

ЦИВІЛЬНО-ПРАВОВА ВІДПОВІДАЛЬНІСТЬ ЗА ШКОДУ, ЗАВДАНУ ЖИТТЮ І ЗДОРОВ'Ю В СФЕРІ СПОРТИВНИХ ВІДНОСИН

Анотація. В статті надано визначення поняттю цивільно-правова відповідальність в сфері спорту. Зазначено ключові особливості цивільно-правової відповідальності за завдання шкоди життю та здоров'ю в спортивній сфері. Досліджено основні підстави виникнення цивільно-правової відповідальності в сфері спорту. Автор статті робить висновок, що, незважаючи на ризиковий характер спортивної діяльності, як такої, спортсмен може бути визнаний винним у цивільному правопорушенні, якщо буде встановлено, що в його намірах є груба необережність або умисел, спрямований на завдання шкоди здоров'ю суперника. Якщо ж порушення і пов'язана з ним травма має незначний характер, а у діяч спортсмена не встановлений умисел, то дії учасника спортивних заходів, навіть, якщо ними завдана шкода, будуть вважатися правомірними.

Ключові слова: спортивне право, цивільне право, цивільно-правова відповідальність, відшкодування шкоди, спортивні спори.

Nataliya O. Tyschuk
Department of Civil Law
National University "Odessa Academy of Law"
Odessa, Ukraine

CIVIL LIABILITY FOR DAMAGE OF LIFE AND HEALTH IN SPORTS RELATIONS

Abstract. The article defines the concept of civil liability in the field of sports. The key features of civil liability for damage to life and health in the field of sports are outlined. The author identified the main grounds for civil liability in the field of sports. Notwithstanding the risk nature of sporting activities by themselves, an athlete may be found guilty of a civil offense if gross negligence or intention is discovered in his actions to harm the opponent's health. The author emphasizes the lawfulness of actions of a participant in sporting events, where the violation and the associated injury is insignificant, and the athlete's actions are not invented. Therefore, when determining responsibility for damages incurred in sporting competitions, it is necessary to take into account the degree of fault of the person who caused the damage and, depending on this, to make a decision on bringing him to civil liability.

Key words: sports law, civil law, civil liability, damages, sports disputes.

INTRODUCTION

Currently, sports is one of the focus areas in our country's life. State and society pay much attention to comprehensive development of the sports movement. Increased

attention to the sports field created the basis for new concept of law development, called “sports law”. Legislation is being formed in the sphere of sports relations. Notice of liability aspects are also taken, however despite of the increased attention of lawyers them have not been yet investigated adequately.

The issue of civil legal liability enforcement in sports still remains to be one of the most controversial issues. Solution to this issue is complicated by the general perception of sports as risky activity, therefore, even with unbiased eye it is rather difficult to delimit the lawful activity associated with the possibility to cause harm in the sphere of sports with unlawful activity in the cause of sports events or training. However, named issue needs to be resolved, as it makes direct impact on the state of the rights and freedoms protection of the parties in sporting activities, who may find themselves in sticky situations due to harmful actions commitment towards them by the other participants in sporting activities. Certain aspects of civil liability for causing damages to life and health in the field of sports have been explored in the papers of the following authors: S. V. Aleksieieva, O. G. Bondar, A. V. Ierofieieva, M. A. Tikhonova, M. O. Tkalych, N. V. Iukhnova, etc. Among the foreign authors dealt with legal liability issues in sports the following ought to be noted: N. Schot, M. Kralik, Leonardo V. P. de Oliveira [1], Branislav Hock, Suren Gomtsian [2], Karolina Tetlak [3], Tom Serby [4], Daniela Heerdt [5], Cem Abanazir [6], Brendan Schwab [7], Tom Evens [8], Katarina Pijetlovic [9], Jaime Morente-Sánchez, Mikel Zabala [10].

Administrative and criminal liability in the sphere of sports is well studied in research literature, which is not the case concerning civil legal liability. Based on the above, and taking into account increasing number of injuries in modern sports, liability of a person for the harm inflicted to life and health in sports relations sphere needs careful legal attention, since many sports are “risky”, that is injuries causing activities.

