

Social values impaired by the manipulation of sports and betting events: the case of the Republic of Moldova

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Abstract

This paper identifies the values (and, implicitly, the social relations hence generated) defended against the manipulation of sports and betting events. Consequently, in the Republic of Moldova, the manipulation of sports and betting events is classified as a specific criminal offence. Under the Criminal Code of the Republic of Moldova, such an offence involves encouraging, influencing or instructing a participant in a sports event or a participant in a betting event to take acts that would produce a flawed effect on that particular event with the purpose to unduly derive goods, services, privileges or advantages of any kind for oneself or for another person. Sports events as well betting events shall be honest, unpredictable and carried out as per the principle of fair play. The author found that these values are impaired by the manipulation of a sports event or by the manipulation of betting events. Moreover, this criminal offence alienates supporters/fans from such events. Finally, the offence in question has repercussions on business activities performed in conjunction with sports events and with other kinds of events offering the possibility to make bets.

Keywords: match-fixing, sport, betting, fair play, Republic of Moldova

Introduction

In its Resolution of the 2nd of February 2012 on the European dimension in sport, the European Parliament urged the European Union (EU) Member States to take all necessary action to prevent and punish the illegal activities affecting the integrity of sport and to make such activities a criminal offence, in particular, where they are betting-related, meaning that they involve the intentional and fraudulent manipulation of the results of a sport competition or of a phase of it in order to gain an advantage not based solely on normal sporting practice or the associated

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uncertainty. In this context, it was recognised that sports federations do not have the structural or legal means to take effective action against match-fixing. In this way, the European Parliament sent a clear and loud message to the EU Member States: to deal effectively with the manipulation of a sports event (irrespective of whether it was committed to bet for a “certain” result or due to other reasons, *e.g.* achieving sporting objectives), criminal law must be applied as a measure of last resort (*ultima ratio*).

The reasons (and the rationale) beyond this message have been disclosed in the European Parliament Resolution of 14 March 2013¹ on match-fixing and corruption in sport. This document stated that the Europol joint investigation team, code-named “Operation Veto”, revealed widespread football match-fixing in recent years, with 680 matches around the world deemed to be suspicious, including 380 matches in Europe. It described a wide-ranging match-fixing network that struck at the sport’s core, with 425 people under suspicion and 50 others having been arrested. Europol stated that those figures were merely the “tip of the iceberg”. A large number of EU Member States were affected by match-fixing, this being a cause for serious concern since match-fixing is related to organised crime and is a major source of risk for the sporting establishment in all Member States, practically. Match-fixing is a form of crime which generates high revenues, while sentencing and detection rates are extremely low. It is therefore used by criminal organisations in their illegal activities such as money laundering and human and drug trafficking. Match-fixing is not a new phenomenon (Anderson *et al.*, 2014, p. 9; Husting *et al.*, 2012, p. 10; Vidal *et al.*, 2014, p. 26) and forms, along with corruption and other types of malpractice, the so-called “dark side of sports” (Andreff, 2018, p. 13). Match-fixing has a long history in all types of sports, going back to the earliest times (Preston and Szymanski, 2003, p. 618). Nonetheless, relatively recently, the phenomenon in question (match-fixing) reached alarming rates, having revealed the scale of a deeply enrooted negativity and overall hostility towards such deed.

Against this background, the European Parliament required, *inter alia*, the [European] Commission to explicitly encourage all EU Member States to include match-fixing in their internal criminal legislation in order to lay down appropriate minimum joint sanctions and to guarantee that the existing gaps are removed in a manner that is fully compliant with the fundamental rights.

At the same time, the European Parliament resolution of the 2nd of February 2017² on an integrated approach to sport policy: good governance, accessibility and integrity, called on the EU Member States to establish match-fixing as a specific

¹ European Parliament (2013), Resolution on match-fixing and corruption in sport (2013/2567(RSP)) (retrieved from <https://goo.gl/9nsEnq>).

