIABILITY FOR ILLEGAL INFLUENCE ON THE RESULTS OF SPORTS COMPETITIONS IN UKRAINE (1845-1991)

Володимир Шаблістий, Дмитро Анісімов. ІСТОРІЯ СТАНОВЛЕННЯ ЗАКОНОДАВСТВА ПРО КРИМІНАЛЬНУ ВІДПОВІДАЛЬНІСТЬ ЗА ПРОТИПРАВНИЙ ВПЛИВ НА РЕЗУЛЬТАТИ ОФІЦІЙНИХ СПОРТИВНИХ ЗМАГАНЬ НА ТЕРИТОРІЇ УКРАЇНИ (1845-1991 рр.). У статті авторами проаналізовано кримінальне законодавство українських земель починаючи з Уложення про покарання кримінальні та виправні від 15 серпня 1845 року до Кримінального кодексу Української Радянської Соціалістичної Республіки від 28 грудня 1960 року. На основі дослідження історії становлення кримінальної відповідальності за протиправний вплив на результати офіційних спортивних змагань на території українських земель констатовано, що подібний вид кримінально-правової заборони, а також їх порушення насамперед залежало від соціально-економічної ситуації в країні у окремі проміжки часу. Наголошено, що встановлення кримінальної відповідальності за протиправний вплив на результати офіційних спортивних змагань було необхідним та історично зумовленим кроком українського законодавця.

Акцентовано, що на даний час кримінально-правове забезпечення результатів офіційних спортивних змагань потребує вдосконалення, адже постала нагальна потреба в боротьбі з корупцією та допінгом в сфері спорту. Це, зокрема, підтверджується даними офіційної статистики Єдиного державного реєстру судових рішень та Єдиного звіту про кримінальні правопорушення по державі. У зв'язку з цим відсутні будь-які відомості про засуджених осіб за протиправний вплив на результати офіційних спортивних змагань.

Ключові слова: історія становлення, спортивні змагання, протиправний вплив, кримінальна відповідальність, спорт.

Relevance of the study. The study of the history of the formation of criminal law and individual criminal laws has always occupied one of the leading places in the science of criminal law. After all, the analysis of historical conditions, socio-legal factors that contributed to the emergence of criminal prohibitions, is the basis for establishing the direction of improvement of existing criminal law. Article 369-3 of the Criminal Code of Ukraine (hereinafter – the Criminal Code of Ukraine) is no exception, which currently has several problems to apply.

Recent publications review. Among the scientists who considered the issue of illegal influence on the results of official sports competitions, we can highlight S. Babanin, O. Bantyshev, O. Bondarenko, Yu. Horodetsky, A. Danilevsky, M. Yefimov, K. Zadoya, O. Kryshevych, V. Ludvik, F. Nemich, A. Savchenko, D. Sanakoev, O. Semenyuk, V. Sokurenko, A. Stark, V. Fedchenko, O. Chuvakov, H. Yarmouth and others. At the same time, acknowledging the significant contribution of this constellation of scientists, it should be

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emphasised that the historical aspects of the formation of criminal liability for illegal influence on the results of official sports competitions have not been paid enough attention to.

The research paper's objective to study the history of legislation on criminal liability for illegal influence on the results of official sports competitions in Ukraine in the period from 1845 to 1991 from the Code of Criminal and Correctional Punishment of August 15, 1845, to the Criminal Code of the Ukrainian Council of the Socialist Republic of December 28, 1960).

Discussion. To choose the direction of improvement of the existing criminal legal norms, which have problems of their practical application, it is necessary, first of all, to conduct a study of the history and formation of the studied criminal legislation, which will be the benchmark for future research.

V. Saber says that the study of the history of criminal law avoids new mistakes and is the key to development. Moreover, according to the scientist, this statement applies to all spheres of human existence, not just the legal sphere [1, p. 8]. Thus, for more than 200 years, the majority of Ukrainian lands, with an area of 452 thousand square kilometers with a population of 25,5 million people were a part of the Russian Empire. In the XIX century and at the beginning of the XX century, physical culture and sports were introduced into the practice of military educational institutions, and the foundations of physical training in the army were created. The development of physical culture and sports is mainly due to the efforts of progressive public figures, military figures, teachers, scientists [2, p. 262].

In the middle of the XIX century, on August 15, 1845, the Russian Emperor Nikolai Pavlovich Romanov signed «Уложение о наказаниях уголовныхъ и исправительныхъ» (the Code of Criminal and Correctional Punishments). No wonder this historical monument is called the first full-fledged Russian Criminal Code. Criminal liability has been established for «мздоимство» (bribery) and extortion.

