

Criminal Law in European Countries

Combating Manipulation of Sports Results - Match-fixing*

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Article

ABSTRACT

This article examines how Council of Europe (CoE) member states address the manipulation of sports results, notably match-fixing, through their criminal law systems and what role future international instruments should play. Building on CoE Recommendation CM/Rec(2011)10 on the promotion of integrity in sport, it maps existing national approaches, showing that some states have introduced specific offences targeting manipulation of sports results, while others rely on general provisions on fraud, corruption, money laundering, or illegal gambling. The contribution highlights that, in practice, authorities largely consider existing criminal law frameworks sufficient, even though investigations and prosecutions remain uneven across Europe and complicated by the transnational nature of match-fixing and related betting schemes. It also explores jurisdictional issues and potential conflicts of jurisdiction in multi-country cases. Against this background, the article argues that any future CoE convention on match-fixing should prioritise coordinated preventive, regulatory, and cooperative measures rather than detailed harmonisation of criminal offences, while still including a general obligation to ensure effective criminalisation, investigation, and prosecution, as well as clear rules on jurisdiction and interstate consultation.

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Introduction

On 28 September 2011, the Council of Europe (hereinafter “the CoE”¹) adopted Recommendation CM/Rec(2011)10 on “Promotion of the integrity of sport against manipulation of results, notably match-fixing.”²

As stressed in the recommendation,³ the problem of match-fixing is, inter alia, a serious threat to “confidence among the public if it perceives sport as a place where manipulation gives substantial financial benefits to certain individuals, rather than as an activity where the glorious uncertainty of sport predominates.”⁴ The growing commercialisation of sport mirrors the lucrative nature of some types of sporting activities and the even more lucrative gains from sport-related betting, and it has undoubtedly led to the establishment of certain profit-making structures where the main activities are concentrated in the field of sports. Some of those structures are of a fully legal nature (i.e., legal betting operators), but many of them – at least according to the latest findings of law enforcement agencies throughout the world – are not. In this environment, ethical practices and behaviour in sports need to be forcefully and effectively applied in order to preserve the spirit of sport itself, which is based on fair play and competition among equals.

The above-mentioned recommendation was adopted in response to this need. In particular, it specifies that the expression “manipulation of sports results” covers: “the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition.”⁵

The recommendation stresses that states should take the following measures in order to combat the manipulation of sports results. Firstly, they should make sure that their legal and administrative systems are provided with “appropriate and effective legal means” to combat this practice.⁶ Secondly, where states already have existing legislation in place, this legislation should be reviewed to ensure that “manipulation of sports results – especially in cases of manipulation of competitions open to bets – including acts or omissions to conceal or disguise such conduct (...) can be sanctioned in accordance with the seriousness of the conduct.”⁷

Following a number of measures undertaken after the adoption of this recommendation, the CoE decided to prepare a feasibility study on the possible elaboration of a binding instrument (i.e., a convention) on match-fixing.⁸ In this context, the Council of Europe’s European Committee on Crime Problems (hereinafter “the CDPC”) was asked to contribute to this feasibility study as regards criminal law issues. Set up in 1958, the CDPC is responsible for overseeing and coordinating the Council of Europe’s activities in the field of crime prevention and crime control. For instance, it identifies priorities for intergovernmental legal cooperation in Europe; makes proposals on activities in the fields of criminal law and criminal procedure, criminology, and penology; and implements these activities. It is responsible for drafting various conventions, recommendations, and reports in the field and, to this end, organises, inter alia, conferences for Ministers of Justice and conferences for directors of prison administrations.

This paper is mainly based on information on criminal law provisions applicable to the manipulation of sports results and on possible legislative plans that states may have in this respect. Some examples of practical experience during the investigation and prosecution of such conduct is also included.

I. CoE Member States' Criminal Law Applicable in Cases of Manipulation of Sports Results

Specific criminal law provisions to address certain types of manipulation of sports results have been introduced – recently in some cases – in 11 European states (Bulgaria, Cyprus, Georgia, Greece, Italy, Poland, Portugal, Spain, Russian Federation, Turkey, and the United Kingdom). In other countries, such conduct – or at least certain forms thereof – fall under their general criminal law provisions. While the legal framework varies in this respect, the relevant criminal law provisions are most often those concerning fraud and different forms of corruption.

Most states, in which specific criminal law provisions on the manipulation of sports results do not exist, do not seem to have any plans to develop specific legislation in this respect in the near future. Only in Sweden is specific legislation currently being prepared, and the advisability of legislative measures in Switzerland is currently being studied.