² European Parliament (2017), Resolution on an integrated approach to Sport Policy: good governance, accessibility and integrity (2016/2143(INI)) (retrieved from <https://goo.gl/p1ik8X>).

criminal offence. However, the European legal landscape is not uniform³; whilst some countries focus on general offences of corruption or fraud (e.g. Finland, Norway, Sweden, Romania), others have implemented specific sport offences to cope with match-fixing contained either in their criminal codes (e.g. Bulgaria, France, Germany, Spain, Latvia, Lithuania, Ukraine), sports laws (e.g. Cyprus, Poland, Greece) or special criminal laws (e.g. Italy, Malta, Portugal, Turkey). In most States, the specific match-fixing offence is dissociated from the act of betting on a sport event or a competition which is fixed. For example, in Germany, match-fixing and bet-fixing are criminalized in two different but interconnected offences. In Bulgaria, Greece, Italy, Portugal, Spain and Turkey, bet-fixing is considered to be an aggravating factor for the match-fixing offence. Finally, in other states (e.g. Switzerland, the UK), the scope of the match-fixing offence is limited to competitions on which bets are offered⁴.

Given the Republic of Moldova's aspirations to adhere to the EU⁵, and in the light of the continuous concern for approximating the Moldovan legislation with the *Acquis Communautaire*, on the 21st of March 2013, the Parliament of the Republic of Moldova passed Law No. 38 on amendments and addenda to certain legislative documents. By means of this Law, Chapter X "Economic crimes" under the Special Part of the Moldovan Criminal Code was supplemented with two new articles, namely Article 242¹ "Manipulation of an event" and Article 242² "Bet-fixing". Likewise, provisions under Article 333, "Taking Bribes" and Article 334, "Giving Bribes", of the Criminal Code of the Republic of Moldova were amended in a way so as to enable the enforcement of criminal liability for giving bribes involving a participant in sports events or in betting, and accordingly, for taking bribes involving a participant in sports events or a participant in betting.

Following these introductory clarifications, it is important to bear in mind that "any indictment rule is erected around a social value, to which the Legislature

³ KEA Report (2012), Match-fixing in sport. A mapping of criminal law provisions in EU 27 (retrieved from <https://bit.ly/2gj1BQP>), p. 2.

⁴ UNODC-IOC (2016), Model criminal law provisions for the prosecution of competition manipulation (retrieved from <https://bit.ly/2Ilgk3Yf>).

⁵ Judgement No. 24 of 9 October 2014 for reviewing the constitutionality of the Association Agreement between the Republic of Moldova, on the one part, and the European Union and the European Atomic Energy Community and their Member States, on the other, adopted by the Constitutional Court of the Republic of Moldova, and Law No. 112 of the 2nd of July 2014 on ratifying the Association Agreement (Association Agreement RM – EU), provide the following: "162. [...] the aspirations of the Republic of Moldova to establish political, economic, cultural relations and in other areas of joint interest with the European countries and orientation towards the European area of democratic values were enshrined in the state constituting document – The Declaration of Independence. 163. [...] [O]rientation of the Republic of Moldova towards the European area of democratic values is based on the fundamental constitutional values unanimously recognised and protected, such as sovereignty, independency, and democracy."

understands to associate criminal protection” (Streteanu, 2008, p. 348; Streteanu and Nițu, 2014, p. 267). From this perspective, this paper aims to identify the values (and, implicitly, the social relations hence generated) defended against an event manipulation offence and which are impaired by committing this offence. In other words, it aims to define the special legal subject-matter of the offence referred to in Article 242¹ of the Criminal Code of the Republic of Moldova.

1. The “event manipulation” concept

To attain the aforementioned goal one first needs to define the “Event Manipulation” concept. Hence, pursuant to Article 242¹ (1) of the Criminal Code of the Republic of Moldova, an “*event manipulation*” shall mean encouraging, influencing or instructing a participant in a sports or in a betting event to take actions that would produce a flawed effect on that particular event with the purpose to unduly derive goods, services, privileges or advantages of any kind for oneself or for another person. Such an unlawful conduct is punishable by imposing a fine ranging from 2 350 to 4 350 conventional units⁶ or to imprisonment (one to three years), and in both cases the natural person in question is deprived of the right to hold certain positions or to exercise a certain activity for up to three years, while the legal entity is punished with a fine ranging from 6 000 to 9 000 conventional units and deprived of the right to exercise certain activities⁷.

Under Article 242¹ (2) of the Criminal Code of the Republic of Moldova, the same actions committed by a Trainer, a Sportsman’s Agent, a Member of the Jury, an Owner of the Sports Club or by a person – member of a sports organisation leadership are punishable by a fine ranging from 3 350 to 5 350 conventional units or by imprisonment (two to six years); in both cases, the people concerned shall have no right to hold certain positions or to exercise a certain activity for a 4-7 year – timeframe.

