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The Inter-Sectoral Correspondability of Legal Norms (on the example of International Humanitarian and Sports Law, National Criminal Law and Law of Criminal-Procedure)

Abstract: In this work, the author substantiated the thesis that delicts in the sphere of illicit trafficking by doping drugs are a kind of criminal legal conflict; carried out an analysis of regulatory regulation of the activities of the World Anti-Doping Agency WADA and came to conclusion that this organization can be attributed to forms of alternative solutions of the criminal-legal conflicts by its nature; and also substantiated the thesis that WADA contradicts the basic principles of the institute of the alternative impact on the offender, norms and generally recognized principles of International Law guaranteeing basic human rights and freedoms, in its applied activities.

Key words: World Anti-Doping Agency (WADA), universally recognized principles and norms of International Law, alternative forms of solving the criminal-legal conflict, human rights and freedoms, Sports Law, crime, responsibility, Criminal Law sphere, basic human rights and freedoms.

The main purpose of this article: the definition of the legal nature of WADA activities, the statement of the basic principles of the realization of this legal phenomenon and the establishment of compliance or non-compliance of the actual activities of WADA to these principles.

The analysis of the Criminal Law Norms of the National Law of various states for the purpose of possible spread its effect on delicts in sphere of illicit trafficking in doping drugs demonstrates the following.

The Criminal Legislation of many countries establishes special rules that criminalize the falsification in the field of medical examination: for example, p.278 of the Criminal Code of Germany-Issue of a false certificate of health status; p. 279 of the Criminal Code of Germany - Use of a false certificate of health status. [1, C228].

Special rules are also fixed, establishe criminal liability for violations in the organization and conducting of sport events: Art. 203 of the Criminal Code of Georgia - ... illegal actions to influence the results of the competition [2, P.236]. Similarly, art. 220 of the Criminal Code of the Kyrgyz Republic; [3. P.223] and in art. 201 of the Criminal Code of the Armenia Republic [4. S.507]; Art. 184 of the Criminal Code of Russian Federation. Article 234 of

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the Criminal Code of the Russian Federation provides also liability for the illicit trafficking in potent substances.

Criminal codes and special laws of many states, establish criminal liability directly for illegal trafficking of doping: Art.323 of the Criminal Code of Ukraine: "Encouraging minors to use doping substances." [5] A similar norm is present in Art. 133 of the Criminal Code of the Republic of Kazakhstan (in the current version). [6] Art. 195 of the Criminal Code of Estonia provides for criminal liability for coercion (inducement) to use doping. [7] Art. 288 of the Criminal Code of the Czech Republic provides the responsibility for the creation of doping drugs. [8] Art. 147 of the Criminal Code of Austria provides liability for the use of doping. [9] Art. 187 of the Criminal Code of Slovenia - for incitement to the use of doping. [10] Art. 185 of the Criminal Code of Hungary - for the production, sale and prescription of doping. [11] In Chapter 44 of the Criminal Code of Finland, two norms are responsible for illegal trafficking in doping: Art. 6 - manufacture of doping drugs, article 7 - use of doping drugs. [12] In Italy, a criminal offense is not only the transportation or distribution, but also the use of doping drugs. [13] Similar criminal liability for the illicit trafficking of doping drugs is provided by the criminal legislation of France and Spain. [14, 15]

A special law was enacted In Germany on November 1, 2015 (entered into force on January 1, 2016), which refers to medical legislation, which provides for criminal liability in the form of imprisonment and large fines for the use of doping. Athletes will face up to three years of imprisonment in case of confirmation of the fact of doping, as well as in case of revealing the facts of storage of prohibited substances. At the same time, doctors and persons who supply prohibited preparations to athletes may be sentenced to imprisonment for up to ten years. [16]

Moreover, the International Association of Athletics Federations (IAAF) presented to the All-Russian Athletics Federation (VFLA) the final list of criteria for verifying its work in December 2015. There is a requirement in one of the paragraphs "to ensure the effective protection of the future from doping by publishing disqualification for doping, the introduction of additional monetary penalties, as well as criminal punishment for the dissemination of doping." [17] A recommendation was also made to introduce criminal liability for the encirclement of athletes, if it promotes the use of doping In the declaration of the Olympic Summit on October 8, 2016. In Lausanne. [18] The IOC (02. 09. 2016) also considers it appropriate to criminalize coaches, doctors and others working with athletes, for assisting in the use of doping. [19]

