

THE CRIMINAL LAW FRAMEWORK FOR COMBATING DOPING IN SPORTS IN SERBIA

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Abstract

This paper deals with the aspects of criminal law as regards the suppression of doping in sports in the law of the Republic of Serbia. The Law on the Prevention of Doping in Sports prescribes two criminal offences, namely Facilitating the Use of Doping Substances and the Unauthorized Production and Circulation of Doping Substances. These are criminal acts that are prescribed by the so-called secondary criminal legislation of the Republic of Serbia. The analysis of these criminal offences is afforded the central place in this paper. At the same time, for the sake of systematicity, numerous common features of these criminal acts were separated and analysed, such as protective object, object of action (doping agent), consequence of the criminal act, guilt, special intention, etc., and then their other features were separately considered. It is noticeable that the criminal offenses from the Law on the Prevention of Doping in Sports have corresponding regulatory shortcomings, above all they do not include certain important aspects related to the suppression of doping in sports, so certain proposals de lege ferenda were made based on the criminal offenses from the Criminal Code. The paper also gives a cursory review of the most important international documents in this area, i.e. the two most important documents ratified by the Republic of Serbia, namely the International Convention against Doping in Sport and the European Convention against Doping in Sport, bearing in mind that these acts were the basis for adoption of a special anti-doping law in our country. Additionally, the paper clarifies what is considered doping in sports according to the provisions of the positive law of Serbia.

Key words: doping in sport, doping substances, criminal protection, Facilitating the Use of Doping Substances, Unauthorized Production and Circulation of Doping Substances, criminal offences.

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КРИВИЧНОПРАВНИ ОКВИР СУЗБИЈАЊА ДОПИНГА У СПОРТУ У РЕПУБЛИЦИ СРБИЈИ

Апстракт

Аутори у раду објашњавају проблематику допинга у спорту. Законом о сузбијању допинга у спорту предвиђена су два кривична дела, и то омогућавање употребе допинг средстава и неовлашћена производња и стављање у промет допинг средстава. Ради се о кривичним делима која су прописана тзв. споредним кривичним законодавством Републике Србије. Централни део рада представља анализа наведена два кривична дела. При томе, систематичности ради, издвојена су и анализирана бројна заједничка обележја ових кривичних дела, као што су заштитни објекат, објект радње (допинг средство), последица кривичног дела, кривица, посебна намера и сл., а потом су посебно размотрена њихова остала обележја и облици. Приметно је да кривична дела из Закона о спречавању допинга у спорту имају одговарајуће регулаторне мањкавости, пре све што не обухватају одређене битне аспекте везане за сузбијање допинга у спорту, па су по узору на кривична дела из Кривичног законика дати извесни предлози *de lege ferenda*. Дат је летимичан осврт на најзначајније међународне документе у овој области, односно на два најзначајнија документа која је Република Србија ратификовала, а то су Међународна конвенција против допинга у спорту и Европска конвенција против допинговања у спорту, имајући у виду да су ти акти представљали основ за доношење посебног анти-допинг закона у нашој држави. Такође, појашњено је и шта се сматра допингом у спорту према одредбама позитивног права Србије. На посебном месту у раду аутори разјашњавају питање шта се сматра допингом у спорту у Републици Србији.

Кључне речи: допинг у спорту, средства за допинг, омогућавање употребе допинг средстава и неовлашћена производња, стављање у промет допинг средстава, кривична дела.

INTRODUCTION

From the point of view of criminal law, sport is linked either to violence or to doping (Marković, Trifunović, Šekeljić, 2016; Radenović & Mijatović, 2017). The use of substances and methods aimed at improving results in sports is as old as sports, and was recorded as far back as ancient Greece (Pajčić & Petković, 2008, p. 551). And yet, it was only during the second decade of the 20th century that it became clear that it was necessary to establish bans on the use of certain substances in sports. Cases of doping began to seriously compromise the credibility of sports achievements, and the victories of some 'arena heroes' became questionable and debatable (Vlad et al, 2018, p. 529).

According to same authors, the problem of doping in sports also had its own political connotation, which reflects the international relations of an era (Vlad et al., 2018, p. 530). This information revealed the negative aspects of the history of sports, in which such substances were used unscrupulously, not only in the name of achieving better sports results but also as a propaganda weapon in demonstrating the superiority of

a certain ideological-political order. To note a specific case, it was used to demonstrate the superiority of the communist and socialist order (Vlad et al, 2018, p. 530). However, judging by the available information, the western side of the Iron Curtain did not lag at all in this regard (Yesalis, Bahrke, 2002, pp. 42-76).

