
Sports crime in Algerian law La délinquance sportive en droit algérien

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ABSTRACT:

Law and sport are interconnected. If legal regulations are not strictly implemented in sport, chaos and fraud will prevail easily, and becomes a means of behavioral destruction and ethical derivation instead. Sport is a bastion of physical prowess and moral virtue; abiding by the rules and playing fair is considered a vehicle to encourage the wayward to veer from potential deviance or to rehabilitate offenders. However, sport has become in some cases a realm for criminal behavior. Hence, order cannot be achieved without the implementation of a solid legal system that controls interrelationships and individuals' attitudes before, during and after sport activity

key words: the crime , sports crime , Algerian law .

ABSTRAIT:

Le droit et le sport sont liés. Si les réglementations légales ne sont pas strictement appliquées dans le sport, le chaos et la fraude prévaudront facilement et deviendront plutôt un moyen de destruction comportementale et de dérivation éthique. Le sport est un bastion de prouesse physique et de vertu morale ; le respect des règles et le jeu équitable sont considérés comme un moyen d'encourager les

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capricieux à s'écarter d'une déviance potentielle ou à réhabiliter les contrevenants. Cependant, le sport est devenu dans certains cas le royaume des comportements criminels. Par conséquent, l'ordre ne peut être atteint sans la mise en place d'un système juridique solide qui contrôle les interrelations et les attitudes des individus avant, pendant et après l'activité sportive.

mots clés : le crime, la délinquance sportive, la loi algérienne.

Introduction:

Law is considered as one of the basic foundations of human societies as humans are social by nature and they are always willing to construct relationships with others to serve mutual interests. Hence, law helps creating order and sustains equity among human communities and prevents chaos to take place. Besides, the guidelines undertaken by the legal institutions contribute in identifying everyone's rights and obligations and entice people to live in harmony and inclusion.

Accordingly, the word "law" is used to denote a set of rules that regulate individual behaviors and attitudes within the society and the appropriate penalties that should be implemented for violating them. Law compares between the intertwined and conflicting individual interests and chooses one interest over the other and gives it legal legitimacy and protection. Yet, this operation can only be achieved by relying on the basis of valid legal regulations and texts that oblige people to respect the legal decision.

As law, sport existed with the existence of the first humans and has become one of the prominent physical activities that have shaped human history and civilization over time. Nowadays, sport is regarded as a separate social system of well-defined goals and characteristics developing in an interconnected international scope reflected in the various international sports federations, Olympic committees as well as regional and continental organizations and bodies. These highly-acknowledged institutions have given sport activities a valuable character based on a solid foundation of legal systems, rules and legislations.

Sport organizations are in great need of a well-defined legal system as they are primarily based on the idea of competition. Hence, there must be legitimate legislation and unified legal rules that help imposing professionalism and fairness as well as avoiding the rise of conflicting interests and negative attitudes among players, and eventually, training the young generation to be more patient, mentally focus and aware of their actions so that losing is not seen as a sign of weakness or defeat, but rather as an motivator that helps the individual identify his weak spots and work on improving them. Adopting deterrent measures that go in hand with the educative directives can help achieve these goals.

This study aims to shed light on sport crimes by exploring the following problematic: how “sport crimes” are defined in the Algerian Law? How effective is the Algerian legal system in fighting sport crimes? To answer these questions, we ought to follow this plan:

The first section deals with sport crimes and their specificity, while the second section investigates sport crimes in the Algerian law.

The first title: the concept of sport crimes and their specificity

In Article 215 of the Law N° 05/13 related to the regulation and development of physical and sport activities, the Algerian legislator addresses a number of criminal acts and the punitive legislation in force in its general framework, given that the behaviors involved in sports violence do not fall outside the scope of the punishable criminal acts punishable by the Algerian law¹.

Accordingly, the Algerian legislator gives the definition of sport crime and its characteristics through a set of legal texts included in Law N° 05/13 and based on the acts that he classified as criminal sport violence.

The first sub-title: the definition of sport crimes

Legally speaking, a crime is defined as an act criminalized by the force of law and punished by a proper penalty, i.e. committing an act that is prohibited by law, or failure to perform a legal duty. It also implies the violation of the legal system in its various branches such as the criminal Law, Civil law, Administrative Law, and Sport Law. This definition is derived from the criminal law stating that every behavior that contradicts the guidelines of the legal texts is automatically considered a criminal act even if it doesn't violate moral or social values. This definition is summarized into the famous rule that states (no punishment without a crime and no crime without a text)².

