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## LEGAL RESPONSIBILITY IN THE FIELD OF SPORT: SOME PROBLEMATIC ASPECTS

*The issue of legal responsibility in sports is debatable and ambiguous. On the one hand, there is no prohibition on the application of current rules of civil, administrative or criminal law in the field of sport. On the other hand, sport is an autonomous sphere of human activity, and sports bodies claim to regulate all relations in the field of sport, including tort. At the same time, it should be clearly understood that offenses in the field of sports are divided into those committed in connection with sports activities and those that are not closely related to sports activities. Accordingly, both the qualification of such acts and the bodies authorized to prosecute for such offenses will differ significantly. For example, the infliction of harm by one athlete to another during a game differs significantly from the infliction of the same harm by one fan to another while observing the game. If in the first case the case will be considered by the disciplinary bodies of the respective federation, in the second – by law enforcement agencies on general grounds. In this case, in the first case, the act itself will be qualified as a violation of the rules of the game, and in the second – an ordinary administrative / criminal offense. In view of this, clear rules for distinguishing between legal liability and quasi-legal liability for sports offenses are of particular importance. Equally important are the issues of distribution of competence of state judicial and law enforcement bodies and authorized bodies in the field of sports on the application of measures of responsibility to violators. Thus, the purpose of the article is to clearly delineate the types of offenses in the field of sports and to clarify the specifics of the application of liability for such offenses. The conclusions reached by the author of this article can be used for law enforcement and lawmaking.*

**Key words:** legal responsibility, offense, quasi-legal responsibility, composition of the offense, signs of the offense.

### Панченко Б.М. ЮРИДИЧНА ВІДПОВІДАЛЬНІСТЬ У СФЕРІ СПОРТУ: ДЕЯКІ ПРОБЛЕМНІ АСПЕКТИ

*Питання юридичної відповідальності в спорті є дискусійним і неоднозначним. З одного боку, немає жодної заборони для застосування чинних норм цивільного, адміністративного або кримінального законодавства у сфері спорту. З іншого боку, спорт є автономною сферою людської діяльності, а спортивні органи претендують на регулювання всіх відносин у сфері спорту, зокрема, й деліктних. При цьому, слід чітко розуміти, що правопорушення у сфері спорту розподіляються на такі, що вчинені у зв'язку із спортивною діяльністю, і такі, що не мають тісного зв'язку зі спортивною діяльністю. Відповідно, і кваліфікація таких діянь, і органи, уповноважені притягати до відповідальності за такі правопорушення, істотно відрізнятимуться. Наприклад, завдання шкоди одним спортсменом іншому під час гри істотним чином відрізняється від завдання такої ж шкоди одним вболівальником іншому під час спостереження за грою. Якщо в першому випадку справа буде розглянута дисциплінарними органами відповідної федерації, то в другому – правоохоронними органами на загальних підставах. При цьому, в першому випадку саме діяння буде кваліфіковане, як порушення правил гри, а в другому – ординарне адміністративне/кримінальне правопорушення. З огляду на це, особливого значення набувають чіткі правила розмежування юридичної відповідальності і квазі-юридичної відповідальності за правопорушення у сфері спорту. Не меншого значення набувають питання розподілення компетенції державних судових і правоохоронних органів та уповноважених органів у сфері спорту щодо застосування заходів відповідальності до порушників. Отже, метою статті є чітке розмежування видів правопорушень у сфері спорту і з'ясування особливостей застосування відповідальності за такі правопорушення. Висновки, яких дійшов автор цієї статті, можуть бути використані для правозастосовчої та законотворчої діяльності.*

**Ключові слова:** юридична відповідальність, правопорушення, квазі-юридична відповідальність, склад правопорушення, ознаки правопорушення.

