

# Criminal liability for injuries of competitors arising in the course of sports competition in Polish criminal law

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## abstract

Practicing both high performance and recreational sport involves not only many sacrifices, taking care of one's health and maintaining an appropriate shape, but also risks which result in damage to one's health and, in extreme cases – the death of a contestant. The athletes suffer various types of sports injuries during competitions or training sessions. Much of it is due to the behaviour of another contestant. Therefore, the question is when a sportsman, in the Polish legal system, will be liable for a penalty for the fact that during the competition he caused an injury (sporting injury) to his rival. The criminal liability of sportsmen may be subject to criminal law provisions concerning: causing serious bodily harm, causing other than serious bodily harm, unintentionally causing the death, violating personal inviolability. According to the criminal law, an injury caused as a result of sports activity should be defined as a bodily harm. It should also be pointed out that in the Polish legal system it has been developed by doctrine and reflected in court rulings, the sport risk justification excluding the unlawfulness of the act and thus excluding criminal liability of the competitor causing damage to the health or death of the competitor.

**Key words:** criminal liability, injuries, sports competition.

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## INTRODUCTION

Sport is an important part of social life. In the literature, sport is often described as a conscious and voluntary activity of a human being undertaken in order to satisfy his or her needs for fun, competition, as well as to improve his or her own physical and mental abilities. Sport is expressed through exercises and games practiced according to specific rules. Sport activity, which is systematically practiced according to certain rules, characterized by competition and a tendency to achieve better and better results, aims at manifesting physical well-being [1].

Sport seen as competition is an attempt to mix and compare, under the same conditions and according to the accepted rules, one's strength, athletic prowess, physical and mental abilities. The most significant features of today's sport are competitiveness and striving for the highest achievements, strict specialization and individualization of sports training and martial arts. The basis for the classification of sport is the type of sport competition: with the opponent, with space, with time or for points, e.g. in games.

The two most significant forms of sport are:

- high performance sport, meaning the pursuit of achieving the best result or victory in contests of a regional, national, world or Olympic rank through systematic trainings;
- recreational sport, which seeks to maintain physical well-being, mental relaxation and good mood.

A specific character is sport of children and young people as an element of physical education, sport of women, reflecting the psychophysical features of women and sport of disabled people as a means of rehabilitation [2].

In the Polish legal system, the rules of practicing and organizing sport are set out in the act of 25 June 2010 on sport [3], which contains a legal definition of the term sport. According to art. 2 of the act on sport, sport is any form of physical activity which, through temporary or organized participation, influences the development or improvement of physical and mental condition, the development of social relations or the accomplishment of sports results at all levels. Competition based on intellectual activity aimed at achieving a sporting result is also considered sport. Sport together with physical education and physical rehabilitation, constitute part of physical culture.

Practicing both high performance and recreational sport involves not only many sacrifices, taking care of one's health and maintaining an appropriate shape, but also risks which result in damage to one's health and, in extreme cases - the death of a contestant. The number of sports injuries is currently increasing due to the popularity of sport events, as well as the development of sports technology and equipment that enable people to perform better and better, at the limit of their abilities. Moreover, in some sports, not only contestants but also the audience watching the competition are at risk of losing health or life. The history of sport knows many examples of tragedies that occurred during and in connection with sports competitions. One of the greatest disasters was recorded in 1955 during the 24 Hours of Le Mans motor race, when a car driven by Pierre Levegh flew off the track and fell into the crowd. The accident caused the death of 79 spectators and the driver [4]. Apart from such enormous tragedies, less dangerous events are also noted in sport. Athletes suffer from various types of sports injuries during competitions or training sessions. Many of them are due to the behaviour of another contestant. This is particularly noticeable in contact sports (combat sports, football, rugby). During football, fouls are common and often cause harm to the contestant's health. Some fault-related injuries are so serious that they end a footballer's career. Similar situations occur in other contact

disciplines. Therefore, the question is when a sportsman, in the Polish legal system, will be liable for a penalty for the fact that during the competition he caused an injury (sporting injury) to his rival. The further part of this publication will be devoted to the above issue. The work will disregard the civil liability for events endangering the life or health of sportsmen occurring during the competition.

## LEGAL REGULATIONS IN POLAND

Polish criminal law does not provide a specific legal basis for criminal liability for sports injuries. However, the fact of participating in sports competition (contests, trainings) cannot lead to impunity of brutal non-sporting behaviour causing injury or death of a competitor. The criminal liability of sportsmen may, therefore, be subject to criminal law provisions concerning:

1. causing serious bodily harm (art. 156 of the PCC [5]),
2. causing other than serious bodily harm (art. 157 of the PCC),
3. unintentionally causing the death (art. 155 of the PCC),
4. violating personal inviolability (art. 217 of the PCC).

