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SANCTIONS IN SPORT: INTERNATIONAL-LEGAL EXPERIENCE

Bringing to justice for violations in the field of sports is one of the most controversial issues in modern sports. This fact is connected, first of all, with the existence of the principle of sports autonomy. In particular, in the field of sports there is its own system of arbitration courts, which apply in their activities mainly quasi-legal acts issued by the governing sports bodies. In addition, the field of sports claims to be completely independent of the governing influence of government agencies on any relations in this field. Some researchers, however, believe that sport has de facto formed its own specific legal order. Accordingly, it is sometimes quite difficult to establish the boundaries of those relations that are subject to self-regulation and those that should be regulated by law. Issues of bringing to justice for sports offenses belong to this problem category. The authors of the article explored a particular aspect of legal liability in sports, namely - the problem of sanctions. At the same time, the foreign experience of applying sanctions for violations in the field of sports was carefully analyzed, as the domestic practice of applying sanctions for offenses in sports has not yet been fully formed. Moreover, the domestic Supreme Court takes the position that all disputes in the field of sports should be considered by the governing sports bodies. At the same time, in foreign countries, general courts often accept similar cases. Thus, a careful analysis of the jurisprudence of Canada and the Czech Republic led to the conclusion that even despite the risky nature of sports in itself, there are mechanisms to bring violators to justice, in particular - in terms of compensation. At the same time, the subjective side of the offense in the field of sports is subject to legal analysis in a slightly different way than in all other cases. In particular, a person will be found guilty of committing an offense only if there is intent to violate the rules of sport and commit an offense.

Key words: sport, sanctions, sports disputes, case law, sports law.

Ткалич М.О., Толмачевська Ю.О. САНКЦІЇ У СПОРТІ: МІЖНАРОДНО-ПРАВОВИЙ ДОСВІД

Можливість притягнення особи до юридичної відповідальності за правопорушення у сфері спорту є одним із найбільш дискусійних питань у сучасному спорті. Цей факт пов'язаний, насамперед, з існуванням принципу спортивної автономії. Зокрема, у сфері спорту існує власна система третейських судів, які застосовують у своїй діяльності переважно квазіправові акти, видані керівними органами спорту. Крім того, сфера спорту претендує на повну незалежність від керівного впливу державних органів на будь-які відносини у цій сфері. Деякі дослідники, проте, вважають, що спорт де-факто сформував свій специфічний правопорядок. Відповідно, іноді досить важко встановити межі тих відносин, які підлягають саморегулюванню, і тих, які мають регулюватися законом. До цієї проблемної категорії належать питання притягнення до відповідальності за спортивні правопорушення. Автори статті дослідили окремий аспект юридичної відповідальності у спорті, а саме – проблему застосування санкцій. При цьому ретельно проаналізовано зарубіжний досвід застосування санкцій за правопорушення у сфері спорту, оскільки вітчизняна практика застосування санкцій за правопорушення у спорті ще не сформована в належній мірі. Більше того, вітчизняний Верховний суд дотримується позиції, що всі спори у сфері спорту мають розглядатися керівними спортивними органами. Водночас у зарубіжних країнах загальні суди часто приймають подібні справи. Таким чином, ретельний аналіз юридичної практики Канади та Чехії дозволив зробити висновок, що навіть незважаючи на ризиковий характер спорту сам по собі, існують механізми притягнення порушників до відповідальності, зокрема – в частині відшкодування шкоди. При цьому, суб'єктивна сторона правопорушення у сфері спорту підлягає правовому аналізу децю інакше, ніж у всіх інших випадках. Зокрема, особа буде визнана винною у вчиненні правопорушення лише за наявності умислу на порушення правил спорту та вчинення правопорушення.

Ключові слова: спорт, санкції, спортивні спори, судова практика, спортивне право.

Sports activities are a type of human activity that is associated with an increased risk of damage to property, health, life of individuals or property of legal entities. At the same time, the current legislation does not contain special norms that would provide for the peculiarities of the application of tort liability in sports. Accordingly, the damage caused by the athlete during sports activities must be compensated according to the rules of general tort.

