

Exploring the definition of the manipulations of sports competitions by Norbert Rubicsek J.D.

1. Introduction

Although manipulations in sport competitions is not a new phenomenon, the structured, multidisciplinary counter measures taken have only emerged since the mid 2000's. Due to this relatively short period of time, together with the range, complexity and difficulty of the issue, experts and academics of the domain have been endeavouring to find common ground for effective counter measures and even for a common understanding of the basic definitions.

This issue has proven to be difficult. Sport manipulations is a multidisciplinary phenomenon and is approached differently by each type of actors: the attempts to solve the problems are based on the threats posed by the issue to their field. These principal stakeholders include the sport movement, law enforcement and judicial authorities and the betting industry.

Normally, this multi-sectorial involvement would not be a problematic: different approaches tend to help solve and handle a certain problem. In this circumstance and at the 2013¹ stage of the fight, however, although the different stakeholders, public and private, needed to co-operate and work together to solve cases; misunderstandings and disagreements tended to jeopardize success in tackling manipulations in sport.

In 2014, the Council of Europe made a big step towards organising the fight against manipulations of sports competitions by adopting The Convention on the Manipulation of Sports Competitions (the Macolin Convention) for signature and ratification; an international legislation was thus launched which provided a legal basis for effectively fighting manipulations in sport. The text was constituted by representatives not only of ministries, but also of the sport movement, law enforcement, judicial authorities and betting industries of countries from 3 continents with consensus.

Whereas the concept and legal base has been created, practice has to follow.

It is crucial for all key players to "speak the same language" in order to effectively tackle manipulations of sports competitions. The three big fields in this area (sport, law enforcement and betting) have to understand things in the same way or at least comprehend their counterparts' perspectives, otherwise a huge caveat is created; a caveat which plays into the hands of criminals.

Therefore, to support the fight against manipulations in sport, an attempt has been made below to define some key points of the domain by answering basic questions of tackling sport manipulations based on over a decade of field experience in law enforcement, tackling organized crime and sport manipulations. This might help stakeholders better understand each other and consequently co-operate more effectively and step up against the phenomenon more successfully.

2. Visiting a well-known definition

According to the Council of Europe's international Convention on the Manipulations of Sports Competition, (Macolin Convention), the manipulations of sports competitions is defined as "*an intentional arrangement, act of omission aimed at an improper alteration of the result of the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others*".

This definition has been widely accepted as **the** definition of the manipulation of sports competitions and has been integrated into a number of national legislative frameworks, in preparation for the entry into force of the Convention.

¹ The year of the release of the biggest criminal investigation in this domain – JIT VETO/Bochum Case

This definition is extremely important for several reasons:

- ✦ There was no uniform definition on sport manipulations before the Macolin Convention,
- ✦ The definition was created with great consensus of national and international stakeholders from the sport, betting and law enforcement fields and particularly from ministries of countries from all over the world,
- ✦ It covers the definition sport manipulations widely and flexibly enough to facilitate transposition into national legislation.
- ✦ Since then, this definition has been used all over the world and is commonly accepted by stakeholders such as the International Olympic Committee and Interpol,
- ✦ It covers not only the act of sport manipulations, but also the intention to manipulate.

3. Determining motives

The first point to remember is that **sport manipulations are always committed for financial benefit whether or not it is for sport motivated purposes**. This financial benefit could be manifested directly (accepting bribes, betting, sponsorships, transferring players, etc) or indirectly (sexual service², personal favours: e.g. arranging education for a family member, etc).

The only exception to anyone benefitting applies to those who are forced to fix a sport event under threat of harm to themselves or their close ones. Nevertheless, since they fix the sport event on behalf of somebody else, following the Macolin Convention definition, "... *obtaining an undue advantage for oneself or for others.*", the manipulation could be considered as having been committed.

4. Clarifying the use of the term 'match-fixing'

Given the interchanging frequency with which the terms 'match-fixing' and 'manipulations of sports competitions' have been used – accurately or inaccurately- in this domain, a law enforcement approach would suggest restricting the term match-fixing (whether fixing entire event, tournament or one part of it) purely to the on-venue action through which the sport manipulation is implemented. **Match-fixing is the act that takes place at the sporting venue. It is a part of the manipulation rather than being a synonym.**

In light of the above mentioned, it is necessary to distinguish between the phase of the sport manipulation and match-fixing:

- ✦ **Match-fixing:** What happens AT the sport venue/field/court/pitch (including issues directly linked to sport venue happenings (e.g.: goalkeeper intentionally lets in a goal, player is not played to make the team weaker, etc.)
- ✦ **Sport manipulation:** What happens ON AND OFF/away from the sport venue/field/court/pitch (match fixing and bribe, coercion, money laundering, betting, etc.). For instance, an organized crime group bribes a referee (OFF the sport venue). The referee then fixes the match concerned on the field (ON sport venue) – both acts fall under the offence of manipulation of sports competitions).

