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Betting in sports and Polish criminal law

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The close link between sporting activities and the betting market has an extremely long history. For instance, it suffices to refer to "betting" on the results of chariot races in ancient Egypt or betting during the ancient Olympic Games.[1] The attractiveness of such betting, intensified by the possibility of often high monetary winnings, gradually became a factor involving organised criminal groups in activities related to sports gambling in the broad sense. This became most pronounced in the United States, particularly in the early 20th century.[2] Today, sport is without a doubt regarded as a profitable business, also by criminal groups. It has long been subject to commercial rules and the accompanying commercialisation has meant that the number of areas of the sports market offering substantial profits has increased significantly. Examples include profits from the sale of tickets for sports events, sports

[1] See M. Huggins, *Historicising Sports Gambling*, in: *Gambling and Sports in a Global Age*, eds. D. McGee, Ch. Bunn, Leeds 2024, p. 11 et seq.

[2] See, *inter alia*, J. Albanese, *Illegal gambling businesses & organized crime: an analysis of federal convictions*, "Trends in Organized Crime" 2018, No. 21, pp. 262–277; A. Michalska-Warias, *Przestępczość zorganizowana a sport w świetle badań kryminologicznych*, in: *Sport a przestępczość zorganizowana*, ed. M. Leciak, Warszawa 2018, pp. 5–7.

accessories and equipment, broadcasting rights to sporting events, income from sponsorship agreements, players' contracts or licensing rights, as well as profits from betting activities. In the case of each of the exemplified forms of activity, it is not uncommon for organised criminal groups to be significantly active. This is particularly the case in respect of betting on sport. This field, after all, offers almost unlimited possibilities in terms of manipulating the course or outcome of sporting competitions. It is usually identified with the two most prominent and intensely stigmatised pathologies of the sports market, i.e. corruption and gambling.[3] Meanwhile, manipulating sports competition in relation to betting appears to have a distinct advantage over it for a number of reasons. The betting services market represents an area of significant capital investment by organised crime groups. Indeed, it has been described as a low-risk/high-profit sector. Nowadays, sports results or the course of competitions are manipulated largely via cyberspace, which undoubtedly enhances the scale of abuse and at the same time makes it considerably more difficult to detect undesirable behaviour associated with the sports market. "Betting" by means of online betting poses a number of practical problems on an international level. On the one hand, this concerns determining the jurisdiction of law enforcement authorities while, on the other hand, undertaking active international cooperation in preventing and combating unfair betting behaviour in sport. It suffices to point to a situation in which the participant in such bets is a national of a different country than that in which the sports competition to which the bet relates takes place. An additional element hindering prosecution may also be a different place of registration of the "bookmaker's" activities.[4]

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[3] Cf. S. Gardiner, *Conceptualising corruption in sport*, in: *Corruption in Sport. Causes, Consequences and Reform*, ed. L.A. Kihl, London 2018, p. 20 et seq.

[4] See B. Hessert, Ch.L. Goh, *A Comparative Case Study of Match-Fixing Laws in Singapore, Australia, Germany, and Switzerland*, "Asian Journal of Comparative Law" 2022, No. 17, p. 286; cf. *Illegal Betting in Sport. Global UNODC Report on Corruption in Sport*, https://www.unodc.org/documents/corruption/Publications/2022/Global_Report_on_Corruption_in_Sport_Chapter_9.pdf (access:

This briefly presented portrayal of betting in sport provides in practice enormous opportunities to win high prizes in often low classes of games or to "arrange" only fragments of sport competition (e.g. a yellow card on the tenth minute of a match). On the other hand, given the scale of the activities of organised criminal groups and their active cooperation with the sports community,[5] it is reasonable to speak of a kind of criminal business in sport. It develops in the international space, relying on a network of extensive links with the sporting, economic or political markets.[6]

From the sporting world's point of view, on the other hand, there is no doubt that dishonest betting must be regarded as a phenomenon that undermines certain universal values that have always been at the heart of sporting competition, such as integrity, sporting spirit and fair play. From this perspective, therefore, it represents a serious threat to contemporary sport.[7]

The concept of betting is generally equated with gambling or bookmaking activities. Undoubtedly, however, gambling is the concept with the broadest meaning, encompassing a significantly diverse catalogue of games and bets. An array of arguments – axiological, political, economic, cultural, etc. – determine the functioning of various models of legal regulation of the gambling market on a global scale, including in sport. Thus, on the one hand, there are those that are strictly regulatory (e.g. Malaysia, India), whereas, on the other hand, there are complex –

30.05.2024). The substantial involvement of South East Asian organised crime groups operating in the international space is articulate.

