

2019

Trainers and sports clubs civil liability for contestants' injuries caused during sports training or competition as regulated in the Polish legal system?

Cezary Waldzinski
Lomza State University of Applied Sciences, Poland

Ewa Waldzinska
Lomza State University of Applied Sciences, Poland

Aleksandra Durzynska
Lomza State University of Applied Sciences, Poland

Tomasz Waldzinski
Lomza State University of Applied Sciences, Poland, twaldzinski@pwsip.edu.pl

Kazimierz Kochanowicz
Department of Theory of Sport and Human Motorism, Faculty of Physical Education, Gdansk University of Physical Education and Sport, Poland

Follow this and additional works at: <https://www.balticsportscience.com/journal>



Part of the [Health and Physical Education Commons](#), [Sports Sciences Commons](#), and the [Sports Studies Commons](#)

Recommended Citation

Waldzinski C, Waldzinska E, Durzynska A, Waldzinski T, Kochanowicz K. Trainers and sports clubs civil liability for contestants' injuries caused during sports training or competition as regulated in the Polish legal system? *Balt J Health Phys Act*. 2019; Suppl (1): 54-66. doi: 10.29359/BJHPA.2019.Suppl.1.05

This Viewpoint is brought to you for free and open access by Baltic Journal of Health and Physical Activity. It has been accepted for inclusion in Baltic Journal of Health and Physical Activity by an authorized editor of Baltic Journal of Health and Physical Activity.

Trainers and sports clubs civil liability for contestants' injuries caused during sports training or competition as regulated in the Polish legal system?

Abstract

The issues with the injuries caused by the sports trainings are strictly related with the legal liability of natural and legal persons directly participating in sports activities, including trainers, medical staff, sports clubs, organizers of the sports events, equipment and devices manufacturers, the owners of sports facilities and the contestants themselves. Sports injuries are integrally related with training any sport discipline. The consequences may vary, from slight health detriment, not requiring medical support, through loss of or permanent damage to health, up to death of the contestant. Without doubt, occurrence of these adverse effects of sports training shall be limited to minimum in every and each sports discipline. The essential role in this matter belongs to the trainers, who carry penal and civil liability for any infringements (acts and omissions). The trainers' obligation is not only to prepare the contestant to the sport rivalry but also to provide safety during sports training. As referred to in the jurisprudence, the trainer has a very special duty to provide the proper conduct of training, not only with regard to complying with the rules applicable in each sports discipline, but also with respect to the contestants' utility to participate in the training.

Keywords

civil liability, injuries, sport training

Creative Commons License



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

Trainers and sports clubs civil liability for contestants' injuries caused during sports training or competition as regulated in the Polish legal system?

Authors' Contribution:

A Study Design
B Data Collection
C Statistical Analysis
D Data Interpretation
E Manuscript Preparation
F Literature Search
G Funds Collection

Cezary Waldziński¹ ABCDEFG, Ewa Waldzińska¹ ABCDEFG, Aleksandra Durzyńska¹ ABCDEFG, Tomasz Waldziński¹ ABCDEFG, Kazimierz Kochanowicz² ABCDEFG

¹ Lomza State University of Applied Sciences, Lomza, Poland

² Department of Theory of Sport and Human Motorism, Faculty of Physical Education, Gdansk University of Physical Education and Sport, Gdansk, Poland

abstract

The issues with the injuries caused by the sports trainings are strictly related with the legal liability of natural and legal persons directly participating in sports activities, including trainers, medical staff, sports clubs, organizers of the sports events, equipment and devices manufacturers, the owners of sports facilities and the contestants themselves.

Sports injuries are integrally related with training any sport discipline. The consequences may vary, from slight health detriment, not requiring medical support, through loss of or permanent damage to health, up to death of the contestant. Without doubt, occurrence of these adverse effects of sports training shall be limited to minimum in every and each sports discipline. The essential role in this matter belongs to the trainers, who carry penal and civil liability for any infringements (acts and omissions). The trainers' obligation is not only to prepare the contestant to the sport rivalry but also to provide safety during sports training. As referred to in the jurisprudence, the trainer has a very special duty to provide the proper conduct of training, not only with regard to complying with the rules applicable in each sports discipline, but also with respect to the contestants' utility to participate in the training.

Key words: civil liability, injuries, sports training.

article details

Article statistics: **Word count:** 5,750; **Tables:** 0; **Figures:** 0; **References:** 35

Received: April 2019; **Accepted:** June 2019; **Published:** June 2019

Full-text PDF: <http://www.balticsportscience.com>

Copyright © Gdansk University of Physical Education and Sport, Poland

Indexation: Celdes, Clarivate Analytics Emerging Sources Citation Index (ESCI), CNKI Scholar (China National Knowledge Infrastructure), CNPIEC, De Gruyter - IBR (International Bibliography of Reviews of Scholarly Literature in the Humanities and Social Sciences), De Gruyter - IBZ (International Bibliography of Periodical Literature in the Humanities and Social Sciences), DOAJ, EBSCO - Central & Eastern European Academic Source, EBSCO - SPORTDiscus, EBSCO Discovery Service, Google Scholar, Index Copernicus, J-Gate, Naviga (Softweco, Primo Central (ExLibris), ProQuest - Family Health, ProQuest - Health & Medical Complete, ProQuest - Illustrata: Health Sciences, ProQuest - Nursing & Allied Health Source, Summon (Serials Solutions/ProQuest, TDOne (TDNet), Ulrich's Periodicals Directory/ulrichsweb, WorldCat (OCLC)

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Conflict of interests: Authors have declared that no competing interest exists.

