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Svitlana KOROHO ©
Ph.D. (Law),
Senior Lecturer
(Dnipropetrovsk State
University of Internal
Affairs), Ukraine



Yuliia HALENKO ©
Senior Lecturer
(Dnipropetrovsk State
University of Internal
Affairs), Ukraine



**José Miguel Costa
BARRETO** ©
Colonel
(Guarda Nacional
Republicana),
Portugal

CRIMINAL LIABILITY OF ATHLETES FOR SPORT INJURIES OR DEATH DURING COMPETITIONS

Abstract. This article studies the legislation of Ukraine in force and scientific papers reflecting the issue of causing harm to athletes, fans and other participants of sport events, as well as liability in case of death or injury of the participants of such events.

Sport is an important component of social life, but at the same time it is not without risks. Sports competitions are often accompanied by injuries that can have serious consequences, including the death of athletes. In this connection, the question arises about the criminal liability of athletes in case of sports injuries or deaths during competitions. This becomes a matter of concern for legislators, the judiciary and the public, as it is important to ensure a balance between the development of the sport and the protection of the rights and safety of the participants.

Legislation regarding the criminal liability of athletes for sports injuries or death during competition may vary from country to country. In some jurisdictions there are specific articles that regulate such situations, in others it may be subject to interpretations of general criminal norms. At the same time, it is important to take into account the specifics of sports activities, the participants' ability to manage risks, and the general practice of resolving similar conflict situations. In the case of sports injuries or deaths during competition, the judicial system must carefully analyze all the circumstances of the event, including the observance of safety rules, the availability of medical care and the possible need to take criminal measures. Solving the issue of the athlete's criminal responsibility for such events requires an objective and careful approach that takes into account all aspects of sports activity and legal norms.

Keywords: *sport events, athlete, harm to health, criminal liability, sport crimes.*

Introduction. Sport events are of high level of danger, since in course of such events physical injuries of different level, including traumas or lethal outcome, may be caused. Not only athletes can be harmed, but also fans, judges

© Korohod S., 2024
ORCID iD: <https://orcid.org/0000-0001-6696-6818>
svitlanakorohod20@gmail.com

© Halenko Yu., 2024
ORCID iD: <https://orcid.org/0000-0002-5670-4774>
julia.translation.30@gmail.com

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and other natural persons or legal entities taking part in holding and/or organizing sport events. Research in the field of legal responsibility of athletes becomes relevant in connection with changes in the sports environment itself, technological innovations and the emergence of new types of sports. It is important to take into account these dynamic changes in order to improve legislation and ensure adequate protection of the rights of athletes and other participants in sports events.

The issue of legal responsibility in sports also requires attention to ethical aspects. Research in this field helps to reveal ethical problems related to the resolution of conflict situations in sports and to develop mechanisms for their resolution that would take into account the interests of all parties. Ensuring fairness and ethics in the resolution of legal issues in sports is a key task that requires constant research and improvement.

In addition, the development of the international sports movement requires the harmonization of legal norms between different countries. Research in the field of legal responsibility of athletes helps to develop mechanisms of international legal cooperation, contributing to the creation of uniform standards and procedures regulating the legal status of athletes in the international sports environment.

Analysis of recent research and publications. This problem has been reflected by either national, or foreign scientists, namely, Z. Dikhtyarenko, L. Pustoliakova, V. Tatsii, O. Sybal and others (Dikhtyarenko et al., 2020; Tatsii & Borysov, 2016; Sybal, 2015).

However, the logical question arises whether a person shall be criminally liable in case of an action (or inaction) stipulated by a Special Part of the Criminal Code of Ukraine.

The purpose of the article is to determine cases of criminal liability of athletes during sport events in case of their causing harm to health, trauma and possible consequences in form of death of a victim.

Formulation of the main material. Sport helps to strengthen health, thus the state policy of Ukraine is directed to avoiding harm to health or life of a person during trainings and competitions. For this a set of regulatory legal acts stipulate rules and necessary limitations to prevent traumas, injuries and death in course of sport trainings and events, in particular, the Law of Ukraine "On Physical Culture and Sport" (<https://zakon.rada.gov.ua/laws/show/3808-125>) and the Order "On Amendments to the Procedure of Acknowledging Sports and Their Inclusion to the Register of Acknowledged Sports in Ukraine" (<https://zakon.rada.gov.ua/laws/show/z1134-16#Text>), approved by the Order of the Ministry of Youth and Sports of Ukraine dated February 28, 2019, which states that a sport cannot be acknowledged in Ukraine if relevant competitions are connected with extra danger to health and life of a person, as well as the one degrading human honor and dignity and is barbaric.