The second subtitle: crime and its relationship to sports

Sport is defined as “a set of competitive games and physical activities that are practiced by some individuals in order to improve their physical state or for the sake of amusement under certain rules.” Hence, sport includes playing, entertainment as well as organized, competitive and original sports.

“Playing” implies all kinds of physical activities that elicit pleasure and team spirit, but it is often unorganized and lacks adults' guidance. “Recreation” is more organized than playing, and generally involves physical activities practiced in free time. “Sport” is the most regulated physical activity as it involves strict rules, norms and sometimes competition.

“Sport” is also defined as: “a social activity that contributes to the advancement of the human motor, health and psychological condition through training,

¹ Ben Eissa Ahmed: "Procedural and Objective Legal Frameworks for the Prevention of Sports Violence", an article published in the Journal of the Faculty of Law and Political Science at the University of Tiaret, No. 2, p 107

² Mansour Rahmani, "Al-Wajeez in General Criminal Law, Dar Al-Uloum, Algeria 2006, p 83

competition, and the implicated efforts and obligatory rules to be followed. Hence, sport helps humans to enjoy a healthy lifestyle and better social integration and education.” Sport is made of many body movements that implicate physiological and mental muscles and tools that indicate the presence of a physical or moral sporting activity¹.

This idea was confirmed by the Algerian legislator in Law N°13/05 related to the regulation and development of physical and sports activities in the first part “General Provisions”, article 2: “physical and sports activities play a decisive role in getting better education and enjoy intellectual openness as well as improved physical condition and healthy lifestyle.”²

In recent times, sport has become more of a social, civilizational and political phenomenon that reflects the progress and values of the human race since ancient times. When experiencing different mood swings, humans try to find emotional balance by exercising specific physical activities. However, many mood swings (sadness, happiness, enthusiasm, tension...) drive individuals to get involved in unethical actions that do not reflect the true values of sport activities³. These criminal acts that occur inside and outside sport facilities breach sport conventional rules and ethics.

Hence, crime is defined as: “a violation of one of the rules regulating human behavior in the community. These criminal acts may occur inside or outside sports facilities and violate legal regulations. It is also regarded as an individual behavior represented in all acts that violate the rules and carried out in the social environment⁴.

Crime is also defines as: “an illegal act that negatively affects the person’s life, properties, and honor. It can also harm the wider social group, its institutions and the political and economic system.”⁵

Therefore, legal texts are used in this regard to determine whether the socially unacceptable act is a crime or not by investigating the used tools in the crime scene and identifying the appropriate penalty for the committed act. Nowadays, sport crimes are commonly committed within sports facilities and during sport events by

¹ Ibrahim Mohamed Abdel-Maqroud and Hassan Ahmed El-Shafei: "Scientific Encyclopedia of Sports Management", Dar Al-Wafa Ladonia, Alexandria, 2004 edition, p 25□

² Law 13/05 dated in 14 Ramadan 1434 corresponding to July 13, 2013, related to the organization and development of physical and sports activities□

³ Muhammad Zaki Abu Amer: “A Study in Criminology and Punishment”, University Publishing House, Beirut 1982, p 27□

⁴ Ahsan Abu Saqi'a: "Al-Wajeez in the General Criminal Law", Homa Printing and Publishing House, Algeria, 2003 edition, p 21□

⁵ Sobhi Filane, Najeh Diabat, Nayef Al-Yor, Nidal Al-Aqri: "Sport is a healthy culture", Arab Society Library Publishing House, first edition 201, p 25□

different actors of the sport community; namely, players, trainees, coaches, referees, fans, spectators, commentators, security guards, journalists..etc,¹

The members of the sport community are greatly affected by various innate and acquired factors, which are transmitted from the individual to the group and lead them to perform certain criminal behaviors, such as the acts committed inside sports stadiums. For example, if a small group of spectators commit a criminal act at a stadium, it will be easily transmitted to the rest of the crowd who will imitate their fellow spectators in committing the same criminal act but in a wider sphere².

Due to its social, political and economic dimensions, sport is easily affected by the surrounding conflicts and misunderstandings, which is reflected in the growing rates of violence in sport facilities.