In 13 European states, investigations/prosecutions (and sometimes convictions) in cases of manipulation of sports results have recently taken place. This applies equally to states with specific legislation (Cyprus, Greece, Italy, Portugal, and Turkey) as well as to states where general criminal law provisions have been applied (Belgium, Czech Republic, Finland, France, Germany, Lithuania, Monaco, Switzerland). In many other states, it appears that no investigations/prosecutions regarding cases of manipulation of sports results have been recently carried out (Azerbaijan, Bosnia and Herzegovina, Bulgaria, Denmark, Estonia, Georgia, Iceland, Ireland, Norway, Serbia, Sweden). It is likely, however, that even more states have carried out investigations/convictions with regard to the manipulation of sports results: if a state has no specific legislation in place but instead applies general provisions on fraud or corruption, relevant statistical data on whether such an investigation or conviction was for an offence of fraud or corruption related to the manipulation of sports results may simply not be available.

1. Specific Criminal Law Provisions in CoE Member States

In the 11 countries that have introduced specific criminal law provisions, the definition of manipulation of sports results is based on general definitions of active and/or passive corruption and/or fraud. However, these provisions may introduce specific elements and/or a specific range of sanctions. For example, these criminal law provisions may apply to conduct:

- Intended “to influence the development or outcome of a sports competition” (Bulgaria), or “influencing results of the competition and contest” (Georgia), or “exerting influence on the results” (Russian Federation), or “to influence a specific sports competition” (Turkey);
- Having the purpose of “the alteration of the result of any team or individual sport” (Cyprus), or “to alter the result in favour or against sports clubs, groups of paid athletes or athletic public limited companies” (Greece), or “to alter or distort the result of a sporting event” (Portugal);
- Undertaken “in order to get a different result from the one which would have been reached by a regular competition” (Italy);
- Intended to induce “unfair behaviour that might influence the result of the competition” (Poland).

In some cases, such provisions also refer to specific actors, whose behaviour must be influenced by such conduct in order for these provisions to be applicable, e.g., athletes, managers, or members of sports clubs

(Cyprus), a participant, a referee, a coach, a leader of a team, or an organiser of professional sports competitions, as well as an organiser or a jury member of a commercial entertainment contest (Georgia, Russian Federation).

Criminalisation on the grounds of these provisions does not appear to be dependent on whether or not the manipulation of sports results is actually successful, i.e., the intended (manipulated) result of the sporting match is achieved. In Cyprus and in Greece, for instance, such a case of successful manipulation would, by definition, be considered an aggravating circumstance. The [offence of] manipulation of sports results related to the participation in betting schemes is considered to be an aggravating circumstance under Bulgarian and Italian law whereas Polish criminal law specifically punishes a person who participates in betting schemes – or advocates such participation – and knows that the [offence of] manipulation of sports results has taken place.

2. General Criminal Law Provisions in CoE Member States

In the majority of European states, one or more “general” criminal law provisions could be applicable to cases of manipulation of sports results. Successful convictions on such grounds have taken place in some of these countries. In other countries, it appears that some of their criminal law provisions would or should be applicable in such cases.

In several states, the criminal law provisions on fraud and corruption cover most or at least some of the types of conduct that may be involved in the manipulation of sports results (Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Montenegro, Serbia, Slovenia, and Switzerland). In many of them, reference is made to provisions on different types of corruption (Azerbaijan, Belgium, Czech Republic, Finland, France, Iceland, Latvia, Monaco, Norway, and Sweden). In a number of others, there are cases where criminal law provisions on extortion (Belgium and Latvia), money laundering (Belgium, Denmark and France), or illegal gambling (Slovenia) could become applicable. It would obviously depend on the specifics of a particular case as to whether or not one or the other criminal law provision could apply.

The existence of general legislation in most of these states seems to suggest that these general provisions would be sufficient to deal with the phenomenon of manipulation of sports results and, therefore, that many of these states would not see the need to introduce new, specific offences in order to be able to combat such crimes.

II. Jurisdiction of CoE Member States’ Courts and Conflicts of Jurisdiction

Manipulation of sports results and the exploitation of legal or illegal betting schemes that may be linked to such conduct often take place in a multi-country setting. Thus, for example, players of a fixed match may come from one country, the match may take place in another country, the person(s) behind the fixing may come from a third country, and the illegal profits stemming from such an operation may be collected in yet another country. This may raise difficult issues of jurisdiction, either because the prosecutor or the court may not feel competent to address the case in its full complexity or because investigators and prosecutors in different countries may be attempting to bring the same persons to court for the same offences.

CoE conventions in the criminal law field normally require Member States to introduce jurisdiction on the basis of the territoriality principle, i.e., on the basis of where the offence has taken place (which may, however, sometimes be difficult to determine, or there may be more than one country to which this criterion applies in a specific case). In order to avoid impunity, CoE conventions in the criminal law field normally also

require Member States to exercise jurisdiction on the basis of the active and passive nationality principles (nationalities of the offender(s) and the victim/s). In most cases, however, CoE conventions allow state parties to enter reservations in respect of the latter.