[5] One should also point out the cooperation of organised criminal groups with bookmaking companies as organisers of betting events, often actively participating in the fraudulent "betting" on sports competition. Such operators remain at the same the sponsors of major sports clubs (e.g. in the football Premier League), while the existence of many forms of entertainment remains significantly dependent on the betting market (e.g. horse racing) – see B. Constandt, *Integrity Matters: Denormalising Gambling in Belgian and Dutch Sports Club*, in: *Gambling and Sport in a Global Age*, eds. D. McGee, Ch. Bunn, Leeds 2024, p. 75 et seq.

[6] See L.A. Kihl, C. Ordway, *Sport, corruption and fraud*, in: *The Oxford Handbook of Sport and Society*, ed. L.A. Wenner, Oxford 2023, p. 240 et seq.

[7] See R. Rodenberg, A. Kaburakis, *Legal and Corruption Issues in Sports Gambling*, "Journal of Legal Aspects of Sport" 2013, No. 23, pp. 8–35.

often liberal – regulatory regimes in Europe.[8] In Polish legislation, the concept of betting has been defined under the provisions of the Act of 19 November 2009 on Gambling Games (hereinafter: AGG).[9] Gambling games include games of chance, betting, card games and games on slot machines (Article 1(2) of the AGG). The term betting has been given a legal definition in Article 2(2)(1–2) of the AGG. Under this definition, bets on winnings in cash or in kind are recognised as mutual betting. At the same time, they are divided into one of two categories. Firstly, these are the so-called "totalisers", which consist in guessing the results of sports competition between humans or animals, in which the participants pay stakes and the amount of winnings depends on the total amount of stakes paid. Secondly, the legislator identifies so-called bookmaking. This, in turn, involves guessing the occurrence of various events, including virtual events, in which the participants pay stakes and the amount of winnings depends on the ratio of the payment to the winnings agreed between the person accepting the bet and the person paying the stake. It is worth adding that sports betting activity may be conducted under a granted licence both at betting shops,[10] and via the Internet (Article 6(3) of the AGG). Also, the taking of such bets may take place in one of the two forms indicated (Article 14(3) of the AGG).

The national legislator has hitherto attached little importance to the need to combat the phenomenon of manipulation of sporting competition in connection with sports betting. Prior to the entry into force of the provisions of the Sports Act of 25 June 2010 (hereinafter: SA),[11] no penal regulations established for such a purpose existed. The penal reaction in this respect was of a completely residual nature and could be based primarily on the normative construction of Article 296b § 1–4 of the CC, which is no longer in

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[8] See B. Rathakrishnan, S. George, *Gambling in Malaysia: an overview*, "British Journal of Psychiatry International" 2021, No. 18, pp. 32–34.

[9] Journal of Laws, consolidated text of 2023, item 227.

[10] Pursuant to Article 4(1)(2) of the AGG, a betting facility is "a designated place where totaliser or bookmaker bets are accepted on the basis of approved regulations".

[11] Journal of Laws, consolidated text of 2023, item 2048.

force, whereby behaviours related to selling and bribery in sport were criminalised.

In the course of the work on the provisions of the prospective Sports Act, not only was the need recognised to broaden the scope of the criminalisation of behaviour related to corruption in sport by including those involving so-called paid patronage, but, at the same time, attention was drawn to the need to punish those perpetrators who exploit the knowledge of corrupt behaviour within the framework of betting.[12] Consequently, Article 47 of the Act was drafted. Under the provisions of this article, an offender who, having knowledge of the perpetration of an offence defined in Article 46 of the Act, takes part in betting on sports competitions to which the knowledge pertains, or discloses such knowledge in order for another person to take part in such betting, is subject to a penalty of imprisonment for a term of between 3 months and 5 years.