The second title: Sport crimes in the Algerian law

The first subtitle: the types of sport crimes in the Algerian legislation

Sport crime is defined as: “the crime that occurs within the sport community and negatively affects human lives, properties and the society.” It is also defined as: “various aggressive acts such as hitting, burning, destroying, sabotaging, as well as inappropriate and immoral behaviors carried out by players, administrators and sports fans in violation of the applicable civil laws and regulations before, during or after sport competitions.³

Sport crime has often been described as sport violence that takes different shapes and manners. Hence, the Algerian legislator tried to deal with the issue of sport crimes by issuing Law N° 13/05 related to the organization and development of physical and sports activities and demonstrating its danger in more detailed legal texts.

Crimes committed in the sport community are numerous, yet, we will try to review some of which have a crucial impact on the victim, as follows:

1- Crimes against individuals - violence against the body safety:

They include criminal physical actions that aim at harming another person’s body through the use of weapons against players, referees, or supporters.⁴

For example: committing the crime of murder against fans, colleagues or opponents inside the stadiums using sharp tools such as knives.⁵

^{1 4} Abdel-Fattah El-Sayed: “Studying the phenomenon of riots in sports facilities in the light of an integrated values and educational dimensions of human and sports development”, the Supreme Youth Council, Cairo, without edition, p 87□

^{2 5} Hamad Youssef Hajjaj: "Intolerance and aggression in sports", Anglo-Saxon Library, Cairo, edition 2002, p 112

³ Maurice Nakhle, Rawhi Baalbaki, Salah Matar: "The Triple Law Dictionary", Al-Halabi Human Rights Publications, Beirut, 2002 edition, p 189□

⁴ Law 13/05 dated in 14 Ramadan 1434 corresponding to July 13, 2013, related to the organization and development of physical and sports activities.□

^{5 3} Mustafa Al-Aouji: "General Criminal Law", Part 2, Naoufal Publishing and Distribution House, Beirut, 1992 edition, p 430

Disputes between players during the game due to a provocation or a misunderstanding, especially in team sports that are more likely to lead to the commission of murder than in individual sports.

In this regard, the Algerian Penal Code insures ultimate penal protection of individuals' lives by applying strict penalties on the crimes of beating and intentional wounding using all kinds of tools, based on the nature of damage caused to the victim; ie, the penalty of minor violence is identified in article N° 442 of the Penal Code, temporary disability in article N° 422 of the same Code, permanent disability in article N° 264 and death in article N° 254-261 of the Penal Code. Besides, Law N° 13/05 states the various violent acts that threaten the physical safety of others as well as their penalties in articles N° 235 - 239.¹

2- Violence against properties: crimes against sports facilities.

The perpetrators of this kind of crimes intend to attack public and private properties by sabotaging sport facilities and equipment, intentionally destroying and burning buildings and means of transport in order to paralyze public activities. Given the seriousness of these acts and the damages resulted from them, the Algerian legislator made sure to apply severe penalties against the perpetrators, for example, burning buildings and means of transport is punishable by Article 396 of the Penal Code, while sabotaging public properties is punishable by Article 396 of the Penal Code. The Algerian law also criminalizes the intentional destruction of the aforementioned properties by means of demolition and vandalism in Article 406 and 407 of the Penal Code.

The second subtitle: the legality of sport behaviors

Due to the great value of sport in modern era as a way of fostering social cohesion and community development, many thinkers show their interests in studying it and trying to integrate physical activities in educational programs. Consequently, numerous research studies, books and websites articles have been written by prestigious historians, economists, doctors, political analysts, psychologists and even legal experts regarding the distinctive phenomenon of sport. These research areas can also be considered as sub- branches of sport, as they are interested in studying sport-related topics such motor development and training, sports psychology, sports sociology, anatomy, physiology of physical activity, and so on.

In the near future, more studies will be done on sport legislation, sports management and its relationship to internal and external environment that is made of players, administrators, coaches, referees, media, spectators and sports facilities

¹ Youssef Dalanda: "The Penal Code", revised according to the latest amendments of the Law No. 01/09 dated on 02-252009 and supported by the principles and jurisprudence of the Supreme Court in the article of the Penal Code, Homa House, 2010 edition, p. 27

of all kinds in order to properly build the cognitive structure of physical education and sports.

When studying the various behaviors related to the sport system, we find that the immoral "brutal" aggressive acts can be easily transformed to killing, beating, wounding, burning, sabotage, property destruction, as well as insulting, slander, forgery and fraud which reflect a direct breach of civil and criminal laws. In order to investigate the nature of sports crimes and to identify the legal texts that deter these disgraceful behaviors, it is vital to address some of these criminal acts and their implications in sports.