Corresponding author: Tomasz Waldziński, ul. Promienna 4D, 18-400 Łomża, tel.606921921, e-mail: twaldzinski@pwsip.edu.pl.

Open Access License: This is an open access article distributed under the terms of the Creative Commons Attribution-Non-commercial 4.0 International (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits use, distribution, and reproduction in any medium, provided the original work is properly cited, the use is non-commercial and is otherwise in compliance with the license.

INTRODUCTION

Sport is a social phenomenon which enables achieving the objectives and can take various, more or less organized forms. It has a cross-border (global) dimension and is sometimes defined as a rare combination of entertainment, passion and unpredictability [1, p. 27]. Sport is an efficient remedy for many civilization diseases, treatment and prevention or great stress reliever. Physical activity has, without doubt, a positive influence on human's psyche and mental health. Sport supports development of such abilities and skills as team activity, solidarity, tolerance and competition [2, p. 33].

Sport is a term without a precise definition. There are various definitions of sport [3, p. 7] in many sources, and each of them emphasizes some specific dimension, depending upon the needs of that specific sport type. Nevertheless, most of them draw attention to the following components: physical activity, competition and rules [1, p. 27]. According to the classical theory, sport consists in diverse forms of physical and mental activities which are aimed at competition and rivalry. Such rivalry may be either of an individual or team nature. The essence of sport is complying with the predefined set of rules and its institutionalization [4].

In the Polish legal system, the rules of sports practicing and organizing are stipulated in the Sports Act of 25 June 2010 [5] which provides the legal definition of sport. Pursuant to Article 2 of the Act, sport comprises all forms of physical activity which, through casual or organized participation, maintain or improve physical and mental health, social interactions or achieving scores on many levels. Intellectual activities which are aimed at achieving a score are also claimed to be sport competitions. Sport, together with physical education and rehabilitation, forms physical culture.

Unfortunately, sport, just like many other areas of life, is not safe from the threats which consist in damage to health or, in extreme cases, death of a contestant. The number of sports injuries is currently increasing due to the general character of sports events and the development of technique and sports equipment which now enables achieving higher scores but also reaching the extent of humans' body endurance. Depending on the sports discipline, the possibility of experiencing an injury during training or competition differs. Some sports disciplines are relatively safe (e.g. tennis), while others may cause a considerable damage to health or life of the contestant due to the employed equipment (e.g. track racing) or because these are contact sports (e.g. combat sports). During the long history of sport, many tragic events have taken place during or in relation to sports competitions [6] or every-day trainings. The proper organization and conduct of competitions or trainings is, therefore, essential to mitigate the risk to the acceptable level.

The issues with the injuries caused by the sports trainings are strictly related to the legal liability of natural and legal persons directly participating in sports activities, including trainers, medical staff, sports clubs, organizers of sports events, manufacturers of equipment and devices, owners of sports facilities and the contestants themselves. Further considerations will address the injuries suffered by the contestants during trainings or competitions and trainers' and sports clubs civil liability in such situations. Penal liability for contestants' life or health threatening events will be omitted.

SPORTS INJURIES

A number of definitions of “injury” have been developed in traumatology. The most common are: a dynamic transfer of a load of energy on the living tissue, causing damage of the tissue structure and consequently its impairment, or an anatomic or functional damage to the body caused by external force. There are various kinds of injuries: mechanical, thermal, chemical or electrical. Tissue structure damage (physical trauma) is a result or a consequence of injury on human organism. The extent of damage (of tissue or organs) depends upon the type or size of injury and each tissue resistance [7, p. 46].

Consequently, the scientific literature states that sport injury is an injury causing damage that occurred during physical sport activity, mainly during trainings or competitions, which results in temporary or absolute exemption from physical activity [7, p. 47]. Sport injuries are often referred to as contusions [8].

Sport disciplines may be divided into 3 groups depending on the frequency of injuries. Group I covers disciplines with a high frequency of injuries such as martial arts (boxing, wrestling) and games (football, hockey). Group II covers disciplines with a moderate contusion level which require fast movements from the contestants (cycling, skiing, athletics, ice skating, handball), movements which are complicated or difficult to coordinate (gymnastics, ski jumping, acrobatics, figure skating) or sports that require enormous effort and high muscle work intensity (weight training). Group III covers low contusion level sports disciplines which do not require rapid movements (swimming, rowing) or when a contestant wears special protection (fencing, shooting) [9, 10, p. 15-16].

Sports injuries may be divided into two groups, i.e. mechanical injuries and those resulting from physical strain. Mechanical injuries are caused by a contact with another contestant, sport equipment or any other object. Physical overreaching injuries are caused by exceeding the human's body endurance during too intense training in comparison to the functional preparation level [9]. In other words, physical overreaching comes as a result of disturbance to the balance between training and rest.