Sport competitions are sport events or a complex of events held for comparing successes of athletes and choosing a winner. Such competitions are organized in accordance with the rules of sport competitions related to a particular kind of sport, approved by a state power body and guided by the Law of Ukraine "On Physical Culture and Sport" (<https://zakon.rada.gov.ua/laws/show/3808-12>). To hold sport competitions, relevant legal and organizational conditions shall be respected, following which violators can be brought to

justice. Such conditions are as follows:

- 1) Guidance by the particular regulatory legal acts;
- 2) Control over respecting the rules by corresponding authorized bodies;
- 3) Availability of permission to hold such sport competitions;
- 4) Correspondence to sport regulations;
- 5) Inclusion of sport events to a calendar plan of physical and cultural events;
- 6) Mandatory state insurance of the participants of sport events (Sukha, 2019, p. 255).

According to Art. 5 of the Law of Ukraine "On Insurance" (<https://zakon.rada.gov.ua/laws/show/1909-20#Text>), state insurance can be performed either willfully, or in a mandatory mode. All athletes participating in competitions shall be insured in a mandatory mode. Athletes are insured against accidents either during competitions, or out of them (the way to the place of competitions, training, etc.).

Possible cases include causing injuries of various severity levels, causing traumas and possible death. In accordance with civil-and-legal legislation in case of causing harm, stipulated by the state insurance, to a person or his/her close relatives (in case of a victim's death) will be paid an one-time monetary compensation at the cost of the state budget or a private social insurance fund (<http://zakon3.rada.gov.ua/laws/show/2341-14>, <https://zakon.rada.gov.ua/laws/show/1909-20#Text>).

It should be mentioned that the issue on criminal liability of athletes and judges is not sufficiently reflected in legal science, thus, persons experiencing harm during sport events (athletes, spectators, trainers and other persons, who can be victims in such cases) are not protected. According to the Art. 54 of the Law of Ukraine "On Physical Culture and Sport", persons guilty in violation of legislation regulating relations in sport and physical culture can be made liable in terms of disciplinary, administrative, civil legal and criminal responsibility (<https://zakon.rada.gov.ua/laws/show/3808-12>).

To ground the issue of criminal liability of athletes, it is required to consider different situations, which may arise. Firstly, an athlete or a group of athletes (team) deliberately violates determined rules and restrictions for their own favor. For instance, using of metal plates in boxing gloves of an athlete is deliberate violation of sport competition rules. In such a case an athlete and persons aware of the violation, but have not prevented it, will be criminally liable for causing injuries or murder in case of death, in accordance with the Special Part of the Criminal Code of Ukraine. It is necessary to mention that in such a case a contract signed with a sport club becomes null and void, since its terms and conditions will be violated. In such a case an athlete harmed a victim deliberately and purposely violated sport competition rules (Dikhtyarenko et al., 2020, p. 43 Tatsii).

Another situation, which may arise, is causing injuries or death without violating the determined sport competition rules. In this case personality of a victim shall be considered as well. If a victim is an athlete, who has negotiated an agreement and is aware of consequences, which may arise during sport competitions, thus an athlete having caused harm will not become criminally liability. The example can be kinds of sports connected with fights, where an athlete may perform even a death punch to his/her opponent. In this case neither

an athlete, nor a trainer, or a judge will not be criminally liable, since a contract signed by every participant of sport competitions stipulates a possibility of harm, including death.

A victim may be another person, who does not sign any contracts, i.e. a fan. For instance, during a hockey game a puck flows out of the ring harming fans. In case of such accidents organizers of sport events will be mostly likely criminally liable, since the legislation in force defines necessary requirements towards premises, where sport events are held. Therefore, during hockey games special transparent barriers of a particular height shall be installed to avoid causing traumas to the spectators (Dikhtyarenko et al., 2020, p. 44).