In civil law, in contrast to criminal law, the principle of presumption of guilt applies, respectively, to avoid civil liability of the athlete must prove the absence of his guilt in causing harm. Otherwise, the athlete must be liable for the damage caused to others on general grounds.

In this case, guilt, as a person's mental attitude to the act committed by him, may exist in the form of intent and negligence. Accordingly, a player who intentionally injures the goalkeeper while trying to take possession of the ball must compensate for the damage caused to the goalkeeper. At the same time, in most cases it is almost impossible to establish the fact of intentional infliction of harm to another athlete. However, the lack of intent of the athlete to cause harm to another person does not indicate the absence of guilt as such, and, accordingly, the lack of conditions and grounds for civil liability. After all, the careless task of harming another athlete will also indicate the guilt of the perpetrator. At the same time, there is another problem of qualifying the athlete's action as illegal. It is about the inability to clearly define the boundary between negligent harm by wrongful conduct, ie violation of established rules of sport (damage is reimbursed under the rule of general tort), lawful conduct of a person within the established rules of sport, which resulted in damage (under current law (there is no obligation to compensate for damage), and the conduct of a person outside the established rules of the sport, which is not illegal, but as a result of which damage was caused (under current law there is no obligation to compensate for damage). As for the lawful conduct of the athlete, the rule of Part 4 of Art. 1166 of the Civil Code of Ukraine, the damage caused by lawful acts is subject to compensation in cases expressly established by law. It seems that the relevant relationship may arise in the case of damage with the consent of the athlete, within the rules of the sport.

For example, football "kicks" are associated with the possibility of harm to the athlete, but his implicit actions, the player agrees to the possibility of applying similar techniques to himself. Consecutive actions in this case are to agree with the rules of football and the direct entry of the athlete on the field.

It is also not uncommon for damage to be caused by the intent of the victim. In particular, athletes are often fully aware of the possibility of harming each other as a result of a dangerous act (for example, a deliberate collision of rugby players with their heads). In this case, the damage caused by athletes to each other is not subject to compensation, as its infliction is due to the intent of each of them.

Moral damage caused by the athlete is also subject to compensation. Thus, according to Part 1 of Art. 1167 of the Civil Code of Ukraine such damage must be compensated by the person who caused it by his guilty actions. Non-pecuniary damage should be understood as non-material losses due to moral or physical suffering or other negative phenomena caused to a natural or legal person by illegal acts or omissions of others. Accordingly, moral damage caused by the wrongful acts of one athlete against another is subject to full compensation.

Sanctions in sport through the prism of doctrinal provisions and the practice of Canadian courts

Canadian litigation on sports disputes is rich in precedents. In the period from 1970 to 2005, a total of more than 100 sentences were handed down in similar cases (Yates, & Gillespie, 2002). Consider textbook cases. In the case of *Agar v. Canning* (Man. Q.B., 1965), the plaintiff was injured in the eye in a hockey match. The court found the defendant guilty of damages and ordered compensation to be paid, but reduced the amount due to the circumstances of the case and the nature of the game. The Court of Appeal upheld the decision (Fast, 2004). It should be added that the reduction in compensation was due to the partial fault of the victim himself, which in the Canadian doctrine of sporting sanctions is called "partial negligence".

In the cases of *Regina v. Green* (Ontario Provincial Court, 1971) and *Regina v. Maki* (Ontario Provincial Court, 1970), the court acquitted both of them based on the insignificance of the damage caused by Green, who started the fight, and self-defense by Mecca (Yates, & Gillespie, 2002).

In the case of *R. v. Ciccarelli* (Ontario District Court, 1989), The Court of Appeal refused to consider the arguments of the defense that the injuries inflicted on the plaintiff should be considered as those that could normally be obtained during the game of hockey. The court decided to apply the approach typical of *R. v. Cey* (Saskatchewan Court of Appeal, 1989), Which was to determine the objective criteria for going beyond the normally expected episodes of the game, therefore, taking into account the fact that the victim was hit three times with a stick in the head after the referee's whistle, was committed with

malicious intent and goes beyond what is expected and what the athletes agree to during the game, the defendant was found guilty by a court decision, sentenced to 1 day in prison and obliged to pay compensation to the victim for \$ 1 thousand (Fast, 2004). The NHL, in turn, suspended the culprit's participation in the competition for 10 days, which cost him \$ 25 thousand salaries (Yates, & Gillespie, 2002).