There are several classifications aimed at structuring the reasons for sport injuries. Generally, it can be assumed that the occurrence of the injuries during trainings or competitions is related to [11, p. 44]:

- a. improper conduct of training or competitions;
- b. improper warm-up before the workout or competitions;
- c. contestant inadequate mental and physical preparation;
- d. lack of discipline;
- e. engaging in training or competitions while in poor health;
- f. exhaustion, overwork, physical overexertion;
- g. organizational defects of trainings or competitions;
- h. improper condition of sport facilities or defective sports equipment;
- i. wearing unsuitable sportswear or footwear;
- j. failure to comply with the rules of personal hygiene and the cleanliness of the facilities and equipment;
- k. adverse weather conditions.

The body damage placement is different depending on the sports discipline. Lower limb injuries are typical of football players, skiers, ice skaters, athletes; upper limb injuries occur to boxers and gymnasts, head injuries to boxers, while

torso injuries are typical of wrestlers. Sportsmen often suffer from joint damage – mainly the knee joint and the ankle joint, whereas internal organs injuries barely occur. Most sport injuries make slight or medium damages, which cause incapacity for physical exercises for a period of 5 to 10 days [10, p. 12–14].

Sports damages may appear acute or chronic (primary or secondary). Acute damages develop abruptly, in the result of mechanical injury, which appeared in clearly defined moment. The chronic primary injuries develop slowly as a result of accumulation of small injuries, which slowly damage the tissue. These damages may last very long (e.g. tendinitis), comprise subacute period (4–6 weeks since the initiating affliction) and are often defined as damages resulting from overreaching or the overreaching syndrome. Chronic secondary damages result from tissue damages, which were previously affected by impairment [7, p. 47]. Overreaching syndromes are difficult to diagnose and treat. They occur to approximately 25–50% sportsmen treated in sports medicine clinics. Most frequently they develop after 2 years of involvement in competitive sports. Sportsmen involved in endurance sports (long-distance running) and individual sports that require precise technique and repetitive moves (tennis, gymnastics, weightlifting) are in 80% affected by the overreaching syndrome. These injuries in 80% concern lower limbs, in particular knees (28%), feet and ankle joints (21%) [9].

Overextension is the most frequent training error, generally caused by a wrong sequence of specific exercises and too violent implementing of advanced workouts. Very often overextension results from contestants' recklessness or their excessive ambitions that influence implementing the objectives too soon in comparison to the abilities. Overextension may refresh old and cured sports damages, aggravate the already existing ones (which are not very serious) or cause new ones. Moreover, overextension may delay, hinder or prevent a contestant from being cured, which very often leads too untimely end of sports career. Regardless of the potential medical mistakes of the doctors treating the contestants, overextension is always a consequence of a defectively created or implemented sports plan. It shall be also highlighted that the line between the training aimed at improving sports proficiency and overextension is very slight, barely visible. Very often the only person who is capable of indicating this line is an experienced trainer [12].

As indicated in the civil law, sports injuries that occur as a result of sports traumas consist in bodily harm or health disorder. Undoubtedly, bodily damage or health disorder may cause the contestant's death. Violation of physical integrity constitutes bodily damage (e.g. bone break). Health disorder is expressed as disruption of the normal functioning of particular organs without harming them (e.g. neurosis, mental illness). One event may lead to both, bodily damage or health disorder [13].

CIVIL LIABILITY OF TRAINERS AND SPORTS CLUBS

The subject matter of the further section of this paper focuses on an in-depth analysis of trainers and sports clubs' civil liability for death or bodily harm of a contestant during training or competitions. First and foremost, a few comments of a more general nature shall be made in the matter of types of compensations in the Polish legal system.

Compensation is regarded as the civil law pillar. Irrespective of the compensation type, each of them has one common trait – performance aimed at remedy,

namely to cover a damage in one's interests (the aggrieved party) by the other entity [14]. The civil code [15] – following the European legislation – distinguishes two main liability types:

- a) the contractual liability that arises as a result of failure to perform or undue performance of obligations (Art. 471 c.c. and following);
- b) the tortious liability that results from the unlawful acts (Art. 415 c.c. and following).

In the civil law the unlawful acts are events unrelated to the already set contractual relationship, where meeting other circumstances provided by the law, the person is liable under the provisions of law (e.g. service contract for the provision of swimming lessons) where the damage occurred. These events influence inherently on arising of an obligation, i.e. a legal relationship where one person (creditor) is entitled to request from another person (debtor) a specific conduct, known also as a performance, which the debtor is obliged to make. Violation of the legal relationship existing between the parties serves as a base for contractual liability [16, p. 196, 263].

The Polish legal system envisages a possibility of joinder tortious and contractual liability, which is directly indicated in Article 443 c.c., according to which an action or omission which causes damage, constituting non-performance or undue performance of an earlier obligation is not a circumstance – as a rule – precluding claim for remedy of damage from tort. A possibility of choice between available claims arises from a joinder liability for the aggrieved party.