It is important to note that:

- ✦ The two parts (On AND OFF/away from the sport venue/field/court/pitch) should have a strong direct connection.
- ✦ The sequence of actions ON and OFF the sport venue (order of actions) is indifferent when classifying them under the term "manipulation".

² Singaporean Ding Si Yang was sentenced to three years in jail for supplying prostitutes to three Lebanese referees - <https://www.bloomberg.com/news/articles/2014-07-24/singaporean-jailed-3-years-for-prostitute-referee-bribes>

5. Identifying and classifying perpetrators

In order to understand the offence of sport manipulations, it is important to distinguish the roles and actors involved in this act.

Due to the similarity of some parts or the entire act of manipulation, when more than one person is involved, notably including on-field actors (athlete or referee) as well as actors away from the sporting venue, these roles can be explained based on the definition of roles in the offence of bribery³. Bribery is used as an analogy, because the basic behaviour is the same: person A approaches person B and convinces him/her to fix a sport event, following which B executes the fix. The nuances are of course to be studied (situation of accepting to fix, etc).

In this sense, the act of sport manipulations involves two types of parties:

- The actors that **fix** the event (match, game, tournament, etc.); their primary activity within the act of sport manipulation is therefore match-fixing. They are referred to as a **Passive manipulator** – the person who gains, asks and/or claims benefit from another to fix a sport event (even when such a person is coerced into fixing – although leniency will probably play a role during the trial proceeding).
- Those who intend to **manipulate** the event (e.g. criminals, criminal organizations, club owners for sport related purposes) for reasons beyond the venue; their role **includes** that of the passive manipulator and goes beyond. These persons will not only approach and ensure that the passive manipulators will fix the event on the field of play but will also undertake to ensure a financial gain from **the same** fix on the field. They may be referred to as the **Active manipulator** – the person that **offers and/or gives** benefit to someone to fix the sport event in order to obtain undue financial benefit for themselves and/or others.

It is possible that the same actor may encompass the profile of both types of manipulators – such as an athlete fixing the game on the field (result or spot-fix) and then betting safely for financial gain.

However, the moment that the on-field actor (athlete or referee) or team manager/coach/trainers bets on an event fixed by him/herself FOR self-benefit or bribes another athlete, according to the standardization illustrated below, he/she is no longer considered in the role of passive manipulator, but his/her status becomes that of a non-sport related criminal since he/she acts with an undue influence for him/herself (fix the event), as an active manipulator to have financial benefit. (please see the table below).

Actors involved in committing the offence of sport manipulations	Type of manipulator
On the sport venue/field/court/pitch	
▪ Athletes	Passive manipulator
▪ Referees	Passive manipulator
Around the venue	
▪ Team managers/coaches/trainers ⁴	Passive manipulator/ Active manipulator
▪ Athlete's entourage,	Active manipulator
▪ Other sport officials,	Active manipulator
▪ Managers of sport clubs, organizations, athletes,	Active manipulator
▪ Player agents	Active manipulator
Far from the sporting venue	
▪ Non-sport related criminals	Active manipulator
▪ (Organized) criminal groups	Active manipulator

³ (<https://stats.oecd.org/glossary/detail.asp?ID=7203> <https://stats.oecd.org/glossary/detail.asp?ID=7205>)

⁴ Depending on their role in the activity they could be passive (being approached to fix the sport event) or active (approaching the athletes and/or referees to fix the game)

6. Reasons to manipulate

While the ultimate aim as described above will eventually be financial gain, the motive to manipulate can be largely divided into two sub-sections, as seen in considerable literature (non-exhaustive list):

- **Sport related:** the direct aim is to arrange the event to obtain a sporting benefit. The interest of the active manipulator is to obtain something illicit for the benefit of the club, the team or athletes related to the respective sport. There will inevitably be a financial benefit (sponsorship, bonus for promotion/victory/non-relegation/increase in ranking, etc.).