The first systematic law in Serbia related to the issue in question – the Law on the Prevention of Doping in Sports (hereinafter: LPDS/2005) – was adopted in 2005, although even before that there was a certain, admittedly modest legal framework that regulated some issues of the given matter (see: Đurđević, 2008, pp. 73-74; Šuput, 2008, p. 16). Today, the Law on Prevention of Doping in Sports from 2014 (LPDS) is in force. This law regulates measures and activities in order to prevent doping in sports (Article 1), and expressly prescribes the prohibition of doping in sports (Article 2). Facilitating the Use of Doping Substances (article 38) and the Unauthorized Production and Circulation of Doping Substances (Art. 39) are criminalized.

A BRIEF OVERVIEW OF THE MOST IMPORTANT INTERNATIONAL DOCUMENTS ON DOPING IN SPORT

The first international sports organisation to ban doping was the International Athletics Federation in 1928, and other sports organisations followed suit. The first international sports organisations that introduced doping tests in 1966 were the International Cycling Union (French: Union Cycliste Internationale - UCI) and the International Federation of Football Associations (French: Fédération Internationale de Football Association - FIFA) (Pajčić & Petković, 2008: 552). A year later, the International Olympic Committee established its Health Commission, and established a list of prohibited substances, with the first doping controls carried out at the Winter Olympic Games in Grenoble in 1968, and at the Summer Olympic Games in Mexico City that same year. In the beginning, sanctions against doping rule violators were exclusively of a sporting nature. However, opinions that the state, with its repressive apparatus, should be involved in the fight against doping as the greatest evil of modern sports became louder and more influential (Pajčić & Petković, 2008, p. 552).

With the aim of preventing and fighting doping in sports, and eliminating it, as stated in its preamble, in October 2005, the International Convention against Doping in Sports was adopted within the framework of UNESCO. The Convention entered into legal force in 2007, and, by its nature, it is a framework convention that imposes obligations on states to adopt appropriate measures both at the national and international level, in accordance with the principles of the Code. The World Anti-Doping Code was adopted by the World Anti-Doping Agency on March 5 2003 in Co-

penhagen, and is Appendix 1 of this Convention (Article 2, Paragraph 3, Item 6 of this Convention).

It is important to point out that, in order to coordinate the fight against doping in sports both at the national and the international level, the Convention obliges the participating countries to respect the principles of the Code as a basis for the obligations contained in Article 5 of the Convention, which concern the adoption of appropriate measures through legislation, regulations, as well as policies or procedures of the administration, without denying the right of states to adopt additional measures that are complementary to the Code (Article 4 of the Convention).

At the level of particular international law, it is important to mention the European Convention against Doping in Sports, which was adopted within the framework of the Council of Europe in Strasbourg in 1989. The proclaimed goal of the Convention is the final elimination of doping from sports, obliging members to take the necessary steps within the framework of their constitutional provisions to implement the provisions of the Convention (Article 1).

WHAT IS DOPING IN SPORTS UNDER SERBIAN LAW?

To understand the criminal offences, it is important to first determine what is considered 'doping in sports' in terms of our positive legal regulations. According to article 2(2) of the LPDS, doping in sports "is the existence of one or more violations of anti-doping rules" which are established in article 3 of the same law. According to the latter article 3(1) of the LPDS, violation of anti-doping rules exists in cases of: (1) the presence of a prohibited substance or its metabolites, or markers, in the athlete's body sample; (2) using or attempting to use (application, introduction, injection, or any other type of consumption) a prohibited substance, or a prohibited method (hereinafter: doping substances); (3) refusal, or omission without convincing justification, to provide a sample after notification of doping control, or avoidance of providing a sample in another way; (4) any combination of three missed doping tests and/or failure to complete the athlete location form, in accordance with the international results management standards approved by the World Anti-Doping Agency, within a period of 12 months and by an athlete involved in a registered test group; (5) interfering or attempting to interfere with any part of doping control; (6) illegal possession of doping substances by the athlete or persons assisting the athlete; (7) unauthorised sale, transportation, sending, delivery or distribution of a prohibited doping substance, or a prohibited doping method (either physically, electronically or by any other medium) by the athlete, persons assisting the athlete, or a third party, to any person under the authority of organisations in the field of sports, or an attempt to do so; (8) administering or attempting to adminis-

