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"Civil liability for sport-related damages in a comparative perspective"

ABSTRACT

The author considers issues regarding civil liability for damage caused due to sport activity. The issue of civil liability in sport includes both tort and contractual liability. The author is focused on the grounds for tort liability as the practice of pursuing claims shows that injured party are seeking the redress in the light of the delictual regime.

The dissertation consists of six chapters. In the first chapter the author presents the most important issues related to the so called sports law. These issues have been presented in a very synthetic manner - primarily in order to emphasise the uniqueness of sports regulation and self-regulation of sports organisations. She also introduces the most important issues regarding sports arbitration.

The second chapter discusses the extent of risk associated with sport, which sets the limits of civil liability in sport. Acceptance of risk in sport usually takes two forms: a) consent of the injured party (*volenti non fit iniuria*) and b) *assumption of risk*. This part of dissertation refers to consideration of the application of both defence, which, if correctly applied, may lead to the exemption of liability. The author also considers the application of the *assumption of risk* in a situation where the liability of the tortfeasor is strict.

The third chapter concerns civil liability for damage caused by a sportsman. First, the author analyses the most frequently premise of tort liability - i.e. fault. She discusses the issues of the source of the obligation not to inflict harm (the *neminem laedere* principle), the objective element of fault (understood as unlawfulness) and fault *sensu stricto*. The analysis of fault always requires the establishment of an appropriate standard of required conduct of a "reasonable sportsman", therefore it was necessary to determine what should be taken into account when establishing standard of care for a professional sportsman and for a recreational athlete.

The fourth chapter governs the issue of damages suffered by participants in sport, i.e. professional players, spectators and recreational athletes. The chapter contains a casuistic presentation of the most frequent situations in which injured persons demand compensation

for damage, especially in situations where the obligation to ensure the safety of participants in sport has been violated (e.g. civil liability of a sports referee, a coach, an organiser of a sports event, an operator of a sports facility, civil liability for wrongful conviction for doping or wrongful exclusion from a competition, liability for improper medical treatment).

The fifth chapter refers to the issue of damages as the sport-related damages have got a specific nature. The author considers the problem of *loss of chance* (e.g. loss of chance of successful career or to win a competition). The redress of this type of damage seems to be controversial in Polish Law as the Polish courts qualify a lost chance as a circumstance affecting the scope of non-pecuniary damage. Moreover, a problem of the redress also refers to the damage *par ricochet* (e.g. in a case when a sports clubs have lost a player due to a foul). Finally, the author indicates to the scope of contribution of the injured party to the damage and issues related to contractual indemnity clauses, which affect the scope of the compensation obligation.

The last chapter presents current problems related to regulation and functioning of insurance in sport. The Polish legislator has imposed an obligation on sports clubs to conclude accident insurance but has not indicated any sanctions for failing to do so. The author analyses the general terms and conditions of insurance contracts in sports, including risks covered by insurance and risks excluded from insurance coverage. The chapter also contains the presentation of the views of the judiciary taken in the context of the concept of an insured accident in sport. The discussion also covers third party liability insurance, including obligatory civil liability insurance of the organiser of a mass event.

Each chapter ends with a short summary. Conclusions from all the conducted research are presented in the final conclusions. They constitute a synthesis of the research and evaluation of the functioning and effectiveness of solutions concerning civil liability in sport.

The comparative and formal-dogmatic methods are used in the dissertation. Due to the fact that in Poland the jurisprudence practice concerning civil liability in sport is almost non-existent, it was necessary to reach for practical experience and theoretical concepts developed in foreign legal systems.