


GOVERNMENT SUPERVISION OF GAMBLING IN THE FACE OF FRAUD MECHANISMS AND THE CRIME OF EMBEZZLEMENT

 <https://doi.org/10.56238/arev7n2-201>

Submitted on: 01/18/2025

Publication date: 02/18/2025

Antonio José Cacheado Loureiro¹, Eurico Dias Teixeira Neto², Dilson Castro Pereira³.

ABSTRACT

This analysis examines the State's performance in the control of gambling, addressing its relationship with fraudulent practices and the crime of embezzlement. The main objective is to ensure the protection of related legal assets, highlighting the relevance of state regulation to preserve the integrity and transparency of these games. Different formats of regulation are discussed, including state models and licensing systems, in addition to investigating the strategies used to defraud games, associating them with the crime of embezzlement. The study also proposes preventive measures against fraud, such as regulatory and technological solutions and cooperation between authorities and companies in the sector. The conclusion reinforces that state control is essential to promote trust and justice in gambling while repressing manipulation and embezzlement based on doctrines, jurisprudence, data, and bibliographic references.

Keywords: Gambling. Fraud. Criminal Law.

¹ Doctor student in Constitutional Law
Autonomous Faculty of Law of São Paulo (FADISP)

² Public Security Specialist
Focus College

³ Specialist in Military Law
UNINA College

INTRODUCTION

State control of gambling is a topic of increasing relevance in the contemporary legal scenario, especially in the face of the expansion of sports betting and other types of games of chance. This practice dates back to a historical process in which human societies sought new forms of recreation and entertainment, culminating in a global phenomenon driven by globalization and the advancement of the internet. However, the exponential increase in these activities generates significant challenges for state regulation, such as the prevention of illicit practices and the protection of the legal assets involved.

In Brazil, the legal system has important gaps in the regulation of gambling, which favors the occurrence of fraud, such as the crime of embezzlement, and has negative impacts on the popular economy. Although Law No. 13,756/2018 (BRASIL, 2018) introduced a new category of lotteries and addressed fixed-odds betting, so far, there has been no effective regulation of this modality by the executive branch. This absence of clear rules generates legal uncertainties and difficulties in the inspection of activities, affecting both bettors and tax collection.

In addition, the proliferation of betting platforms operating internationally, often in tax havens, further complicates the regulatory landscape, imposing challenges related to supervision, taxation, and safeguarding users' rights. Current legislation, such as Decree-Law No. 3,688/1941 (BRASIL, 1941), does not apply to activities carried out by platforms based abroad, widening gaps in state control.

The crime of embezzlement, often associated with fraudulent practices in sports betting, highlights the need for a robust regulatory framework that defines clear parameters for the operation of these activities. Match-fixing, for example, not only undermines the integrity of sports competitions but also directly affects bettors, who are the most vulnerable party in the relationship.

From a technical perspective, this research adopts a qualitative approach based on a bibliographic and documentary analysis of doctrines, legislations, and case studies. The overall objective is to examine the phenomenon of sports betting in Brazil, with an emphasis on its legality and the resulting economic, social, and legal impacts. The work also investigates how the absence of specific regulation affects the financial order, the popular economy, and tax justice, proposing solutions that involve both regulatory measures and the strengthening of inspection.

In the legal context, state control of gambling plays a crucial role in promoting transparency, trust, and fairness in these activities while combating the manipulation of acts and the crime of embezzlement. This study highlights the need for solid regulation that aligns the exploitation of gambling with the precepts of the Democratic Rule of Law, protecting the interests of gamblers and promoting the sustainable development of this industry in Brazilian territory.

METHODOLOGY

The methodology of this study follows a qualitative approach with a descriptive and analytical focus. This option was adopted due to the need to understand the interactions between the state regulation of gambling, the mechanisms of fraud, and the application of the crime of embezzlement. The qualitative approach is adequate to explore the complexity of the legal, economic, and social dimensions related to this topic, analyzing the existing gaps in the regulation of gambling in Brazil and its reflections on the legal system and the economy (Creswell, 2013).

Information was collected through document analysis and literature review. The documentary analysis included relevant legislation, such as Decree-Law No. 3,688/1941, Law No. 13,756/2018, and the Brazilian Penal Code (1940), as well as technical reports and studies on the regulation of gambling and sports betting. The literature review encompassed scientific articles, academic works, and journalistic reports that discuss normative, economic, and social aspects of sports betting, with an emphasis on legal gaps and the challenges faced by the State.