When undertaking an analysis of this type of normative solution, it is necessary, first of all, to reflect on the premises which determined the legislator's decision to introduce criminalisation in this area. As in the case of other offences related to the sports market, doubts as to what kind of goods and values remain in the background of criminal law protection implemented on the basis of Article 47 of the SA regulation become completely justified. The resolution of these doubts is not only theoretical. It will allow for the assessment of the legitimacy of the scope of criminal reaction on the grounds of the commented regulation and the prospects for its practical application.[13]

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[12] See Explanatory Memorandum to the draft Sports Act, Draft No. 2113, p. 29.

[13] It is worth mentioning as a side note that criminal proceedings for an act under Article 47 of the Act on Sports are uncommon in practice. For instance, in the period 2015–2019, only 1 pre-trial proceeding for such an act was conducted on a national scale, https://cba.gov.pl/ftp/pdf/Zwalczanie_przestepczosci_korupcyjnej_w_Polsce_w_2018_r_.pdf; https://cba.gov.pl/ftp/dokumenty_pdf/Zwalczanie%20przestepczosci%20korupcyjnej%20w%20Polsce%20w%202017%20r..pdf (access: 30.05.2024).

Literature typically indicates that the object of protection continues to be the integrity of sporting competition.[14] However, resting on such a conclusion would be clearly insufficient. Firstly, because the protection of values of an ethical nature is an entirely exceptional subject for criminal law.[15] Secondly, however, attention should be drawn to the much broader catalogue of interests to be protected within the regulation of Article 47 of the SA.

The primacy of goods of an economic nature is therefore rightly raised in the national literature. In this regard, reference is made to the pecuniary interest of the organisers of betting shops, who, in the case of such unfair games, may suffer real losses and forfeit their credibility as a trader.[16] Not unreasonably, it is emphasised that the public perception of the indiscriminate nature of the "fixing" of sporting competitions with the help of betting facilities may discourage consumers from engaging in them.[17] Reflections of this type seem to be in line with opinions emphasising the proper functioning of economic turnover as an individual object of protection of Article 47 of the SA.[18] There should be no doubt that such an understanding is, at the same time, coupled with the assumption that the provision of Article 47 of the SA is intended to protect the principles of organisation and conduct of betting.[19] They may be impaired not only from a strictly economic perspective. At the same time, the welfare of other participants in such gambling games should be pointed out. Their chances of winning may be effectively diminished if there is an advantage to another participant in such a game due to the knowledge they possess.

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[14] See C. Kąkol, *Przestępstwa o charakterze korupcyjnym w sporcie*, "Prokuratura i Prawo" 2011, No. 11, p. 126; M. Iwański, *Przestępstwa związane z korupcją w sporcie w nowej ustawie o sporcie, cz. 2*, "Palestra" 2011, No. 9–10, p. 63 et seq.

[15] Cf. M. Leciak, *Doping w sporcie i jego prawnokarne oceny*, Warszawa 2021, pp. 57–58.

[16] See J. Giezek, *Zwalczanie zachowań o charakterze korupcyjnym w świetle przepisów ustawy o sporcie*, in: *Ustawa o sporcie*, ed. A.J. Szwarc, Poznań 2011, p. 93.

[17] See M. Iwański, *Przestępstwa, cz. 2*, pp. 63–64.

[18] Ibidem, p. 64.

[19] M. Badura, H. Basiński, G. Kałużny, M. Wojcieszak, *Ustawa o sporcie. Komentarz*, Warszawa 2011, pp. 493–494.

This may be accompanied by a certain financial loss associated with the funds invested in the bet. Thus, at stake are the economic interests of consumers.[20]

At the same time, foreign literature stresses that this type of behaviour related to sports betting may also interfere with the financial interests of entities operating on the sports market. Public knowledge of corrupt behaviour linked to an act under Article 47 us may negatively affect the perception of a given sport and the sporting spectacle associated with it and, as a consequence, the loss of trust and credibility, which in real terms may translate into profits for organisers, sports federations and sellers of goods and services.[21] An additional argument for the functioning of criminal law protection instruments in the scope at issue is represented by the above-described premises related to the involvement, on a large scale, of organised crime in "fixing" the results or the course of sports competition around the world.[22] At the same time, there seems to be a certain obvious regularity related to the fact that the possibility of winning unfairly in mutual betting is a factor "provoking" behaviour of a corrupt nature, including those described within the regulation of Article 46(1–4) of the SA.