**Formulation of the problem.** Because sport is characterized by significant psycho-emotional stress, offenses in this area often occur in a state of strong emotional excitement. An obvious example is the removal of the famous football player, captain of the French national team, Zinedine Zidane in the match for the 2006 FIFA World Cup, when he violated the rules against the opposing player,

Italian defender Marco Materazzi, hitting his head in the chest. The incident became incredibly popular in the media. Allegations of Zidane's affect were made as a result of constant violations of the rules against him, and Materazzi's remark about Zidane's sister was the last straw. However, the difference may be in the cultural context: if for Materazzi it could be just a joke, in the cultural environment of

Zidane it is an unacceptable insult, which should be responded to immediately. It is difficult to say what was happening in the minds of the captain of the French national team at this time, but the result was clearly documented in the video. In particular, it shows that M. Materazzi did not expect such a reaction, which was later confirmed by him in the press. So, the so-called the “state of affect” is just one of the assumptions about why players grossly break the rules and what responsibility should be applied to them.

For example, it is known that after the incident, both participants paid a FIFA fine, receiving disqualification: Zidane – for three matches, Materazzi – for two. 4,800 and 3,200 euros, respectively, were collected from the players in favor of FIFA. However, if Materazzi died as a result of a blow to the chest, it would be necessary to find out all the circumstances of the tragedy, in particular, what psycho-emotional state Zidane was in at the time of the injury and whether there was intent to such consequences. For example, in Ukrainian law, the establishment of physiological affect (strong emotional excitement) is associated with determining the state of insanity (Criminal Code of Ukraine, Section VIII “Circumstances precluding criminal wrongdoing”) at the time of necessary defense (Part 4 of Article 36) or extreme necessity (Part 3 of Article 39), as well as mitigating circumstances (paragraph 7 of Part 1 of Article 66). In this case, Zidane could refer to paragraph 7 of Part 1 of Art. 66 of the Criminal Code of Ukraine, if he really proved that he was in a state of strong emotional excitement. Depending on his attitude to the consequences, most likely, he would be charged under Art. 116 or 119 of the Criminal Code of Ukraine [1].

**The results of the study.** According to Buyanova [2], the guilt of the sports team is manifested in the will to act and is a conscious violation of sports law and norms (measures) of the safety of sports in a particular sport. Since the sports team does not have its own psyche, it is impossible to talk about the presence of the attitude to the action as a mental attitude of the team, or its evaluation, awareness of the action, and the consequences from a mental point of view. Instead, being a social unit, a union, a group of people, the will of the team is a social phenomenon. From this point of view, the will of the sports team and its evaluation, attitude, awareness of action is also a social phenomenon that distinguishes the sports team as a social group, whose will is not reduced to the sum of the will of each individual team member. From this point of view, the misconduct of an individual team member

is not a misdemeanor, however, in the presence of collective will and establishing actions or inactions taken by the team as an independent social group to achieve a collective goal (through collective efforts), it is possible to establish the subjective side of the offense by the sports team. Thus, to establish the guilt of the sports team must take into account the collective goal, purpose, motive as characteristic of the collective attitude of the concepts that are not reduced to team members, but are attributes of the sports team as an independent social group.

A common view is that the object of the offense should be understood primarily as a public relationship protected by the rule of law, in which the offense may cause or cause harm. The object of the offense can also be understood as the rule of law as a certain state of affairs, which is protected by law, and its violation plays the role of an unbalancing event that encroaches on the rule of law. Criticism of the object of the offense as public relations is that, as a rule, the injured party has little interest in the fact that the damage was caused to public relations – not at all – the first thing that infuriates her is that the damage was caused to the subject rights, in particular, to those goods and values that belong to him, and not just the system of social relations, the participant (party) of which is the victim of the offense. The object of the offense as a social relationship is criticized precisely in the sense that this concept is poorly applicable in real life, in particular, in practice, when you need to consider a specific case of bringing the subject of sports relations to justice. As a result, it is more practical to use as an object of offense not just social relations, but the concepts of good and values that can be expressed in the objects of the material world. However, it cannot be said that public relations and good / values are in competition for the title of the only object of the offense. For example, the object of the offense as a social relationship is more general in its scope than the good or value that may exist in the context of public relations, so it is more about the level of generalization. In addition, if we take into account, for example, the formal composition of the offense, then it is more appropriate to apply the category of public relations as an object, or even law and order (e.g., being in the stadium without permission, intoxication, presence or use of prohibited items/substances, according to Part 3 of Article 17, Article 18 of Law No. 3673-VI, does not provide for the occurrence of socially harmful consequences for the qualification of relevant acts as an offense, in contrast to illegal conduct in the form of law and order).