According to the criminal law, an injury caused as a result of sports activity should be defined as a bodily harm. The term bodily harm includes a disturbance in the functioning of a bodily organ or a health disorder. A disturbance in the functioning of a bodily organ means a violation of the continuity of human body tissues in the form of external or internal injury (e.g. bone fracture) [6: 249]. Whereas a health disorder is a disruption of the functionality of the human body without affecting the integrity of the body. This term refers to both the disruption of the whole organism as well as to each organ. Abnormalities in the functioning of the organism may involve a disturbance of its physical or mental state [7].

The Criminal Code specifies three types of a bodily injury crime, i.e. grievous (art. 156 of the PCC), medium (art. 157 § 1 of the PCC) and light (art. 157 § 2 of the PCC). These acts may be committed both intentionally and unintentionally.

Pursuant to art. 156 § 1 of the PCC, a grievous bodily injury involves:

1. deprivation of sight, hearing, speech or the ability to procreate,
2. another severe disability, a severe, incurable illness or a protracted illness, a life-threatening illness, a permanent mental illness, a permanent total or substantial incapacity to work in a profession or a permanent, substantive disfigurement or deformation of the body.

Medium bodily injury includes bodily injury other than specified in art. 156 § 1 of the PCC, lasting more than 7 days. Whereas a light bodily injury causes a disturbance in the functioning of a bodily organ or a health disorder lasting no longer than 7 days.

Violation of personal inviolability specified in art. 217 of the PCC cannot cause bodily injury defined in art. 156 or 157 of the PCC. Violation of personal inviolability may consist of a punch (blow with a hand, fist, and kick) or other violation of inviolability (pulling, throwing an object at the victim). Violation of personal inviolability is an intentional crime, which can be committed either with direct intent or with possible intent. The perpetrator of this crime is both the one who intentionally wishes to violate the physical integrity and the one who, anticipating that his behaviour may not be acceptable to the victim, agrees to it. The prosecution of a violation of personal inviolability is based on private prosecution (art. 217 § 3 of the PCC). Violation of physical inviolability is an inseparable element of contact sports. Thus, in the Polish legal system, it is assumed that a competitor, by entering

into a competition, agrees to the violation of personal inviolability of competitors during the competition. It is therefore impossible to speak of a crime in such situations. Physical inviolability belongs to the catalogue of interests protected by criminal law, which can be freely disposed of. However, the majority of interests protected by law cannot be violated without any penalty, even with the consent of the victim. Murder or grievous bodily injury - in the Polish legal system - always remains a crime, even if the victim has previously agreed to it and even demanded it. In Polish law, nobody, including those who practice sport, has the right to dispose of someone's life or health. A sportsman can only accept the risk of these negative effects typical of practicing his discipline.

Causing death unintentionally (art. 155 of the PCC) requires the careless behaviour of the perpetrator, which resulted in a person's death. The perpetrator of this crime, although he has no intention of committing it, commits it as a result of failing to observe the required precautions in the given circumstances, even though the possibility of committing this act was predicted or could have been predicted.

The crimes described above belong to the so-called crimes with criminal consequences. Committing these crimes is dependent on the occurrence of the results prescribed for them (the consequence in the form of bodily harm or death of a human being). During the competition, as well as during training, many times the incidents covered by these regulations occur. Practically every kind of contact discipline causes a violation of the personal inviolability. There are also, although rarely, situations involving the death of a competitor. During the competitions, the competitors sustain sports injuries which often result in the disturbance of the functioning of a bodily organ for over 7 days. There are also, although rarely, situations involving a competitor's death. As an example: during the OPEN GI 2016 competition in the hall of the Lubońskie Sports and Recreation Centre, a few minutes after one of the fights, a Brazilian jiu-jitsu competitor fainted. Unfortunately, resuscitation did not help. The man died.

In the Polish legal system, the criminal liability of a sportsman for causing a sport injury to his opponent, including an injury which is the cause of death, is excluded when such an effect was caused under the so-called sport risk justification. Tolerating the risks associated with the sport is based on the idea that it is socially rewarding in view of the benefits and pleasures of sport and the attractiveness of sporting events to the public [6: 136].

## **SPORT RISK JUSTIFICATION**

When discussing the sport risk justification, first it is necessary to refer to the definition of a crime. The literature of criminal law indicates that a crime is a human act prohibited by law under penalty, culpable, unlawful and socially harmful to a degree greater than minor [6: 50]. All the above-mentioned elements of the structure of the crime must occur together. The absence of even one element means that the act cannot be considered a crime.