The State Duma of the Russian Federation unanimously adopted the bill, which introduces criminal responsibility for inducing athletes to use dope, in the second and immediately in the third, final, reading on November 3, 2016. [20]

In addition, it should be noted that the European Court of Human Rights (Strasbourg) (hereinafter ECHR), in the mode of interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950), developed a unique collision instrument - the doctrine of "Criminal Law", which covers all relationships that have criminal legal meanings, regardless of the norms of which law they found regulation (criminal, criminal procedure, administrative, civil, etc.). In addition to formal factors (the fixing of a specific legal phenomenon in the Criminal Law by National Legislation), material

factors (the severity of the punishment / penalty imposed, the characteristic character of the act ... [21]) are taken into account when determining the "sphere of Criminal Law".

If the main criteria for classifying a specific legal phenomenon to the "sphere of Criminal Law" to use the factors established by the ECHR: a) the nature of the offense, b) the nature and severity of the punishment that the person is at risk of facing, then the events under consideration (WADA activities to identify athletes who use doping and bringing them to justice) is fully attributed to the "sphere of criminal law": a) by nature, the use of doping and falsification of control medical records ootvetstvuetdeyaniyam, criminal responsibility for which is set by the legislation of almost all countries; b) according to the degree of severity imposed on athletes' measures of responsibility (deprivation of rewards, deprivation of titles, prohibition of participation in competitions ...), they are quite consistent with such types of criminal punishment as: deprivation of awards, deprivation of honorary titles / legal status (Article 48 of the Criminal Code / p.45a of the Criminal Code of the Federal Republic of Germany), a ban on engaging in certain types of activities (Article 47 of the Criminal Code of the Russian Federation / p.11 of Art.131-6, 131-28, 131-34, paragraph 2 of Article 131-39 of the Criminal Code of France / UK FRG / Article 54 of the Criminal Code of Switzerland / p.5 Part 1, Article 28 of the Criminal Code of the Netherlands). From the point of view of WADA applied to violators of anti-doping rules of sanctions, we can note an obvious analogy with the institution of criminal punishment. Art. 10 of the World Anti-Doping Code [22] "Sanctions to Individuals" contains the following provisions: a) types of penalties are the cancellation of the results of a sporting event (Article 10.1) and disqualification (Article 10.2) - analogues of such a common type of criminal punishment, as deprivation of the right to engage in a certain type of activity (Article 47 of the Criminal Code of the Russian Federation); provides for the possibility of early termination of disqualification (Article 10.4) or a reduction in the period of ineligibility (Article 10.5) - an analogue of the institution of parole from serving a sentence (Article 76 of the Criminal Code of the Russian Federation); fixed and the limitation period for bringing to responsibility (Article 17) - an analogue of the domestic art. 78 of the Criminal Code of the Russian Federation. The foregoing allows us to conclude that the delicts that are the subject of the WADA proceedings and the measures that this organization applies to the identified violators from the point of view of International law and National Law of the most states belong to the "Criminal Law" area, and WADA's activity in countering them is a form of extrajudicial / alternative solution of the criminal-legal conflict.

The Introduction to the "World Anti-Doping Code" contains the provision: "The Code contains quite specific provisions, while it is sufficiently universal in cases where a flexible approach to the practical application of anti-doping principles is required" [22]. The so-called principle of discretion of law enforcement (freedom of discretion of law enforcement), characterising the doctrine of alternative forms of solving a criminal legal conflict. In the introduction to Part 1 in paragraph 5, the provision is fixed: "Specific anti-doping rules and procedures, ... differ in essence from Criminal and Civil Processes. They can not be subject to or limited by any national requirements and legal standards applied to such processes, although it is expected that human rights will be respected in these procedures ... "- the status of WADA procedural activity is fixed more than definitely - it is not a classical

litigation, with its guarantees and procedures, but an alternative form of solving legal problems.

But how the activities of the WADA is in accordance with with the principles of alternative forms of decision of criminal-legal conflict? First of all, it is widely recognized principle that alternative forms of the decision of criminal-legal conflict are not applied instead of the classic trial, and they interact with them; they do not aim at the restriction of human rights and their extra warranty (compared to the traditional judicial forms. The idea of alternatives is that the offender and the victim decide whether to resolve the conflict in a traditional jurisdictional form or to take advantage of alternative procedures. Moreover, if alternative forms of conflict resolution are implemented with respect to the offender, it is considered that all claims of the state, society and the victim against him for a specific tort are exhausted, the issue of bringing the same person to administrative and criminal responsibility for the same offense is excluded.