Referring further to the findings on the subjective scope of the offence under Article 47 of the SA, it should be noted that any person may become a perpetrator. We are therefore talking about a general offence. It concerns both the perpetrator who has previously committed an act under Article 46(1–4) of the SA and the one who acquired information about it from another source. It is rightly emphasised that such information may refer to the corrupt activity of the perpetrator himself, as well as to the activities of others.[23] A view has also been presented in the literature that

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[20] See M. Iwański, *Przestępstwa, cz. 2*, pp. 63–64.

[21] See L. Rebeggiani, F. Rebeggiani, *Which Factors Favor Betting Related Cheating in Sports? Some Insights from Political Economy*, in: *Match-Fixing in International Sports Existing Processes, Law Enforcement, and Prevention Strategies*, eds. M.R. Haberfeld, D. Sheehan, New York 2013, pp. 160–162.

[22] See D. Forrest, *Betting and the integrity of sport*, in: *Sports Betting: Law and Polic*y, eds. P.M. Anderson, I.S. Blackshaw, R.C.R. Siekmann, J. Soek, Hague 2012, p. 17.

[23] See J. Giezek, op.cit., pp. 92–94.

the act under Article 47 of the SA has the nature of an individual offence, and the decisive element for this is the fact of having knowledge of the commission of an act under Article 46(1–4) of the SA.[24] Such a view appears to be misconceived. The knowledge which the perpetrator must have is only a factual prerequisite of his or her responsibility resulting from the nature and character of the act under Article 47 of the SA, and not a normatively defined specific feature of the object of the prohibited act. The offence in question may be committed by any person who is able to take actions, in this case exclusively dependent on themselves, related to the use of information about the act under Article 47 of the SA.

A vast complex of problems and doubts in the interpretative layer is connected with the reconstruction of the features of the object side. First of all, it should be recalled that Article 47 of the SA provides for two alternative forms of offences. Despite the use of the conjunction "or" there is no doubt that a separable alternative is involved.[25] The common element with regard to both of them remains the fact that the perpetrator has knowledge of the commission of an act under Article 46(1–4) of the SA. Therefore, it is necessary to consider, first of all, its source, its nature and the degree of credibility. To start with, it must be decided whether it is only information about an act committed under Article 46(1–4) of the SA, or whether it also includes information concerning an attempted corrupt act or one that will take place in the future. In the light of the results of linguistic interpretation, there should be no doubt that criminal liability for an act under Article 47 of the SA will only arise in the case of committing an act under Article 46(1–4) of the SA. Thus, the elements of the act under Article 47 of the SA will not be fulfilled when the perpetrator is in possession of information about the attempted corrupt act. After all, this normative construction refers to "information on the commission of a prohibited act". It is rightly pointed out that had the legislator's intention been to also criminalise behaviour related to the use of knowledge of intentional acts, a different normative

[24] See M. Iwański, *Przestępstwa, cz. 2*, p. 65 et seq.
[25] See ibidem, p. 65.

formulation would have been used, indicating, e.g. "knowledge of the commission or intention to commit a prohibited act".[26]

However, one cannot ignore the above conclusions in the light of the real needs of combating crime related to the manipulation of sports competition, including with the use of mutual betting. After all, it is not difficult to imagine – by way of example – cases in which a person taking part in mutual bets has knowledge that another person will, within a short period of time, proceed to grant a benefit or make a promise thereof, e.g. to a sports referee, in order to thus influence the outcome or course of a sports competition, and exploits such knowledge within the framework of the aforementioned bets. Similarly, a situation can be indicated in which the perpetrator attempted to offer a pecuniary benefit to such an arbitrator in exchange for a specific result or course of sports competition, and despite the fact that such a benefit was not accepted, the perpetrator's behaviour achieved the intended effect. It seems evident that in the above-mentioned cases it is impossible to speak of the exhaustion of the elements of the act under Article 47 of the SA. At the same time, there is no doubt that the same premises for penalisation, which justify a criminal reaction under Article 47 of the SA, also support the inclusion of the above mentioned forms of behaviour under criminal law. Therefore, the proposal – at the *lex ferenda* level – to indicate, within the framework of the normative construction of Article 47 of the SA, the "knowledge of the commission or intention to commit a criminal offence" seems justified. Unfortunately, such a proposal fails to remedy other shortcomings of the commented regulation in a complex manner. The same considerations, in fact, speak in favour of criminalising also other forms of unfair behaviour related to betting in sport. It is possible to point to cases in which influence or various forms of pressure are exerted on those who can influence the outcome or course of a sports competition. For example, we speak of abetting, threatening and coercing unfair refereeing and later using knowledge of such behaviour in the context of betting. The behaviour exempli-

[26] Ibidem, pp. 64–65; conversely: C. Kąkol, op.cit., p. 126.

fied violates the principles of fairness in sporting competition and, at the same time, may harm the economic interests of selected categories of operators.