As it can be easily seen, in the meaning of offences referred to in Article 242¹ of the Criminal Code of the Republic of Moldova, not only sports events can be subject to manipulation but also betting, which may be not related to sports, *i.e.* the Academy Awards (the Oscars) or other film awards; Miss World; Eurovision; TV music contests and broadcasts; TV reality shows; political event; financial events, etc. (Brînză and Stati, 2015, p. 107; Stati, 2013, p. 12; Stati, 2014, p. 176; Stati, 2016,

⁶ According to Article 64(2) of the Criminal Code of the Republic of Moldova, a conventional unit used to calculate the amount of fines equals to MDL 50. At the time of writing this paper, 1 MDL = 0.25 RON; 1 MDL = 0.05 EUR.

⁷ Pursuant to Article 65 (2) of the Criminal Code of the Republic of Moldova, the court shall decide to deprive of the right to hold certain positions or to exercise certain activity for 1 – 5 years, and for 1 – 15 years for specific cases covered by the Special Part of the Criminal Code.

p. 217). Hence, this offence does not exclusively concern sports events, but also other types of events which provide the opportunity to make bets.

Pursuant to Article 242² (1) of the Criminal Code of the Republic of Moldova, “bet-fixing” shall mean betting on sport-related events or on other events that offer the possibility to make bets, or informing other people about the arrangement to manipulate the event at issue with the intention to urge them to participate in that particular betting committed by a person who certainly knew about the arrangement to manipulate that event. Such unlawful acts are punishable by fines ranging from 2 350 to 4 350 conventional units or by imprisonment (one to three years), while the legal entity involved is punished by fines ranging from 6 000 to 9 000 conventional units and by depriving them of the right to exercise certain activities. According to Article 242² (2) of the same Code, the liability is tightened if the acts referred to in paragraph (1) of the same Article are committed by an organized criminal group or by a criminal organization (letter a), or have caused particularly severe damage (letter b). Against this background, fixed betting offences shall be punished by fines ranging from 3 350 to 5 350 conventional units or by imprisonment (two to six years), while the legal entity shall be punished by fines ranging from 9 000 to 11 000 conventional units and by depriving it of the right to exercise certain activities.

So, under the Criminal Code of the Republic of Moldova, event manipulation offence is dissociated from the act of betting on a sport event or another event which is fixed.

Unlike the Criminal Code of the Republic of Moldova, according to Article 3 of the Council of Europe Convention on the manipulation of sports competitions, adopted on 18 September 2014, “manipulation of sports competitions” means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sport competition in order to remove all or part of the unpredictable nature of the aforementioned sport competition with a view to obtaining an undue advantage⁸ for oneself or for others.

This definition is shared also by the legal doctrine (Spapens and Olfers, 2015, p. 337). From the standpoint of terminology, the expressions “match-fixing” and “manipulation of sports competitions” are used interchangeably (Serby, 2015, p. 84; Zaksaitė, 2013, p. 287).

⁸ In the same sense, according to Article 29 (1) of the FIFA Code of Ethics (2018 edition): “[p]ersons bound by this Code are forbidden from being involved in the manipulation of football matches and competitions. Such manipulation is defined as the unlawful influencing or alteration, directly or, by an act or an omission, of the course, result or any other aspect of a football match or competition, irrespective of whether the behaviour is committed for financial gain, sporting advantage or any other purpose. In particular, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit any pecuniary or other advantage, on behalf of himself or a third party, in relation to the manipulation of football matches and competitions.”

2. Outcomes and discussions

Turning to the subject-matter under discussion, one could learn from Article 165 (2) of the Treaty on the Functioning of the European Union that one of the EU objectives is to develop the European dimension in sport by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

This provision has been detailed in a large number of documents adopted under the aegis of the EU and the Council of Europe. As an example, one shall note that:

- the European Parliament reaffirms the EU's legitimate interest in sport, in particular its social and cultural aspects, as well as the educational and social values that sports transmits such as self-discipline, challenging personal limitations, solidarity, healthy competition, respect for opponents, social inclusion, opposition to any form of discrimination, team spirit, tolerance, and fair play; sport represents a means of socialization, communication, social integration and, at the same time, teaches team spirit, fairness and respect for rules (European Parliament resolution of 13 November 2007 on the role of sport in education)⁹;
- sport has a special role in society as an instrument of social inclusion and integration. It constitutes an important instrument for promoting intercultural dialogue and makes an outstanding contribution to the development and promotion of important societal, cultural and educational values, such as fairness, tolerance and mutual respect, solidarity, respect for rules, team spirit, and self-discipline; sport teaches young people the values of tolerance and mutual respect, honesty and respect for the rules of fair play, and health care prevention (European Parliament resolution of 8 May 2008 on the White Paper on Sport)¹⁰;
- sport makes a huge contribution to positive values such as fair play, respect and social inclusion; high-level sport is a showcase for certain core sporting values and conveys those values to society generally, encouraging participation in sport (European Parliament resolution of 2 February 2012 on the European dimension in sport)¹¹;
- sport is perceived as a fundamental right of everyone, and therefore everyone should have equal rights to engage in physical activity and sport; sport is not only a growing economic reality, but also a social phenomenon which makes an

⁹ European Parliament (2007), Resolution on the role of sport in education (2007/2086(INI)) (retrieved from <https://goo.gl/c2hfNr>).

¹⁰ European Parliament (2008), *Resolution on the White Paper on Sport (2007/2261(INI))* (retrieved from <https://goo.gl/725YFr>).

¹¹ European Parliament (2012), Resolution on the European dimension in sport (2011/2087(INI)) (retrieved from <https://goo.gl/NY3riW>).

important contribution to the European Union's strategic objectives, and to social values such as tolerance, solidarity, prosperity, peace, respect for human rights and understanding among nations and cultures. Both professional and grassroots sports play a key role in the global promotion of peace, respect for human rights and solidarity, carry health and economic benefits for societies and have an essential role in highlighting fundamental educational and cultural values, as well as in promoting social inclusion (European Parliament resolution of 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity);

- sport provides a context for teaching important values upheld by the Council of Europe, such as tolerance and fair play, experience in winning and losing, social cohesion, respect for the environment and education for democratic citizenship (Recommendations No. 6/2003 of the Committee of Ministers of the Council of Europe¹² on improving the physical education and sport for children and young people in all European countries);
- sport attracts citizens, whose majority participates regularly in sports activities. This generates important values such as team spirit, solidarity, tolerance and fair play, helping them develop and attain personal goals (White Paper on Sport).

The aforementioned issues are typical for practicing sports not only at the level of the EU or the Council of Europe. Thus, at the global level, the Olympic Charter mentions that “[t]he practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play [...]”. From the same document one can learn that the International Olympic Committee's¹³ role is to encourage and support, inter alia, the promotion of ethics, as well as education of youth through sport and to develop their attachment towards fair play spirit, which shall prevail in sport.

In light of the foregoing, it is understood that the sport crux is competition, which developed historically during the evolution of the society and by which the physical performances, intelligence and creation ability were compared.

Sport and, respectively, sport events shall be subordinated to sports ethics, be honest, unpredictable and be conducted in compliance with the Principle of Fair Play. These values shall apply for betting as well. They may be derived from Article 50 (5) of the Constitution of the Republic of Moldova: “it is the duty of public authorities to ensure conditions for the free participation of young people in the country's social, economic, cultural and sporting life”. With no doubts, the State

¹² Committee of Ministers (2003), Recommendation Rec(2003)6 to member states on improving physical education and sport for children and young people in all European countries (retrieved from <https://goo.gl/rFfr1z>).

¹³ International Olympic Committee (2017), Olympic Charter (retrieved from <https://goo.gl/wlHeQk>).

shall efficiently endorse those provisions not just for the young people, but also for all people, regardless of their age.

The infra-constitutional regulatory documents guarantee the aforementioned values and social relations surrounding them. Hence, in terms of sporting activity, Article 9 (1) of the Law No. 330 of 25 March 1999 on physical culture and sport stipulates that “sporting activity shall be organised based on the principle of ensuring a civilised climate, fair play and sportsmanship”. Likewise, Article 3 (2) of the Law No. 185 of 11 July 2012 on preventing and controlling doping in sport provides that “this Law, other legislative and regulatory documents in force shall guarantee the right of citizens to practice clean sport, having complied with the principle of fair play”.

By contrast, with respect to betting, as per Article 3 (5) of the Law No. 291 of 16 December 2016 on organising and conducting gambling, “[t]he principles of state policy in the area of organising and running gambling/games of chance are as follows: a) protection of rights, legitimate interests, life and health of citizens; b) ensure a level-playing-field for all gambling players and compliance by all participants; c) ensure fairness and objectivity of activity in the area of gambling; [...]”. As per the aforementioned Law, betting is classified as gambling.