In the given veiv, let us analyze the norms regulating the activity of WADA in the field of combating illicit trafficking in doping drugs. The basic normative legal document regulating the international anti-doping policy is the "World Anti-Doping Code" of 2003. in Ed. of 15.11.2013. Johannesburg (hereinafter WAC). [22] "Doping is fundamentally contrary to the spirit of sport" (preamble of the WAC). The exception is the authorization for therapeutic use of banned drugs in out-of-competition period (preamble of WAC), provided for in Article 2.6.1 and 4.4.1 of the HAC. By virtue of Art. 10 and 11 of the WAC, personal / individual responsibility is provided for athletes for the violation of anti-doping legislation. Responsibility of the team is possible only in team sports. Sanctions for sports organizations are possible as to legal entities (Article 12). But such phenomena as the responsibility of the entire Olympic team in track and field athletics, or the Russian Paralympic team as a whole does not correspond to the generally recognized principles of International Law). Art. 10.1-10.13 The WAC provides for two main types of sanctions: individual disqualification (up to 2 years, up to 4 years and for life) [22] (Art. 11 provides for the possibility of command disqualification for team sports) and annulment of the results of competitions (Art. and such types of liability as: personal exclusion from participation in competitions, removal of all medals, points and prizes, reimbursement of costs associated with violation of anti-doping rules). Such kind of responsibility as non-admission to the national team competitions as a whole is not provided. In accordance with art. 2.1.1. of WAC shall establish an anti-doping rule violation regardless of the fault of the athlete; but his fault is taken into account when imposing responsibility on him. According to Art. 10.4 -10.6 The WAC is responsible for the requirements of anti-doping control in accordance with the guilt principle. Liability without fault is excluded. [22] Art. 3.1. The WAC defines the burden and standards of proof: the Anti-Doping Organization is under the burden of proving that an anti-doping rule violation has occurred. It seems, we observe the next fastening of the presumption of innocence. But then there is the following thesis: "The standard of proof will be the detection by the Anti-Doping Organization of an anti-doping rule violation at an acceptable level for the experts performing the hearing procedure, taking into account the seriousness of the charges made. This standard of proof is more weighty than just a balance of probabilities in all cases, but less proof in the absence of reasonable doubt. " The athlete may be charged with the refutation of the presumption of his guilt; and the validity

of such a refutation is estimated from the point of view of the so-called "balance of probability": what is more, and what is less likely. How does this agree with the presumption of innocence: the conviction should not be based on assumptions (and the notorious balance of probabilities is nothing more than a comparative assessment of assumptions), all unsolvable doubts about guilt should be resolved in favor of the suspect? In addition, the above-mentioned situation of the VAK contains an internal logical contradiction: what kind of proof of a tort can we talk about, if the level of such a proof is "less than proven in the absence of justified doubts" - that is, the case contains unsolved substantiated doubts about the fact of tort, the suspect, the guilt of the latter, and the process of proof is completed? Moreover, the absence of the fault of the athlete is not a circumstance excluding his liability, but only a basis for a possible early cancellation of the disqualification (Article 10.4 of the WAC).

Art. 3.2 of WAC "Methods of Establishing Facts and Presumptions" contains the following presumptions:

- presumption of scientific validity of WADA methods (article 3.2.1) - i.e. the conclusion of WADA is not one of many evidences that are subject to a comprehensive assessment by the law enforcer, but a given constant (which contradicts the general theory of proof and expert opinions that the expert in each case has to justify his competence in the matter);

- presumption of the truth of the conclusions of WADA laboratories (Article 3.2.2) - similarly;

- derogation from an international standard or other rule (or other violation of legal requirements) does not lead to recognition of WADA laboratory investigations as invalid (Article 3.2.3) - that is, evidence obtained in violation of the law is recognized as valid (admissible and having evidentiary value);

- The refusal to attend the meeting of the relevant commission WADA is a sufficient basis for the decision against the athlete (ie, without taking into account all the other evidence, even if the absence of the tort or the absence of the suspect's guilt is obvious).

One gets the impression that this is not a legal document of the 21st century, but an analog of the medieval "Hammer of Witches" or instructions for the inquisition of the Torquemada times.

Art. 20.7 of WAC is devoted to roles and responsibilities of WADA in the anti-doping movement. According to Art. 4.4.1- 4.4.6 of WAC WADA is authorized to allow the use of prohibited drugs athletes for therapeutic purposes (an obvious rudiment of the medieval institute of indulgence.