When CoE Member States are not bound by a convention in this respect, they are free to determine the extent to which they wish to introduce and exercise jurisdiction. Even when Member States have become party to a CoE criminal law convention, the provisions on jurisdiction merely set “minimum rules,” which do not prevent Member States from also extending their jurisdiction to other cases beyond those with territorial links or links based on the nationality or place of residence of the offender or victim. In many cases, CoE conventions contain a specific “safeguard clause,” which clarifies that the convention in question does not exclude any criminal jurisdiction exercised by a party under its national law.

Some, but not all, CoE conventions contain a provision on positive jurisdiction conflicts, i.e., situations in which more than one party asserts jurisdiction and the parties are thus required to consult each other in order to establish which party should be in charge of prosecution.

Conclusion

Based on the findings of Recommendation CM/Rec(2011)10, it appears that a concerted and a more co-ordinated international response is needed to tackle the phenomenon of manipulation of sports results. In this context, practical steps have already been taken both internationally and domestically.

However, these measures do not seem to have been effective enough so far. In fact, the manipulation of sports results continues to spread throughout the sporting world. Therefore, it may be advisable to reinforce these efforts by way of a new legal instrument to be drafted under the auspices of the CoE.

Furthermore, as the phenomenon of the manipulation of sports results is in itself mostly transnational, a wide political forum may be required and the CoE is conceivably a legitimate “agora” in which it is possible to involve not only its member states but also of other states, international sports federations and specialised NGOs. The CoE, by adopting the above recommendation, has certainly started this process.

It is quite clear, however, that any possible future convention should focus on other ways of dealing with this phenomenon rather than on criminal law aspects. It appears that, irrespective of whether or not CoE Member States have chosen to introduce specific criminal law provisions on the manipulation of sports results, Member States’ authorities feel confident that, by and large, the majority of cases can be dealt with under existing criminal law provisions, be they specific provisions or general criminal law on fraud, corruption, or other types of offences.

In light of this, and considering the large range of possible types of conduct that may be linked to the manipulation of sports results as well as the variety of ways the Member States deal with such cases, it appears advisable that any possible future convention in this field could be complemented by a general provision appealing to state parties to ensure effective criminalisation and investigation of such crimes based on applicable national law, e.g., along the lines of Section 13 of Recommendation CM/Rec(2011)10.

In respect of jurisdiction, it may also be useful to specify that parties to such a convention shall exercise jurisdiction on the basis of the territoriality and the active nationality principles. They should also foresee

that, in cases where more than one state asserts jurisdiction, authorities consult each other to establish which party should be in charge of prosecution.

1. The Council of Europe, based in Strasbourg (France), covers the entire European continent, with its 47 member countries. Founded on 5 May 1949 by ten countries, the Council of Europe seeks to develop common and democratic principles throughout Europe based on the European Convention on Human Rights and other reference texts on the protection of individuals. The Committee of Ministers is the Council's decision-making body and is made up of the ministers of foreign affairs of each Member State or their permanent diplomatic representatives in Strasbourg.↵
2. Full text of Recommendation CM/Rec(2011)10: <https://wcd.coe.int/ViewDoc.jsp?id=1840345&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>↵
3. Within the meaning of Art. 15b of the Statute of the Council of Europe, a recommendation is a legally non-binding instrument. Although legally non-binding, recommendations may develop new standards that may subsequently serve as the basis for a legally binding instrument, such as a convention. Recommendations are sometimes quoted by the European Court of Human Rights as relevant Council of Europe instruments insofar as they reflect legal, political, and societal developments in the Council of Europe Member States.↵
4. Recommendation CM/Rec(2011)10, adopted by the Council of Europe on 28 September 2011, p. 2↵
5. Appendix to Recommendation CM/Rec(2011)10, Guidelines, Sect. A, para.1.↵
6. Appendix to Recommendation CM/Rec(2011)10, Guidelines, Sect. C, para.12.↵
7. Appendix to Recommendation CM/Rec(2011)10, Guidelines, Sect. C, para.13.1↵
8. According to Recommendation CM/Rec(2011)10, adopted by the Council of Europe on 28 September 2011, the Committee of Ministers: "Invites EPAS, where appropriate, in co-operation with other relevant national and international bodies: ... to carry out a feasibility study, in co-operation with the other concerned bodies, on the basis of this recommendation, on a possible international legal instrument that covers all aspects of prevention and the combat against the manipulation of sports results."↵

* Author statement

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