

Fausto Martin De Sanctis

Football, Gambling, and Money Laundering

A Global Criminal Justice Perspective

 Springer

Football, Gambling, and Money Laundering

Fausto Martin De Sanctis

Football, Gambling, and Money Laundering

A Global Criminal Justice Perspective

 Springer

Fausto Martin De Sanctis
Tribunal Regional Federal 3rd Region
Sao Paulo
Brazil

ISBN 978-3-319-05608-1 ISBN 978-3-319-05609-8 (eBook)
DOI 10.1007/978-3-319-05609-8
Springer Cham Heidelberg New York Dordrecht London

Library of Congress Control Number: 2014936297

© Springer International Publishing Switzerland 2014

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed. Exempted from this legal reservation are brief excerpts in connection with reviews or scholarly analysis or material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. Duplication of this publication or parts thereof is permitted only under the provisions of the Copyright Law of the Publisher's location, in its current version, and permission for use must always be obtained from Springer. Permissions for use may be obtained through RightsLink at the Copyright Clearance Center. Violations are liable to prosecution under the respective Copyright Law.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

While the advice and information in this book are believed to be true and accurate at the date of publication, neither the authors nor the editors nor the publisher can accept any legal responsibility for any errors or omissions that may be made. The publisher makes no warranty, express or implied, with respect to the material contained herein.

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

Acknowledgments

This book was possible thanks to research completed at the U.S. Law Library of Congress in 2013. I want to express my gratitude for having the opportunity to access documents, papers, and books, and I thank all of the people at the Law Library of Congress, especially Eduardo Soares, for their invaluable help. I am also grateful to Rebecca Szucs for her excellent work editing this book.

Contents

1 Introduction	1
Bibliography	5
2 Sport	7
2.1 Sport and Cultural Heritage	7
2.2 Structural Violence and Organized Crime	8
2.3 Unlawful Practice and Consent	13
Bibliography	27
3 Football	29
3.1 Football: A Dream or a Nightmare?	29
3.2 Typologies (Money Laundering Methods)	32
3.3 Prevention and Control	37
3.3.1 Financial Action Task Force	41
3.3.2 The FIUs, Law Enforcement Agencies, Securities and Exchange Commission, IRS, and Federal Reserve Banks ...	43
3.3.3 Fédération Internationale de Football Association, National Leagues, and Clubs	50
3.4 France: Control Model of Accounts in Football	60
3.5 The Need for Suspicious Activities Reports	62
Bibliography	64
4 Gambling and Lotteries	69
4.1 Initial Considerations	69
4.2 Casinos	78
4.3 Lotteries	79
4.4 Typologies (Money Laundering Methods)	81
4.5 Measures for Crime Prevention	86
4.6 Enforcement Agencies	89
Bibliography	91

5 Illegal Betting and Internet Gambling..... 97
 Bibliography 101

**6 The Use of Illegal and Disguised Instruments for Payments
 (Cash/E-money, Offshore Accounts, NGOs) by Organized Crime**..... 103
 Bibliography 111

**7 Combating Money Laundering Through Sport and Gambling:
 International Legal Cooperation** 115
 Bibliography 125

8 Conclusions..... 127
 Bibliography 141

**9 Proposals to Improve the War Against Money Laundering
 Through Gambling and Sport/Football**..... 143

9.1 General Proposals 144

9.1.1 An International Perspective 144

9.1.2 A National Perspective 151

9.2 Specific Proposals—Gambling and Sport/Football 157

9.2.1 Regulatory Agencies 157

9.3 Specific Proposals—Gambling 161

9.4 Specific Proposals—Sport/Football 163

Bibliography 169

Index..... 171

About the Author

Fausto Martin De Sanctis holds a Doctorate in Criminal Law from the University of São Paulo's School of Law (USP) and an advanced degree in Civil Procedure from the Federal University of Brasilia (UnB) in Brazil. He was a Public Defender in São Paulo from 1989–1990, and a State Court Judge, also in São Paulo, from 1990–1991, until being appointed to the Federal Courts. He is currently a Federal Appellate Judge in Brazil's Federal Court for Region 3, with jurisdiction over the states of São Paulo and Mato Grosso do Sul.