An analysis of the text of the WAC makes it possible to draw quite an alarming conclusion. It is obvious that WADA implements not only the functions of investigating doping delicts, but it is also empowered to make decisions on the merits of many issues: the formation of the regulatory framework for anti-doping policy, the empowerment of subjects, the restriction of rights, bringing to justice and exercising control over all that has been stated. The situation when the same subject forms the normative base, and in a personal aspect, assigns rights and duties to specific participants in legal relations, and investigates offenses, and takes decisions on the merits of the case, and supervises the implementation of

the measures of responsibility, and decides issues of exemption from liability, and it controls itself - this is not even an inquisition process, it is a rudiment of incredibly ancient patriarchal relations, when all the power is concentrated in one hands, and the separation of powers is not known. The abuse of such unlimited powers is programmed naturally.

The responsibility of WADA is not provided for its own offenses (CAS can only reverse its decisions). The sports community created a "legal monster" which proved to be substantially more terrible than the problem for which it was established. The situation when the medicine was more dangerous than the disease.

The main document of international sports law (Olympic movement) is the Olympic Charter (Charter of the International Olympic Committee of the IOC) [23], which fixes a number of basic sports principles directly related to the subject of this research.

Thus, principle No. 6 states: "The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.". How does this principle correspond to the openly Russophobic policy of WADA? Chapter 1 outlines the overall structure of the Olympic movement: among the numerous organizations and institutions of the Olympic movement for VADA there was no place. WADA activities are not envisaged by the Olympic Charter. In accordance with paragraph 8 of article 2, the leadership of the fight against doping in sport is entrusted to the IOC. Art.41 - the condition for admission to the Olympic Games is respect and implementation of all provisions of the Anti-Doping Code of the Olympic Movement (the admission / non-admission shall be decided in the personal format of the athlete). Art.44 - The Olympic Anti-Doping Code is mandatory for the entire Olympic movement.

UNESCO International Convention on the Fight against Doping in Sport (Paris, 19.10.2005). [24] This is a document of Public International Law (see the Preamble). Art. 4. p.1 of which establishes a coordinating link between the Convention and the WAC: the principles of the Code are recognized, but the anti-doping policy is not exhausted. The text of the Code is adopted for information and is not part of the Convention. Part 2, Article 4 defines the recommendatory status of the Code - "its provisions do not by themselves establish for the participating States any international legal obligations".

Important in the fight against doping in sport are such normative legal acts of International Sports Law as: the International Charter of Physical Education and Sport of UNESCO [25] and the Copenhagen Declaration against doping in sport in 2003. [26], which are generally based on the provisions of the Charter and the Convention cited above. One gets the impression that the general system of norms and principles of International Sports Law is extremely poorly correlated with the legal acts that WADA has developed for itself and which is guided in its activities. This kind of autonomy very closely borders on the phenomenon of "self-proclaimedness."

The main document which WADA has developed for itself on the basis of the powers granted to it by the HAC (which was also developed by it), and guided by its activities is the "Technical Document on Sport-Specific Analysis (TDSSA)" [27]. The same regulatory

act should be guided by national anti-doping agencies. The main purpose of this document, declared in paragraph 2.1, is to protect the interests of pure athletes. Thus, the imposition of responsibility on entire national teams without the differentiation of "pure" and "doping" athletes - is contrary to this goal. Most members of the Olympic team for track and field athletics and the Russian Paralympic team are "clean" athletes. The imposition of a ban on participation in competitions undoubtedly violates the interests of pure athletes. Obviously, WADA fixes legally certain provisions, but its actual behavior has an opposite vector of direction. That is, it violates those canons, which it established for itself. In section 3.2. contains a list of prohibited drugs and substances. It was noted that: "Prohibited substances indicated by the TSSA are not determined by routine standard methods and require the use of special analytical methods" - thus, freedom of discretion of WADA in resolving the issue of recognition of a substance prohibited and in determining its limiting indicators is fixed. At the discretion of the anti-doping agencies (clause 5.2.), Even the question of determining the type of material taken for analysis (urine or blood) is given. Also, according to paragraph 6, anti-doping agencies have the right to conduct analysis of samples under a reduced program in relation to specific cases. In accordance with paragraph 6.1. VADA has the right to approve a decrease in MLA (minimum level of analysis) to 50% by its decision (the motivation for such a decision is not mentioned). WADA has the right to authorize a reduction in MLA if it is recognized that such a reduction "will lead to a more reasonable, efficient and rational use of available Testing Resources" (Supporting Document A to the TSSAA). However, WADA has the right to review its approval for the reduction of MLA in any time (clause 6.4). For example, according to Annex 1, MLA are set to 60 units for track and field athletics, cycling, cross-country skiing, triathlon and biathlon, and 0 for archery, aeronautics, bobsleigh, bowling, chess, curling, equestrian sports, motor sport, shooting, ski jumps from the springboard. The method of assessment and hedging of risks is declared in this document, when assessing the prevalence of the use of doping and other values of this phenomenon. Undoubtedly, the differentiation of doping risks, depending on the sport, should take place; However, the range of deviations of risk indicators can not be so significant. This is contrary to the basics of risk management [28, P.186]. The risk factor can not be 0. The statement that there are can not be doping in archery, equestrian sport or a bobsled, to put it mildly, does not correspond to the truth.