The data were examined using the content analysis technique as described by Bardin (2011). This approach made it possible to identify themes and patterns related to the historical development of sports betting, the lack of regulation, and the connections between match-fixing and illicit activities, such as embezzlement. An analysis of the impact of Law No. 13,756/2018 and the absence of its specific regulation in the national context was also carried out.

To ensure the accuracy and validity of the results, methodological triangulation was used, comparing information extracted from different documentary and bibliographic sources (Patton, 1999). This procedure was essential to ensure that the conclusions faithfully reflected the issues addressed in the study.

The methodology adopted seeks to offer a broad analysis of the regulation of gambling in Brazil, addressing its connection with fraudulent practices and their economic and legal effects. Combining document analysis, literature review, and data triangulation, the study aims to contribute to the debate on the challenges and benefits of this sector, promoting reflections for the development of more effective regulatory policies.

EXPLORATION OF THE LEGAL AND REGULATORY FOUNDATIONS OF STATE CONTROL OVER GAMBLING

The regulation of gambling, according to Mike Feintuck (2010), must transcend market interests, incorporating social and political values that promote social justice. In Brazil, the 1988 Constitution reflects these values, which direct regulation to the public interest, especially when market mechanisms are insufficient to solve sectoral problems. However, the values that guide regulation often conflict with practices and results arising from market decisions.

Feintuck points out that the main regulatory challenge is not only to confront market values but also to build a clear and concrete model of public interest based on constitutional values and sector-specific principles. This model must be legitimized by collective constructions of society, often incorporated into constituent processes, as is the case in Brazil.

The Brazilian regulatory approach is exemplified by Bill 442/1991, which adopts a hybrid model. It integrates objectives aimed at protecting the player and promoting state interests, such as increasing tax collection and stimulating economic development. This approach seeks to balance market freedom with the imposition of measures that guarantee competitiveness and social responsibility.

Player protection is one of the pillars of the Brazilian regulatory model. Inspired by the principles of consumer protection and human dignity, the concept of "responsible gaming" aims to minimize the negative impacts of gambling. Preventive measures, such as restrictions on advertising and the registration of compulsive gamblers, are provided to safeguard the financial and psychological health of citizens.

Another crucial objective of regulation is the fight against money laundering, a recurring problem in markets with poor supervision. In Brazil, the absence of effective regulation facilitates illicit practices, often carried out through operators located in tax

havens. Law No. 13,756/2018 sought to mitigate these risks, but its implementation still faces significant challenges.

The global gambling market offers important lessons for Brazil. In Portugal, for example, the evolution of regulation has allowed the strategic use of gambling to promote tourism and collect tax revenues. In Nevada, in the United States, the flexible regulatory structure and low taxes have created a competitive environment that attracts large investments, consolidating the state as a global reference in the sector.

In Portugal, historical regulation prioritized the state monopoly with private concessions. This approach allowed the integration of consumer protection principles with tax collection strategies, as evidenced in Decree-Law No. 422/1989. Legislative evolution has culminated in a sophisticated structure that balances public and private interests.

Nevada, for its part, has built its regulation based on competitiveness and transparency. Since the legalization of gambling in 1931, the state has implemented robust control structures, such as the Gaming Control Board, to mitigate risk and attract investment. Progressive taxation and the absence of strict limitations on licenses fostered an environment of sustainable growth.

In Brazil, the substitute for PL 442/1991 (Brasil, 1991) proposes similar measures but faces obstacles, such as the absence of a consolidated regulatory framework. The concept of "responsible gaming" envisioned in the project reflects efforts to promote a balanced environment but requires greater structuring to meet the needs of players and protect the public interest.

The implementation of efficient inspection and auditing systems is essential to ensure the reliability of the market. According to Frantz (2023), regulation not only protects players and combats illicit practices but also contributes to formal legalization, increasing revenue and promoting transparency.

It is concluded that the regulation of gambling in Brazil should prioritize a model that balances the protection of the player with the economic interests of the State. The adoption of successful international practices can guide the country in the creation of an efficient regulatory framework capable of fostering socioeconomic development and ensuring legal certainty in the sector.

ANALYSIS AND DETAILING OF THE MAIN METHODS OF MATCH-FIXING IN GAMBLING

Sport has significant relevance in contemporary society, uniting people from different backgrounds and attracting widespread media attention. However, preserving their integrity has become a challenge, especially in the face of practices such as doping, corruption, and match-fixing, which negatively affect the credibility of competitions (CARPENTER, 2012; UNODC, 2013). Technological advancement and the expansion of online sports betting have intensified this problem, making match-fixing a more complex and globalized threat.