According to Art. 402 «On Bribery and Greed» it provides as follows: it is an abuse of power or power of attorney. For bribery could be prosecuted officials who carried out their activities in the field of sports [3, p. 175].

According to Art. 406 «Extortion is considered the highest degree of greed. By this is meant any claim for gifts, or an uncertain payment, or a loan, or any services, profits, or other benefits to the office or position of the perpetrator». Complicity is also criminalized. In Art. 409 provides «Promotion of bribery or greed» [3, p. 176–178].

In these articles, we can see a prototype of illicit gain, concerning a special subject, which can be considered as a certain basis of the article we are studying. However, even in the days of the Russian Empire there was a ban on lotteries, except for the state ones. By Art. 1278 they were those «who without the permission of the government will publicly play the lottery», Art. 1279 «who will be exposed in the prohibited by law distribution of tickets of any foreign lottery», Art. 1280 «for forgery and other deceptions when playing the lottery» [3, p. 520].

According to the Criminal Code of March 22, 1903, which was approved during the reign of Nicholas II, namely Art. 656 «Punishment is subject to an employee guilty of receiving a bribe knowingly given for a committed name, which is part of his duties, services, actions» [4, p. 137]. The competition judge could be prosecuted for receiving a bribe (illegal profit). In these norms, for the first time at the legislative level, the emperor tries to regulate lottery activities.

The First World War, which began in 1914, necessitated some measures to improve the process of physical and military training of the youth of the Russian Empire. On December 8, 1915, the tsarist government adopted the «Regulations on the Mobilization of Sports», which stated that the mobilization of sports was intended to organize pre-conscription training of person's subject to conscription during the war. In total, in the Kyiv educational district for the period from 1915 to 1916, 2276 students of various educational institutions took military pre-service training courses [2, p. 263].

The fateful event for our people was the revolution of 1917, which undoubtedly influenced the further development of physical culture and sports.

First, it is the formation of the Central Council on March 17, 1917, which was the beginning of the process of building the institutions of statehood of Ukraine. The Third Universal, proclaimed on November 20, 1917, proclaimed the Ukrainian People's Republic, and the Fourth Universal (January 22, 1918) proclaimed the independence of Ukraine. Physical culture and sports were under the leadership of the Ministry of Education [2, p. 263].

A new stage of formation of physical culture and sports has begun. Legislative acts of public authorities are of great importance for understanding the forms and methods of

regulating public life [5, p. 719]. At this stage of the study, we will pay attention to the questions to the Ukrainian Soviet Socialist Republic on the topic we are studying.

On October 2-10, 1920, the Third Congress of the All-Union Leninist Communist Youth Union was held, at which, for the first time since the revolution, one of the issues was to discuss the importance of physical culture and sports in the state.

A review of the Criminal Code of 1922 suggests that the legislator focused on the settlement of military conflicts. However, the criminal liability for bribes is ignored. This is in particular Art. 144 and Art. 115 [6, p. 14]. The Basic Law of the USSR adopted at the second session of the Central Executive Committee of the USSR of the first convocation on June 6, 1923 [7], was also aimed at regulating state control. In May, 1936, the All-Union Central Council of Trade Unions decided to organize 64 voluntary sports unions of trade unions [8, p. 11].

The Central Executive Committee of the USSR and the Council of People's Commissars of the Ukrainian SSR adopted Resolution № 64/1087 of July 21, 1936 «On the Establishment of the All-Union Committee for Physical Culture and Sports under the Union of People's Commissars of the USSR» [9]. This resolution was aimed at strengthening state control over physical culture and sports.

On January 30, 1937, in Kyiv, at the XIV Extraordinary Congress of Soviets, the draft of the new Constitution of the USSR was approved. According to Art. 19 of the latter, the Ukrainian Soviet Socialist Republic, represented by its highest authorities and public administration bodies, includes the management and organization of physical culture and sports [10].

On September 1, 1939, Adolf Hitler's troops attacked Poland. World War II begins. During the war, all forces of the USSR were aimed at fighting the German occupier. The end of the war dates back to September 2, 1945.