The foregoing demonstrates a picture of the essential (bordering on the unlimited) freedom of discretion in the activities of WADA. From the position of the general theory of law: if the legislator is allowed freedom of discretion of the law enforcer (discreteness in the decision), the boundaries of this discretion must be clearly defined and the responsibility for the abuse of this right established. These provisions for WADA have not been established. The possibility of appealing against the decisions of the WADA in the CAS is not a liability measure.

Since the priority is the observance of human rights and fundamental freedoms in the activity of this organization is declared in the statutory documents of WADA (for example, the WAC), it seems appropriate to analyze the real actions of WADA for compliance with normatively enshrined principles that guarantee human rights and freedoms.

WADA activities are subject to analysis for compliance with the provisions of the following international legal instruments: European Convention for the Protection of Human Rights and Fundamental Freedoms (Strasbourg, 04.11.1950 and its Protocols) (hereinafter the European Convention) [29]; The Universal Declaration of Human Rights (adopted by the UN General Assembly, New York, 10.12.1948) (hereinafter the Declaration) [30], the International Covenant on Civil and Political Rights (UN, New York, 16.12.1966) (hereinafter the Covenant) [31].

Art. 7 of the Covenant and Art. 3 of the European Convention reads: "No one should be subjected to ... degrading treatment" - it is superfluous to recall that those humiliating procedures that Russian athletes were compelled to compete for in the 2016 Olympics and the Parolympic Games contradict the elementary minimum standards of respect for human dignity.

Article 6 of the European Convention and Art. 14 of the Covenant stipulate "The right to a fair trial" (similar provisions are contained in articles 8 and 10 of the Universal Declaration): " In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. " Extra-judicial forms of a civil-law or public-law conflict are allowed only in the framework of alternative forms of solving a legal conflict and only with the consent of the parties (with respect to each specific case of the proceedings).

Art. 4 of Protocol No. 2 to the European Convention contains a ban on collective responsibility.

Art. 14 of the European Convention contains the categorical "Prohibition of discrimination": "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. " Art. 1, 2 and 7 of the Universal Declaration are consonant with these provisions. The identical position is also reflected in Art. 26 of the Covenant. These norms of international law exclude the application of double standards in any form. The rigid position of WADA against Russian athletes is well known, in fact, the presumption of guilt was widespread in relation to them; but a diametrically opposite approach is demonstrated to athletes of a different nationality .

Part 2 of Art. 6 of the European Convention and Part 2 of Art. 14 of the Covenant fixes the main provisions of the presumption of innocence: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." (the same provisions are also enshrined in Article 11 of the Universal Declaration). As mentioned above, at the normative level, the institution of the presumption of guilt is fixed in the activities of WADA.

The provisions of the Covenant, the Universal Declaration, the European Convention relating to the regulation of possible restrictions on human rights, refer exclusively to living people. The possibility of depriving any rights of the deceased is excluded. Repression against the dead is a rudiment of Medieval L aw. However, russian wrestler Besik Kudu-

khov is posthumously stripped of the silver medal of the Olympic Games in London on the recommendation of the World Anti-Doping Agency.

In general, the considered activities of WADA contradict the requirements of Art. 17 of the European Convention (Article 5 of the Covenanat and Article 30 of the Universal Declaration): "Prohibition of Abuse of Rights", according to which: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention". At the present time (the beginning of the 21st century), the World Anti-Doping Agency (WADA) has revived the most gloomy institutions of public legal justice in its work, which in the course of historical evolution the judicial system refused several centuries ago: the right to trial, the inquisition process, repression in the collegial responsibility, indulgences, the presumption of guilt, ignoring the principle of guilt, the class nature of responsibility (the unequal legal status of various subjects - double standards).

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