In the Polish criminal law, there are number of circumstances excluding criminal liability (criminality of an act). Such circumstances also include so-called justifications. In the legal doctrine, it is commonly accepted that justification is a circumstance excluding unlawfulness and thus criminal liability. In criminal law, statutory and non-statutory justification is distinguished. The former is included in statutes which define their criteria (e.g. necessary defense, state of necessity). Whereas non-statutory justifications - as the name itself indicates - do not have their statutory regulations, but have been developed in the doctrine and recognized in judicial decisions.

Sports risk is one of the so-called non-statutory justifications, i.e. circumstances excluding the unlawfulness of a prohibited act. A contestant acting within the conditions of a counter-attack of sports risk formally exhausts the signs of some kind of crime (e.g. causes serious bodily injury to a rival), but his action is not unlawful, and therefore does not constitute a crime. A sport risk justification refers to the interaction between contestants during a competition or training when one contestant causes death or injury to another one. In such a case, if this event occurs under circumstances which meet the conditions of the sport risk justification, the perpetrator shall not be held criminally liable [8].

The grounds for the sport risk justification are not uniformly presented in the literature of criminal law. Without pretending in the terms of this publication to try to unify slightly different positions of doctrine, reference should be made to Lech Garlicki, who states that the exclusion of criminal liability on the basis of the sport risk justification for the injury or death of an opponent takes place when the following conditions are jointly fulfilled [6: 136-137]:

1. death or injury occurred while practicing a permitted sport discipline,
2. the action was taken for a sporting purpose, i.e. to defeat another player or team in a team sport,
3. the perpetrator of the result in the form of death or injury obeyed the rules binding in a given sport discipline.

In the Polish legal system, Polish sports associations have the exclusive right to establish and implement, organizational and disciplinary rules in sports competition organized by the association, as provided for in art. 13 section 1 point 2 of the act on sport. Sports rules have a central place in the assessment of a competitor's criminal liability for the death or injury of a rival. All sports rules established by Polish sports associations are similar to those of international sports organisations of which a given Polish sports association is a member (e.g. the sport, organisational and disciplinary rules in force at the Polish Football Association are equivalent to those of FIFA) [9]. In the literature, the term "sports principles" refers to all rules regulating the course of sports competition in a given sport, both from the organisational and disciplinary side. Sports rules also include rules that affect the broadly understood safety of sportsmen during competition. Sports principles are not only written, but also derived from custom; in particular, fair play rules are referred to as such [10: 150].

The safety rules prohibit certain activities that are dangerous to the life and health of competitors or a sport group, e.g. a ban on lifting one's leg too high in football, or a ban on hitting below the belt in boxing. The safety rules impose certain duties of care on competitors. These rules prevent the game from becoming a dangerous one and prevent from sport accidents. Safety rules by their purpose and content may, from a legal point of view, form the basis for assessing a contestant's behaviour. There are certain categories of safety rules: injunction, prohibition, rules on personal protective equipment, rules on equipment (vehicles) and rules on the security of sports facilities [10: 164-165].

The issue of violating the principles of a given discipline in the past has been discussed both in literature and in the jurisprudence. The Supreme Court in its judgment of 27 April 1938 expressed the opinion that a contestant who follows the existing rules of the game does not exceed explicit rules or those arising from the rules of the game and is acting only for sporting purposes acts legally. Any exception to these conditions deprives the contestant's action of the legal character and leads to possible criminal repression, depending on the type of fault and the intentional or consequential harmful effects of the act [11]. The importance of sporting rules was also pointed out by the Supreme Court in its judgment of 8 July 1968, indicating that the more dangerous a given type of sport is, the

more scrupulously the established sporting rules must be obeyed. Anyone who contravenes these rules commits a tort, resulting in an obligation to compensate a damage [12].

Currently, there is no catalogue of sports disciplines allowed to practice in Poland. Such a catalogue existed in the period from 17 July 1985 to 6 July 1996, during the period of validity of the act of 3 July 1984 on physical culture [13]. This catalogue was initially contained in the attachments to the bylaws of the Chairman of the Main Committee for Physical Culture and Sport, dated 17 June 1985, on sports permitted in the country and the scope of that admission [14], and later in the attachments to the bylaws of the Chairman of the Physical Culture and Tourism dated 7 July 1993 [15] amending the above-mentioned bylaws and binding since 22 July 1993. In the act on sport of 25 June 2010, the legislator did not specify a list of sports disciplines allowed to practice in Poland; however, the act imposed an obligation on the Minister of Sport to maintain a list of Polish sports associations. The list is published on the website of the office supporting the Minister of Justice, as stipulated in art. 11 section 5 of the act on sport. Establishment of a Polish sports association requires the consent of the Minister of Justice (art. 11 section 6 of the act on sport). Thus, it is possible to freely determine which sports are allowed to play and which rules of the game apply to a given sport. It should be pointed out that there are sports in Poland which have no sport association but are allowed. As an example, tug-of-war can be given. The Tug-of-war Association in Poland was registered in 2012. It would be incorrect to say that tug-of-war has been a legal sport in Poland only since this year. Illegal sports are those that violate the law when you practice them. An example of illegal sports is night-time car racing on the streets of the city. By breaking the traffic code, they are not allowed and, therefore, illegal [16].

