

Criminal liability for causing harm to health during sports

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ABSTRACT

The study of liability in sport takes place through the prism of legal liability, which is understood as a legal relationship between an entity that has violated the law, on the one hand, and the state, represented by its bodies or other organizations authorized to determine liability for the offender, on the other. Liability can be defined as a mechanism for redistributing costs based on the idea of fair reimbursement; the costs of the person whose rights have been violated are transferred to the person through whose fault the violation occurred. The aim of the study was to examine the issues of regulation of liability for health injuries in sports. The methodology of the chosen problem was a systematic approach, including dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. According to the Criminal Code of Ukraine, a crime is a socially dangerous criminal act (action or omission) committed by the subject of the crime. In case of harm to human health during sports, the perpetrators should be prosecuted in cases where one of the participants in the competition intentionally grossly violates the established rules of sports competitions.

KEYWORDS

Sports Injuries; Athletes; Criminal-legal characteristics of the circumstance; Terms of Eligibility; Sports Rules

1. INTRODUCTION

Criminal law cannot remain indifferent in cases of health damage in sports, so the issue of liability for health damage in sports deserves special consideration.

Along with traditional notions of the social benefits of sport, there is a tendency to deny the positive importance of some sports (including boxing, karate, rugby, football, hockey and others related to the physical interaction of athletes) due to the high probability of injuries, which are often lead to serious consequences (prolonged health disorders, injuries, death, etc.). At the same time, damage can be caused not only by one athlete to another, but also as a result of illegal actions of sports judges, coaches, and doctors. The analysis of statistical data shows an annual increase in the number of people injured during sports events.

The socially significant role and value of sport as one of the most effective ways to strengthen the health of the nation remains unchanged throughout the evolutionary development of world culture and civilization. According to Article 2 of the Law of Ukraine (On Physical Culture and Sports, 1993), the main objectives of sport are to constantly improve the health, physical and spiritual development of the population, promote economic and social progress, and establish Ukraine's international prestige in the world community. However, along with traditional notions of social utility, there is a tendency to deny the positive importance of certain sports due to the high probability of their participants receiving physical injuries. We are talking about power sports and other sports related to the dangerous interaction of two or more subjects (boxing, karate, martial arts, rugby, football, fencing, motorsports, etc.).

According to Article 54 of the Law of Ukraine, persons guilty of violating the legislation in the field of physical culture and sports shall be held liable to civil, disciplinary, administrative or criminal liability in accordance with the law (On Physical Culture and Sports, 1993)

Sport is a component of physical culture, which has developed in the form of competitive activities and special training for competitions. Exercise helps to improve the health of the population, so the state is making efforts to prevent harm to health during sports by setting certain rules for competitions, but sport is a very traumatic activity, and in general it should be recognized that sport “is a specific type of activity based on voluntary human will, aimed at improving the health of the population at risk of receiving and (or) causing bodily harm”.

Unfortunately, the topic of sports injuries has not been properly reflected in the science of criminal law of Ukraine. However, the authors focus mostly on the superficial aspects of the study of

this issue, without proposing a comprehensive solution (Havronyuk, 2006). As a result, this topic remains relevant in terms of the gap in the Criminal Code of Ukraine and open to further research.

2. METHODS

The aim of the study was to examine the issues of regulation of liability for health injuries in sports. The methodology of the chosen problem was a systematic approach, including dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study was theory cognition and its general method was dialectical materialism. The following were used as general scientific research methods: formal-logical and systematic methods.

3. LEGAL REGULATIONS IN UKRAINE

The issue of the criminal-legal assessment of the behavior of athletes and judges and the lack of legal protection of victims of sports injuries, have received little attention in the legal literature, although the practical significance of these studies is difficult to underestimate. In the literature, the inadmissibility of such facts is emphasized when an athlete, in order to save the reputation of his team or his prestige, violates the rules of the competition and deliberately disables the opponent, causing him bodily harm. These actions were proposed to be considered intentional, which should lead to the exclusion of the athlete from the sports team, sports association or club and prosecution.

According to Part 1 of Article 11 of the Criminal Code of Ukraine (2001), a crime is a socially dangerous criminal act (action or omission) provided by this Code, committed by the subject of the crime. This definition is formulated by the legislator, on the one hand combines two approaches to the definition of crime, namely formal and material, and on the other - indicates the features inherent in this phenomenon. According to most scholars, the legislator in this definition focused on four main features of the crime, namely: illegality, public danger, guilt and punishment (Marco, Baulin & Borisov, 2005). They call the signs listed by the legislator "the most global, which are inherent in all criminal acts without exception, also assuming the existence of other signs of the crime".