Secondly, a determination is required as to whether the knowledge of the act under Article 46(1–4) of the SA must be true. This constitutes a necessary requirement for the criminal liability of the perpetrator of an act under Article 47 of the SA. A contrary conclusion would stand in clear conflict with the results of linguistic interpretation within the criminal regulation under analysis. Mikołaj Iwański is right in pointing out that in the case in which the perpetrator remains in a mistaken belief as to the commission of an act under Article 46(1–4) of the SA, his or her behaviour should be treated in terms of a delusion of the fulfilment of the elements of the crime, which will not result in criminal liability for an ineffective attempt in the light of the regulation of Article 13 § 2 of the CC.[27] Moreover, not only linguistic arguments, but also considerations of expediency related to the legitimacy of the criminal response within Article 47 of the SA speak for renouncing the criminalisation of behaviour related to such delusion of the perpetrator.

In further analysis of the interpretative problems relating to knowledge of the commission of an act under Article 46(1–4) of the SA, it is necessary to decide what its source should be. It seems that in this respect it is irrelevant how such knowledge was obtained by the offender. As indicated before, such information could have been obtained from the perpetrator of an act under Article 46(1–4) of the SA. It is also not ruled out that the offender himself had previously realised the elements of acts stipulated within this normative construction. Similarly, the degree of credibility of such knowledge remains neutral. It is also irrelevant for the existence of an offence under Article 47 of the SA whether this type of knowledge is of a comprehensive and detailed nature or whether it is just residual knowledge referring only to selected circumstances of the act under Article 46(1–4) of the SA. The per-

[27] See M. Iwański, *Przestępstwa, cz. 2*, p. 65.

petrator of an act under Article 47 of the SA certainly does not need to have information about specific circumstances, including for example: the time or place of committing an act under Article 46(1–4) of the SA, the size or nature of the benefit granted or promised, the identity of the person giving or accepting such a benefit or promise, or the specific outcome of a sports competition or its course established through corrupt behaviour.[28]

An additional element common to the implementation of both causal alternatives of Article 47 of the SA relates to the concept of betting on sports competitions. It does not have a legal definition. The provisions of the SA make use of this term (e.g. Article 28(2) of the SA), albeit without offering any explanation. Reference is made only to specific categories, e.g. Olympic Games, Paralympic Games, Deaflympic Games, World Championships, European Championships (e.g. Article 32(1) of the SA). On the other hand, there is no doubt that not all categories of sports competitions are what the legislator has in mind under Article 47 of the SA. In fact, it clearly indicates that the offender is in possession of information about acts under Article 46(1–4) of the SA, i.e. such acts which remain "in connection with sports competitions organised by a Polish sports association or an entity operating in the field of sports competitions". There is no room here to analyse the meaning of this phrase in detail. This has already been done on the basis of the interpretation of the elements of the offences under Article 46(1–4) of the SA.[29] Regardless of the doubts as to the interpretation of the doctrine, it should be emphasised that narrowing the scope of penalisation of corrupt behaviours under Article 46(1–4) of the SA, and, consequently, also within the scope of the act under Article 47 of the SA, only to this type of compe-

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[28] See J. Potulski, *Penalizacja korupcji w sporcie*, "Prokuratura i Prawo" 2012, No. 3, p. 73.