In Poland, there is no specific sports prohibition, although in the past there were some categories of sports which were reserved for men only, e.g. boxing, weight lifting, or rugby [10: 137].

Coaches, sports referees or competition organizers may also be held criminally liable for death or injury of a contestant. Moreover, during the contest, not only the competitors but also the audience can be subject to unfortunate events. As an example of this, reference can be made to the tragedy that occurred during a hockey match in France in 2014. During the match between HGD Dunkerque and Reims, the puck fired from the surface and hit the head of a boy sitting in the tribune. The boy was taken to the hospital where he died. Similar tragedies can occur at training or tournaments in athletics competitions, such as hammering, disc throwing or javelin throwing.

In Poland, the Supreme Court has often expressed its opinion on the criminal liability of coaches or competition organizers for events affecting the life or health of competitors. In the ruling dated 25 April 1973, the Supreme Court indicated that a sports coach is under a special obligation to ensure the proper conduct of training, not only in terms of compliance with the rules of combat applicable in a given sport, but also in terms of the suitability (fitness, health, etc.) of players for participating in training. This obligation applies in particular to boxing trainings, always involving greater dangers than in another sport. Therefore, if a boxer who is to take part in the training declares to the coach that he is unable to take part in the training due to his health, and the coach is not able to consult the doctor, or has failed to consult the doctor, he is obliged in any case to release the boxer from the training [17]. Thus, the lack of an adequate response to complaints regarding the bad condition of a player preparing for the competition may result in criminal liability of the coach. On the other hand, the verdict of the Supreme Court, dated 24 November 1969 indicated that practicing certain sports is always connected with risk, hence its side effect – accidents – happens. It is especially frequent and more dangerous in the case of a sport

such as boxing. In this discipline, the violation of physical integrity is an essential part. Therefore, there are strict rules of the game or fight, the obedience to which is aimed at reducing the danger of bodily harm or death to a minimum, and the more scrupulous the observance of these rules is, the more dangerous the type of sport is. The consequences of allowing a player who is not classified as a boxer, inexperienced and physically weak to compete in a boxing competition shall be the responsibility not only of his home club, but also of the club hosting and organizing the competition, which was required to at least object to the participation of such a boxer in the competition. Failure to comply with this obligation constitutes organizational negligence, as a sign of lack of due diligence and care for maximum safety of all competitors participating in the fights by their proper selection and classification [18]. The liability of the organizers of sports competitions for bodily injury or death of the competitors was also discussed by the Supreme Court in a judgment of 9 July 1977. The subject of the case was the death of one of the participants of the Junior Championships in cross-country skiing. In the reasoning of the judgment, the Supreme Court expressed that not every violation of the rules of the Ski Sports Regulations by the competition organizers results in criminal liability. However, there is no doubt that a number of provisions of these regulations have, among others, the safety of the competitors in mind. Ensuring adequate safety has been introduced in particular through provisions limiting the scope of the difficulties, specifying the location of the gates on the route, or limiting the speed of the competitors. Also important are the provisions of the Ski Sporting Regulations, which impose on the organizers of the competition the obligation to secure the routes on sections where a possible technical error of the competitor threatens to fall off the route and hit solid elements, such as a tree. Thus, the competition coordinator can be held criminally responsible if he violates the rules and regulations in force and at the same time creates conditions for the competition in which a possible easily predictable technical error of the competitor will lead to a situation in which the competitor will be exposed to an immediate danger of losing life or serious injury [19].

## CONCLUSIONS

Sport is essentially associated with the risk of unfortunate events that could damage the health or life of contestants during the competition. Sportsmen who take part in competitions or trainings are aware of this, but they assume that they will avoid it. Unfortunately, many athletes ended their sporting careers too early as a result of unfortunate events, especially in high performance sports. The Polish legislator did not stipulate any special legal regulations governing criminal liability for events endangering the life or health of persons actively practicing sports. Therefore, only the provisions of the Polish Criminal Code, in particular the provisions regulating crimes against life and health, may be applied in such events.

It should also be pointed out that in the Polish legal system it has been developed by doctrine and reflected in court rulings, the sport risk justification excluding the unlawfulness of the act and thus excluding criminal liability of the competitor causing damage to the health or death of the competitor. The exclusion of criminal liability of a competitor causing this undesirable effect occurs when the following conditions are jointly met: practicing the sport in question is allowed, the action was taken for sporting purposes and the rules of the sport in question were not violated during the competition.

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