After the liberation of the territory of the USSR from German troops in 1944 by the decision of the Central Committee of the Communist Party of Ukraine and the Council of People's Commissars of the USSR on December 7, 1943, the Committee on Physical Culture and Sports resumed work. Resolution of the Central Committee of the Communist Party of Ukraine and the Council of People's Commissars of the USSR for № 1592 of November 20, 1944 «On measures to improve the mass physical culture and sports work of the USSR». The Council of People's Commissars of the USSR passed a resolution on № 375 of February 16, 1945 «On military and physical training of students in schools, universities, and colleges of the USSR» [2, p. 266].

In the Criminal Code of the USSR of December 28, 1960, Chapter VII «Official Crimes». Accordingly, officials are persons who permanently or temporarily related to the performance of organizational or administrative duties, or perform such duties under special authority at enterprises, institutions or organizations, regardless of ownership, positions [11]. In particular, we are interested in Art. 168 «Receiving a bribe». It provided for criminal liability for the receipt by an official of any form of bribery for performance or non-performance in the interests of the bribe-giver, any action using the power or position granted to him. This rule could potentially be applied to cases of bribery of officials of sports federations, organizations, sports clubs.

On October 7, 1977, at the extraordinary seventh session of the Verkhovna Rada of the Ukrainian SSR of the ninth convocation, a new version of the Constitution of the Ukrainian SSR was adopted. In the norms of the said Constitution, the legislator singled out physical culture and sports as one of the priorities of state policy. In Art. 25 it was proclaimed that the USSR provides spiritual and physical development for young people, prepares them for work and social activities. In Art. 41 it was stated that citizens of the USSR have the right to the development of public sports, physical culture, and tourism [12].

Thus, from act to act, we can trace the gradual and systematic development of regulatory support for physical culture and sports.

Nowadays, sport is a complex multifunctional social phenomenon that has an impact on various aspects of human life [13, p. 31]. Therefore, the state should pay enough attention to sports not only and not so much at the national but also the international level.

Meeting the needs of spectators in the observation of a sports spectacle, which takes place in a fair, uncompromising competition of athletes in compliance with the principles of ethics and fair play, should be one of the basic principles of the competition. However, the facts of corruption influence on the official sports competitions, and their results lead to the mass audience receiving low-quality sports spectacle, which significantly violates the interests

of citizens and the interests of sports development in Ukraine [14, p. 214]. This position is relevant if we consider it from the standpoint of bringing the audience to the fore. This opinion does not stand up to criticism, because the rule should be protected by public relations. Even in ancient Greece, while watching competitions, spectators who violated the rules of conduct were beaten with sticks, it was the case of a specially appointed supervisor.

A new stage in the development of legislation on criminal liability begins with Ukraine's independence in 1991, sports activities are primarily provided by the Constitution of Ukraine [15]. According to Art. 49, the state undertook to take care of the development of physical culture and sports and to ensure the sanitary and epidemiological well-being of the population.

Conclusions. A study of the origin and current state of criminal law support of the results of official sports competitions in Ukraine showed that such criminal law prohibitions depended primarily on the socio-economic situation in the country at a certain time.

Beginning with the Penal Code of August 15, 1845, officials were prosecuted for providing improper benefits. Officials who carried out their activities in the field of sports could be prosecuted for bribery. The Criminal Code of March 22, 1903, reflected the provisions of the criminal law of the predecessor. However, for the first time at the legislative level, the legislator is trying to regulate lottery activities. The Criminal Code of the Ukrainian SSR of December 28, 1960, defined officials and improve the criminal law on bribery, which was called «Receiving a bribe».

In addition, it was found that currently, the criminal law enforcement of the results of official sports competitions needs to be improved, as there is an urgent need to combat corruption and doping in sports.

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ABSTRACT

The article analyzes the criminal legislation of the Ukrainian lands from the Regulations on Criminal and Correctional Punishments of August 15, 1845 to the Criminal Code of the Ukrainian Soviet Socialist Republic of December 28, 1960. Based on a study of the history of criminal liability for illegal influence on the results of official sports competitions in the Ukrainian lands, it was stated that this type of criminal law prohibition and their violation primarily depended on the socio-economic situation in the country at certain times. It was emphasized that the establishment of criminal liability for illegal influence on the results of official sports competitions was a necessary and historically determined step of the Ukrainian legislator.

It has been emphasized that at present the criminal law support of the results of official sports competitions needs to be improved, as there is an urgent need to fight corruption and doping in the field of sports. Which, in particular, is confirmed by the official statistics of the Unified State Register of Court Decisions and the Unified Report on Criminal Offenses by State. Accordingly, there is no information about convicted persons for illegal influence on the results of official sports competitions.

Keywords: *history of formation, sports competitions, illegal influence, criminal liability, sports.*