[29] See, *inter alia*, R.A. Stefański, *Przestępstwo korupcji sportowej*, "Ius Novum" 2011, No. 1, pp. 47–50; J. Potulski, op.cit., p. 70; C. Kąkol, op.cit., pp. 115–117; M. Iwański, *Przestępstwa związane z korupcją w sporcie w nowej ustawie o sporcie, cz. 1*, "Palestra" 2011, No. 7–8, pp. 84–85; R. Żurowska, *Przestępstwo korupcji w sporcie*, Poznań 2010, p. 308; M. Badura, H. Basiński, G. Kałużny, M. Wojcieszak, op.cit., p. 479 et seq.

titions, seems inaccurate from the perspective of the criminalisation rationale justifying the reaction to behaviours that may affect the course or outcome of sports competition. In addition, it should be noted that, in practice, the object of mutual bets may not only be specific sporting competitions but also other events related to sporting competition. For instance, it may be the ranking of a specific team in the league table or the league table layout. Thus, Jacek Potulski correctly observes that the subject of criminal regulation of Article 47 of the SA is solely "betting" on a specific "sold" match as a sports competition, and not betting on other results in a given league.[30] There is no doubt that the capacious formula for betting on sports events makes the current scope of penalisation significantly disproportionate. It is also obvious that, from the *lex ferenda* perspective, attention should be paid within the scope of Article 47 of the SA to a concept that is conceptually broader than sports competitions.

Looking then at the elements constituting the first alternative, it should be pointed out that it consists in participation in mutual bets on sport competitions to which the information on the commission of an offence under Article 46(1–4) of the SA pertains. The concept of taking part in betting should be equated with the conclusion of an agreement by the perpetrator of an offence under Article 47 of the SA, within the framework of which the parties, i.e. the consumer (the perpetrator of the offence under Article 47 of the SA and the trader (the acceptor of the bet), declare a pecuniary benefit to the one of them, whose claim regarding certain past or future facts proves to be true.[31] From the perspective of the construction of the elements of the deed under Article 47 of the SA, the issue is the utilisation, exploitation of the knowledge of the deed under Article 46(1–4) of the SA.

It should be noted that for the offence in question it is not necessary to achieve any effect. In this instance, we are talking about

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[30] See J. Potulski, op.cit., pp. 72–73.

[31] See D. Mieniewski, *Sankcje cywilnoprawne w sferze hazardu*, "Przegląd Policyjny" 2016, No. 2, p. 160 et seq.; Supreme Court judgment of 9 August 2019, V CSK 413/17, not publ.

a formal offence. Thus, it is irrelevant whether there was actually a "distortion" of the outcome or the course of the sports competition as a result of the corrupt behaviour and whether the offender achieved the intended effect in the form of winning. Instead, what is necessary in terms of the offender's conduct is a direct link between the competition covered by the betting and the information concerning that very competition.

The second causal alternative, on the other hand, involves disclosing knowledge of the commission of an act under Article 46(1–4) to another person in order for that person to engage in such betting. The notion of disclosure should be interpreted in a manner which does not necessarily accord with its linguistic understanding. Under the latter, to disclose means to make something public.[32] This observation makes it possible to question the legitimacy of the term used in the framework of Article 47 of the SA referring to the causative action. After all, there is no doubt that in order to commit the crime in question it is not necessary to provide someone with information which has not been previously disclosed to anyone. Regardless of such conclusions, it should be stated that the analysed element will be realised when the offender provides information about the act under Article 46(1–4) to another person or persons.[33] As a side note, it may be added that the manner in which the information is communicated, i.e. verbalised or written, or even by means of a gesture, facial expression or sign, is irrelevant.[34] It is also worth underscoring that it is possible to disclose information not only by action, but also by omission. Such disclosure may, for example, take the form of leaving documents with information as to the corrupt act, which led to it becoming known.[35]

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[32] See M. Leciak, *Tajemnica państwowa i jej ochrona w prawie karnym materialnym i procesie karnym*, Toruń 2009, pp. 162–163.

[33] Ibidem, pp. 163–165.

[34] Ibidem, pp. 165–167; cf. Supreme Court judgment of 17 March 1971, III KR 260/70, "Nowe Prawo" 1972, No. 7–8, p. 1262.

[35] See M. Leciak, *Tajemnica*, pp. 167–168; M. Badura, H. Basiński, G. Kałużny, M. Wojcieszak, op.cit., pp. 495–496.

