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A REVIEW ON DOPING IN SPORTS IN TERMS OF SPORTS LAW AND PENAL LAW IN THE LIGHT OF INTERNATIONAL LEGISLATION

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Objective: the main objective of this paper is to study on the offense of doping in history and how it is regulated in international law in terms of both sports law and penal law. **Methods of research:** general scientific, philosophical and specially-legal methods of scientific research have been used. A system analysis method has been used to determine sports law, doping. A dogmatic method was valuable to formulate conclusions and recommendations of practical character within the research issues concerning the prevention of doping use in sport. **Results:** doping has been a method used by mankind for centuries B.C. However, the movement against doping has only started in the 20th Century, and with the workings of the sports federations, the States and international organizations, a union is trying to be achieved in the fight against doping. A unity has mostly been reached by the means of WADA and the prohibited substances and method lists updated every year, nevertheless, to create a full unity, an effective control mechanism must be applied. The prevention of the application of doping or the imposing of the necessary sanctions are a matter of right implementation of the law. **Discussion:** it was based on whether the current regulations were effective enough to fight against the use of doping.

Keywords: sports law; penal law; doping; anti-doping; WADA; disciplinary offenses.

Introduction. By nature, human beings have always been entities that strive to push their limits and try various ways to achieve their goals. For this purpose, we use various stimulants and consume supplementary foods to extend our mental and physical limits even in our daily lives. However, there are situations where the probability of achieving success and results outweighs the need to comply with ethical, social and legal norms; and such undesirable situations, which are frequently encountered due to human nature, are tried to be prevented as much as possible with criminal rules and sanctions.

Sports law can be defined as a system that regulates sporting activities, relations arising from sports, situations faced by real persons and legal entities involved in these relations and solves the problems that arise [1, p. 17]. The legislation established in order to maintain order within this system regulates the people of interest, the rules related to sports and the penalties to be given in

case of non-compliance with these rules. In many international and national regulations governing the use of doping, there are definitions of doping in various forms and scopes. However, between these definitions which are determined independently from each other, there is still no unity aside from the fact that that doping is accepted as a disciplinary offense.

With the effect of the pharmacological and technological developments worldwide and the national and international organizations and federations that started to be formed, it was accepted that the need to start the studies on the subject and to bring the fight against doping into a legal order, and the first steps began to be taken for this purpose.

Analysis of the Research and Publications. Various aspects of doping using in sports became a subject of scientific interest for the leading scholars such as K. Erkiner, H. Gerceker, P. Memis and Y. Unver. At the same time, the question of its concept, specific and prevention is still opened. That is why it needs its further investigation with the pur-

pose to understand it and make a common policy to its effective prevention.

Research Tasks. The main subject of the law is the regulation of human relations. While doping is primarily a subject of human health and sports, its prevention is only possible with the rightly prepared and implemented law. Doping is a cause of corruption of both sports ethics and human health, which leads the sports, health and legal community to take necessary steps in order to prevent its usage. The purpose of this paper is to make a review on doping in sports in terms of sports law and penal law in the light of international legislation. To reach this aim, it is needed to perform the following tasks: 1) to determine a concept of doping in lights of sports law; 2) to investigate history of doping use in sports; 3) to analyze doping in the scope of international sports law regulations and within the activity of international organizations.

Research Results. The first detected written regulation on doping is a French directive in 1901, which prohibits the vaccination of substances such as drugs and stimulants in order to improve the performance of horses in horse races, and authorizes the public forces to take all measures to prevent this and to punish those responsible. Following this, the first studies on doping started in Switzerland in 1941 [2, p. 215], then in the international area, it was first proposed to investigate doping at an international conference that took place during the 1960 Olympics in Rome, after which doping was first described in a scientific congress convened in France in January 1963. According to that definition; *«Doping is not the physiological preparation of an athlete. This preparation is vital and should be done under medical control. Any application of substances or methods aimed at increasing the efficiency by targeting or during a competition, which is contrary to sports ethics and which may harm the physical or mental health of the athlete, shall be deemed doping»* [3, p. 1354].