ter any doping substance to an athlete in competition, or administering or attempting to administer to any athlete out of competition any doping substance prohibited out of competition; (9) assisting, inciting, aiding, abetting, concealing, creating conditions or any other form of intentional complicity or attempted complicity in violation, or attempted violation of anti-doping rules, or in violation of a measure imposed for violation of anti-doping rules; (10) associating, in a professional or sports-related capacity, an athlete or other person under the jurisdiction of an authorised anti-doping organisation with a person who helps an athlete who is subject to an imposed measure for violating anti-doping rules, or has been punished in criminal, misdemeanour or other proceedings for an act that represents a violation of anti-doping rules in the sense of this law, if the penalty is still in effect or less than six years have passed since the imposition of such penalty, or with a person who is an intermediary or representative of such a person; and (11) behaviour of an athlete, or other person that represents a threat or serves to intimidate another person with the intention of dissuading him from communicating information related to doping and non-compliance with anti-doping rules, or aims to put in a disadvantageous position a person who in good faith has provided evidence or information that relate to doping and non-compliance with anti-doping rules, to an authorised anti-doping organisation or competent state body. However, there will be no violation of the specified anti-doping rules in cases of approved exceptions for therapeutic use, and other exceptions established by the World Anti-Doping Code (article 3(2) of the LPDS).

For the sake of further understanding this problem, the question of what is meant by the terms ‘sport’ and ‘athlete’ may be posed. The LPDS does not define these terms, but they are defined in the Law on Sports (hereinafter: LS). Article 2 of the LS stipulates that ‘sport’ is an activity of special importance for the Republic of Serbia, and that it represents a part of physical culture that includes every form of organised and unorganised performance of sports activities, and sports activities by natural and legal persons in the sports system, with the aim of satisfying human needs for creativity, affirmation, physical exercise and competition with others. Therefore, sport consists of “performance of sports activities and sports activities”, and these concepts are also determined by this law.

An ‘athlete’ is a person engaged in sports activities. The LS makes a distinction between an amateur athlete, a professional athlete, a competitive athlete, a top athlete, a promising athlete, a talented athlete and a categorised athlete. An athlete can engage in sports activities independently or within organisations in the field of sports, amateur or professional (article 9 LS).

*CRIMINAL OFFENSES FROM THE SERBIAN LAW
ON THE PREVENTION OF DOPING IN SPORTS*

Preliminary Remarks

The criminal legislation of the Republic of Serbia consists of the so-called basic (or main), and secondary (or special) criminal legislation. The basic criminal legislation consists primarily of the provisions contained in the Criminal Code (CC), which regulate the matter of the general offence, as well as the majority of the matter of the special offenses of criminal law as a branch of positive law. Secondary criminal legislation, on the other hand, consists of criminal law provisions contained in other, non-criminal laws, which regulate the corresponding areas of social life, but in their separate heads, which are usually titled as penal provisions with the aim of providing more complete legal protection in that sphere, they prescribe certain criminal offences (Turanjanin, 2022; Turanjanin & Ćorović, 2018, p. 3; *see also* Otašević & Đurđević, 2022, p. 337). Therefore, the provisions of secondary criminal legislation refer to part of the matter of a special part of criminal law, with the majority of this matter still being found in the Criminal Code.

Bearing in mind that the LPDS is a regulation that primarily regulates measures and activities for the prevention of doping in sports of a different nature, this legal text nevertheless, with the aim of comprehensively regulating this matter, in Chapter V which is devoted to penal provisions, prescribes the aforementioned two criminal offenses - Facilitating the Use of Doping Substances (article 38) and Unauthorized Production and Circulation of Doping Substances (article 39). Therefore, these two criminal offences fall under the domain of secondary criminal legislation. This approach can also be found in comparative criminal legislation, such as in Germany, where the special Anti-Doping in Sport Act of 2015 (*Gesetz gegen Doping im Sport*) also provides for corresponding criminal offenses related to doping (§ 4). On the other hand, in other criminal legislation, these acts are systematised in the basic criminal legislation, as is the case with Croatia, where article 191a of the Criminal Code prescribes the criminal offense of unauthorised production and trafficking of substances prohibited in sports.

The previous LPDS/2005, in addition to the two above mentioned criminal offences, regulated another one other – the use of doping substances. However, according to the current LPDS, this is now a misdemeanour (article 41(1) point 1).

Facilitating the Use of Doping Substances

This criminal offense has a basic (paragraph 1) and a severe (paragraph 2) form. In its essence, it is close to the criminal offense of Facilitating the Taking of Narcotics from CC. Hence, the legal understandings

related to the latter criminal offense can be applied to the criminal offense from article 38 of the LPDS.