Judge De Sanctis was selected to handle a specialized federal court created in Brazil to exclusively hear complex cases involving financial crimes and money laundering offenses. He is a world known expert on this topic and has been invited to participate in programs and conferences both in Brazil as well as internationally.

From April 2 to September 28, 2012, Judge De Sanctis was a fellow at Federal Judicial Center in Washington, DC.

Since 2013, Judge De Sanctis has also been an Advisory Council member of the American University College of Law on its Program for Judicial and Legal Studies Brazil-United States.

His publications include, among others:

Money Laundering Through Art: A Criminal Justice Perspective. Heidelberg: Springer International Publishing Switzerland, 2013

“Recent Legal and Judicial Reform Initiatives in Brazil.” International Judicial Monitor. Published by the International Judicial Academy, Washington, DC, with assistance from the American Society of International Law, Winter 2013, available at <http://www.judicialmonitor.org/current/judicialreformreport.html>

“Popular Action: Using Habeas Corpus in the Context of Financial Crimes” in Popular Action (“Ação popular: A utilização do habeas corpus na dinâmica dos crimes financeiros” in Ação Popular. São Paulo: Saraiva, 2013)

“Coherent and Functional Criminal Law” (“Direito Penal Coerente e Funcional” in *Revista dos Tribunais. Edição especial dos 100 anos*. Vol. 919. São Paulo: Revista dos Tribunais, May 2012)

“Telephone Tapping and Fundamental Rights,” in *A Tribute to Afrânio Silva Jardim* (“Interceptações Telefônicas e Direitos Fundamentais” in *Tributo a Afrânio Silva Jardim: escritos e estudos*. Rio de Janeiro: Lúmen Júris, 2011)

Money Laundering through Gambling and Football. Analysis and Proposals (Lavagem de Dinheiro. Jogos de Azar e Futebol. Análise e proposições. Curitiba: Editora Juruá, 2010)

Criminal Liability of Corporations and Modern Criminal Methods (Responsabilidade Penal das Corporações e Criminalidade Moderna. São Paulo: Saraiva, 2009)

Organized Crime and the Disposal of Seized Assets: Money Laundering, Plea Bargains, and Social Responsibility (Crime Organizado e Destinação de Bens Apreendidos. Lavagem de Dinheiro, Delação Premiada e Responsabilidade Social. São Paulo: Saraiva, 2009)

“The Constitution and Freedoms” in *Constitutional Limitations on Investigations* (“Constituição e Regime das Liberdades” in *Limites Constitucionais da Investigação*. Rogério Sanches Cunha, Pedro Taques and Luiz Flávio Gomes. São Paulo: Revista dos Tribunais, 2009)

The Fight Against Money Laundering: Theory and Practice (Combate à Lavagem de Dinheiro, Teoria e Prática. Campinas: Millennium, 2008)

“Human Trafficking: The Crime and Victim Consent” in *Women and Criminal Law* (“Tráfico Internacional de Pessoas: Tipo Penal e o Consentimento do Ofendido” in *Mulher e Direito Penal*. A collaborative work. Rio de Janeiro: Forense, 2007)

“Crimes Against the National Financial System: A Precursor to Money Laundering” in *Money Laundering: Commentary on the Law by Judges at Specialized Courts* (“Crimes contra o Sistema Financeiro Nacional como antecedentes de Lavagem de Valores” in *Lavagem de Dinheiro—Comentários à Lei pelos Juízes das Varas Especializadas*. A collaborative work. Porto Alegre: Livraria do Advogado, 2007)

Criminal Tax Law: Highlights (Direito Penal Tributário: Aspectos Relevantes. Campinas: Bookseller, 2006)

Criminality in the National Financial System: Criminal Law and Protection of Brazil's National Financial System (Punibilidade no Sistema Financeiro Nacional: Tipos Penais que Tutelam o Sistema Financeiro Nacional. Campinas: Millennium, 2003)

Criminal Liability of Corporations: An Overview (Responsabilidade Penal da Pessoa Jurídica, São Paulo: Saraiva, 1999)

Judge De Sanctis has also written a number of articles published in newspapers and magazines specializing in law and economics.