The trainers and sports clubs responsibility for personal injury (trauma caused by sports) or damage to property (sports equipment damage) may be considered as both contractual and tortious liability. In reality, most contestants' claims against the trainers, instructors or sports clubs are based on tortious liability. Civil code provisions regulating the aforementioned liability entitle the aggravated person to claim for remedy of damage or monetary recompense for the harm suffered. Monetary recompense for non-performing or undue performance of the obligation is not envisaged in the Polish legal system (e.g. the service agreement on tennis lessons). Monetary recompense for the harm suffered is tightly related with tortious liability regulations.

In the Polish civil law the unlawful act (tort) is also described as a damage causing an event which constitutes an obligation for compensation. The content of the obligation relationship concluded as a result of joinder is the entitlement of the aggravated person and adequate to this entitlement obligation for compensation. The term of unlawful action is an expression typical of the civil law and shall not be mistaken with a punishable act (crime) – a term characteristic of the penal law. Not each unlawful act within the meaning of civil law is an offence or infraction.

Tortious liability grounds are covered in Art. 415 c.c. under which anyone who by a fault on his part causes damage to another person is obliged to remedy it. The liability for the tortious acts arises when three circumstances stated below are met: damage occurrence – taken as detriment in the protected by law interests of the aggrieved person, occurrence of an event for which the specified entity is obligated to compensate and the casual link between this event and damage. Events are regulated differently depending on the fact if the event whereby an obligation to compensate arises concerns the entity's own actions (e.g. boxer's responsibility for causing serious physical damage during the competitions or the training as a result of culpable infringement of fighting

rules; football player's responsibility for causing with the so-called tactical foul health detriment or the trainer's liability for health detriment to the contestant during the training resulting from omitting conducting the warm-up), another entity's action (e.g. sports club's liability for contestant's health detriment which occurred during the sports training conducted by the trainer or coach employed in this club), causing damage by the collapse of the structure or the detachment of any part thereof (e.g. the sports hall owner's liability for health detriment to a contestant or the audience caused by collapsing of the building construction), causing damage by a hazardous product (e.g. producer's liability for damage to athlete's health caused by faulty construction of sports equipment), etc.

Events which constitute an entity's own liability for damages consist in, pursuant to Article 415 c.c., the actor culpable and unlawful conduct. Speaking about the legal entity liability (e.g. sports clubs), they are obliged to compensate for the damages cause by its body, as stipulated in Art. 416 c.c. If the casual link between the event and the damage may be indicated, the actor is obliged to compensate.

Damage occurs when an aggrieved person suffers a difference, against his will, between his current financial condition and a condition that would have existed if the event causing damage had not occurred. In other words, damage is every detriment in the interests protected by law which the aggrieved person has suffered against his will. Damage is not only pecuniary but also non-pecuniary (non-pecuniary detriment). Non-pecuniary damage is known also as harm and may be remedied by means of financial compensation for the harm suffered, only if it is established by specific provision. Pecuniary damage shall be remedied in any case if the aggrieved person indicates a person liable for the damage and is able to prove the circumstances under the liability for damages of this person.

There are two types of pecuniary damages, i.e. damage to property and personal injury. Damage to property consists in direct detriment of an element of property of the aggrieved person (e.g. destroying sports equipment). Personal injury is when personal interests of an aggrieved person (e.g. health) have a detriment to the extent that – indirectly – this person suffers negative consequences in the property. For example, as a result of bodily damage of the contestant during the training, he lost his capacity to work, so he must undertake treatment, expensive rehabilitation, lost earning opportunities or maybe it became necessary to purchase prosthesis, which constituted pecuniary damage [17].

Another element to determine the liability for damage pursuant to Article 415 c.c. is the causal link between the action and the damage. Briefly, it means that if not for that event (action or omission), the damage would probably never have occurred. Pursuant to Article 361 § 1 c.c., a person obliged to pay compensation is liable only for normal consequences of the actions or omissions from which the damage arises. That theory is so-called adequate causal link. According to that theory, damage remains in the causal link only with the events which in a typical (normal) course generate the consequence of a particular detriment (harm). Any other events of exceptional, extraordinary nature are exempted from cause-effect chain and by these means and exempted from liability for damage [18].

As previously indicated, pursuant to Art. 415 c.c., an event which the legal act links the particular entity's compensatory obligation with the actor's act has an essential meaning for a possibility to attribute compensatory liability to the actor. Such an act may consist in action or omission. Moreover, this act shall be simultaneously unlawful and culpable.

Unlawful acts are those directly prohibited by the provisions of law applicable in Poland, notwithstanding their source, abstractive and imposing a general obligation of a specific conduct, so ordering or prohibiting generally indicated entities to conduct in a specific way in a given situation. Furthermore, as unlawful are also indicated all behaviors contrary to the rules of social conduct and good practice, so generally approved standards in the whole society or social community [19]. In the memorandum of its ruling dated 2 December 2003, the Supreme Court expressed an opinion that the extent of unlawfulness covers not only infringement of the specific prohibitions or orders addressed to everyone or some entities but also the infringement of the general rules, ordering acting in a specific way to prevent the possibility of damage occurrence in given circumstances. According to the Supreme Court's statement, the general prohibition of not causing harm to another person is -in specific circumstances of the case - justified by undertaking the necessary remedial actions preventing the occurrence of damage to a person or property. Therefore, the obligation of due care for life and health of a human being may result not only from the legal act but also from just the rationality supported by the life experience principles which order not only to avoid redundant risk but also to undertake the action necessary to prevent the possibility of threat to human health or life [20].