The action of the basic form is prescribed alternatively as: (1) giving a doping mean to an athlete; (2) prescribing a doping mean to an athlete; (3) issuing a doping mean to an athlete; (4) applying a doping mean to an athlete; (5) inducing an athlete to use a doping mean; (6) assisting an athlete in using a doping mean; or (7) enabling the athlete to use a doping mean in another way. The aforementioned actions are prescribed in the legal provision using perfective verb forms ('have/has prescribed', 'have/has specified', etc.). In this sense, it is indisputable that a one-time undertaking of one of the aforementioned actions is sufficient for a completed criminal offence.

The act of 'giving' consists of making available or handing over doping substances to the athlete (Šuput, 2008, p. 20; cf.: Lazarević, 2006, p. 655). This implies that there was a factual handing over of the doping mean to the athlete, which resulted in direct or indirect state control over the object of the action, and it is irrelevant whether it was used (cf.: Delić, 2014, p. 103; Babić & Marković, 2018, p. 177). Giving must be free of charge (Delić, 2014, p. 103; Mrvić Petrović, 2016, p. 169; Babić & Marković, 2018, p. 177), because if a certain compensation (cash or other thing/barter) were given for a doping mean, it would be the criminal offense of unauthorised production and distribution of doping substances from article 39 of the LPDS (Turajanin & Ćorović, 2018, pp. 304-305). Admittedly, there are opinions that giving a doping mean can be done with 'some compensation', but that it must not be a sale (Šuput, 2008, p. 20; Đurđević, 2008, p. 430; cf.: Lazarević, 2006, p. 655). We believe that this opinion is not correct, because in the case of giving any compensation, in the sense of what was said, it is a criminal offense from article 39 of the LPDS (Turajanin & Ćorović, 2018, p. 305, fn. 73).

'Prescribing' a doping mean is an action performed by a doctor when they prescribe a certain doping mean to the athlete, that is, when he issues a prescription for a certain medical device that contains, or is in itself a doping mean (Đurđević, 2008, p. 430). Even in this case, it is not necessary for the athlete to use a doping substance, while the action in question can only be undertaken by a doctor.

'Dispensing' a doping mean is an action performed by a pharmacist when he dispenses to the athlete a mean that contains, or is in itself a doping mean (Đurđević, 2008, p. 430), although the possibility that such an activity can be undertaken by other medical professionals should not be ruled out (medical/pharmaceutical technicians, nurses, etc.) (Turajanin & Ćorović, 2018, p. 305). Additionally, this act does not require the use of a doping mean by the athlete as a condition for the existence of the act.

The ‘application’ of a doping mean is manifested in the “active participation in the introduction of a doping mean into the athlete’s organism” (Đurđević, 2008, p. 430), such as when a person injects a doping substance into the body of an athlete.

The act of ‘inducing’ is, in fact, incitement, which is provided for in this act as an act of execution. It implies the formation of an athlete’s decision to use doping substances, or the strengthening of his insufficiently firm decision that otherwise would not have been realised (cf. Stojanović, 2017, pp. 801-802). Inducement can be realised in different ways - verbally, through conclusive actions, indirectly, etc. (Delić, 2014, p. 102). It cannot be fully accepted that “stimulating an already expressed desire to take doping substances” (also: Šuput, 2008, p. 21) represents a form of inducement, because if someone had an ‘expressed desire’ to take a doping substance, then persuasion, encouragement and other similar activities rather represent a form of psychological assistance.

The act of ‘aiding’ is represented by numerous heterogeneous activities consisting of assisting, supporting or facilitating the athlete to use a doping mean. As is usual in criminal law, in this case it can be manifested as physical or psychological assistance. In the first case, aiding can be manifested as making available to the athlete the substances by which he uses the doping mean, such as giving syringes or needles for intravenous administration, and in the second case, aiding can be manifested as giving certain advice on how to take a certain doping mean.

In addition to the above, the legislator generally determined the last alternatively prescribed action in the sense of ‘enabling’ an athlete to use a doping mean in some other way. It can be considered that what is meant under other substances is making a room available to the athlete for the purpose of taking the doping mean (Đurđević, 2015, p. 207), i.e. taking him “to a place where the doping mean can be taken or used undisturbed” (Šuput, 2008, p. 21). In fact, the act of ‘enabling’ is nothing more than a form of aiding. Moreover, almost all of the aforementioned actions, with the exception of guidance, represent a kind of help provided to the athlete in the process of using doping substances (Đurđević, 2015, p. 206; compare Stojanović, 2017, p. 802).

Since the intended actions of the execution of this criminal offense are determined by the perfect verb, in the event that the perpetrator repeats them towards one and the same athlete, it can be a continuing offense from article 38 of the LPDS under the conditions prescribed in article 61 of the CC (Turanjanin & Ćorović, 2018, p. 307).