It should be noted that there is no separate section in the Special Part of the current Criminal Code of Ukraine, which would formulate the grounds for liability for crimes exclusively in the field of physical culture and sports. Only Article 323 of the Criminal Code of Ukraine (2001), is devoted

to the issue of direct regulation of relations in this area, the rest is regulated by general articles, which, in our opinion, predicts the emergence of proposals from scientists to create a separate section of the Criminal Code of Ukraine. Indeed, the division of the Special Part of the Criminal Code of Ukraine into sections is essential for the delimitation of crimes and plays an important role in the application of punishment for their commission. In addition, the division of the Special Part for law enforcement activities is of great importance (Gryshchuk, 1992).

In the context of conducting a scientific and theoretical criminal law assessment of harm to life and health during sporting events, it is necessary to clarify and solve a number of tasks:

- first, to establish a regulatory condition, in the presence of which, *de jure*, criminal punishment for harm in sports will be lawful;
- secondly, to outline the range of sporting events during which harm may occur;
- third, identify the range of persons who may be guilty of causing (or suffering from) harm.

We believe that in causing harm to life and health in sports, a person is not subject to criminal liability due to the fact that this type of activity is permitted by law. This follows from the above Law, according to Article 4 of which the state supports the development of physical culture and sports in Ukraine by creating conditions for legal protection of citizens in the field of physical culture and sports, develops sports and infrastructure industry, encourages citizens to strengthen their health to lead a healthy lifestyle. At the same time, participation in various sports events is recognized as a socially useful cause, because their holding is a guarantee of sports development, which in turn contributes to the formation of spiritual and physical culture of the individual and society as a whole. As for aggression and harm in some sports, it is socially acceptable, as it serves to achieve the above goal. Criminal law should not interfere with sports activities and determine the conditions under which persons who have harmed life or health in the course of sports are exempt from criminal liability. Such tasks are best met by the usual construction of the case, which excludes responsibility for the objective-random result. A person is not subject to criminal liability for causing harm to life or health during sports on the same grounds as a doctor who harms his patient. In this regard, it is advisable to consider certain situations in which harm may be caused to a participant in sports competitions during their conduct.

For example, first, it is possible to cause harm to human health during sports competitions without violating the relevant rules (Saienko, 2016). A professional boxer can strike without breaking the rules, as a result of which the victim may be harmed of any severity or die, or a hockey player with great force sends a puck into the opponent's goal and hits the head of the referee or player, causing damage health, etc. This should be considered as innocent damage in accordance with the

Criminal Code of Ukraine (2001), and the actions of the athlete should not entail not only criminal but also other consequences (disqualification, etc.). Although such actions result in harmful consequences, the athlete does not intend to violate sports rules and cause harm, and his actions cannot be found to be recognized as socially dangerous or illegal.

Secondly, harm to human health is possible due to intentional violation of the rules of the game. In our opinion, in this case the issue of criminal responsibility of the perpetrator should be decided depending on the nature of the consequences (Sushchenko, 2012). If the result of intentional violation of the rules of the competition was the infliction of mild or moderate damage to the health of the victim, the actions of the perpetrator should not entail criminal liability. In case of causing serious damage to the victim's health, liability should be incurred for negligent infliction of these consequences, so in relation to the perpetrator to the consequences, in this case is characterized not by intentional but by negligent guilt.

Third, it is possible to harm human health when an athlete inadvertently violates the rules of the game. For example, a football player puts on a step and the victim is injured as a result of a fall. In this case, the actions of athletes do not constitute a crime. For violations of the rules against him, only the sanctions provided by the rules of the game can be justly applied. In this regard, it is very controversial that criminal liability can occur when the permitted sportsman athlete intentionally or negligently violates sports rules, resulting in damage to the health of another person. This view is quite true when it comes to intentional violations of the rules, and unacceptable when the rules are violated by negligence. As far as we know, there has been no case of criminal prosecution of an athlete who violated the rules of the game by negligence, when such a violation caused harm to the health of another competitor (Śliwa, Saienko & Kowalski, 2021).

Recognition by the state at the regulatory level and the establishment of the procedure for legalization of the sport gives it a legal character. Since the rules of most contact sports provide for a high probability and, in some cases, the need to cause harm, the permissibility of this activity indicates the automatic consent of the state to the admissibility of its infliction (Iasechko, Skomorovskyi, Korolova, Makovetska & Cherntchenko, 2020). Thus, the task of harm to life and health during events in officially recognized (legal) sports is legitimate. This thesis is confirmed in a work which states that the act is provided by the Special Part of the Criminal Code, but in the presence of certain circumstances allowed and, moreover, prescribed by law, at the time of its commission can not be criminal - lawful. Permission includes the consent of the state to conduct sporting events and the probable permissibility of harm within the rules of an officially recognized sport.