Sport- related aims

- to avoid relegation
- to win the sport event
- to achieve a certain rank
- to qualify for other tournaments
- to achieve/maintain sponsorship deals

- **Non-sport related:** to arrange the sport event to obtain financial benefit from the manipulation with no regard for the sporting result. The vehicles used are most often corruption, fraud and money laundering. These manipulations are committed not to achieve something for sport or sport clubs or for any athletes. In this case the manipulator's motive is to obtain an illicit (financial) benefit **THROUGH sport**. The methods used are varied as cases and investigations have proven; for example, the active manipulators could gain benefit from betting on a certain game to use the sport club for money laundering and the sport event as a money laundering scheme. The passive manipulators who are actively fixing the game gain benefit from the corruption.

Non-sport related aims

- To gain illegal income as **an active manipulator**
- To gain illegal income as **a passive manipulator** - receiving benefit for fixing the event. As mentioned earlier, the moment that the on-field actor or team manager/coach/trainers bets on their event that they fixed for self-benefit or bribes another field actor, their status is that of a non-sport related criminal/active manipulator

7. Examples of how the benefit is manifested

The methods used by active and passive manipulators are varied; increasingly sophisticated technology and currency provides new avenues for exploitation. So how are sport manipulations carried out in order to obtain (financial) benefit?

The list of methods is not exhaustive and pertains to methods most often observed and investigated:

• Sport- related – income and benefit

While the active manipulator receives money as a consequence of the act such as bonus for moving to/remaining in a higher league, a prize for winning the event, sponsorship deals, exchange transfers of athletes between two teams, etc; the passive manipulator can be paid in different ways, ranging from direct payment, sponsorship or personal favours, etc.

The actors on the field can be paid directly or through an intermediate (their club or agent, etc) as well. In addition, all those actors that receive inside information on all these attempts and intentions are able to bet with more knowledge and are therefore breaking further law and regulations.

Non-sport related – income and benefit

The non-sport related income has been seen to be most often acquired through:

- **Betting by**
 - The athlete or referee who commits the fix in order to bet on the event **themselves** (hence, they commit the entire act of sport manipulation: match-fixing and fraud by the same actor⁵ and become the active manipulator as well)
 - Those that have inside information on a fixed game (and **then** bet on it)
 - The active manipulator and his accomplices (e.g. criminals or criminal organizations)

Note: It is important to mention that although betting itself is not illegal, since the manipulations of sport event, which the betting is based on is, it makes the entire act illegal.

- **Bribe money or other benefit** by the passive part of the sport manipulations (in this case the corruption) - Athletes, referees, sport officials, agents, club owners can receive income/benefit for committing sport manipulations, for example:
 - As a “gift” (sexual service, personal favour or receiving a prize)
 - Directly (by cash or money transfer),
 - As a sponsorship
 - As a tie-in (player transfer, transfer of goods or real estate, etc)
- **Money from Money laundering** - by the active manipulator, committing sport manipulations as a money laundering method - using clubs, players, player transfers, betting, inside information as tools

Both, the sport and non-sport motivated manipulations are illicit, therefore so are the income and benefits acquired!⁶

8. Conclusion

It is clear from this short analysis that distinguishing between the ultimate motive on the one hand and between the manifestation of the benefit on the other hand is already complex, without mentioning the methods used to ensure that the final act is committed and the process that is executed to carry out the entire act of sport manipulation. Criminals have capitalised on this blurred status to create a melange of methods, abusing legal tools for illicit gain and exploiting all the gaps in legislation to increasingly poison the sport domain and compromise its integrity.

Therefore, strong and clear national legislation, as well as a supporting international legislation (the Macolin Convention) and effective national and trans-national co-operation within a legally sound framework will greatly boost efficiency in detection, investigating and finally sanctioning perpetrators in this domain. That sound framework will inevitably allow preventative actions to eventually have a greater impact. It is a slow process, but a very necessary one in order to ensure the integrity of sport and the stability of the economy.

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⁵ Please see “Clarifying the use of the term ‘match-fixing’” above

⁶ It is possible that a national legislation does not apply to a certain sport manipulation case. This could be, for instance, when the perpetrators cannot be charged since the article referring to bribery applies only to officials. The respective law enforcement authorities should (and have been known to) find an alternative solution in such cases:

Chann Sankaran - Krishna Ganeshan - Michael Boateng - Delroy Facey and Moses Swaibu case in UK in 2014-2015. (<http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2014/Three-guilty-in-match-fixing-probe.aspx>). In this case, on 20 June 2014 three men suspected of trying to manipulate the scorelines of football matches were found guilty of conspiracy to commit bribery and received sentences totaling in excess of 11 years in prison.