Following the foregoing statement that the values (and, implicitly, social relations surrounding them) generated by sports and betting events are guaranteed by law, it is necessary to elucidate the terms “integrity”, “unpredictability”, “ethics in sport”, “fair play”. Let us turn to them one by one.

Hence, integrity is seen as a virtue (Archer, 2016, p. 128). The European Parliament resolution of the 2nd of February 2017 on an integrated approach to sport policy: good governance, accessibility and integrity points out that sport integrity is paramount for promoting its credibility and attractiveness. At the same time, as per Article 3 (5) d) of the Law No. 291 of 16 December 2016 on organising and conducting gambling, it is understood that one of the principles of state policy in the area of organising and carrying out games of chance is to ensure protection of gambling results from the possibility to be influenced from outside. Based on the review of those provisions one can conclude that, on the one hand, participants in sport events and/or betting events have the positive obligation to show their real performance and act as per their best level of training and ability. On the other hand, the people subject to discussion have a negative obligation as well, namely to refrain from any behaviour that affects or would affect the integrity of the event they are involved in.

To support the statements made above, one shall invoke the provisions of Article 12 “Integrity of matches and competitions and match-fixing” of the Union of European Football Associations (UEFA) Disciplinary Regulations¹⁴, according to

¹⁴ United European Football Association (2017), Disciplinary Regulations (retrieved from <https://goo.gl/pYkF2Y>).

which: “[a]ll persons bound by UEFA rules and regulations must refrain from any behaviour that damages or could damage the integrity of matches and competitions organised by UEFA, and must cooperate fully with UEFA at all times in its effort to combat such behaviour” (paragraph 1); “[t]he integrity of matches and competitions is violated, for example, by anyone:

a) who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party, having violated in this way the UEFA statutory objectives;

b) who participates directly or indirectly in betting or similar activities relating to competition matches or who has a direct or indirect financial interest in such activities;

c) who uses or provides others with information which is not publicly available, which is obtained through his position in football, and damages or could damage the integrity of a match or competition;

d) who does not immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition;

e) who does not immediately and voluntarily report to UEFA any behaviour he is aware of that may fall within the scope of this article” (paragraph 2).

Hence, integrity presupposes organising and unrolling sports events and/or betting events under probity conditions, with no undue influence over their obvious course or final result.

The unpredictability of sports events and betting is closely related to their integrity (Breuer and Kaiser, 2017, p. 64; Harms and Kaiser-Jovy, 2018, pp. 39-41; McNamee, 2013, p. 173). This feature is inherent to the discussed events and captures people’s attention. As a valid proof, Recommendation CM/Rec(2011)10 of the Committee of Ministers¹⁵ of the Council of Europe to Member States on promotion of the integrity of sport to fight against manipulation of results, notably match-fixing, underlined the following: “the nature of sport itself, based on fair-play and equal competition, is unpredictability”. The same statement is mirrored in the Preamble of the Council of Europe Convention on manipulation in sports competitions. In that connection, based on the provisions of Article 2 of the Law No. 291 of 16 December 2016 on organising and conducting gambling, it means that betting involves placing stakes on an up-coming uncertain event to occur without the involvement of the Organiser. Therefore, the course or the result of sports events or of events of different nature offering the possibility to make bets (susceptible to be manipulated in the meaning of Article 242¹ of the Criminal Code of the Republic of

¹⁵ Committee of Ministers (2011), Recommendation CM/Rec(2011)10 to member states on promotion of the integrity of sport against manipulation of results, notably match-fixing (retrieved from <https://goo.gl/1Rb4Uo>).

Moldova) must be uncertain, and the best participant shall win. Sports events and betting are governed by the principle of uncertainty, like an artery overflying the hazard.

Without breaking the logical thread, according to Article 5 of the Code of Sports Ethics, revised by Recommendation No. 9/2010 of the Committee of Ministers of the Council of Europe¹⁶, “sports ethics is a positive concept that guides human action”, while sport is a social and cultural activity that must be practised fairly. Article 6 of the Code of Sports Ethics stipulates, inter alia, that sports ethics is defined as a way of thinking, not just a way of behaving. It incorporates issues concerned with the elimination of cheating, the use of unfair strategies, etc.