This definition, which contains all the elements included in today's definition of doping, has been tried to be developed in the meetings held by the Council of Europe and alongside countries such as England, Netherlands, Italy, Spain, Denmark and

Austria, Turkey has also presented its own definition as *«Doping substance is a kind of pharmacological stimulant that raises the performance»* [4, p. 1]. The CoE has made a new definition in the light of all the definitions and suggestions presented, and in the scientific congress convened due to the 1964 Tokyo Olympics, an addition to its first definition was made that even if the necessity of a medical intervention that unfairly and artificially increases the performance of the athletes participating in a competition is to be considered as doping. Following these definitions, states and federations started to form their own legal doping definitions and legal arrangements on the topic. With the anti-doping laws and related regulations and lists of prohibited substances coming into effect, doping has officially sat on a legal ground and become a criminal offense whose definition and punishment is defined by law.

As such, hundreds of different definitions of doping have emerged. With the thought that these doping definitions, some complementary, some similar, and some contradictions, would produce more turbidity and confusion instead of taking steps to create a common legislation, CoE decided on a simplified definition in 1984, which defined doping as the use of substances or subclasses that are prohibited by or against the rules of the authorized sports organizations [4, p. 2]. With this, it was aimed to prevent confusion of different doping definitions made for different sports branches, however, this led to the creation and implementation of different lists of prohibited substances and methods. Even if the definitions are renewed and updated in accordance with the conditions of the day, a single, generally accepted, de facto definition of doping has yet to be provided.

Doping in the Scope of International Sports Law Regulations. The most effective instrument used in the fight against doping are the penalties to be imposed in cases of determination of the doping acts. Even though the regulations are mostly non-criminal in terms of Criminal Law and subject the action to sportive sanctions and do not foresee judicial punishment, they must not contradict the basic rules of Criminal Law. Therefore, in accordance with the principle of legality, which is the basic principle of Criminal Law, the definition of the crime should be made clearly and without any confusion. Therefore,

defining doping in accordance with law is of great importance.

Even though a common definition has not been made so far, some common elements have been reached. First one of those elements is the acceptance of doping is applied to athletes, while another is the necessity to embody the actions by listing the prohibited substances and methods [3, p. 1358].

In the Scope of International Organizations. While performing an activity, people have always had the need to be in a community that carries out the same activity. There are hundreds of international federations, sporting committees affiliated with international organizations and similar organizations throughout the world. Each of these organizations has its own rules or instructions stating its own rules, including the definition of doping, lists of prohibited substances and methods, and regulations on administrative sanctions. However, works of some organizations are worth examining separately due to both its pioneering role in making these regulations and the high number of States parties it hosts.

Council of Europe (CoE), is the first international organization to regulate and define doping. Its regulations became the main source for national and international legislation including IOC. In 1984, the European Sports Charter was prepared by the Council. This Charter became a basic document for establishments like EU Commission, WHO and UNESCO, and later on, with the support of these organizations, the Anti-Doping Convention was able to be created in 1989. Following the adoption of the Convention by states and international organizations, CoE established a committee with the aim to ensure the supervision of the Convention and with this monitoring body it revised the Convention, prepared a code of conduct which includes environmental education, laboratory standards, responsibilities of healthcare personnel and public information [4, ps. 5, 6].