For example, a player can intentionally behave in unethical way by harming the other player and win the game, as in football matches when the player intends to injure the opposite player rather than chasing the ball to prevent him from performing well. This kind of incidents can sometimes lead to death, or permanent injuries especially when the two teams are super competitive. If it is proven that the player had purposely injured the victim, he has to be punished for intentional wrongdoing; however, if he didn't intend to harm the opposite player, he should be punished for unintentional wrongdoing.

Accordingly, we can easily identify the nature of sport violent acts and their classification as intentional and unintentional crimes. On this basis, the legislator orders to implement different penalties according to the nature and the level of injury. However, since most of sport violent acts are classified as unintentional wrongdoings in the first place, we will exclusively focus on their implications in the following section.

Unintentional wrongdoing: it occurs when one side acts without taking his precautions imposed by the law and fails in preventing the dangerous consequences from happening. Therefore, the abuser of this kind of act neglects the importance of people's right of security and the protection of the public interest. In other words, the perpetrator of the unintentional wrongdoing willingly performs the criminal activity without intending to be harmful; yet, he had to / could, or should expect this to happen. If the essence of the non-intentional criminal act is the breach of the general obligations of vigilance and carefulness established by law, and punishable by Articles 109-440 of the Penal Code, two other criteria have to be present in order to confirm the commitment of an unintentional wrongdoing:

A- The personal criterion: by comparing the behavior of the perpetrator with the behavior of another person who is exposed to the same circumstances and see whether the latter will commit the same mistake or not.

b- The objective criterion: by comparing the behavior of the perpetrator to the behavior of an ordinary person who acts with a certain level of caution. If the latter acts in a violent way after exposing him to similar circumstances, the perpetrator

becomes fully responsible of his criminal acts, however, if that ordinary person doesn't commit the violent act, the perpetrator is charged with unintentional wrongdoing.¹

The third subtitle: the specificity of sport crime.

- Based on the definition of sport crime, we can say that the latter is distinguished from the other types of crimes by a set of special characteristics and factors.²

First of all, sport crime is committed as a result of the presence of four basic elements: the audience, players, referees, administrators, and four minor ones: the press, coaches, administrators, security guards and paramedics.

Besides, sport crimes occur inside all kinds of sport facilities, especially stadiums³.

Assault as a means: Some sports, by their nature, require the use of violence, in which assault is carried out, but without intent to harm the other side; for example, sports that requires mutual consent between players to carry out the violent acts, such as boxing and wrestling. In this regard, the assault is a prominent part of the game.

- Sport crimes occur as a result of multiple apparent factors and for the purpose of satisfying personal motives, such as achieving victory or regional, sectarian or racial gains. They also occur as a result of venting the psychological and social pressure experienced by young people.

- Sport crimes take place during sport events and individual and collective competitive games.

- Sport crimes negatively affect social, political and economic relations, considering that sport is a social phenomenon that has a political, economic and cultural dimension.

Conclusion:

Physical activities are subject of sport and legal regulations, known as “the rules of the game.” Even though some of these rules can be seen as deceiving, such as the rule that prevents the boxer from hitting his opponent in specific body places, they help preventing the commitment of some violent acts as a result of breaching those rules. However, although competitive sports are subject to technical and legal rules, this does not exclude the possibility of certain accidents as a result of violation of these rules. Accidents may occur to players, referees or spectators due to direct human action, and may be caused by the tools and means used in sports competition, which means assault and even the commission of criminal acts that

¹ Muhammad Suleiman Ahmed, Wadih Yassin Al-Tikriti, and Louai Ghanem Al-Sumaida'i (Culture between Law and Sports), Wael Publishing House. Ed. (2005), p 126□

² ² Seyed Ahmad Hadj Issa - Iran Iman: "Violence in Algerian football stadiums as a cause of confrontation mechanisms", 1434-2013 edition, p15□

³ Ahssan Boussakia: “Al-Wajeez in the Private Criminal Law”, “Crimes against Persons and Money, Some Private Crimes”, Part One, revised and supplemented in the light of the new laws, Homa Publishing House, 2014 edition, p5

are not expressly covered by the laws of sports. Penal provisions for perpetrators of crimes, which means that they are subject to the rules of common law .

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