This context requires an in-depth analysis of the phenomenon of "match fixing", an expression that encompasses the deliberate manipulation of sports results. This practice is not recent, but its connection with illegal activities, such as corruption, money laundering, and organized crime, has increased its severity (TIAC, 2014). Match fixing challenges the sport's core values and compromises not only its authenticity but also the trust of the public and sponsors.

Several cases have revealed the negative impact of match-fixing on the reputation of athletes, clubs, and sports federations. Institutions such as FIFA and Interpol, aware of these damages, have entered into collaborations to combat the practice (MORICONI, 2014). Manipulation compromises sporting and economic values, resulting in the loss of sponsors, reduced revenues, and decreased interest from investors, factors that harm the entire sports chain.

Studies identify two main categories of manipulation: that motivated by sports benefits and the other that is aimed at economic interests (EUROPEAN COMMISSION, 2012; OLFERS; SPAPENS, 2015). Sports manipulations seek competitive advantages, such as avoiding relegation or winning classifications, while economic manipulations are directly linked to betting, generating financial gains for those involved. Despite the distinctions, both have significant negative impacts.

Manipulations for sporting reasons can indirectly generate economic benefits. A team that avoids relegation, for example, can attract more sponsors and television rights. This type of manipulation is especially prevalent at the end of sports seasons, when crucial decisions for competitions are made (AQUILINA; CHETCUTI, 2014; TIAC, 2014). Such a context increases the vulnerability of teams to fraudulent practices.

The manipulation of results for economic reasons has gained prominence in international investigations. An example was the manipulation of 90 football matches in

Italy, involving renowned players and sporting directors, which generated substantial profits in the illegal betting market (SOUSA, 2014). In Portugal, notorious cases such as the Oriental-Oliveirense match led to changes in local legislation to combat these practices (PEREIRA, 2017).

These examples illustrate the damage that manipulation causes to sports, compromising its ethics and values. The fight against this practice is essential to preserve unpredictability and fairness in competitions. Collaborative strategies involving governments, sports organizations, and society are key to addressing this threat effectively.

Another central point is the growing use of advanced technologies to combat sports fraud. Data monitoring systems make it possible to detect suspicious behavior and prevent manipulations (MKT ESPORTIVO, 2023). However, the use of these technologies faces ethical and regulatory challenges, such as the need to balance investigations with the preservation of the privacy of those involved.

Corruption also plays a relevant role in sports manipulation. It can occur both in management and in competitions, compromising sports governance and requiring rigorous action from global organizations. The Council of Europe Convention on the Manipulation of Sports Competitions, for example, establishes guidelines for the creation of effective norms, awareness, and investigations against fraudulent practices (IOC, 2014).

In Brazil, the recent case of Operation Maximum Penalty exposed the lack of regulation in the sports betting sector. The absence of clear legislation allows betting platforms to operate without proper oversight, creating a favorable environment for fraud. The creation of a national regulatory agency is urgent to supervise and prevent irregularities in the sector (BRASIL, 2018).

In addition, it is imperative that sport adopts exemplary punishments against individuals involved in manipulations. Guilty players and officials must be permanently excluded from the sporting environment as a measure to restore public confidence and preserve the values of sport. The responsibility also falls on sports bodies, such as the Superior Court of Sports Justice (STJD).

Finally, effective regulation of sports betting in Brazil, combined with educational and preventive efforts, can mitigate the negative impacts of this activity. Collaboration between government, judiciary, and sports entities will be essential to establish a safer and more transparent market, ensuring the integrity of competitions and the protection of fans and players.

DETAILED STUDY OF THE CRIME OF EMBEZZLEMENT: LEGAL CONCEPT, ESSENTIAL COMPONENTS, AND LEGAL REPERCUSSIONS

The twenty-first century is marked by technological advances that have transformed human interaction and the global economy. Globalization, intensified by the development of the internet and social networks, has allowed global interconnection and promoted unprecedented economic, political, and cultural integration. However, these innovations have also brought significant challenges, including the proliferation of illicit practices, such as embezzlement, especially in the context of gambling. The internet, with its ability to connect millions of people, has also become a space conducive to fraud and scams that exploit users' trust (BRASIL, 1940).

The crime of embezzlement, provided for in article 171 of the Brazilian Penal Code, is characterized by obtaining an illicit advantage through fraud, causing damage to third parties. For its configuration, the agent must mislead the victim by using deceptive artifices. The origin of the term "embezzlement" goes back to the Greek word *stelio*, which refers to a lizard that changes color to deceive its prey, illustrating the typical behavior of the offender in this type of crime (HUNGARY, 1958). Consummation occurs when the agent achieves the desired illicit advantage, although it is also possible to configure the attempt if external factors prevent the conclusion of the crime.