The above mentioned consequences should be considered as non-deliberate causing harm and does not bring *нести* neither criminal, nor disciplinary liability (disqualification, deprivation of right to take part in competitions within a specific period of time) for an athlete. At taking such actions an athlete does not have an intention to cause harm and violate competition rules, therefore, such actions cannot be socially dangerous or illegal.

One more situation, when consequences in form of injuries are possible, is when an athlete violates game rules unintentionally. For one, a football player makes another athlete a trip and the latter gets injuries. In this case only sanctions stipulated by the game rules are imposed on a player, since there is no crime. Intention to cause harm is absent (Babanin, 2014, p. 192). However, some lawyers do not support this idea and put forward the version that criminal liability for athletes is necessary even in case of non-deliberate causing harm with minor offence of game rules (Tatsii & Borysov, 2016, p. 306).

One of the key features of sport competitions is voluntariness. A participant of sport competitions gives his/her voluntary consent to take part in them, as well as realizes possible risks of injuries, traumas and death.

Speaking about causing harm during sport events as about criminal violation, it shall consist of the following elements:

- 1) Object – life or health;
- 2) Victim – a participant of sport competitions, who has been harmed due to voluntary participation in an event, a fan;
- 3) Objective side – form of action; an action;
- 4) Means – an order or method of applying special techniques and movements stipulated by sport competition rules as well as sport game rules and the procedure of their holding;
- 5) Admissibility – admission to cause bodily injuries to another person (contact kinds of sport);
- 6) Subject – a participant of sport competitions authorized to perform special sport exercises and techniques; an authorized person in organization and holding sport competitions;
- 7) Consequences – causing bodily injuries of different level of severity or death;
- 8) Legality – holding sport competitions in a kind of sport allowed at the territory of Ukraine according to specially approved procedure, approved by a relevant authority (Tatsii & Borysov, 2016, p. 308).

Considering the above, it can be concluded that in case an athlete follows all game rules, one of the elements of a criminal violation, i.e. a subject, is absent. Thus, there is confusion, since an athlete could not and did not have to anticipate

socially dangerous consequences. Criminal violation is a socially dangerous culpable act (action or inaction) committed by a subject of a criminal violation and stipulated by the Criminal Code of Ukraine (<http://zakon3.rada.gov.ua/laws/show/2341-147>). In case of committing an act (usually an action), which has resulted in causing harm to a person, during sport competitions, social danger is absent, since social danger is a feature, which characterizes a crime as an action causing severe harm to the existing order in society (Chorna & Myrosenko, 2022, p. 185). In comparison, in Portugal the discussion under this particular topic is now focused on damages during dangerous/reckless actions during a particular contact game (football, rugby, handball etc).

For example, is it acceptable to present a civil claim for damages following a dangerous tackle during a game? What if the tackle results in severe consequences, such as the player becoming paralysed or permanent disabled? If the tackle was dangerous and reckless and the injury entirely foreseeable, even on the normal course of the game, what is the civil/criminal responsibility?

Here, even if the action is considered deliberate, the most frequent course of action is that the offender does not face a criminal prosecution in addition to being sued for damages. Usually the action stays in the civil responsibility. Criminal prosecutions following injuries arising from sporting events are still extremely rare. Civil and criminal liability can overlap, but criminal prosecution is still uncommon.

Sometimes, during team sport competitions mass fights arise, in course of which persons can suffer bodily injuries. In such cases all guilty persons (the ones participating in such fights) shall be made criminally liable according to the relevant article of the Criminal Code of Ukraine, since such situations slightly differ from similar cases in another place.

Some lawyers, such as V. Tatsii, consider that criminal liability can and shall come into force in case of violation of sport competition rules either deliberately, or by negligence, if a person's health or life was harmed, since rules are violated in one's own favor, i.e. to increase chances to win. This can take place only under the condition of deliberate violating laws and regulations (Tatsii & Borysov, 2016, p. 305).

It shall be mentioned that situations exist when an athlete causes harm not in terms of sport competitions, i.e. deliberately or non-deliberately harms another person's health or life. For instance, Volynskyi Appeal Court sentenced a citizen of Volyn region to 5 years of imprisonment for deliberate causing severe bodily injuries resulted in death, which is stipulated by Part 2 of Art. 121 of the Criminal Code of Ukraine. The convicted was demonstrating his friend boxing skills and kicked him on the head heavily, in the result of which the victim died. The court of the first instance recognized the victim to be guilty under Part 1 of Art. 119 of the Criminal Code of Ukraine, i.e. unintentional manslaughter (<https://reyestr.court.gov.ua/Review/12906450>).