Chapter 1

Introduction

Since ancient times, man has glorified athletes for their importance and for the beauty of their practice. The vast commercialization of sport in modern times, with its internationalized labor market and huge investments by media and sponsors, would have been unthinkable in previous eras. The existence of large sums of money with wealthy private investors who cross borders to fund sports would have been unimaginable.

The romantic view of sport has dissipated and no longer finds support or justification in today's world. Crime that was typically confined to certain sectors found its way into sport, transforming itself in order to carry out offenses that are extremely harmful to society.

Recognizing the opportunity for huge profits, money gradually discovered the world of sport and began to control it. On one hand, the increase in cash flow has allowed large numbers of people to access the world of sport through various investments. On the other hand, it has led to the harmful effects of fraud, tax evasion, corruption, doping, human trafficking, illegal gambling, match fixing, and money laundering. There is no doubt, therefore, about sport's vulnerability to a number of global threats.

It was not by accident that money laundering took such an unusual turn. Controls enacted pursuant to the recommendations by the Financial Action Task Force (FATF), aimed at cracking down on money laundering, made it necessary for criminals to seek out new mechanisms for the laundering of ill-gotten gains. Furthermore, the globalization of financial markets and the rapid development of information technology have gradually steered the underworld economy toward new possibilities for the commission of financial crimes.

Like so many other businesses, sport and gambling have been used by criminals to launder money and derive illegal income. As in the art world, criminals in the sport world are not always motivated by monetary gain. Social prestige, rubbing elbows with celebrities, and the prospect of dealing with authority figures may also attract private investors bent on skirting the law. Its high degree of specialization—inasmuch as few are really familiar with this market—could also contribute toward attracting illegal activities.

The absence of adequate and well-designed legislation gives power and mobility to organized crime, allowing its continuity and illegal acquisition of unprecedented amounts of wealth. Unreasonable, unjustified, and repeated tolerance by authorities toward criminal activities “practiced in the name of sport” has undermined the credibility of the sport industry. The inertia and inefficiency that plague enforcement in this industry must be dealt with through an assessment of sport regulation. Taking isolated and uncoordinated positions is irrational and runs serious risks. It is now more than ever necessary to use legal tools to bring an end to organized crime.

Because it is one of the most popular and celebrated sports in the world, and is also the subject of much attention and concern from many authorities, football will receive special attention and consideration in this book. Football is played by more than 265 million people in the world. According to the Fédération Internationale de Football Association (FIFA), there are 38 million professional players, duly registered, and about 301,000 clubs. Football has experienced an extraordinary growth since the early 1990s, a result of increased television rights and sponsorships. The market for professional players has experienced an unprecedented internationalization, allowing more and more transfers of resources at a transcontinental level.

The high volume of resources crossing boundaries and the lack of transparency in these transactions should demand a more incisive control by authorities, whose absence or ineffectiveness provides a unique opportunity for criminals to launder money. Yet, there is a true and apparent conflict. On one hand, there is a desire for autonomy in the organization and operation of sport. In Brazil, this autonomy is subject to a requirement of exhaustion in disciplinary and competition matters by a government judicial body called Sport Justice (Justiça Desportiva). On the other hand, there is an imperative need for state action in the prosecution of offenses committed by criminal organizations that rely on sport to perpetuate their actions and gain profit.

In football, image contracts, advertising contracts, and sponsorship contracts can be tools for criminal practice, notably tax evasion, since the money stipulated in these contracts is commonly transferred to accounts of companies in tax havens. This results in serious risks of fraud, since it is tempting to not declare the money received, which requires the use of third parties in various financial transactions. The most common form of cash payments involves jurisdictions located abroad, which allow the final destination of payments to be disguised. Image rights are also used to conceal the amounts actually paid to players.