International Olympic Committee (IOC), following the initial arrangements developed by CoE, the IOC started to work on its own legislation on doping and drafted a definition of doping in parallel with the definition of the CoE and a list of prohibited substances and methods which is

considered a source for sports organizations and states. The list was broad and abstract, covering even future technologies that could not be realized at the time it was prepared, and following the adoption, it was immediately put into practice at the Tokyo Olympics of 1968. In the said code, in addition to using doping, proposing, offering, permitting, approving, condoning, facilitating the use of doping, selling, distributing, marketing or smuggling doping substances are also prohibited. This list, which was later referred to as the Anti-Doping Code of Olympic Movement, was the main document in the establishment of the World Anti-Doping Agency and was used as the basis for the creation of the Anti-Doping Code. Even though it was stated in the article 48/1 of the Olympic Charter that this code was compulsory for the whole Olympic Movement, there were international and national federations that international federations that have not agreed to implement the code or added additional items or excluded most of the list [3, p. 1362]. Therefore, although the IOC's anti-doping code and the list of prohibited substances it contains are recognized worldwide, they have not succeeded in achieving integrity. This has had a major impact on the establishment of WADA and the adoption of WADC. Today, the IOC still requires the WADC to be implemented by the federations and plays a role in developing the code and keeping the list up to date.

UNESCO, acts to bring together ministers and statesmen responsible for physical education and sport and thus to evaluate all aspects of sport and also operates in the fight against doping according to this purpose [2, p. 216]. In 1978, UNESCO adopted the International Charter of Physical Education and Sport, which includes ethical principles in sports and values related to education and continued its activities within the scope of this Charter [3, p. 1362]. UNESCO held six meetings called MINEPS meetings in the years 1972, 1988, 1999, 2004, 2013 and 2017. «Recommendation No. 5» which was adopted in MINEPS II, has been one of the main factors in the preparation of the CoE Anti-Doping Convention signed in 1989. In MINEPS III, which was held in 1999, doping was especially emphasized and the measures to be taken on the subject were discussed. During the meetings, state ministers pledged to take the necessary measures to prevent unethical situa-

tions and emphasized the necessity of international cooperation and taking necessary measures on doping [2, p. 216]. The last activity of UNESCO on the subject is International Convention Against Doping in Sport signed in 2005. Turkey is also a party to the Convention and implements since 2007 due to Law No. 5721.

World Anti-Doping Agency (WADA), as it was seen that the studies of CoE and IOC did not provide the desired order, in addition to the unpreventable and fatal doping uses, the most important trigger of going into action has been the scandal that occurred during the Tour de France in 1998, which is known as the «Festina Incident». In the mentioned incident, during the examination after it was detected that the Festina team athletes were using doping, it was determined that the players of the other teams participating in the Tour have also been using doping systematically. As a result of this incident which can be considered as an organized crime, a worldwide conference was organized in Lausanne in February 1999 under the leadership of IOC [2, p. 218]. The conference was attended by IOC and national Olympic committees, as well as state representatives, representatives of international federations and international organizations such as the CoE, EU and UNESCO. The main issues discussed in the conference can be summarized as protection of athletes, legal and political dimensions of doping, ethics, education and communication and the financial dimension of the fight against doping within the scope of prevention methods [3, p. 1363].

The most important of the decisions taken during the two-day conference is the establishment of WADA, as a new and independent organization. In the conference, the main objectives of WADA were determined in general and the areas in which it will operate, and its function were specified. In addition, it was decided that athletes, coaches and managers should swear an Olympic oath that they will act in accordance with ethical principles. It has also been determined that the IOC Code is the main pillar in the fight against doping in WADA's continued operation. Alongside these, it is agreed that WADA will cooperate with other international organizations, states and public institutions, all organizations acting in the name of anti-doping,

and the IOC, international federations, Olympic committees and CAS will cooperate with WADA, while preserving all authority and independence [3, p. 1364].

WADA was established on 10 November 1999 under Swiss law, and is a Swiss private law person, a foundation and is a subject to the supervision of the Swiss Ministry of Internal Affairs. Its headquarters were moved from Lausanne to Montreal in 2001, however, since it continues to be a subject to Swiss law and supervision, the courts of Switzerland can be appealed against the decisions of WADA, as well as CAS.

In the Scope of International Regulations. There are hundreds of bilateral or multilateral international conventions that contain provisions relating to the fight against doping. In this part of the study, the regulations which Turkey is a party to and are worldwide valid shall be mentioned.