In the legal literature, liability is understood as the application following special procedural order to the person committed the offense, the means of state coercion provided for by the sanction of the legal rule. Article 54 of the Law of Ukraine “On Physical Culture and Sports” defines responsibility for sports legislation violation as: “persons guilty in violation legislation in the sphere of physical culture and sports are administratively, criminally, disciplinarily or civilly liability in accordance with the law” [11, Art. 80].

Object of the paper is studying civil liability in the field of sports in general along with studying possibility of compensation for damages inflicted to life and health in particular in sport sphere.

1. MATERIALS AND METHODS

Study materials are social relations related to civil liability for damages inflicted to life and health in the sphere of sports. In the process of civil legal liability issue study in the field of sports, general scientific and special methods were used, in particular:

comparative-legal, dialectical, historical methods, as well as analysis and synthesis method.

Comparative legal method allowed to analyze the provisions of statutory regulations concerning civil legal liability in the sphere of sports, operating in Ukraine and in the other countries of the world. As for the dialectical approach in the process of study, it allowed to consider the very essence of civil liability in sports, as well as to establish the main features of it.

It is also worth mentioning that while writing this paper, historical method has been used, which, in turn, made it possible to investigate major historical stages of the establishment of the civil legal liability system in the field of sports. Moreover, it should be noted that analysis and synthesis methods application while writing this work allowed to apply approaches to civil liability for damage caused to life and health in the field of sports which legal doctrine is already aware of.

In addition, it should be noted that dialectical method of studying civil legal liability issue for damages inflicted to life and health in sports, along with other methods of legal phenomena learning, allowed to formulate major proposals to improve the existing national legislation governing the civil legal liability relations in the field of sports.

2. RESULTS AND DISCUSSION

The share of sports injuries is about 10-17% of all the injuries. A considerable proportion injury in sports is not life-threatening, although injuries affect the performance of the athlete and require a long rehabilitation period. However there are also such sports, where neither of duel meets can be seen without injuries, including serious ones. Sad statistics of the consequences of such injuries in professional boxing is given by Ring, American magazine. Over 500 boxers died directly in the ring, or as a result of injuries sustained during boxing matches. "Record-breaking" is 1953 with 22 fights with a lethal consequence. Lately, the number of fatalities in football has increased during training and competitions. as well as immediately after them. According to the Italian judge Guarinello's data, in the last 30 years only in "A series" 30 football players died due to performance-enhancing drugs use. At the same time boxing and football are not the only dangerous sports.

According to experts, "currently the top injury-causing sports" should include: martial arts, mountain climbing, water tourism, auto and motorcycle racing, equestrian sport, hockey, rugby, football, downhill skiing, sky flying, gymnastics, track and field athletics and weight-lifting. It becomes apparent that in the process of sports activities there is a high risk of property damage infliction to another person. In case athletes claimed compensation for damages each time after a fight, sparring or sports game, then majority of these sports for the time being would not even exist at all. With such relevance of this issue, it would seem that the legal regulation of sports

injuries prevention, elimination of their causes and consequences should be a priority in each state. As a matter of fact the case is in life and health of individual. It is of athlete who risking with these valuables, sometimes for quite low material remuneration, provides moral values to the state, sport, sports club, sports federation [12].

Unfortunately, the state of affairs with sports injuries' legal regulation is not satisfactory. Sports activities as such, and even more – the activities in sports events preparing and conducting are featured with higher than normal degree of public danger. In particular, injury or damage can be caused to athlete participating in the sports event, the spectators attending the event, sports clubs, as well as other individuals or legal entities being involved into sports event. Therefore, special attention is required to the issue of the proper legal regulation of tort relations in the sphere of sports, the content of which provides for liability of individual/ legal entity for caused injury / damage [13, p.105]. One of the main features of such commitments in the field of sports distinguishing this liability from the general understanding of the civil injury is the particular content of subjects: athletes, coaches, medical staff, sports organizations, sporting events organizers, as well as sports fans. The listed subject at the same time can act as victim and as a person causing harm. With regard to the subject matter of civil injury liability in the field of sports, it includes material and non-material values subjected to damage (life, health, property, property rights, etc.).