Gambling, like sport, has a recreational role in society. Sport and gambling are similar in the sense that both are vulnerable to money laundering due to the lack of transparency and the attraction of large sums of money that characterize the two sectors. In addition, gambling is directly related to sport through betting on games and matches.

Therefore, lotteries, casinos, and gambling houses will also receive special attention in this book. The economic impact of the gambling sector is evident because large investments are channeled through it. There are also societal impacts, including business development and an extensive transmission of cultural values. Yet, the

growth of this industry has encountered illegal practices, especially corruption, tax evasion, and money laundering.

The author's purpose in this book is to go beyond a mere introduction to this captivating topic. Considerations will be presented in an effort to further the study of methods likely to add transparency to business dealings and thereby inhibit or curtail unlawful activities. This book seeks to dispel the many mysteries surrounding certain practices. It will provide an understanding of the deficiencies in the world of football, as well as the weaknesses present in lotteries, casinos, and gambling houses. The aim is therefore to shed light on commercial practices in the world of sport in order to improve the system of crime prevention and punishment.

Some statutes and legislation deserve special analysis, as does the role of oversight bodies and regulators (FIFA, confederations or federations, clubs, and government agencies). The book will also identify legislative and institutional loopholes that might give power and mobility to organized crime, thereby making it a more deeply entrenched source of unprecedented illicit wealth.

The issue of violence in sport will also be addressed, for the crimes committed in the sport world are not limited to economic and financial ones. Sport provokes strong feelings in people that sometimes result in rash action. The emotional aspects of sport can, in a way, explain why people sometimes do not view it seriously in terms of its management and funding. In other words, authorities do not prioritize investigating financial crime in sport.

Betting on games has developed a sort of sophistication, with numerous operators working in several countries and using the Internet. This has increased the risk of illegal money laundering. Therefore, countries must regulate the gaming market so as to make it transparent because profiteers use countries that do not regulate or supervise games. It is not easy to control speculators who use online services and work from abroad. This, combined with the lack of transparency in the market, makes it an ever more attractive vehicle for criminals.

It is important to note that FIFA, the world governing body of football, which also has the mission of regulation, promotion, and development throughout the world, has made efforts to prevent unlawful practices in football. National associations, federations, and confederations are also properly engaged in these efforts. They should do more to offer necessary support, like professional training on money laundering, so as to enable communication on suspicious transactions. They should also analyze regulations and disciplinary actions of those in charge of managing and protecting sport.

The FATF, an intergovernmental body linked to the Organization for Economic Cooperation and Development, has shown great concern in the prevention of money laundering in sport.

For a global vision of the role of each actor in the football industry, it is important to study, among others, the Brazilian bodies of discipline and control, including the Brazilian Football Confederation, regional federations, clubs, the Council for Financial Activities Control (Brazil's financial intelligence unit), the Federal Revenue of Brazil, police, public prosecutors, and the Sport Ministry. They could all, in theory, coordinate actions to prevent crime.

After connecting the dots that make up this interesting topic, the book suggests effective proposals for improving the assessment, investigation, and prosecution of the crime of money laundering. The book takes into account both the legislation and the immediate needs of the bodies involved, judicial or otherwise. The world is in a pivotal moment. Brazil, one of the greatest powers in football, is especially in a critical time, as it will soon host both the World Cup and the Olympics.

Gambling and sport have demanded staunch fair play to prohibit common violence. But it is also essential that they develop “financial fair play” to curb economic and financial crimes that can, in the not so distant future, compromise and bring down the activity itself. This book can assist global authorities in taking necessary preventive measures.

We must be mindful that one of the essential criminological features inherent in money laundering, as Pedro Caeiro, citing Jorge Fernandes Godinho and Luís Goes Pinheiro, reminds us, is its necessary links to organized crime, which in turn add considerable diversity to the types of conduct that its prosecution and enforcement may prevent.¹

Our aim is to provide a reading on this sector, a snapshot of the market, which will provide the groundwork and guidance necessary to give it transparency and a backdrop sufficient for a particularized analysis. Some rigor in procedures for cataloging and investigation are in order, for we ought to remember that the resurgence of organized crime is often the result of a systemic atmosphere of inattention, mutual tolerance, and ethical codes that, however lofty, are in practice applied only selectively. Matters are worsened by the arrogance and permissiveness, if not covert complicity, of portions of civil society (the elite, the press, etc.) that insist on pointing out only the defects that do not suit their purposes.