We consider that the term “fair” is the one that imprints the heaviest valence on “sports ethics”. Sports events must be carried out on the basis of rules that are accepted by participants and complied with. This is true also for betting events (susceptible to be manipulated in the meaning of Article 242¹ of the Criminal Code of the Republic of Moldova) where participants shall be guided by the rules of ethics. These rules represent the “moral lentil” for the actors involved in the events concerned.

As for the meaning of the Principle of Fair Play, we shall mention that its foundation was deeply anchored along with the involvement of competitions themselves (Renson, 2009, p. 5). The antic ideal “*Kalos kai agathos*” – harmonisation of aesthetics with ethics – is the core source of fair play of today, the kernel of modern Olympics. The ethical considerations that give rise to fair play are not an optional element, an appendix. Quite the opposite, it is an essential aspect of any sporting act, any policy and any sports management. They shall apply to all levels of competence and commitment related to sporting acts – unequivocally applied to recreation activities and professional sports.

Etymologically, the expression “fair play” originates from English and constitutes a juxtaposition of the word fair and play. Used for the first time by W. Shakespeare in the historic play King John (1598) (Loland, 2002, p. 12), the expression in question, as a constitutive element and intrinsic value of sports, is central nowadays in the Code of Sports Ethics (approved by the Committee of Ministers of the Council of Europe).

According to Article 6 of the foregoing Code of Sports Ethics, fair play is defined as much more than playing within the rules. It also incorporates the concepts of friendship, respect for others and sportsmanship.

This idea is shared by sports federations, as well as by the Moldovan legislation. For instance, Article 1 of the Code of Ethics of the Moldovan Football Federation provides that Moldovan football is guided by the following principles: lawfulness, integrity, solidarity, loyalty and fair play.

¹⁶ Committee of Ministers (2010), Recommendation CM/Rec(2010)9 to member states on the revised Code of Sports Ethics (retrieved from <https://goo.gl/acyEf9>).

The Moldovan Football Federation in its Fair Play Regulation, Article 3, has stated that “fair play” means “acting in compliance with the principles of ethics, which, in particular, are contrary to the concept of sport success at any rate; promotion of integrity and equality of chances for all competitors, as well as emphasising respect for the personality and value of any participant embarked on a sporting competition”.

Likewise, as per Article 4 of the Moldovan Law on preventing and combating doping in sport, the Principle of Fair Play stated that “acting as per the principles imposed by ethics, which preclude the concept of success at any rate, promotion of integrity and equal opportunities for all competitors, emphasising respect for the personality and value of every participant in a sport event”.

By way of overlapping, it can be noticed that Article 3 of the Moldovan Football Federation Fair Play Regulation acquired (with insignificant editing) the legislative definition of the principle of fair play covered by Article 4 of the Moldovan Law on preventing and combating doping in sport.

Although this principle is often associated with sport events, it is equally applicable to other types of events. As per C. Valentin: “the fair play concept is well-known in all law systems that operate effectively based on the principle of Rule of Law. Fair play or fairness (synonym) designates a fundamental attitude towards the rules, principles and standards of a regulatory system. Correct, loyal, faithful, clean, selfless, impartial – each of [these] adjectives captures a particular facet of the fundamental attitude called fair play. The attitude may be defined as a legal obligation by adopting a law principle to protect it, or may operate as a moral rule within the system, as a moral directive that can determine the system actors to self-limit their behaviours” (Valentin, 2010, p. 4). In the case of the Republic of Moldova, the principle of fair play is materialising both as a moral rule and as a legal obligation (instituted *ope legis*) to be complied with by the participants in sports and/or betting events.

Hence, the principle of fair play presupposes: 1) subordinating people’s behaviour to the principles imposed by ethics, which, otherwise, precludes the concept of success at any rate; 2) promoting the event integrity; 3) ensuring equal opportunities for all competitors; 4) respecting the personality of every participant in an event. These features (dependent on rules of ethics) are typical for sports events and for other types of events, which give the possibility to make bets.

After this conceptual clarification, it is worth mentioning that the Opinion of the Committee on economic and monetary affairs addressed to the Committee on culture and education on the European dimension in sport (2011/2087(INI))¹⁷

¹⁷ Committee on Economic and Monetary Affairs (2011), Opinion for the Committee on Culture and Education on the European dimension in sport (2011/2087(INI)) (retrieved from <https://goo.gl/VfQwkH>).

mentions that the: “cases [...] of match-fixing in sport [...] harm the integrity of sport for fans and threaten the economic contribution from sport”.