The passive subject of this criminal offense is the athlete, and that term should be understood as previously explained in terms of the relevant provisions of the LS. It is clear that a passive subject – an athlete does not need to know that he is allowed to use a doping mean. A criminal offense will certainly exist if, for example, the club doctor poured a

doping substance into a refreshing drink without the athlete's knowledge (Đurđević, 2015, p. 207). Moreover, in such situations, there is a greater degree of guilt of the perpetrator, because he acts secretly, even abusing the athlete's trust (if it is a doctor, trainer, etc.).

As previously explained, in order for this to be a criminal offense, it is necessary that the aforementioned actions are undertaken with the aim of doping in sports.

The basic form of the criminal offense of enabling the use of doping substances is punishable by imprisonment lasting between six months and five years.

The more severe form is regulated in 38(2) of the LPDS. It exists if the basic form: (1) was committed against a minor; (2) was committed against several persons; or (3) caused particularly severe consequences.

A 'minor' in criminal law is a person who has reached the age of 14, but has not reached the age of 18 (Art. 112, point 9 of the CC). It is obvious that children, i.e. persons who have not reached the age of 14 (art. 112, paragraph 8 of the CC), are omitted for this qualified form. It made more sense to provide as a qualifying circumstance the circumstance of the criminal offense being committed against a 'child', which substances all persons under the age of 18 (Art. 112 paragraph 10 of the CC), as was done with the qualified form of the criminal offense of Facilitating the Taking of Narcotics from art. 247(2) of the CC. Perhaps with a logical interpretation (*argumentum a fortiori - maiore ad minus*), this provision could also include persons under the age of 14 (Turanjanin & Čorović, 2018, p. 309). Certainly, the existing solution is unacceptable. Hence, it is proposed to replace the term 'minor' with the term 'child' in the essence of this form, or to prescribe, while maintaining the existing form, an even more difficult form where a child would appear as a passive subject (Mandarić & Delibašić, 2014, p. 46). The existing qualifying circumstance must be covered by the perpetrator's intention, that is, the perpetrator must be aware that the action is being taken against a minor. If he was mistaken about that fact, he can only answer for the basic form (Turanjanin & Čorović, 2018, p. 309).

As for the term 'several persons', it includes at least two persons (Stojanović, 2017, p. 803). Of course, all these individuals must be athletes.

Particularly severe consequences should be understood, first of all, as a severe impairment of the athlete's health (Stojanović, 2017, p. 803). In relation to this consequence, negligence is required in the sense of Art. 27 of the CC, because it is a criminal offense qualified by a more serious consequence. There is an opinion that particularly severe consequences include, in addition to the aforementioned, "severe violation of the regularity of the competition" (Đurđević, 2015, p. 209).

A prison sentence of two to ten years is prescribed for this form.

It is not clear whether the negligent death of an athlete can also be brought under the latter qualifying circumstance. Death as a qualifying circumstance is usually emphasised in the nature of the act, which was not done in this case, and it is not justified to put death on the same level as other qualifying characteristics. In that case, is there a confluence of the basic form of the criminal offense of facilitating the use of doping substances and negligent deprivation of life from Article 118 of the CC (on jurisprudence *see* Turanjanin, 2023)? The solution is legally logical, but criminal-politically unjustified, because the perpetrator would be in a more favourable position due to the rules on determining the single penalty for the collision. Namely, for both of these criminal offenses (from Article 38 of the LPDS and from Article 118 of the Criminal Code), the maximum prison sentence of 5 years is prescribed, so that the single sentence would have to be less than 10 years. It is illogical that 10 years of imprisonment can be imposed for serious damage to health attributed to the negligence of the perpetrator (which is the maximum for a qualified form of criminal offense from Article 38 of the LPDS), while less than 10 years of imprisonment can be imposed for the negligent death of an athlete, as an objectively more serious consequence (because under the process of assessing the penalty, the punishment could not be the sum of the individually prescribed punishments for these acts). From that point of view, it would be more correct to assume that the formulation of particularly severe consequences also includes the negligent death of an athlete, although it is still criminally and politically controversial to equate negligent death, as the most severe consequence, with other forms of particularly severe consequences (Turanjanin & Ćorović, 2018, pp. 309- 310). That is why it would be necessary to prescribe the most serious form of this criminal offense in case the death of an athlete occurred.