Certainly, the contestants with a lower level of physical fitness shall learn from those with a higher level of physical fitness and who are more experienced. Those contestants indeed must be aware of their role during the sparring and be aware of the shortcomings in qualifications or the experience of their sparring partner. If the trainer does not ensure such awareness, he carries both civil and penal liability for the damage resulting therefrom, such as death or bodily damage of the trained sportsman [21].

The action (omission) of an actor must be culpable. Fault is when the actor may be accused of making the wrong decision or that in some specific circumstances he failed to conduct in a proper way, even though it was possible and expected of him. Likewise, in the penal law, there are two types of fault distinguished in civil law: i.e. intentional and unintentional fault. The intentional fault is when the actor desires to cause damage to the other person or at least consciously accepts the possibility of it. Unintentional fault is whereby the actor foresees the possibility of harmful consequence but unreasonably assumes that it will be prevented, or the actor does not foresee the harmful consequence, even though he should and is capable of foreseeing it. Negligence is manifested in both of these situations. In the civil law the term of negligence is related to lack of due care. Therefore, while assessing if the fault in form of negligence occurred, it is essential to assess the due care measure which is preserved in case of proper behaviour. Negligence is defined in civil law by a lack of due care, i.e. care generally required in the relationships of specific nature (Art. 355 § 1 c.c.). Attributing negligence to a given person is perceived as justified only if in a particular place and time that person behaved in a manner deviating from the relevant due care measure [22-23].

As regards the act assessment (of the contestants, trainers and sports club) in the context of its unlawfulness, the rules of relevant sports disciplines are of considerable importance, which in the present legal order are determined by the Polish sports associations, pursuant to Art. 13(1)(2) of the Sport Act. In the judgement dated 8 July 1968, the Supreme Court indicated that training some sports disciplines is related to risk. In order to reduce the threat of bodily damage or death, strict rules of game or fight are stipulated. The more dangerous a sport discipline is, the more diligently the stipulated sports rules should be obeyed. A person who violates these rules commits a tortious act, which raises an obligation to remedy (Art. 415 c.c.). However, the Supreme Court expressed the view that a sports club, designating a contestant for fight and entrusting him to perform a specified act, shall be attributed a double responsibility: for his physical condition and technical preparation aiming at preventing himself from accidents on the one hand, responsibility for fair-play of this contestant and complying with the sports regulation, not generating a likelihood of causing damage to his opponent on the other hand [24].

It is crucial to indicate that complying with the regulations of the competitions or training does not exempt the contestant and the others indirectly participating in the competitions (trainer, a referee, etc.) from the liability for the damage caused to the opponent. The Supreme Court stated in its judgement dated 25 April 1973 that limitation to obeying regulations of the competition and trainings may only be insufficient and does not exempt from liability for an accident. Sports regulations are not of an enacting force and from this perspective shall be assessed. Thereby punching the opponent during a boxing fight is according to the regulations not clearly relieved of fault (having preserved all requirements related to pairing, equipping with the proper protective gear), if all circumstances related to the conduct of the fight, attitude of the referees etc. are not clarified. Simultaneously, the Supreme Court stated that the trainers have a special duty to preserve the proper conduct of the training, not only in terms of complying with the regulations but also in regard to suitability (condition, health status etc.) of the contestant to participate in the trainings. The trainer is in possession of expertise and, having this in regard, he is capable of foreseeing the consequences of his actions (acts, omissions) concerning the contestants being under his supervision. Special duty to preserve the proper conduct of the training mostly concerns boxing, as this sports discipline is of a greater threat than others. The boxing trainers are obligated to preserve special prudence and caution while performing their actions and also by assessment of the boxer capability of a professional fight. Therefore, as indicated by the Supreme Court, a boxer who declared to his trainer before the training that due to his health condition he is unable to participate in the training and the trainer has at that time no possibility to seek advice from any doctor or refrained from doing so is obligated in any case to exempt the contestant from the training. The refusal of exemption indicates culpability in causing the damage in the result of injuries suffered during the training and justifies the trainer's liability for the damage pursuant to Art. 415 c.c. and the sports club pursuant to Art. 430 c.c. (link of dependency between the trainer and the club). Therefore, the hazardous nature of boxing as an athletic sport imposes an obligation on the competitions' organizers, trainers etc. of particularly due care of the organization of competitions and trainings, adjusted to the circumstances of each specific event [25]. However, in the judgement of 24 November 1969 the Supreme Court indicated that sports training, especially disciplines with a high injury rate, is always associated with risk; therefore, its side effects – sports injuries – are not incidental. This risk is always more frequent and greater in its effect

