

The dependence of criminal liability for match fixing on a sport rule violation according to § 256d German Criminal Code

Der Strafrichter als Schiedsrichter im Rahmen des § 265d StGB - Die Sportregelakzessorietät des § 265d StGB als zulässiges Bindeglied zwischen Strafrecht und gesellschaftlichem Subsystem auf dem Prüfstand

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Abstract

The thesis deals with the manipulation of professional sports competitions (also known as „match-fixing“) from a criminal law perspective. After this topic had already been mentioned in the fraudulent constellation of purchased referee decisions, it came back into focus due to the insertion of § 265d StGB (German Criminal Code), which was effected by April 19, 2017. This norm protects the integrity of sport, which is almost unanimously rejected in the literature as a suitable legal right.

The aim of the study is to not limit its scope to the abstract questions of corpus delicti's legitimation, but to illustrate and discuss the problems of the application of this statute according to its elements. In particular, the combination of state criminal law on the one hand and sports law determined by associations on the other hand leads to complications. A crime according to § 265d StGB requires a violation of the relevant sports rules on the side of the beneficiary. Such a recognition of sports law is a novelty. Because this partial legal discipline has always aimed to gain the greatest possible autonomy from state control. For the application of § 265d StGB, this results in numerous conflicts with the requirement of Art. 103 II GG (German Constitution) and the question of whether a private or judicial tribunal adjudicates on a sports rule violation.

To this end, the special features of international competitive sports – in particular the use of arbitration tribunals – and the potential binding effects of decisions on the prosecuting authorities have to be discussed.