The persons participating in and organizing trainings and sport competitions in not acknowledged in Ukraine kinds of sports shall be criminally liable, if such actions harmed a person's health or life. Criminal violations, which can be committed during doing sports, including sport competitions, in not acknowledged in Ukraine kinds of sports is considered to be a murder – Art. 115 of the Criminal Code of Ukraine (Korohod, 2020, p. 327); unintentional manslaughter – Art. 119 of the Criminal Code of Ukraine; or causing bodily

injuries – Art. Art. 121, 122, 125, 128 of the Criminal Code of Ukraine.

Furthermore, a logical question arises, whether committing of a criminal violation during competitions due to heat of passion is possible. For this, it is required to mention that heat of passion is a state of physiological affection meaning a short-term emotion dominating over a person's consciousness, due to which a person partially loses control over his/her own actions. According to Art. 116 and Art. 123 of the Criminal Code of Ukraine, liability appears in case of doing illegal kinds of sports, since disturbance, which a person feels, and physical injuries he/she may suffer are the reason for abrupt short-term losing of control over his/her consciousness (Sybal, 2015, p. 22).

Conclusions. Concerning current requirements of the legislation in force, athletes are not criminally liable for causing harm, including in case of death, if sport events have been held respecting all competition rules in a kind of sport approved in Ukraine. Athletes can be criminally liable in case of causing bodily injuries of different level of severity with grave violation of sport competition rules and using methods and techniques of a game (fight) not stipulated by legal regulatory norms.

In cases when a victim suffers physical harm not in terms of sport competitions or a training area, i.e. without a responsible organization, a violator will be convicted for his/her actions according to the relevant article of the Special Part of the Criminal Code of Ukraine.

Moreover, criminal liability may arise, if the participants take part in sport competitions in not acknowledged kinds of sports. In such cases athletes can be liable for crimes committed by negligence, since such competitions have an impact on the emotional state of a person.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Світлана КОРОГОД, Юлія ГАЛЕНКО, Хосе Мігель Коста БАРРЕТО
КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ СПОРТСМЕНІВ ЗА СПОРТИВНІ
ТРАВМИ АБО СМЕРТЬ ПІД ЧАС ЗМАГАНЬ

Анотація. У статті досліджено чинне законодавство України та наукові праці, що відображають питання заподіяння шкоди спортсменам, уболівальникам та іншим учасникам спортивних заходів, а також відповідальність у разі загибелі чи каліцтва учасників таких заходів.

Спорт є важливою складовою суспільного життя, але водночас він не позбавлений ризиків. Спортивні змагання часто супроводжуються травмами, які можуть призвести до тяжких наслідків, аж до смерті спортсменів. У зв'язку з цим постає питання про кримінальну відповідальність спортсменів у разі отримання спортивних травм або смерті під час змагань. Це стає предметом занепокоєння законодавців, суддів і громадськості, оскільки важливо забезпечити баланс між розвитком спорту та захистом прав і безпеки учасників.

Законодавство щодо кримінальної відповідальності спортсменів за спортивні травми або смерть під час змагань може відрізнитися в різних країнах. У деяких юрисдикціях існують спеціальні статті, які регулюють такі ситуації, в інших вони можуть бути предметом тлумачення загальних кримінальних норм. При цьому важливо враховувати специфіку спортивної діяльності, здатність учасників управляти ризиками, загальну практику вирішення подібних конфліктних ситуацій. У разі спортивних травм або смерті під час змагань судова система повинна ретельно проаналізувати всі обставини події, включаючи дотримання правил безпеки, доступність медичної допомоги та можливу необхідність застосування кримінальних заходів. Вирішення питання про кримінальну відповідальність спортсмена за подібні події потребує об'єктивного та виваженого підходу з урахуванням усіх аспектів спортивної діяльності та правових норм.

Ключові слова: спортивні заходи, спортсмен, шкода здоров'ю, кримінальна відповідальність, спортивні злочини.

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