in sports such as boxing. In this sport discipline violating the physical integrity is in the nature of fight. Therefore, the set rules of fight, aimed at minimizing the threat of bodily injury or death, shall be complied with in a meticulous matter. Thus – in the Supreme Court’s opinion – for the outcome of permitting a non-classified as a boxer, inexperienced and physically weak contestant to participate in a boxing fight, not only his home-sports club is liable, but also hosting and organizing sports club, whose responsibility was at least to protest against this contestant’s participation in the competition. Failure to perform this duty constitutes organizational negligence and a manifestation of a lack of mandatory diligence and care in the name of public interest for the maximum safety of all the contestants participating in the fights by their proper selection and classification [26]. The Polish legal system envisages the possibility of attributing liability for death, bodily damage or health disorder to few entities jointly, e.g. sports club, trainer and sports referee. Pursuant to Art. 441 § 1 c.c., if several persons are liable for damage caused by tort, their liability is joint and several [27]. The provision above are of an imperative nature. Thus, if a few persons cause damage, alone and independently or jointly, their liability is under Art. 441 § 1 c.c. joint and several regardless of the degree of participation of each entity to damage occurrence [28]. It shall be indicated that a person who remedies the damage resulting from an action or omission of several persons is entitled to request the other co-liable persons to reimburse a relevant part of the performance (e.g. return a part of the compensation paid) depending on the circumstances, and especially on the fault of a given person and to the extent to which he contributed to the damage (Art. 441 § 2 c.c.).

The Polish legal system also envisages a possibility of an aggrieved person to contribute to the damage occurrence in his interests protected by law (e.g. health). In such a situation, Art. 362 c.c. shall be applied, pursuant to which - if an aggrieved party has contributed to damage arising or increasing, the obligation to remedy the damage is appropriately reduced according to the circumstances, and especially to the degree of both parties' fault.

Extremely interesting ruling was delivered by the Supreme Court on 21 May 1981. Even though the above judgement was delivered due to a specific event, it constitutes some general conclusions which shall be taken into consideration by the trainers and sports clubs in their business activity. In the reasoning of this ruling (this case concerned providing the dirt track motorcycle with proper tyres), the Supreme Court has expressed the conclusion that sports club’s duties in relation to providing the right quality and condition of the technical equipment shall be reinforced proportionally to the risk threatening the life and health of the contestant of a specific sports discipline. The extent of these duties is at the same time a great starting point for assessment who shall be held responsible in the case of failure of due diligence in the area of the undertaken measures aiming at eliminating technical defects of the equipment from the source of accidents. Hence the sports club cannot be released from any liability for the injury suffered by the contestant just because of an adult contestant’s awareness of possible accidents while using specific sports equipment. The liability for damage is still held by the sports club which is the entity responsible for delivering the proper equipment; nevertheless, in such situations, the contestant may share the responsibility for the damage [29].

Another ruling worth mentioning was delivered by the Court of Appeal in Poznań on 28 March 2007, which concerned sports club and sports organization’s civil liability for the contestant’s death during powerboating (world championships).

The contestant was participating in the competitions using his own boat. It was not equipped with the safety belts nor with the safety cockpit. In that class, these were not required by the policy, nor were they forbidden. Only one Hungarian contestant was equipped with such safety equipment. Lack of installing these elements accelerated the boat's speed, hence a chance of winning. In the present case, the complainant indicated that admission of a person without proper safety equipment to participate in the competitions was unlawful, because his boat was not equipped with cockpit or safety belts. The Supreme Court's conclusion was adverse to the complainant's and indicated that a person who is engaged in a specific sports discipline and participates in the competitions, accepts and takes the risk carried by this activity. If the person aware of the applicable safety rules and risk margin deliberately resigns from not compulsorily but acceptable equipment in order to accelerate his chance of winning, the potential harm caused by failure of applying aforementioned safety equipment fully fall under this risk. In such cases, sport organization's approval for contestants' participation in the competition, using the equipment complying with the statutory safety requirements but does not constitute higher standards, including safety standards, must not be considered as an unlawful and culpable act [29].

REMEDY

Personal injury consists in bodily damage, health disorder, death and violation of other personal interests. It may take a form of a material injury and non-material injury (harm) [13].

Remedy of a material injury to a person is stipulated in the civil code in respect of two examples, i.e. bodily damage or health disorder and death. In the event of bodily injury or health disorder, the aggrieved party is entitled to demand the one-off remedy in the sum necessary for medical costs (art. 444 § 1 c.c.) or annuity (art. 444 § 2 c.c.).

Targeted and necessary expenditures related to the bodily damage or health disorder in particular cover medical costs, purchase of a prosthesis and other specialized devices and appliances, lost income, cost of adjusting the accommodation to the needs of a person handicapped in result of the event, costs related with visiting an aggrieved person in hospital or resulting from the necessity to provide special care nursing over the aggrieved person, expenditures on rehabilitation treatment. It is also recognized that costs referred to in Art. 444 § 1 c.c., are composed not only of the medical costs in its strict meaning but also all expenditures connected with visiting the aggravated person in hospital by the dearest persons. These visits are indeed inherent to improvement of the aggravated person's well-being and accelerating the treatment, and also facilitate contact between family and the doctors with a view to obtaining further information about the aggrieved party's health and his needs [30–32].