Given that some doping substances (for example, both cocaine and heroin are on the List of Prohibited Doping Substances – they are designated as substances of abuse) are also narcotic drugs, relevant from the point of view of being a criminal offense from article 247 of the CC, the question of which criminal offense will be involved if the action has one such tool for its object arises, considering the similarity of the criminal offenses of Facilitating the Use of Doping Substances from article 38 of the LPDS and Facilitating the Taking of Narcotics from article 247 of the CC. In order for a situation to be a criminal offense from article 38 of the LPDS, two conditions must be cumulatively met: first, the action must be taken against the athlete and, second, it must be taken for the purpose of doping in sports. Otherwise, i.e., if one of these conditions is not met, the situation will be considered a criminal offense of Facilitating the Taking of Narcotics from Article 247 of the CC (Turanjanin & Ćorović, 2018, pp. 310-311). In connection to this, it should be pointed out that the same punishments are prescribed for the basic and qualified forms of the men-

tioned criminal acts, with the fact that Facilitating the Taking of Narcotics has another, more severe form in the event that the death of a passive subject has occurred, which is a situation, as already, not regulated in article 38 of the LPDS.

Unauthorised Production and Circulation of Doping Substances

This criminal offense has a basic (paragraph 1) and privileged (paragraph 2) form. According to their features, these forms are similar to the basic and easier form of the criminal offense of unauthorised production and distribution of intoxicants from Article 246 of the CC, so that the legal understandings related to them can also be applied to the incrimination from article 39 of the LPDS.

The act of execution of the basic form is set alternatively as: 1) production of a doping substance, 2) processing of a doping substance, 3) sale or offering for sale of a doping substance, 4) purchase of a doping substance or its possession, i.e., transfer for sale, 5) mediation in the sale or the purchase of doping substance, or 6) unauthorized marketing of doping substance in another way.

However, some authors state that the aforementioned actions can essentially be classified into two basic groups: (1) execution of actions that are of a production nature, which includes the production and processing of doping substances; and (2) execution of actions related to the circulation of doping substances, in which other actions are included (Otašević & Đurđević, 2022, pp. 341-342).

In any case, in order for this to be a criminal offence, it is necessary that some of the aforementioned actions be taken without authorisation. Article 5(2) of the LPDS only stipulates that the production and trade of prohibited doping substances that contain narcotic drugs is carried out in accordance with the law. However, in the Republic of Serbia, there is no special law that generally regulates the production and circulation of doping substances, so the issue of 'authorisation' must be viewed depending on which doping substances is in question in a specific case (Đurđević, 2015, p. 213). In any case, when assessing whether the above mentioned activities were performed without authorisation, one should start from the Law on Medicines and Medical Devices and the Rulebook on the Approval of Exceptions for Therapeutic Use (Đurđević, 2015, p. 213; Otašević & Đurđević, 2022, p. 342).

The 'production' of a doping substance represents any activity by which this substance is created, i.e. "the corresponding chemical, physical or biological process by which a certain material is obtained or contributes to obtaining a substance" (Delić, 2014, p. 87) that has the feature of a doping substance. This activity depends on the type of doping substance, primarily on whether it is a natural or artificial substance (Đurđević, 2015, p. 212).

The 'processing' of a doping substance, on the other hand, substances obtaining one doping substance from another, improving the ingredients of a doping substance, purifying it, etc. (Šuput, 2008, p. 19).

The term 'sale' should be understood in the way it is normally understood. It is a question of the consent of the seller (executor) and the buyer regarding the object (i.e. the doping substance) and the price (Turanjanin & Ćorović, 2018, p. 312). 'Offering for sale' is an attempt to sell, or in other words, make an offer regarding the price and quality of a doping substance (Šuput, 2008: 19).

'Purchasing' represents the activity of the perpetrator by which he acquires the doping substance (Turanjanin & Ćorović, 2018, p. 312), 'holding' actual power over the doping substance (cf. Stojanović, 2017, p. 794), and 'transferring' the activity of moving (including transportation) doping substances from one place or area to another (Turanjanin & Ćorović, 2018, p. 313). However, in order for these actions to be relevant from the point of view of the nature of this criminal offense, they must be carried out 'for the purpose of sale'. The wording 'in order to sell' represents, in fact, the intention that expresses the goal of these activities (cf.: Stojanović, 2017, p. 796). If said activities are undertaken without this intention, then this crime will not exist. In this sense, the verdict of the High Court in Belgrade K 3704/10 of March 21 2013 stated that:

not a single item was found in the apartment where the defendant was staying, which would lead to the conclusion that it was a matter of possession for the purpose of selling for the purpose of doping of prohibited doping substances in sports, since the doping substances in question were not packaged and prepared for sale, i.e. they were not measured nor were there any valid data on possible buyers of the same... In addition, during the procedure, the connection of the defendant with sports organizations or athletes who could possibly be consumers of such substances was not proven, which undoubtedly leads to the conclusion that the defendant used prohibited doping substances exclusively for your personal needs.