Buyanova notes that the concepts of good and value are not clear for the legal qualification of the act as an offense, as good and value may be in conflict when the value that is a characteristic of the object for the individual does not necessarily coincide with the concept of good, which claims the objectivity of its existence, that is, it is good for all citizens, which is why it can be protected by law, as opposed to individual value. Thus, the public good is contrasted here with individual value, which is problematic because the theory seeks a more universal approach to the categorization of concepts for a clear, consistent qualification of what is the object of the offense in sport. The main conclusion that is made in this regard – the value itself is not the object of the offense, as it is not protected by law in public relations, representing a characteristic feature of individual subjects [2].

Aparov [3] notes that public relations in the field of sports are a “social reality”, which consists of subjects, objects, and their interactions, including the interests of subjects and the establishment, change, termination of rights and responsibilities that arise between them.

According to Art. 4 of the Law “On Physical Culture and Sports” [4], universal values, justice, humanism, international standards in sports, equal rights and opportunities, etc., recognized by the state principles, or principles, policies in the field of physical culture and sports, from which it can be concluded that goods and values listed in Art. 4, are under state protection, as the legislator has recognized them as such.

The vectors of the Ukrainian state’s policy are to increase the level of representation of young and talented athletes, promote the comprehensive development of the population, increase Ukraine’s prestige in the international arena, and promote a healthy lifestyle. Improvements in the areas of high-achievement sports, inclusiveness, and accessibility of sports infrastructure are proposed. From this point of view, the document focuses on public relations as an object, emphasizing that the imperfect functioning of various aspects of sports needs to be corrected, and suggests ways to solve this problem, outlining the goals and objectives of such improvement. Thus, the object here is the social relations between the participants in the field of sports, which, however, does not prevent the allocation as an object in the areas of improvement of sports certain benefits, such as a healthy lifestyle, sports culture among the population, availability of sports infrastructure, inclusiveness, employment,

the right to play sports and free choice of sports activities, etc.

The object of the offense can mean what the activities of the subject were aimed at. As an example, the concepts of good, value, social relations are often given in the legal literature. From this point of view, the object is not a dynamic category. The intervention of the subject, the direction of his actions, his activities, concerning the object of the offense, do not change the essence of the latter, because as an essence it exists intangibly. For instance, an athlete who has harmed another athlete is unable to change the nature of the legal relationship in the field of sport that is related to the life and health of the participants in the sporting event. However, the material expression of the athlete’s health, his well-being, specifically – parts of his body, etc., is damaged. Related to this is the classification of the object of the offense into general, generic, specific, and direct, among which the latter sometimes distinguishes the subject of the offense – the object of the material world, which suffered as a result of the unlawful intervention of the offender.

The subject of the offense may be the property of a sports club, sports equipment, structural parts of a sports stadium, etc.

However, much more meaningful for the qualification of a legal fact as an offense is the attitude to the object, first of all, as to the ideal essence – legal (social) relations. There is also a point of view, according to which the object of the offense is the dialectical unity of social relations and good, values, which are expressed in these legal relations [2]. Thus, the damage to the athlete’s health as an ideal category has its material expression in the direct negative change of parts and condition of the victim’s body due to physical interaction between him/her and the perpetrator.