Within the analysed causative alternative, the commented offence is also formal in nature. In order to commit it, it is not necessary for the perpetrator to achieve a specific effect. At the same time, the legislator does not require that the person to whom the perpetrator communicated the said information about the conduct under Article 46(1–4) of the SA took part in the betting at all. Even more so, it remains irrelevant whether a specific goal related to winning has been achieved.[36] It seems obvious that the elements of the act under Article 47 of the SA will not be realised if the offender is in possession of information regarding corrupt behaviour under Article 46(1–4) of the SA, but does not disclose this knowledge to a third party. Instead, he or she induces that person to take part in betting, including bets relating to specific sports competitions. The same applies to cases in which information not related to the corrupt act, but concerning other circumstances that may affect the outcome or course of the competition (e.g. poor physical disposition of the players) is provided to another person in order for that person to engage in betting.[37] As it appears, using the criminalisation arguments supporting a criminal response on the basis of Article 47 of the SA, one may also reasonably argue for the criminalisation of this type of exemplified conduct.

As regards the problems relating to the subjective side, there is no doubt that the offences in question are deliberate offences. The question is whether only direct intent or also possible intent is involved. The possibility of fulfilment of the elements of the first of the causative alternatives also in the framework of possible intention is partially supported in the doctrine.[38] This position should not be contested. It seems that the framing of the elements of the act under Article 47 of the SA does not exclude the assumption that the offender consented to the involvement in betting on sports competitions to which his or her knowledge of the corrupt conduct pertains. However, this does not apply to conduct in the

[36] See J. Giezek, op.cit., p. 94.
[37] See J. Potulski, op.cit., p. 73.
[38] See C. Kąkol, op.cit., p. 129; M. Iwański, *Przestępstwa, cz. 2*, p. 66.

form of disclosing information to another person about an act under Article 46(1–4) of the SA in order for that person to engage in betting. In fact, in this case, it is important to point out the specific intent. The nature of the offence in this respect does, after all, include a particular mental attitude of the offender towards the act. Therefore, it is possible to exclude his or her consent to the disclosure of information concerning an act under Article 46(1–4) of the SA, while at the same time achieving the aim connected with participation of another person in betting activities.[39]

In drawing up brief remarks on the stages of commission of an act under Article 47 of the SA, it is worth mentioning at the outset that preparations for this act naturally remain non-punishable (Article 16 § 2 of the CC). On the other hand, it is by no means difficult to envision a broad complex of behaviours suitable for qualification in terms of an attempt (Article 13 § 1–2 CC). With regard to the first of the causative alternatives in Article 47 of the SA, it is possible to point exemplificatively to a situation in which the offender already proceeds to the point of acceptance of bets, but for some reason its realisation does not take place. In the second form of conduct mentioned in the Article 47 of the SA, we may, in turn, deal with a situation in which the offender communicates – in any form – to another person knowledge of an act under the Article 46 of the SA, but such communication does not reach him or her (e.g. owing to a letter being lost). Nor is it possible to exclude the realisation of a number of accessorial forms of liability within the scope of an act under Article 47 of the SA. These include participation in an act of accomplicity, perpetration by order or directing (e.g. by exploiting a subordinate relationship within a sports association or club), commissioning (e.g. by inducing participation in betting by an offender who has knowledge of conduct under Article 46(1–4) of the SA) and aiding and abetting (e.g. by indicating a place where the offender may execute such a bet).

The offence under Article 47 of the SA is punishable by imprisonment of between 3 months and 5 years. Thus, it is possible to

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[39] See M. Badura, H. Basiński, G. Kałużny, M. Wojcieszak, op.cit., pp. 496–497.

conditionally discontinue the proceedings (Article 66 § 1–2 of the CC), as well as to impose a fine or a penalty of restriction of liberty (Article 37a § 1 of the CC). Given the fact that the perpetrator may act with a view to gaining a pecuniary benefit or to obtain such a benefit, it may also be reasonable to impose a fine in addition to imprisonment under Article 33 § 2 of the CC. Within the scope of penal measures, one should not exclude the application of a prohibition to hold a specific position or to practice a specific profession connected with the sports market (Article 41 § 1 of the CC), as well as to conduct a specific business activity in this respect (Article 41 § 2 of the CC). In particular, this may apply to cases in which the perpetrator of an act under Article 47 of the SA has previously been involved in an offence under Article 46(1–4) of the SA. In some cases, e.g. those concerning well-known persons from the world of sports, the judgment may also be made public in a specific manner, if this is expedient, in particular due to the social impact of the conviction (Article 50 of the CC). In view of the nature of the offence under Article 47 of the SA, it also seems important to indicate the legitimacy of imposing, in selected cases, a penal measure in the form of a prohibition on entering gambling establishments and participating in gambling games (Article 41c § 2 of the CC).[40] Forfeiture also appears to be an important element of the criminal reaction to an act under Article 47 of the SA. The legislator has not provided a separate ground for its adjudication within the provisions of the SA. The forfeiture of financial benefit obtained by the offender, which is to be identified with winnings from betting in connection with dishonest participation in betting (Article 45 § 1 of the CC), will be primarily involved.[41]