The contestant aggrieved in result of sport injury may request for remedy from the liable person (trainer, sports club, etc.) also for annuity, if he becomes completely or partially incapable of working or if his needs have increased or his future perspectives have diminished. For good cause, on the aggrieved party's demand, instead of an annuity or part thereof, the court may award one-off compensation to the aggrieved party. It applies especially to the case where the aggrieved party has become disabled, and the one-off compensation will help him take up a new occupation (Art. 447 c.c.).

Among the aforementioned claims, the contestant who suffered damage as a result of sports injury is entitled to a monetary recompense for the harm suffered (Art. 445 c.c.). The amount of the recompense may in some circumstances be depended on the intensity of physical and mental suffering of the aggrieved person, the length of the rehabilitation process, exemptions from training some sports disciplines and participating in competitions and other consequences related to the development and a sports career [33].

If the aggrieved contestant died as a result of sports injury, then the persons indicated in the Civil code may be awarded with the following performances:

- a) the reimbursement of medical and funeral costs;
- b) one-off compensation;
- c) relevant annuity;
- d) recompense for the harm.

Pursuant to Art. 446 § 1 c.c., if, as a result of bodily injury or health disorder, the aggrieved party dies, the person obliged to remedy the damage should reimburse the medical costs and the funeral costs to the person who incurs them. It is without doubt that funeral costs also include expenditures on the grave. The remedy also covers the return of full cost incurred thereof, unless the court concludes under the circumstances of the case that these costs are excessive in comparison with normal expenditures incurred in other relevant cases [34].

Pursuant to Art. 446§ 3 c.c. the court may also award appropriate compensation to the closest members of the deceased's family if, as a result of his death, their living standard has significantly deteriorated. This compensation has to remedy only detriment of material nature arising as a result of an aggrieved party's death.

However, the relevant annuity may be also claimed, pursuant to Art. 446 § 2 c.c., by persons towards whom the deceased had a statutory maintenance obligation. This annuity may also be claimed by other persons related to the deceased to whom the latter voluntarily and permanently provided means of subsistence if it follows from the circumstances that the principles of community life so require.

Moreover, an appropriate sum may be awarded to the closest members of the deceased's family as monetary recompense for the harm suffered from the liable person (Art. 446 § 4 c.c.). It shall be now indicated that a compensation under Art. 446 § 3 c.c. and a recompense under Art. 446 § 4 c.c. are two separate, generic and normative, performances, aiming at satisfying different types of damages. While the first one is designed to reduce the actual and substantial deterioration of life conditions, so the material detriment, the second performance is designed as a compensative measure for the harm consisting in mental suffering resulting from death of a relative, so is aimed at satisfying the damage of non-material nature [35].

CONCLUSIONS

Sports injuries are integrally (immanently) related with training any sport discipline. The consequences may vary from slight health detriment, not requiring medical support, through loss of or permanent damage to health, up to the contestant's death. Without doubt, occurrence of these adverse effects of sports training shall be limited to minimum in every and each sports discipline. The essential role in this matter belongs to the trainers, who carry penal and

civil liability for any infringements (acts and omissions). The trainers' obligation is not only to prepare the contestant to sport rivalry but also to provide safety during sports training. As referred to in the jurisprudence, the trainer has a very special duty to ensure the proper conduct of training, not only with regard to complying with the rules applicable in each sports discipline, but also with respect to the contestants' utility to participate in the training.