To determine the content of liability in the sphere of sports, it is necessary to define main conditions of its onset. These are the requirements that should be a part of a civil offense in sports. The main criteria for civil legal liability occurrence are as follows:

- wrongful acts (failure to act);
- causative connection between act (failure to act) and occurrence of damage;
- fault of person inflicted the damage [14, p. 366].

Typically it is necessary to comply with all of the above conditions for tort liability commencement. However, in sports legal relationships, such liability arises also in the absence of any of such conditions, as a tort in sports is most often commences through inattentive, careless acts of the subjects. Most injuries caused by the participants in sporting events happens accidentally, thus damage analysis as well as liability measures is a controversial issue. This sphere is of a subjective nature, since most torts are caused by injuries suffered by players resulting from violations of the rules of a particular sport. Following the analysis of athlete actions during violation of the rules, we can make conclusion that in the presence of civil offense in his/ her actions and the necessity of compensation for damage, in fact, the latter does not occur. It is known that sports is a kind of activity where it is impossible to avoid, as any participant in sporting events is always under the risk to obtain them. An athlete may be adjudged guilty of a civil offense provided that it has been established that his/ her intentions has included gross negligence or intent to make harm the opponent's health.

In case the violation and the associated injury is insignificant, and guilty intent has not been found in the actions of athlete, the actions of participant in the sporting events, even if they caused harm, will be considered lawful.

The behavior of the person, who has caused the damage, may mean not only his/her active actions, but also failure to act. Failure to act is considered unlawful provided that the person ought to perform a certain act, but failed to do it. For example, in case sports infrastructure status has not been verified prior to sports competition, and harm could be cause due to improper operation or damage of such infrastructure, or due to sports equipment failed during the competition and caused injury to athlete (p.16 of the Decree of the Cabinet of Ministers of Ukraine “On the procedure for preparation of sports facilities and other specially designated sites for public sports and cultural and entertainment events “[15]). So, on May 5, 1992, at Furian at Arman Cesare Stadium, prior to football match beginning between Bastia and Marseille, additional temporary stands which have been built to increase the number of seats from 10 to 18 thousand spectators came crashing down. Due to owners of the stadium negligence and non-compliance with international standards containing requirements for technical condition of sports facilities, 18 persons died and about 2 thousand fans were injured. The important feature of damages reimbursement of damage in the sphere of sports is that the athlete, taking part in the competition, acts on the basis of the civil-law or employment contract (agreement) made with sports association, sports organization or organizer. Well, organizers, sports federation or other party of the sports law, which can act as employers, bear liability for damages (Article 1172 of the Civil Code of Ukraine [16]) in case they were inflicted to individual or property. Yet such situation is possible only provided that the parties have entered into labor agreement or civil law contract (agreement). Eventually, it creates employer’s liability under the labor law, however he/ she/ it may claim immediate culprit by way of recourse.

The author considers another case where civil law contract exists between the parties to the sports relationship. In this case, the person who directly caused the damage will be liable. However, such solution does not fully meet the needs of the sports movement. The described situation does not allow for full restoration of the infringed right of an athlete or other participant in a sports competition. This is due to the fact that it is practically impossible to bring to justice the person who has immediately caused damages. In this case, liability for damages must be imposed on the organizer of the competition, irrespective of who actually caused damages. For example, on August 23, 2014, at Albert Eboss, an object was thrown from the stands, which hit the head of a football player. Incident occurred during a match between Kabilye FC and UCM Alger, when the teams were leaving the field upon the end of the game. A few hours later, football player died at the Tizi Ouzou Hospital. In accordance with the norms of civil law, responsibility for the task of causing significant damage to health or life of individual shall be placed on the person who has threw

dangerous item on the football field. Given that thousands of spectators have been present at the match, it's almost impossible to identify the offender. In this regard, it is feasible to place liability for recovery of damage inflicted to life and health on sports competition organizer, since he/ she/ it did not provide adequate security for the event.