Anti-Doping Convention, which was drafted on November 1989 and entered into force on March 1st, 1990, was signed by Turkey on the date of preparation, but only on January 1st, 1994 was it able to enter into force. The Convention aims to systematize the work of international organizations relating the fight against doping, and to bind international federations, organizations and states which have independent and specific rules and regulations on the issue while based on these studies. In the preparation of the Convention, various recommendations of the CoE Committee of Ministers, the European Charter on Anti-Doping, UNESCO's Recommendation no. 5 were taken into consideration [5, int., prg. 9, 10].

It can be said that the Convention is the most comprehensive regulation established until the date it was prepared. The purpose of the Convention is described as «reducing and ultimately eliminating the use of doping» in Article 1, and it was stated that it should be complied within the limits of the Constitutions of the States. In Article 2 of the Convention, the definitions of athletes, doping in sports, and doping substances and methods are made, and it can be seen that the definitions are intended to be kept as simple as possible. A point to be mentioned in relation to the Convention is the body that gets its authority from the Convention and is designated as «Observation Group». This body is a political entity within the body of the CoE, authorized with bringing together

representatives of all State Parties and the National Olympic Committees and observing their implementation, reviewing the convention and taking the measures it deems necessary both in technical and educational terms, accepting or regulating prohibited substance lists in accordance with Article 2 and 11 of the Convention, and making decisions in this direction.

International Convention Against Doping in Sport, was prepared under the lead of UNESCO and adopted in 2005 and opened for States' signature. Despite the CoE Convention being open to all countries, recognizing that there was insufficient participation from countries outside of Europe and that this was a major obstacle to the fight against doping around the world especially in the absence of a standardized system, UNESCO prepared the convention based on the necessity of preparing a new universal contract [2, p. 217]. The purpose of the Convention, which aims to bring a systematic and legal unity in the fight against doping, was stated in Article 1 as «within the framework of the strategy and program of activities of UNESCO in the area of physical education and sport, is to promote the prevention of and the fight against doping in sport, with a view to its elimination» [6, a. 1]. Article 2 of the Convention contains twenty-five different definitions, it also states that the definitions should be interpreted within the framework of the WADC text, but in case of disputes the contract would be valid. Although many articles of the Convention refer to WADA and the WADC, it should be said that it is still a highly detailed contract. The Convention has two complementary annexes, the first of which is a list of prohibited substances and methods, and the second is the standard for granting therapeutic purposed privileges. In addition, there are two informative additional sections, which are international standards for laboratories and for testing. It is stated in the agreement that the prohibited list will be the WADC prohibited list to be provided by WADA and the standards shall be determined in accordance with the WADC. In this respect, it should be stated that the Convention is not intended to exclude the WADC, but rather enlightens it in a way to improve it, make it systematic and universal and facilitate its implementa-

tion. Moreover, Article 4 of the Convention also provides a direct link between the WADC and the Convention, stating that State Parties are obliged to comply with the WADC, but may take additional measures, provided that they are not contrary to the WADC. Aside from these, the Convention imposes several tasks on national anti-doping organizations (NADO) for the effective supervision of doping usage. Enjoining states to establish NADO is avoided by using general statements, but it is understood that each country should have NADO organizations that only aims to fight against doping and provide effective control in order to take the mentioned or unmentioned measures in the contract.

The Convention entered into force in Turkey in 2007 with the publication in the Official Gazette. However, after the adoption of the agreement, any regulation has not been made in our domestic law. With the adoption of the Convention, a Draft Law on Prevention of Doping was prepared, and the draft law defined doping as a criminal offense, regulated the establishment, operation and function of Turkish Anti-Doping Agency, and the necessary steps were taken for the effective implementation of the Convention. However, even though the aforementioned draft law was created in 2007 and submitted to the approval of the Turkish Grand National Assembly, it was not enacted.