At the same time, the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions towards a comprehensive European framework for online gambling (COM/2012/0596) revealed that “match fixing runs contrary to the principle of fairness in sporting competitions, which is one of the objectives of EU action in the field of sport (Article 165 of the Treaty on the Functioning of the European Union)”.

Likewise, the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (COM/2011/12) stated that “match-fixing violates the ethics and integrity of sport”.

Ad similibus, the (EU) Council conclusions on combating match-fixing (2011/C378/01) warned that “match-fixing [...] damages the image of sport by jeopardising the integrity and unpredictability of sporting competition”.

Finally, the Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters related to substantive criminal law and judicial cooperation in criminal matters (COM/2017/386) underlined that “match-fixing is widely regarded as one of the major threats facing contemporary sport. Match-fixing undermines the values of sport such as integrity, fair play and respect for others. It risks alienating fans and supporters from organised sport”.

All these statements lead to a single idea: the values generated by sport are impaired by the manipulation of sports events and may have a “domino effect” (Arslan, 2013, p. 61) on businesses¹⁸ run in connection with such events, e.g. the sale of image rights and/or of broadcasting rights; sale of products with the sports club logo; ticketing; catering, etc. (Stati, 2013, p. 10; Stati, 2014, p. 169; Stati, 2016, p. 210). This statement is valid, *mutatis mutandis*, for other events offering the possibility to make bets and which are susceptible to be manipulated in the meaning of Article 242¹ of the Criminal Code of the Republic of Moldova. Committing the offence related to event manipulation generates repercussions on the national economy, regarded as a fundamental value protected against the offences covered by Chapter X “Economic crimes” of the Special Part of the Moldovan Criminal Code. The social relations in terms of national economy (alias social-economic relations) represent a generic (group) legal subject-matter of offences inserted in Chapter X

¹⁸ To this end, the European Parliament resolution of 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity has stated that “sport represents a significant and fast-growing sector of the EU economy and makes a valuable contribution to growth, jobs and society, including at local level, with value added and employment effects exceeding average growth rates; whereas sport-related employment has been estimated at equivalent to 3.51% of total EU employment, and the share of sport-related gross value added at EUR 294 billion (2.98% of total EU gross value added)”.

“Economic crimes” of the Special Part of the Moldovan Criminal Code, including the offence referred to in Article 242¹ of the Criminal Code of the Republic of Moldova.

The special legal subject-matter of the offence has been derived from the generic legal subject-matter. In the opinion of S. Brînză and V. Stati, carrying out sports events and/or betting events, which inevitably involves a certain risk for the business activity, must correspond to the legal order in terms of integrity and unpredictability. Due to this reason, it was concluded that the special legal subject-matter of the offence referred to in Article 242¹ of the Criminal Code of the Republic of Moldova is formed by the social relations regarding the integrity and unpredictability of sports events and/or betting events in relation to which a business is carried out (Brînză and Stati, 2015, p. 106; Stati, 2013, p. 12; Stati, 2014, p. 172; Stati, 2016, p. 213).

On our turn, we believe that the crucial matter meant by the Legislature upon drawing up Article 242¹ of the Criminal Code of the Republic of Moldova was integrity and unpredictability of sports events or of events of other nature offering the possibility to make bets. Encouraging, influencing or instructing a participant in sports events and/or betting events to take acts that would produce a flawed effect on the event concerned with the purpose to unduly derive goods, services, privileges or advantages of any kind for oneself or for another person can damage the integrity and unpredictability of those events. By committing the offence referred to in Article 242¹ of the Moldovan Criminal Code, one affects the course and/or the natural, normal, obvious result of sports events and/or betting events. The manipulation of sports and/or betting events is a proof of lacking fair play. It risks alienating fans, sponsors, broadcasters, etc. from such events (Carpenter, 2012, p. 13; Hosmer-Henner, 2010, p. 32) and discourages people from doing sports (Vaillant *et al.*, 2013, p. 13).

Being aware of this fact, in its Resolution of 10 March 2009 on the integrity of online gambling, the European Parliament considered that “the threat to the integrity of sport and sporting competitions impacts heavily on grassroots participation, a key contributor to public health and social integration; it is of the opinion that, if a sport is perceived as the subject of manipulation for the financial gain of players, officials or third parties rather than played according to its values, rules and for the enjoyment of its fans, this could result in a loss of public trust”. This must be treated as an alert.