However, as there is not relevant provision in the current legislation, for the time being it is practically impossible for athlete to obtain payment for damages caused by the actions of fans. Obviously, the current situation needs to be resolved by amending the rules of the current legislation, which would establish corresponding right of individual (athlete, fan, etc.) for recovery of inflicted losses.

Another specific feature of civil injury characteristics in sports sphere is "sports" liability, the existence of which is based on considerations concerning the necessity to take into account the circumstances that sports injuries sustained during sports events can be caused by the rules of the game and injury risk of a particular sport, etc.

As it was mentioned, sports event participant may in some circumstances be injured by actions of opponent, and sometimes it can happen not through the opponent's fault. During certain sport activities one can get various kinds of injuries. One of the most high injury sport is football. Let us give an example of damages infliction in this sport. Two athletes have collided in the fight for the ball, in the result one of them received a craniocerebral injury. Obviously, the injury has been caused by the actions of the opponent, and there is a direct causal relationship between the actions of the latter and injury. At the same time, the actions of individual caused the damage do not create his liability, since the damage is caused by the peculiarities of the game itself and is the result of unintentional action of the opponents. In such cases, the issue of the liability of individual who caused the damage has estimation and subjective nature. Thus, the damage caused in sports legal relations does not always have the nature of civil injury. According to Ie. V. Pogosian, "the specific feature of the damage caused during sports competitions, is that as a rule, it does not have civil injury origin" [17, p. 141]. In determining liability for damage caused during sports competitions, it is necessary to take into consideration the degree of fault of individual who caused the damage and, depending on this, to make a decision on bringing him/her to civil liability. Competent authority (disciplinary committee, court, etc.) needs to establish the fact of deliberate or accidental violation of the rules of the competition. However, intentional damage caused to participant in sports events is not subject to recovery provided that he/ she has given the consent for possibility of injury during the event.

The condition of civil liability also includes the presence of cause and effect relations. Thus, liability for damage causing is regulated by the provisions of the Chapter 82 of the Civil Code of Ukraine "Compensation for losses" and forms a separate civil law system, which firstly and foremost performs compensatory (restorative)

function and becomes of particular importance in the modern society. According to the Art. 1166 of the Civil Code of Ukraine property damage caused to personal non-property rights by unlawful decisions, acts or failure to act by individual or legal entity, as well as damage caused to property of individual or legal entity, is subject for full compensation by the person who has caused it.

In such a way, a person is hold liable for inflicted damage, provided that it is established that without his/ her guilty act (failure to act) the damage would not have been inflicted. Thus, for example, the court of Trondheim (Norway) awarded monetary amount to compensate for damage caused to football player who has been injured as a result of a strike by his opponent in the crural region. Adjudicating on the matter, the court indicated that “there is direct causal connection between the kick in calf and the injury. The resulted injury and damage were not caused by the rules of the game “. In this case, guilty person is liable for the damages caused to the athlete’s life and health, as provided for by the general provisions of the Civil Code.

Sports activities as it is, all the more activities related to sports events preparation and conduct, is featured with high risl of public danger. In particular, the injury may be caused not only to athlete participating in the appropriate sports event but, as mentioned above, to the viewers attending the event, to the sports clubs, as well as to other individuals and legal entities involved in the sports event [3, p. 106]. That is, any individual/ entity subject to damage at a sports event has the right to recover damages. For the right to claim recovery of damages caused by sports injury, the injury should be caused under abnormal circumstances such as intentional damage caused by negligence of the other party. However, it should be the evidences that the other party acted improperly which, resulted in injury.

Under certain circumstances, sports events can cause sports injuries among viewers. In particular, they may arise as a result of:

- Game disturbances (can lead to mass injuries);
- Use of gaming equipment (balls, pucks, etc. hit to fan stands, which can lead to serious injuries);
- Vehicles on auto-, moto-, cycling competitions.

As for athletes, sports injuries can be caused by:

- Incorrect decision (for example, inappropriate use of equipment);
- Poor coaching (wrong guidance of players by coach, who advises them to use tactics that can cause damage to another team);
- Unsafe stadiums and equipment (playing in unordered or poorly maintained areas and stadiums along with out-of-order sports equipment use can lead to serious injuries);
- Tough behavior (between players when playing).