World Anti-Doping Code (WADC), following the establishment of WADA, preparations started for a new and wide, up to date code based on the IOC Olympic Code. The main purpose of the code is to establish an international standard by providing a worldwide cooperation for fighting against doping and to create a common basis for sanctions and proofs, and to create an international harmony and cooperation in terms of solutions [7, p. 58]. In this way, it is aimed to protect the principles of health, justice, equality and ethics by ensuring the right of the athlete to do sports without doping [2, p. 219]. Thus, WADC was prepared and opened to the signature of the States, international organizations and federations with the conference held in Copenhagen in 2003, also accepted by Turkey and entered into force in 2004. The Code was lastly updated in 2015. The Code can be considered as an international law, with being binding for all signatory states, institu-

tions and organizations, and regarding the sanctions it contains.

In Article 1 of WADC, «Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.10 of the Code», which creates a more utilitarian and practical definition. In the CoE Anti-Doping Convention, supervision was carried out only under the supervision of laboratories accredited by CoE and the Observation Group, while the WADC imposes several obligations on the national anti-doping organizations of the receiving states as well as on international federations and committees [8, a. 20]. Thus, it can be said that the states that accept the code but do not have such an institution are implicitly obliged to create a NADO. Turkish Doping Control Center, which is an accredited lab formed under Hacettepe University, does not provide an adequate system to implement WADC's objectives effectively. In order to ensure international cooperation and to take the necessary national measures, a TADA should be established, and related regulations should be taken.

Following the adoption of WADC in Turkey, necessary measures and inspections began as mentioned before, instructions have been released by Turkish Anti-Doping Commission in order to create case-law compatible with WADC, also the financial liabilities has been fulfilled without delay.

The effect and force of the WADC has once again been strengthened with the adoption of UNESCO's International Convention Against Doping in Sport, and by means of these two globally recognized documents, although still not in unity, the progress made in the fight against doping can be seen clearly. The WADC is one of the most important and key documents on creating a relatively universal and systematic fight against doping by making doping definitions in a broad concept, by providing international cooperation, with the list of prohibited substances and methods which are updated every year with the advancing technology, by providing certain sanctions and by the help of the contracts that reinforce itself.

Conclusion. The most important step in the fight against doping is the Council of Europe An-

ti-Doping Convention, 1989. As a result of the anti-doping movement under the leadership of IOC, WADA was established in order to make the fight against doping more effective by providing worldwide organization. The Anti-Doping Code, which has been prepared by WADA to ensure unity between states and federations, is the base document for doping legislation of all countries. It has become applicable by country legislation while the List of Prohibited Substances and Methods as an annex of the WADC which is annually updated and republished, has become a general list and has been implemented by all national legislation.

It should be noted that doping is a matter of law, as well as health and sports. Even if the researches on doping and the determination of doping substances fall within the scope of the work of health professionals, the prevention of the application of these substances or the implementation of the necessary sanctions when applied, are entirely jurisprudential. Thus, the importance of the international cooperation and the effective implementing of the international legislation in domestic law must be reminded once again.

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Нісан Юсе

ОГЛЯД ДОПІНГУ В СПОРТІ З ТОЧКИ ЗОРУ СПОРТИВНОГО ПРАВА ТА КРИМІНАЛЬНОГО ПРАВА У СВІТЛІ МІЖНАРОДНОГО ПРАВА

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Мета: вивчити правопорушення допінгу в історії та те, як воно регулюється міжнародним правом як з точки зору спортивного, так і кримінального законодавства. **Методи дослідження:** використовуються загальнонаукові, філософські та спеціально-правові методи наукових досліджень. Для визначення спортивного права, допінгу використовується метод системного аналізу. Догматичний метод був цінним для формулювання висновків та рекомендацій практичного характеру в рамках дослідницьких питань щодо запобігання використанню допінгу в спорті. **Результати:** допінг – це метод, який використовувався людством протягом століть до н.е. Однак рух проти допінгу розпочався лише у 20 столітті, і, працюючи, спортивні федерації, держави та міжнародні організації намагаються досягти союзу в боротьбі з допінгом. Єдність була досягнута в основному засобами ВАДА, а списки заборонених речовин і методів оновлюються щороку, проте для створення повної єдності необхідно застосовувати ефективний механізм контролю. Запобігання застосуванню допінгу або введення необхідних санкцій є справою правильного виконання закону. **Обговорення:** ґрунтувалося на тому, чи чинні норми є достатньо ефективними для боротьби з використанням допінгу.