REFERENCES

- [1] Rischka-Słowik B. Konstytucja Sportu w Unii Europejskiej [The Basic Law for Sport in the European Union]. Warszawa: C.H.Beck; 2014. Polish.
- [2] Tetlak K. Polityczne i społeczne przyczyny udzielania zwolnień podatkowych dla mistrzostw piłkarskich [Political and social reasons for granting tax exemptions for football championships]. In: Wetoszka D, editor. Prawo sportowe [Sport law]. Warszawa: C.H.Beck; 2018, 33. Polish.
- [3] Jedrucha S. Odpowiedzialność za szkody wyrządzone uprawianiem sportu [Liability for damage caused by practising sport]. Warszawa; 1972. Polish.
- [4] Voivodship Court of Administration in Warsaw judgement of 14 May 2014, VI SA/Wa 3449/13, Legalis, No. 1065485.
- [5] Consolidated text, Journal of Laws of 2018, item 1263, later referred to as Sports Act.
- [6] Kubiak R. Legalność pierwotna ryzyka sportowego [The original legality of sports risk]. Prokuratura i Prawo. 2006;12:13-14. Polish.
- [7] Widuchowski J. Kolano, urazy i obrażenia sportowe [A knee and sports injuries]. Katowice: G-KWADRAT s.c.; 1997. Polish.
- [8] Ogorevc M. Medycyna alternatywna w sporcie [Alternative medicine in sport]. Katowice: KOS; 2011. Polish.
- [9] Złotkowska R, Skiba M, Mroczek A, et al. Negatywne skutki aktywności fizycznej oraz uprawiania sportu [Negative effects of physical activity and participation in sport]. Hygeia Public Health. 2015; 50(1):43. Polish.
- [10] Lewandowski Z, Świerczyński Z. Zapobieganie urazom w sporcie [Prevention of injuries in sport]. Warszawa: Sport i Turystyka; 1970, 12-16. Polish.
- [11] Łobożewicz T. Bezpieczeństwo, higiena i ochrona zdrowia w sporcie, wychowaniu fizycznym i turystyce [Safety, hygiene and health protection in sport and physical education.]. Warszawa: Sport i Turystyka; 1978, 44. Polish.
- [12] Dziak A, Rusin Z. Traumatologia sportowa [Sports traumatology]. Warszawa: Centralny Ośrodek Sportu; 2000. Polish.
- [13] Bieniek G. Komentarz do kodeksu cywilnego [Commentary to the civil code]. In: Gudowski J, editor. Kodeks cywilny. Komentarz. Tom III. Zobowiązania. Część ogólna [Civil code. Commentary. Vol. 3. Liabilities]. Warszawa: Wolters Kluwer; 2018, 989-990. Polish.
- [14] Kaliński M. Szkoda na mieniu i jej naprawienie [Damage to property and repair it]. In: Olejniczak A, editor. Prawo zobowiązań – część ogólna. System Prawa Prywatnego, Tom 6 [Liability of obligations – general part]. Private Law System. Vol. 6]. Warszawa: C.H.Beck; 2014, 12. Polish.
- [15] The Act of 23 April 1964 – Civil Code (Dz.U. z 2018, poz. 1025) with further amendments. Consolidated text; hereinafter referred to as – c.c.
- [16] Szczurek Z. Prawo cywilne dla studentów administracji [Civil law for administration students]. Warszawa: Wolters Kluwer; 2008, pp. 196, 263. Polish.
- [17] Wiśniewski T. Zasada swobody umów [principle of liberty of contract]. In: Gudowski J, editor. Kodeks cywilny. Komentarz. Tom III. Zobowiązania. Część ogólna [Civil code. Commentary. Vol. 3. Liabilities]. Warszawa: Wolters Kluwer; 2018, 106-107. Polish.
- [18] Mojak J. Prawo zobowiązań [Law of obligations]. In: Filipiak T, Mojak J, Niezbecka E, eds. Zarys prawa cywilnego [Outline of civil law]. Lublin: Innovatio Press, Wydawnictwo Naukowe Wyższej Szkoły Ekonomii i Innowacji; 2012, 261-262. Polish.
- [19] Warsaw Court of Appeal judgement of 25 July 2017, VI ACa 469/16, LEX no. 2482884.
- [20] Supreme Court judgement of 2 December 2003, III CK 430/03, OSNC 2005/1/10.
- [21] Gardocka T, Majewski Ł. Odpowiedzialność za śmierć lub uszkodzenie ciała związane z uprawianiem sportu [Responsibility for death or personal injury related to sporting activities]. In: Gardocka T, Jagiełło D, editor., Problemy prawne na styku sportu i medycyny [Legal problems at the interface between sport and medicine]. Warszawa: C.H.Beck; 2015, 48. Polish.
- [22] Supreme Court judgement of 8 July 2015, II PK 93/14, LEX no. 1936724
- [23] Opole District Court judgement of 30 January 2013, II Ca 934/12, LEX no. 1718309.
- [24] Supreme Court judgement of 8 July 1968, II CR 216/68, LEX no. 4639.
- [25] Supreme Court judgement of 25 April 1973, I CR 306/73, OSNC 1974/2/34.
- [26] Supreme Court judgement of 24 November 1969, III CRN 7/69, LEX no. 6623.
- [27] Łódź Court of Appeal judgement of 6 November 2014, I ACa 619/14, LEX no. 1623922.
- [28] Supreme Court judgement of 21 May 1981, IV CR 132/81, OSNC 1982/1/13.
- [29] Poznań Court of Appeal judgement of 28 March 2007, I ACa 99/07, LEX no. 370511.33.

- [30] Supreme Court judgement of 7 October 1971, II CR 427/71, Legalis No. 15730,
- [31] Zielona Góra District Court judgement of 30 November 2018, I C 194/17, Legalis No. 1866654
- [32] Judgement of Sieradz District Court of 15 October 2015, I C 233/13, Legalis No. 1569256.
- [33] Leciak M. Odpowiedzialność cywilna w sporcie [Civil liability in sport]. In: Leciak M, editor. Prawo sportowe [Sport law]. Warszawa: C.H.Beck; 2018, 415. Polish.
- [34] Szczecin Court of Appeal judgement of 16 March 2017, I ACa 773/16, Legalis No. 1636720.
- [35] Poznań Court of Appeal judgement of 10 April 2018, I ACa 1140/17, Legalis No. 1794185.

Cite this article as:

Waldziński C, Waldzińska E, Durzyńska A, Waldziński T, Kochanowicz K.
Trainers and sports clubs civil liability for contestants' injuries caused during sports training or competition as regulated in the Polish legal system?
Balt J Health Phys Act. 2019; Suppl (1): 54-66
doi: 10.29359/BJHPA.2019.Suppl.1.05