Individual suffered from sports injury may claim to recover not only property loss but also non-pecuniary damage. According to the Article 1167 of the Civil Code of Ukraine, in case citizen suffered non-pecuniary damage (physical or moral suffering)

by actions that violate his/ her personal non-property rights or trench upon his/ her other non-materials values belonging to such citizen, as well as in the other cases stipulated by law, the court may impose on the offender liability for monetary recovery of the specified loss. In accordance with the Part 1 of the Art. 1168 of the Civil Code of Ukraine, moral damage caused by disability or other damage to health may be recovered with a lump sum or with monthly payments.

In determining the amount to recover non-pecuniary damage, the court takes into consideration the degree of fault of the offender and other circumstances that deserve attention. The court must also take into account the degree of physical and moral suffering associated with the features of individual subject to damage.

One of the key objectives of civil legal liability application in the field of sports is the protection of the violated right of the athlete with obligatory consideration of specific features of the sport and its characteristics. Therefore, it is necessary to provide for mandatory preliminary procedure for consideration by special sports arbitration institutions sports disputes, which are related to recovery of losses.

Furthermore, it is necessary to bear in mind that specific procedure for sports disputes settlement is one of the pending issues in domestic sports. Each sports organization independently establishes “rules of the game” and sanctions for their violation. In addition, the organizations of the most developed sports have their own “bodies of justice”, which independently establish dispute settlement procedure. Being guided by their own rules, they decide, at their own discretion, who is to blame and what kind of punishment should be applied. At the same time, suits to the national courts for protection of rights are also encouraged. For a violation of this rule, sports organization may impose sanctions – from administering caution or charging fine to a ban to participate or exclusion from membership in such organization.

Therefore, tendency to “internal” settlement of disputes in the field of sports is clearly seen, including those related to damage infliction. As an example, we can recall the incident happened at sledge-bobsleigh track in Königssee. At that point of time the judge has not track the order of the start of Russian crews, and male duce crashed and turned woman’s at the track, resulting in severe bodily injuries of the female athlete who was within the ace of disability. Investigation has adjudged guilty of the tragedy an officer of the International Federation of Bobsleigh and Tobogganing (FIBT), who has released bob to the track, when traffic light signal was red. For the mistake employee held liable by the German Union of Bobsleigh and Tobogganing in the form of a fine, loss recovery and payment of medical assistance has been done by the GUBT without recourse to law enforcement agencies.

CONCLUSIONS

Based on the study done, we can identify the key features of civil legal liability for damage to life and health in the sports field. According to the author, they are as follows:

- damage within the limits of special type of legal relationship existence - sports legal relations;
- possibility to distinguish subject matter of the tort liability;
- taking into account the fact that law rule infringement and the damage infliction to individual or property under certain conditions may not cause the occurrence of liability to compensate for inflicted damage;
- existence of such a factor as a gross violation of the rules of law and rules of certain sports, which causes the occurrence of civil legal liability;
- existence of the fault of individual caused the damage, which in accordance with the general rule is a condition of tort liability occurrence. However, unintentional fault may not have legal value provided that the damage is a consequence of injury risk of a particular sport;
- in addition to rule of law violation, civil legal liability occurrence is conditioned by significant deviations from the rules of a particular sport.

Taking into account the foregoing, tort liabilities in the field of sports can be defined as such civil legal relations, in which injured participant of the sports event considering the specifics of a particular sport, has the right to claim from another participant who caused the damage, the full recovery of loss resulting from the gross violation of legal norms and rules of a certain sport. While determining liability for damages caused at sports competitions, it is necessary to take into account the degree of fault of the person inflicted the damage and, depending on this, to make the decision on bringing him/ her to civil liability. An athlete may be adjudged guilty of civil offense in case it is determined that his/ her intentions are featured with gross negligence or intent to inflict damage to opponent's health. In case violation and the associated injury is of insignificant character, and no intention has been established in the acts of athlete, the acts of the participant to the sporting events, even if they inflicted damage shall be considered to be lawful.