The responsibility of owners of sports facilities, spectators are also provided. Thus, in all provinces of Canada, the so-called Occupiers' Liability Act applies in different variations, according to which owners or users of sports facilities must take care of the safety of spectators when watching sports (Fast, 2004). However, deviations from such rules are known. For example, in the case of *Elliott v. Amphitheater Ltd.* (Man. S.Ct., 1934), the plaintiff received a puck while sitting close to the ice arena. The court refused to satisfy the claims, placing the responsibility on the plaintiff because he was a hockey player and had to be aware of all the risks of being in his chosen place (Fast, 2004). Thus, the court found that the owners or users of the grounds are not responsible for any actions of spectators on the territory of sports facilities.

Australian case-law

It is also worth paying attention to Australian case law. It is characterized by a stricter attitude of the courts to the autonomy of sport. For example, The High Court of Australia in *Rootes v. Shelton* (1967) along with The New South Wales Supreme Court in *Frazer v. Johnston* (1989) expressed the view that the rules of the game are not decisive for any responsibilities, but are only partially relevant to the circumstances of the case (Podosky, 1994). The Supreme Court of Queensland, in the case of *Hilton v. Wallace* (1989), refused to find the defendant guilty of causing injury to the plaintiff, which resulted in the loss of vision in one eye because the defendant's actions were part of the "normal risks of the game." During the rugby match, there was a fight between them in the fight for the ball. However, in the cases of *R. v. Billingham* (1978) and *R. v. Johnson* (1986). Defendants, rugby players, were found guilty of causing grievous bodily harm (jaw fracture and bitten ear, respectively) (Podosky, 1994). In the case of *R. v. Heke* (1991), 10 players died as a result of a head-on collision in the air fighting for the ball with an opponent. The defendant was charged with manslaughter. During the trial, it became known that the deceased had a clinical background, which indicates that he had suffered a stroke in the past, at the time of the tragedy could not be considered a player in excellent

shape and good health. The accused was acquitted. As we can see, the principal criterion of distinction for Australian courts is the intentionality of the act. Also, a prerequisite is the court's confidence in the arguments that indicate the guilt of the act beyond a reasonable doubt (Podosky, 1994).

Sanctions in the field of sports in the Czech Republic

Let us also turn to the practice of the Czech courts. As Kralik (2015) points out that the textbook for all legal regulation in the context of sports torts is the decision 10 Co 190/7684 of the Municipal Court of Prague, dated May 17, 1978. According to him, a violation of the rules of the game should be qualified as an act contrary to the obligation to take care of health (according to Article 415 of the Czech Civil Code (2012), everyone is obliged to behave in a way that does not harm health, property, nature or the environment). According to Art. 420 (1) of the Czech Civil Code, a person is obliged to compensate for damage caused by the breach of duty established by law.

Corruption crimes

The problem of bribery does not bypass the sphere of sports. One of the most notorious corruption scandals in history occurred in Italy in 2006. It featured Serie A giants (Juventus, Milan, Lazio, etc.). As a result of the investigation, those involved were identified and sentenced to various types of punishment, including imprisonment. They were also subject to sanctions such as life imprisonment for sports activities, and sports clubs were disqualified from the major leagues (BBC Sport, 2006).

Thus, it is obvious that tortious relations in sports are complex and require proper legal regulation. At the same time, the level of legal regulation of these relations is currently insufficient. In particular, the Civil Code of Ukraine does not fully allow to take into account the full range of problematic relationships that may arise in connection with the infliction of harm by an athlete to another athlete during sports activities. In our opinion, it is expedient to classify the offenses committed in the field of sports as special. Among other things, it is advisable to explicitly provide by law that an athlete is presumed innocent of causing harm to another athlete until proven otherwise by a court. In addition, it is necessary to establish clear criteria for distinguishing between forms of guilt and distinguishing guilty wrongdoing from lawful conduct of athletes, which resulted in harm to another athlete. It is also inappropriate to oblige the athlete to compensate for non-pecuniary damage, taking into account the increased risk of sports activities as such and the awareness of the victim of this fact.

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