Спортивне право можна визначити як систему, яка регулює спортивну діяльність, відносини, що виникають зі спорту, ситуації, з якими стикаються реальні особи та юридичні особи, які беруть участь у цих відносинах, і вирішує проблеми, що виникають. У багатьох міжнародних та національних нормативно-правових актах, що регулюють використання допінгу, є визначення допінгу в різних формах та сферах застосування. Однак між цими визначеннями, які формулюються незалежно одне від одного, все ще не існує єдності, окрім того, що цей допінг сприймається як дисциплінарне правопорушення. Внаслідок дії фармакологічних та технологічних розробок у всьому світі та національних і міжнародних організацій та федерацій, які почали формуватися, було прийнято рішення, що необхідно розпочати дослідження з цього питання та привести боротьбу з допінгом у правову площину. У міжнародному просторі вперше було запропоновано розслідувати допінг на міжнародній конференції, яка відбулася під час Олімпіади 1960 року в Римі.

Основними міжнародними установами у цій сфері є: Рада Європи (СЄ), Міжнародний олімпійський комітет (МОК), ЮНЕСКО та нарешті ВАДА. Найважливішими міжнародними законодавствами є Антидопінгова конвенція Ради Європи, Міжнародна конвенція проти допінгу в спорті ЮНЕСКО та Всесвітній антидопінговий кодекс (WADC), що регулюються ВАДА. СоЕ – перша міжнародна організація, яка регулює та визначає допінг. Його положення стали основним джерелом національного та міжнародного законодавства, включаючи МОК. У 1984 році була

підготовлена Європейська хартія спорту, а Антидопінгову конвенцію вдалося створити в 1989 році. Конвенція була найповнішим регулюванням, встановленим до дати її укладення. Мета Конвенції описується як зменшення та усунення в кінцевому підсумку вживання допінгу, і було зазначено, що вона повинна дотримуватися конституціями держав. Після того, як РЄ, МОК почали працювати над власним законодавством щодо допінгу і склали перелік заборонених речовин та методів, які вважаються джерелом допінгу для спортивних організацій та держав, його негайно було застосовано на практиці на Олімпіаді в Токіо 1968 року. Цей перелік посилався як антидопінговий кодекс олімпійського руху, був основним документом у створенні ВАДА і був використаний як основа для створення ВАДК. Сьогодні МОК все ще вимагає впровадження WADC федераціями і відіграє велику роль у розробці кодексу та оновленні вказаного списку.

ЮНЕСКО прийняла Міжнародну хартію фізичного виховання і спорту та провела шість засідань під назвою зустрічей MINEPS, одна з яких була основоположним фактором підготовки Антидопінгової конвенції Ради Європи. Міжнародна конвенція проти допінгу у спорті була підготовлена під керівництвом ЮНЕСКО, прийнята в 2005 році та відкрита для підписання державами. ЮНЕСКО підготував конвенцію, виходячи з необхідності підготовки нового універсального контракту. Хоча багато статей Конвенції посилаються на WADA та WADC, слід сказати, що це все це дуже детальний договір. Основна мета WADC – встановити міжнародний стандарт шляхом забезпечення всесвітньої співпраці для боротьби з допінгом та створення спільної основи для санкцій та доказів, а також створення міжнародної гармонії та співпраці з точки зору рішень. WADC може розглядатися як міжнародне право, яке є обов'язковим для всіх держав, установ, організацій, що підписали його, та стосовно санкцій, які він містить.

Ключові слова: спортивне право; кримінальне право; допінг; антидопінг; WADA; дисциплінарні правопорушення.