REFERENCES

- [1] De Oliveira, L. V. P. (2017). Lex sportiva as the contractual governing law. *Int Sports Law J.* Retrieved from <https://link.springer.com/article/10.1007/s40318-017-0116-5>
- [2] Hock, B. & Gomtsian, S. (2018). Private order building: the state in the role of the civil society and the case of FIFA. *Int Sports Law J.* Retrieved from <https://link.springer.com/article/10.1007/s40318-018-0123-1>
- [3] Tetlak, K. (2013). The taxpayer as the unofficial sponsor of the London 2012 Olympic Games. *Int Sports Law J.* Retrieved from <https://link.springer.com/article/10.1007/s40318-013-0005-5>
- [4] Serby, T. (2016). The state of EU sports law: lessons from UEFA's 'Financial Fair Play' regulations. *Int Sports Law J.* <https://link.springer.com/article/10.1007/s40318-016-0091-2>
- [5] Heerdt, D. (2018). Tapping the potential of human rights provisions in mega-sporting events' bidding and hosting agreements. *Int Sports Law J.* Retrieved from <https://link.springer.com/article/10.1007/s40318-018-0129-8>

- [6] Abanazir, C. (2019). E-sport and the EU: the view from the English Bridge Union. *Int Sports Law J.* Retrieved from <https://link.springer.com/article/10.1007/s40318-018-0139-6#citeas>.
- [7] Schwab, B. (2018). Correction to: Embedding the human rights of players in world sport. *Int Sports Law J.* Retrieved from <https://link.springer.com/article/10.1007/s40318-018-0133-z>.
- [8] Evens, T. (2013). Katrien Lefever: New Media and Sport – International Legal Aspects. *Int Sports Law J.* Retrieved from <https://link.springer.com/article/10.1007/s40318-013-0023-3>.
- [9] Pijetlovic, K. (2017). EU sports law: a uniform algorithm for regulatory rules. *Int Sports Law J.* Retrieved from <https://link.springer.com/article/10.1007/s40318-017-0114-7>.
- [10] Morente-Sánchez, J. & Zabala, M. (2013). Doping in Sport: A Review of Elite Athletes' Attitudes, Beliefs, and Knowledge. *Sports Med.* Retrieved from <https://link.springer.com/article/10.1007/s40279-013-0037-x>
- [11] *On Physical Culture and Sports: Law of Ukraine.* Retrieved from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3808-12>
- [12] Kamenkov, V. S. *Sports-related injury: legal and other consequences.* Retrieved from <http://xn----7sbbaj7auwnffhk.xn--p1ai/article/19158>
- [13] Tkalych, M. O. & Bondar, O. G. (2011). Areas of concern of tort relations in the sphere of sports. *Zaporizhshia National University Herald*, 1, 105.
- [14] Aleksieiev, S. S., Gongalo, B. M. & Murzin, D. V. (2009). *Civil Law.* Moscow: Prospect; Yekaterinburg: Institute of Private Law.
- [15] *On the procedure of sports facilities and other specially designated sites preparation for public sports and cultural and entertainment events conduct: The Decree of the Cabinet of Ministers of Ukraine dated December 18, 1998 No. 2025.* Retrieved from http://search.ligazakon.ua/l_doc2.nsf/link1/KP982025.html
- [16] *Civil Code of Ukraine dated 16.01.2003.* Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>
- [17] Pogosian, Ie.V. (2011). *Forms of sports disputes settlement.* Moscow: Walters Cluver.

Nataliya O. Tyschuk

Judge Court of Appeal of Mykolayiv region

Graduate Student

Department of Civil Law

National University “Odessa Academy of Law”

65009, 23 Fontanskaya Road, Odessa, Ukraine

Suggested Citation: Tyschuk, N. O. (2018). Civil liability for damage of life and health in sports relations. *Journal of the National Academy of Legal Sciences of Ukraine*, 25 (4), 170–179.

Submitted: 14/08/2018

Revised: 18/11/2018

Accepted: 10/12/2018