(According to: Turanjanin & Ćorović, 2018, p. 314)

'Mediation in the sale or purchase of doping substances' consists of the activities of the executor in which he connects the seller and the buyer of doping substances, transmits their messages regarding the possible purchase and sale, keeps their assets until an agreement is reached, etc. (Đurđević, 2015, p. 213). In this case, therefore, the executor makes sure that a unauthorised purchase, or sale, of a doping substance occurs.

In the end, the legislator, through the action formulated through the general clause 'another method of unauthorised circulation of doping substances', tried to include all other actions beyond those listed in the description of the act, which also include the marketing of said drugs. First of all, barter comes into consideration as a counterpart to buying and sell-

ing, when the buyer hands the executor some other thing instead of money (Turanjanin & Ćorović, 2018, p. 313). There are opinions that it can also be a gift or loan of doping substances to another person (Šuput, 2008, p. 19; Đurđević, 2015, p. 213). However, if a gift or loan is made to an athlete for the purpose of doping in sports, this criminal offense will not exist, but the criminal offense of facilitating the use of doping substances from Art. 38 of the LPDS will (Turanjanin & Ćorović, 2018, p. 313).

Of course, all the activities listed above must be carried out for the 'purpose of doping in sports', as already discussed, because without this subjective characteristic, this criminal offense does not exist. In connection to this, the judgment of the Appellate Court in Belgrade Kž. I no. 2518/11 from July 04 2011 pointed out that there is no criminal offense in the Unauthorized Production and Circulation of Doping Substances "if there is no evidence that the defendant's actions were undertaken with the aim of placing them on the market for the purpose of doping in sports, which is an essential characteristic of the nature of this criminal act". A similar point of view was accepted in the judgments of the Appellate Court in Belgrade Kž. I no. 382/22 of June 02 2022, and the High Court in Belgrade K no. 156/19 of February 25 2022, in which it was stated that "it is not enough that the defendant keeps doping substances for sale, but the prosecutor must also prove during the proceedings that those substances are kept for sale for the purpose of doping in sports".

A prison sentence of three to twelve years is prescribed for this form.

As with the previous criminal offense, there may be a problem of how to qualify the perpetrator's actions if they have as their object a doping substance that is also a narcotic drug within the meaning of the CC. Will it be about the Unauthorized Production and Circulation of Doping Substances, or the Unlawful Production and Circulating of Narcotics? If a doping substance that also has the character of a narcotic drug within the meaning of the CC is trafficked for the purpose of doping in sports, there will be a criminal offense under article 39(1) of the LPDS. Otherwise, i.e., if it is traded outside of the stated goal, it will be considered an Unlawful Production and Circulating of Narcotics (Turanjanin & Ćorović, 2018, p. 316).

The privileging form from Para. 2, Art. 39 of the LPDS represents, by its nature, a preparatory action for the execution of the basic form of this criminal offense from Para. 1, with the fact that the legislator elevated this action to the rank of execution action (cf.: Stojanović, 2017, pp. 797-798: 195). In this sense, the merger between the basic and privileging form of this part is not possible on the basis of subsidiarity. Therefore, the special form will exist only if the basic form of this criminal offense has not been realised (Đurđević, 2008, p. 442; Turanjanin & Ćorović, 2018, p. 316).

The object of this form of activity are not doping substances, but the equipment, material or substances intended for the production or preparation of doping substances.

The act of execution is defined alternatively as: (1) making; (2) procuring; (3) possessing; or (4) providing for use the specified equipment, material or substance. Making implies the making of the specified object of action; acquisition represents their acquisition in a certain way (for example by purchase, barter, gift); possession represents the state, i.e., possession of said objects; making them available for use substances renting them out to third parties (Turanjanin & Ćorović, 2008, p. 317).

Even with this form, it is necessary for the mentioned actions to be undertaken with the aim of doping in sports. At the same time, the executor must know that the object of the action, i.e. the equipment, material or substance, is intended for the production or preparation of doping substances.

For the privileged form, a prison sentence of six months to five years is prescribed.