Under normal or desirable conditions of sports relations as a social phenomenon, when they contribute to the physical, cultural, spiritual, intellectual development of individuals or social groups or at least not harm, sports offense is an interference in this process that upsets the balance of public and private interests, which is manifested in the free sports activities of individuals in compliance with socially approved norms and rules of conduct approved by regulations, customs and morals, as well as spoils the quality of legal relations in sports, although, it does not change their essence, which is the interaction between subjects of sports law. From this point of view, the offense in sports is the dysfunction of sports relations, which occurred through the fault of the tort subject. Because the

object of the offense is damaged, the sports relationship at the time of the offense does not work or does not work properly, resulting in damage to the goods and values that exist in the sports relationship, such as damage to property or life and health of the victim.

Usually, the objective side of the offense refers to its external manifestation (a form of expression) [2], while the object is internalized – refers to the essence of what the violation was aimed at, that is, those social relations (according to the most general definition), as a result of which there is an imbalance in their functioning.

According to the criterion of socially harmful or dangerous consequences, the offense may have a material or formal composition, in which the material composition of the offense – the occurrence of negative consequences and the causal link between the act and the consequences. To qualify an offense with formal composition, it is sufficient to commit an illegal act without consequences.

The objective side of the offense does not include thoughts, desires, worldview, however, the time, circumstances, and place of the offense as a property of objective reality are taken into account in the objective side of the offense in its qualification. Thus, the characteristics of the objective side of the offense are categories that do not depend on the attitude of the subject, are objective, real, in nature, are a manifestation of facts or events that occurred in space and time for appropriate reasons, and may be qualified as an illegal act.

An illegal act is considered to be a violation by a person of the limits of permissible behavior, which arises as a result of the appropriate attitude of the person to the public relations in which the offense was committed. Thus, when committing an illegal act, a person actually has an illegal attitude to public relations, law and order, public good or value. At the same time, for the objective side of the offense, it is important how such an attitude was manifested in reality, that is, the ways, methods by which the offense was committed. This means that the objective side of the offense takes into account whether the act coincides with the prohibition. To do this, the action must take place in space-time so that we can qualify how the person acted within a certain period of time so that it is possible to establish the circumstances of the case. From this point of view, the offense can occur both singularly, for example, single doping, and be stretched in time, for example, manipulation of sports results. One way or another, from the point of view of the

objective side of the offense, we are dealing with facts that occurred in reality, correspond to the disposition of the rule of law, and therefore coincide with the implementation of illegal activities (committing an illegal act).

From this point of view, it is impossible not to mention the material and formal composition of the offense. In the first case, the occurrence of negative social consequences and causation is mandatory for qualification, for example, damage to the property of the athlete / club / stadium or manipulation of the outcome of a sporting event that harms such social (sports) values as fair play, integrity in sports, entertainment and unpredictability of sports competitions. In the second case, the very fact of violating the limits of permissible behavior is sufficient, for example, being in a sports stadium in violation of the rules of conduct for visitors. However, while such a distinction can be considered somewhat conditional, as, for example, a prohibited stay in a stadium can be considered a violation of law and order or the safety of a sporting event as a result of an offense, it is indisputable that in terms of establishing objective parties to the offense, we are dealing with a person's attitude to the rule of law, which is reflected as a fact of reality, ie, has a factual, valid, objective, real nature as an illegal act, which consists in violating the rule of law. From this point of view, a person is in conflict with the rule of law or puts himself above it, which is established as a legal fact, that is, took place in reality, and coincides with the prohibition provided by law. Thus, the objective and subjective aspects of the offense are interrelated, as the subject's internal attitude to the rule of law finds its true expression in violation of the permissible conduct, which coincides with the statutory prohibition, which is an external form of expression offense (objective party).

**Conclusions.** Thus, the application of legal responsibility in sports is a problem given that the field of the sport itself is specific. Accordingly, it is often impossible to properly classify an offense committed in the field of sport. At the same time, taking into account the autonomous status of sports concerning the general law and order, certain aspects of liability for offenses in sports may be regulated by local acts of sports organizations. Given this, clear rules for distinguishing between legal liability and quasi-legal liability for sports offenses are of particular importance. This study is an attempt to establish these principles of delimitation of liability for sports offenses.

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