As already mentioned, the main form of functioning and manifestation of sports is a sporting event. The category of sports events includes: sports competitions (championships, championships, world cups, European cups, national cups, other official national and international competitions), other events (international and national demonstrations, festivals, competitions, congresses), as well as training and training camp aimed at preparing for their holding (paragraph 4 of the "Procedure for preparing sports facilities and other specially designated places for mass sports and cultural events" approved by the Cabinet of Ministers of Ukraine from 18.12.1998; paragraph 7 of the STA letter regarding the taxation of the cost of food for participants of sports events at the training camp). The temporal and spatial boundaries of these activities should be the normatively defined situation in which there may be legitimate harm to life or health of their participants (Ksonzhyk, Lavrushchenko, Oleksiuk, Saienko & Buryk, 2021).

Damage should be considered lawful only during official sporting events. The formality of a sporting event is characterized by the following features:

- regulation of the established rules (Article 16 of the Law);
- the presence of persons specially authorized to supervise compliance with the rules. The control over the observance of the rules of sports competitions, which contain the requirements for the competitions, is carried out by the sports judges. During training, compliance with the rules must be supervised by a coach or other authorized person (Article 22 of the Law);
- availability in certain cases of permission (decision) of competent entities to conduct it. The basis for events is the decision (order) of the relevant body, on the initiative (or under the auspices) of which they are held: international events - by decision of international sports federations, national - by decision of central executive bodies, regional - by local state administrations or bodies local self-government (paragraph 4 of the Procedure).

Participants in sports events are: 1) athletes; 2) coaches; 3) judges; 4) other participants who, in accordance with the regulations of the competition or the list of participants of the training camp, are included in the approved by the order list of persons participating in the event (Section I "Standards of costs for sports competitions and training camps »Approved by the order of the State Committee of Ukraine for Physical Culture and Sports of 06.05.1998). The category of "other participants" includes sparring partners, assistants, seconds, support, organizational and technical staff and other persons involved in the sporting event.

Thus, it can be pointed out that a gross violation of the rules of sports competitions is a crime with a mixed (double) form of guilt, where its subject intentionally commits the act itself, and the "grave consequences" occur through negligence. In the case of intentional treatment of these

consequences, the subject must be liable under articles of the current Criminal Code of Ukraine, which provide for liability for intentional harm to life and health. Not the least role among the signs of the subjective side of the crime is played by the emotional state of the person, in particular his being in a state of strong emotional excitement (Iasechko & Zaitsev, 2021).

4. DISCUSSION

The formulation of the concept of "crime in the field of physical culture and sports" must be based on the fact that it is specific to the generic concept of the general definition of crime, and therefore should reflect the features that define the act of crime and features that reflect the properties that are characteristic of this group of criminal acts. Therefore, we believe that a crime in the field of physical culture and sports can be defined as provided by the Criminal Code of Ukraine (2001) "a socially dangerous crime that harms or threatens to cause public relations that ensure the full development of physical culture and sports in the country, and which, are protected by the law on criminal liability". The classification of crimes in the field of physical culture and sports, given the multiplicity of acts that can be attributed to this group, provides for their division into groups according to the following criteria: generic object of crime and subject of crime. At the same time, there are still many debatable, insufficient or unexplored issues on this topic. In particular, it has not been finally clarified what is the basis for excluding criminal liability of athletes for causing harm to each other during sporting events, the norms of which of the criminal law institutions should be applied to the settlement of such relations, in which cases it is expedient to raise the issue of criminal liability for these acts, etc.

Thus, when causing harm to human health during sports, the perpetrators should be prosecuted in cases where one of the participants intentionally violates the established rules of sporting events, resulting in harm to human health.

According to the criminal law nature of sports corresponds to the generic doctrinal concept of the circumstance that excludes the criminality of the act:

1) is a set of conditions (factors of reality) that justify the legitimacy of harm to the object of criminal law protection;

2) is determined by the provisions of the legislation of Ukraine;

3) excludes the criminal illegality of a socially dangerous, formally (outwardly) similar to the crime act.

It is substantiated that harm to life and health of a person during sports is not covered by other circumstances that exclude the criminality of the act, including necessary defense, extreme necessity, acts related to risk, as well as existing circumstances in the doctrine of criminal law - consent the victim and the performance of professional functions and responsibilities. Therefore, it was concluded that sports are an independent circumstance that excludes the criminality of the act.

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AUTHOR CONTRIBUTIONS

All authors listed have made a substantial, direct and intellectual contribution to the work, and approved it for publication.

CONFLICTS OF INTEREST

The authors declare no conflict of interest.

FUNDING

This research received no external funding.

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