This book is divided into nine chapters. Chapter 2 addresses illegal activities in the sport world. Chapter 3 deals specifically with financial crime in football. It also provides an overview of the French experience of controlling accounts in football. Chapter 4 discusses overarching topics of gambling and lotteries, measures for crime prevention, and enforcement agencies. Chapter 5 is about illegal betting. Here, important cases that were recently covered by the media will be discussed. Chapter 6 seeks to identify the use of illegal and disguised instruments for payments in business transactions. Forms of payment and the use of nongovernmental and offshore organizations are addressed. International legal cooperation and asset forfeiture are analyzed in Chapter 7. Chapter 8 covers conclusions that may go a long way toward clarifying how the prevention of money laundering applies to the gambling and sport industries. The final chapter, Chapter 9, covers national and international proposals for improving the industry so as to prevent money laundering and the financing of terrorism.

¹ Cf. Pedro Caeiro, in *Branqueamento de capitais*. Manual distributed in a course sponsored by the Organization of American States (OAS) and the Brazilian Ministry of Justice and presented to the Brazilian judges and prosecutors on October 17–21, 2005, p. 4.

Bibliography

CAEIRO, Pedro, in *Branqueamento de capitais*. Manual distributed in a course sponsored by the OAS and the Brazilian Ministry of Justice and presented to Brazilian judges and prosecutors on October 17–21, 2005, p. 4.

Chapter 2

Sport

2.1 Sport and Cultural Heritage

The world of sport is a paradox. On the one hand, the organization and functioning of sport runs on the principle of autonomy, such that leaders of sports organizations or relevant associations require competition and discipline matters to go through specialized sport courts, where they exist (like Brazil), before involving local authorities. On the other hand, it is imperative to prosecute offenses committed by criminal organizations that use the sport sector to cover up and facilitate their actions, and this requires the involvement of local authorities.

Indeed, the sport industry is one of many sectors that has attracted perpetrators of financial crimes, such as money laundering. The traditional, simplistic view of the sport sector as an area where no actions are taken in bad faith by those involved is no longer accurate. As several criminal cases are reported and more are gradually revealed to the public, the traditional view should cease to exist.

Yet, some people continue to have this innocent perception, where they refuse to acknowledge organized crime in sport and show a lack of interest in assessing the resources within the sport sector that are used for organized crime. This innocent perception threatens the sport sector and will even compromise the state order. This romantic view of sport does not have support in today's world, where crime that was once confined to a few sectors has expanded to the sport arena. Moreover, this expansion has transformed the sport sector's operations to propagate crimes of extreme social harmfulness.

Since ancient times, man has given importance to sport and idolized its athletes. This esteemed view of sport has led to worldwide marketing of different games, an unprecedented international labor market surrounding sport, and large sums of money invested by the media, various sponsors, and wealthy private investors. One can certainly say that money gradually began to discover sport and control it. While this increase in cash flow allows a great amount of people to contribute diverse investments, it can also lead to risks of fraud, tax evasion, and corruption. The movement of money within the sport sector can also become a channel for laundering dirty money.

There is no doubt that the sport sector is vulnerable to a number of issues and global threats. Over time, authorities have become aware of problems within the sports industry, which include racism, corruption, doping, human trafficking, illegal gambling, match fixing, violence, and money laundering. The high volume of resources being transported across borders and, as we will be discussed later, the lack of transparency in such negotiations require greater control by authorities. The absence of such control provides unprecedented opportunities for organized crime to launder dirty money within the sport sector. All of this leaves out the hunger for profits of private investors, who view the sport sector as just another commercial business whose first principle would be “business is not built on the Beatitudes.”

Despite the existence of international media reports and various studies pointing out the international schemes of organized crime within the sport sector, many choose to ignore these reports. Perhaps this is done due to denial or as a matter of convenience by those managing or participating in the sport sector. This willful ignorance prevents people within the sport sector from seeing any connection between organized crime and sports, and such denial only stimulates more crime due to state inaction.