In the virtual environment, embezzlement takes on specific contours, especially in gambling games. Criminals often utilize fraudulent links sent via email or messages, directing victims to fake websites where personal and financial information is collected. This practice, known as "online fraud", is even more worrying when associated with the use of foreign servers, as described in paragraph 2-B of article 171 of the Penal Code, introduced by Law No. 14,155/2021 (BRASIL, 1940).

The manipulation of results in betting games exemplifies the impact of embezzlement in the sports environment. Emblematic cases, such as the "tale of the winning ticket", highlight the ingenuity of criminals in exploiting human vulnerabilities (OLIVEIRA, 2023). In addition, practices such as the manipulation of sports results directly affect the integrity of competitions. In Brazil, the case known as the "Whistle Mafia", which occurred in 2005, revealed a scheme in which referees were bribed to alter results, compromising the credibility of national football (GLOBO ESPORTE, 2015).

The absence of specific regulation for the betting sector contributes to the proliferation of these illicit practices. Law No. 13,756/2018 legalized sports betting in Brazil,

but the lack of clear guidelines created an environment vulnerable to fraud (BRASIL, 2018). It is crucial to implement measures that protect both bettors and the integrity of sports competitions. Regulation should include strict guidelines for monitoring betting platforms, ensuring a safer and more reliable environment for participants.

The challenges of investigating and punishing the perpetrators of embezzlement in gambling are amplified by the complexity of digital transactions and the transnational actions of criminals. The use of false identities and digital payment services hinders the traceability of offenders, requiring authorities to adapt to the digital environment (MIGALHAS, 2022). International cooperation is key to addressing these challenges, enabling information sharing and joint efforts in investigating and punishing crimes.

Public education also plays an essential role in preventing embezzlement in gambling. Awareness campaigns can empower players to identify fraudulent practices and avoid pitfalls. In addition, the creation of reliable reporting channels facilitates the fight against fraud and protects the interests of consumers.

Proper punishment of offenders is crucial to maintaining integrity and trust in the betting industry. The application of severe penalties, including substantial fines and prison sentences, acts as a deterrent against fraudulent practices. In addition, restitution to victims must be guaranteed, allowing compensation for the damage suffered.

Effective regulation and enforcement are central elements in creating a fair and safe environment for gambling. Independent regulatory bodies must establish clear guidelines and monitor the operations of platforms, ensuring transparency and ethics in the sector. At the same time, the use of advanced technologies can help identify suspicious activities, strengthening the fight against embezzlement.

Gambling fraud reflects the complexity of fraud in a highly interconnected environment. Robust regulation, international cooperation, and public awareness are indispensable measures to address the challenges posed by these illicit practices. Only through a joint effort is it possible to protect players, preserve the integrity of competitions, and ensure the credibility of the sector. Thus, the integrity of sports and betting can be safeguarded, promoting a fairer and safer environment for everyone involved.

CONCLUSION

The crime of embezzlement, outlined in article 171 of the Brazilian Penal Code, gains new dimensions when analyzed in the context of gambling and match-fixing. With

technological evolution and the exponential growth of online betting, fraudulent practices have become more sophisticated, requiring equally robust legal and regulatory responses to protect players, the integrity of sports competitions, and trust in the system.

The analysis reveals that embezzlement transcends the simple obtaining of an illicit advantage, as it compromises fundamental values such as transparency, sports ethics, and asset protection. Emblematic cases, such as the "Whistle Mafia" and the recent scandals involving match-fixing, highlight the damage caused not only to individual players but also to the credibility of the entire sports sector. In this context, the regulation of the betting sector emerges as an essential instrument to ensure a safer environment, promoting the balance between economic incentive and the preservation of ethical and legal values.

In addition, technological evolution, although it represents a challenge, offers powerful tools to identify fraudulent practices and strengthen control mechanisms. The use of advanced monitoring techniques and international cooperation are essential to mitigate the impacts of embezzlement and ensure the effective punishment of those responsible. Public education, in turn, plays an essential preventive role, making bettors aware of the risks and promoting informed decisions.

Finally, the analysis of embezzlement in gambling reinforces the need for an integrated approach, which combines effective regulation, education, proportional punishment, and restitution to victims. This joint effort is essential to protect the integrity of sports competitions, ensure the credibility of the betting sector, and safeguard the interests of consumers. The strengthening of legal norms and the promotion of an ethical and transparent betting environment are consolidated as fundamental steps towards building a fairer society in line with the principles of the Democratic Rule of Law.

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