Lastly, it is necessary to consider the problem related to the possible concurrence of the provisions of Article 46(1–4) and Article 47 of the SA. This relates to cases where the perpetrator

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[40] See R.A. Stefański, *Środek karny zakazu wstępu na imprezę masową*, "Prokuratura i Prawo" 2010, No. 1–2, p. 277 et seq.; M. Iwański, *Przestępstwa, cz. 2*, p. 66.

[41] See M. Badura, H. Basiński, G. Kałużny, M. Wojcieszak, op.cit., pp. 493–497.

first fulfils the elements of an act under Article 46(1–4) of the SA, and then uses this fact to participate in mutual betting. We have to agree that the divergence within the individual objects of protection does not allow to recognise any of the acts confined within these provisions as a concurrent offence.[42] Thus, on the one hand, the acceptance of the qualification of a concurrence of offences should not be ruled out, and on the other hand – which seems more realistic – the application of the construction of a concurrence of provisions (Article 46(1–4) of the SA in conjunction with Article 47 of the SA in conjunction with Article 11 § 2 of the CC).[43]

In conclusion of the above solutions and the articulated shortcomings and deficiencies of the regulation of Article 47 of the SA, which require the intervention of the criminal legislator, it should nevertheless be mentioned that on 7 July 2015 Poland signed the Macolin Convention,[44] as an international agreement whose main purpose is to prevent the manipulation of national and international sports competitions at the national or international level.[45] Among the multiple obligations undertaken within it is an obligation to standardise at national level the behaviour related to the manipulation of sporting competitions by creating offence types wherever such manipulation involves coercion, corruption or fraudulent practices as defined in national law (Article 15).[46] There is no doubt that Poland is not only failing to follow the Macolin commitments, but has penal provisions that are significantly unsuited to the realities of the pathology of the sports market in question.

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[42] See M. Iwański, *Przestępstwa, cz. 2*, pp. 66–67.

[43] It should be added that offences under Article 47 of the Sport Act are prosecuted ex officio.

[44] It came into effect on 1 September 2019.

[45] See https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=215 (access: 30.05.2024).

[46] Reference is made in this regard to the need to implement effective, proportionate and dissuasive sanctions, including monetary sanctions, in national criminal legal orders for the commission of such offences, while ensuring the primacy of the threat of imprisonment (Article 22).

SUMMARY

Betting in sports and Polish criminal law

The criminal response to unfair behaviour related to betting in sports is significantly limited in Polish legislation. It only applies to the use of knowledge about acts of corruption within such establishments. Meanwhile, in practice, a number of other activities of perpetrators can be noted, including manipulation of the result or course of sports competition, which are often closely related to participation in the above-mentioned betting. Taking them into account justifies the need for changes in national criminal law solutions.

Keywords: sports; corruption; betting; criminal law

STRESZCZENIE

Zakłady wzajemne w sporcie a polskie prawo karne

Reakcja karna na nieuczciwe zachowania związane z zakładami wzajemnymi w sporcie ma charakter istotnie ograniczony w polskim ustawodawstwie. Odnosi się bowiem wyłącznie do wykorzystania wiedzy o czynie korupcyjnym w ramach takich zakładów. Tymczasem w praktyce można odnotować szereg innych działalności sprawców, w tym mających formę manipulowania wynikiem lub przebiegiem sportowego współzawodnictwa, które pozostają niejednokrotnie w ścisłym powiązaniu z udziałem w ww. zakładach. Ich uwzględnienie uzasadnia potrzebę zmian w obrębie krajowych rozwiązań karnoprawnych.

Słowa kluczowe: sport; korupcja; zakłady wzajemne; prawo karne

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