There seems to be a general perplexity surrounding crime in sport that has cooled efforts of state control, which is dependent on confidential information provided by clubs or sports associations that is not always easily understood. This realization has surprised scholars and confronted the orthodox practices of sports management. The sport industry is surrounded by an aura of mystery that cannot be boiled down to a simple prognosis of unlawful behavior. Instead, it will take a differentiated approach to uncover the criminal acts in the sport sector.

2.2 Structural Violence and Organized Crime

Notwithstanding the central focus of this study—financial crime in the sport sector—violent crime is a constant threat to individuals at sporting events, as well as to their assets. For example, homicides, thefts, and robberies are still the crimes that most people fear while at sporting events. Street robberies make up a large portion of these criminal offenses, threatening the general public as well as foreigners who attend international sporting events. Street robberies are particularly dangerous due to the frequent use of firearms to carry out such crimes, especially in underdeveloped countries.

Football has particularly engendered violent forms of aggression, both in stadiums and outside stadiums on the streets. For example, on November 9, 1947, on the Brazilian field at Teixeira de Castro, the team from Bonsucesso defeated the team from Fluminense by a score of four to three. The referee, Alberto da Gama Malcher, was brutally attacked by six fans who disagreed with his ruling. The attack resulted in several injuries.

The congregation of large groups of people at sporting events allows for the enjoyable and spectacular experience of watching a game together and the collective

manifestations of various cultures. However, this congregation of fans can also lead to a “mob mentality,” where people engage in negative attitudes or actions as a group that they would never do in isolation. The stirring up of emotions that leads to the united gathering and support of fans can also attract those who wish to act out negatively on their emotions in a way that is normally not allowed in other social contexts. Any negative emotions that are socially repressed may find an outlet at sporting events due to the safety of numbers, causing fans to act on their frustrations in a way that would not happen if they were alone. Moreover, the stadiums in some countries are badly maintained and difficult to exit, thus creating conducive environments for festering annoyances to be aggravated until they erupt into episodes of physical violence.

Homeland security is a major concern for the general public, and issues of security are especially salient when it comes to football. On game days, authorities make plans that are meant to curb violence in football games, particularly in the stadiums, in surrounding areas, and sometimes in different places outside of game sites. However, fans and their families are skeptical of these measures due to the apparent inability of the state to reduce crime and provide greater safety at football games.

In most cases, carrying out policies that are meant to contain such crimes proves to be a challenge to government agencies. Such offenses are still considered a major threat to the citizens, which shows that what many countries are doing to contain such crime is not enough. However, the prevalence of such violent crime is based on a combination of factors that depend on the socioeconomic conditions surrounding the sport environment, and any deficiencies in police work should not be regarded as the sole cause of such crimes.

People and players are also fully aware of the serious problems regarding crime within football and the risks that stem from the absence, or insufficient action, of local authorities. The players themselves have also been victims of violence.¹ The growth of the underworld within the football arena has caused gangsters to become overconfident.

Furthermore, other crimes have been committed within the scope of international sporting events, such as Internet crimes, drugs, human trafficking for sexual exploitation of women and children, and terrorism. Misguided public policies have moved individuals and supporters away from direct participation in the management of sports, especially with respect to the revenues made by sporting clubs. These policies have made it harder to stop crime within the sport sector, since less people are able to infiltrate and prevent such crime.

On January 8, 2010, the world was surprised by the attack on the team bus of the Togo national football team, which was carried out by the Liberation Front of Cabinda and led to the killing of three people and the injuring of several others. This

¹ Graham Johnson reveals that “in the past, good players expected fans to get upset when they left a club, especially if they went to a big rival. But today, the boos and hisses of the ordinary supporters are accompanied by a sinister undertone: death threats, hate campaigns and attacks on family members.” In *Football and Gangsters: How Organized Crime Controls the Beautiful Game*. Great Britain: Cox and Wyman Ltd., 2007, p. 61.