This criminal offense is close to the privileging form of the criminal offense of Unlawful Production and Circulating of Narcotics from Art. 246(7) of the CC. Bearing in mind that the equipment, material and substances can be used for the production of doping substances that are also narcotic drugs, the question of legal qualification can also be open in this case. If actions of this type are undertaken for the purpose of doping in sports, the offence will be this form of the criminal offence of unauthorised production and distribution of doping substances from article 39(2) of the LPDS. Otherwise, if that goal does not exist, and the object of the operation is to produce a doping substance that has the characteristics of narcotic drugs, the offence may be a criminal offence of Unlawful Production and Circulating of Narcotics from article 246(6) of the CC (Turanjanin & Ćorović, 2018, p. 317).

What can be noticed is that the LPDS did not prescribe the more severe forms of this criminal offence following the example of the criminal offence of Unlawful Production and Circulating of Narcotics from 246 of the CC. Namely, from a criminal and political point of view, it would be justified to prescribe as more severe forms the situations of committing this act by a group or organised criminal group, that is, the situation of organising a network of sellers or intermediaries for the purpose of committing the same, as well as performing the aforementioned actions against a child. Also, it would make sense to prescribe an optional possibility of exemption from punishment in the event that the perpetrator reveals from whom he obtained the prohibited doping substance (Otašević & Đurđević, 2022, pp. 347-348).

CONCLUDING REMARKS

After the analysis of the incriminations in question, it can be concluded that the criminal law aspects of suppressing appropriate actions related to doping in sports are not the most precise and complete. In this sense, we will present certain proposals.

Firstly, we consider it useful for the LPDS to define the terms 'sport' and 'athlete' for its needs, because the available practice, which is rather scarce, shows that the courts differently treat the cases in which the incriminations from this law can be applied. To be more precise, it is not clear whether it refers only to sports competitions or also to recreational sports.

Secondly, in the case of the qualified form of facilitating the use of doping substances from Art. 38(2) of the LPDS, it is necessary to designate the child as a passive subject, and not a minor, as it is wrongly stated now. Thirdly, it is necessary to prescribe the situation when the death of an athlete occurs as a result of the basic form as the most serious form, which would remove the existing gap regarding that issue.

Fourthly, in the case of the criminal offense of unauthorised production and distribution of doping agents from Art. 39 of the ZSDS, it is necessary to prescribe more severe forms, specifying as qualifying circumstances such as the commission of a criminal offense by a group or a limited criminal group, that is, the organisation of a network of re-sellers or intermediaries for the purpose of committing such offenses, and the commission of the offence in question against a minor. For a criminal offence, it is useful to foresee the possibility of exemption from punishment if the perpetrator reveals from whom he obtained the doping substance.

It seems to us that these changes would significantly improve the existing solution, and would contribute to a more comprehensive and effective suppression of doping in sports.

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КРИВИЧНОПРАВНИ ОКВИР СУЗБИЈАЊА ДОПИНГА У СПОРТУ У РЕПУБЛИЦИ СРБИЈИ

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Резиме

Рад се бави кривичноправним аспектима сузбијања допинга у спорту у праву Републике Србије. Наиме, Закон о спречавању допинга у спорту прописује два кривична дела, и то омогућавање употребе допинг средстава (чл. 38) и неовлашћену производњу и стављање у промет допинг средстава (чл. 39). Отуда централно место у овом раду заузима анализа ових кривичних дела. При томе, систематичности ради, издвојена су и анализирана бројна заједничка обележја ових кривичних дела, као што су заштитни објекат, објект радње (допинг средство), последица кривичног дела, кривица, посебна намера и сл., а потом су посебно размотрена њихова остала обележја и облици. Пре тога, дат је летимичан осврт на најзначајније међународне документе у овој области, односно на два најзначајнија документа која је Република Србија ратификовала, а то су Међународна конвенција против допинга у спорту и Европска конвенција против допинговања у спорту, имајући у виду да су ти акти представљали основ за доношење посебног анти-допинг закона у нашој држави. Такође, појашњено је и шта се сматра допингом у спорту према одредбама позитивног права Србије. По својим обележјима, кривична дела из чланова 38 и 39 Закона о спречавању допинга у спорту веома су слична инкриминацијама неовлашћене про-

изводње и стављања у промет опојних дрога из члана 246 Кривичног законика и омогућавању уживања опојних дрога из члана 247 Кривичног законика, тако да између њих није лако направити разлику тим пре што поједина допинг средства уједно представљају и опојне дроге. Међутим, приметно је да кривична дела из Закона о спречавању допинга у спорту имају одговарајуће регулаторне мањкавости, пре све јер не обухватају одређене битне аспекте везане за сузбијање допинга у спорту, па су по узору на кривична дела из чланова 246 и 247 Кривичног законика дати извесни предлози *de lege ferenda*.