The concern in question is mirrored by the following illustrative example: in 2011, at a National Football Division match between FC “D.” and FC “Z.”, after the first team opened the score, supporters of the second team displayed a banner with the following text “We come to stadiums for pleasure, you – for food and beer”, chanting that they, in fact, were the FC “Z.” team spirit, not the players who “sold” the match to FC “D.”. The easy way in which FC “D.” was playing the match determined the fans of FC “Z.” to abandon the stadium, protesting against the fixed-

match (Hadei, 2011). FC “Z.” footballers played with their “handbrake on”. Hence, sometimes, the “imprint” of the incriminated acts under Article 242¹ of the Criminal Code of the Republic of Moldova is so protruding that it seems that the individuals who follow a pre-directed scenario are the only ones who do not know the ultimate result of the disputed event.

Moreover, with regard to the arguments brought by the European Court of Human Rights (ECtHR)¹⁹ in its ruling of 18 January 2018, following the trial of the case of *Fédération nationale des associations et des syndicats sportifs (FNASS) et al. v. France*²⁰, we believe that the offence of event manipulation depriving the audience of a loyal competition is legitimately attached.

Therefore, the special legal subject-matter of the offence referred to in Article 242¹ of the Criminal Code of the Republic of Moldova is shaped by the social relations on the integrity and unpredictability of sports and/or betting events susceptible to be manipulated.

Depending on the legal subject-matter structure, the legal doctrine distinguishes between monooffensive offences and plurioffensive offences. In the case of monooffensive offences, it is sufficient to impair a single social value for the presence of an offence, while in the case of plurioffensive offences – several social values shall be impaired (Antolisei, 2000, p. 182, Rîșniță, 2014, p. 142).

On this issue, we subscribe to the following point of view: “the special legal subject-matter of an event manipulation offence may have both simple and multiple features. This happens because, in the meaning of the offence referred to in Article 242¹ of the Criminal Code of the Republic of Moldova, influencing a participant in sports events and/or betting events to undertake actions that might produce prejudiced effects on those events may imply: applying violence; threatening; cheating; theft or damage of goods, etc. Subsequently, the event manipulation offence may affect, in the background, the social relations related to: an individual’s psychical integrity; health, psychical freedom; freedom of will; substance, integrity and potential to use the goods, etc.” (Brînză and Stati, 2015, p. 106; Stati, 2013, p. 12; Stati, 2014, p. 172; Stati, 2016, p. 213).

¹⁹ European Court of Human Rights (2018), Case of *Fédération nationale des associations et syndicats de sportifs (FNASS) and others v. France*, nos. 48151/11 et 77769/13 (retrieved from <https://goo.gl/TBJ3R2>).

²⁰ In the case of *Fédération nationale des associations et syndicats de sportifs (FNASS) et al. v. France*, ECtHR established that the use of doping to attain results that would exceed the ones achieved by other sportsmen removes unjustifiably competitors of the same level who do not use doping, amateur practitioners who are incited to use doping to capture rewarding achievements and, finally, the audience that is deprived of a fair competition to which they are legitimately attached (§ 166). We are referring to this case in the context of reviewing the event manipulation related offence as it, along with doping, impairs the sport generated values.

Conclusions

Hence, when an offence covered by Article 242¹ of the Criminal Code of the Republic of Moldova implies influencing a participant in sports and/or betting events to undertake acts which would produce prejudiced effects on the corresponding event, more social values would be affected and, implicitly, the afferent social relations. In particular, the social relations in terms of integrity and unpredictability of sports and/or betting events for which a business activity is carried out represent the primary legal subject-matter of an event manipulation offence. Correspondingly, the secondary legal subject-matter of this offence is composed of social relations regarding: physical safety of the individual; his/her health, psychical freedom of the individual; the freedom of will; substance, integrity and potential to use the goods, etc. In this situation, the offence covered by Article 242¹ of the Criminal Code of the Republic of Moldova may be regarded as a plurioffensive offence.

Per a contrario, when the offence at issue implies encouraging or instructing a participant in sports and/or betting events to take actions that would produce a flawed effect on that particular event with the purpose to unduly derive goods, services, privileges or advantages of any kind for oneself or for another person may impair the social relations regarding the integrity and unpredictability of sports and/or betting events (susceptible to be manipulated in the meaning of Article 242¹ of the Criminal Code of the Republic of Moldova). Integrity and unpredictability of the corresponding events may be subsumed to the concept of “fair play”. Thus, in this case, the event manipulation offence may be regarded as a monooffensive offence.

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