Liability for damages in case of sports injuries

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ABSTRACT

For sports and its participants, injuries are something entirely common. Upon the occurrence of an injury, certain damage always occurs to the individual, raising the question in such situations of who or if anyone is liable for the resulting damage.

Due to the nature of sports, the liability for damages in cases of sports injuries is supposed to be more of an exception than a rule. Otherwise, individuals could potentially lose motivation for sports participation, and in such a scenario, the sport itself might lose its meaning and attractiveness.

Every sport is to some extent specific, and individuals can participate in sports in various ways or roles. Consequently, liability relationships for injuries in sports can be diverse but can generally be categorized into two groups: reciprocal liability for damages of athletes and liability for damages of organizers of sports events and managers of sports equipment.

By the very nature of things in the case of sports injuries, each specific case is unique, so only judicial practice can offer definitive answers to questions about liability for damages in the respective cases.

Keywords: sports, sports injuries, liability for damages, reciprocal liability for damages of athletes, liability for damages of organizers of sports events and managers of sports equipment

Odškodninska odgovornost ob nastanku poškodbe pri športu

POVZETEK

Za šport in njegove udeležence so poškodbe nekaj povsem običajnega. Ob nastanku poškodbe posamezniku vselej nastane določena škoda, pri čemer se v takšnih situacijah vedno pojavi vprašanje, kdo oz. če kdo odškodninsko odgovoren za nastalo škodo.

Zaradi narave športa naj bi odškodninska odgovornost za poškodbe pri športu predstavljala bolj izjemo kot pravilo. V nasprotnem primeru bi namreč lahko posamezniki izgubili motivacijo za športno udejstvovanje, šport kot tak pa bi v tem primeru izgubil svoj smisel in atraktivnost.

Vsak šport je do neke mere specifičen, posamezniki pa lahko v športu sodelujejo na različne načine oz. v različnih vlogah. Posledično so lahko odškodninska razmerja v primeru nastanka poškodbe pri športu različna, vendar jih je v osnovi mogoče razdeliti na dve skupni primerov, in sicer na medsebojno odškodninsko odgovornost športnikov in na odškodninsko odgovornost organizatorjev športnih prireditev ter upravljalcev športne opreme.

Že po naravi stvari pri poškodbah v športu vsak konkretni primer predstavlja posebnost zase, zato lahko šele pravna kazuistika ponudi dokončne odgovore na vprašanja o odškodninski odgovornosti v tovrstnih primerih.

Ključne besede: šport, poškodbe pri športu, odškodninska odgovornost, medsebojna odškodninska odgovornost športnikov, odškodninska odgovornost organizatorjev športnih prireditev in upravljalcev športne opreme

1. Introduction

Sports is a highly diverse and complex activity that is both beneficial and, to some extent, also risky. Individuals can participate in sports in various roles – as professional or amateur athletes, coaches or instructors, organizers of sports events, managers of sports facilities, manufacturers of sports equipment, spectators, etc. (Možina, 2020, p. 115).

Injuries are quite common in sports and for its participants. Their occurrence always results in some form of harm to the individual, prompting the question of who, if anyone, is liable for the incurred damage and whether the injured individual is entitled to compensation for the suffered harm (Možina, 2020, p. 115).

In legal theory, especially in the theory of sports law, three different perspectives on liability for damages in case of sports injuries have emerged. Two are diametrically opposed in their approach to determining liability, while the third falls somewhere between these two extremes (Králík, 2015, p. 1021).

The first group of theorists believes that sports participants should be held liable for injuries in sports without limitations. They do not consider sports to be such a specific area of human activity that justifies the potential application of a special legal regime when determining liability for damages in case of sports injuries (Králík, 2015, p. 1021).

In contrast, the second group of theorists almost completely excludes the application of rules on liability for damages in case of sports injuries. Advocates of this viewpoint argue that the world of sports is a sphere into which the law should not intrude (Králík, 2015, p. 1022).

The third group of theorists accepts the role of law in sports-related matters but modifies the traditional idea of liability for damages in case of sports injuries by considering the unique nature of sports (Králík, 2015, p. 1022).

Due to the nature of sports, liability for damages in cases of sports injuries is seen as an exception rather than a rule; otherwise, individuals might be discouraged from participating in sports, and the sports themselves would lose their meaning and appeal (Šabec, 2023, p. 70). Consequently, assessing liability for damages in cases of sports injuries poses a special challenge for courts worldwide. This often leads to situations where, in certain cases, especially in foreign jurisdictions, legal precedents refer to the practices of other countries in similar cases (Králík, p. 1032).

The question of liability for damages in cases of sports injuries can arise in various situations, depending on the role played by the injured party and the party potentially liable for damages. Liability relationships for injuries in sports can be diverse but can generally be categorized into two groups: reciprocal liability for damages of athletes and liability for damages of organizers of

sports events and managers of sports equipment (Možina, 2020, p. 116).

Liability for damages in cases of sports injuries can be contractual or non-contractual. In the Republic of Slovenia, general rules of law of damages (the provisions of the Obligations Code (OZ)) apply to matters concerning injuries in sports. For someone to be held liable for damages, and for the injured party to be entitled to compensation, the prerequisites of liability for damages must be satisfied. In other words, a foundation for liability for damages must exist for the awarding of compensation (Možina, 2020, p. 115).

The Slovenian legal system distinguishes between objective and fault-based liability for damages, differing in whether fault is one of the prerequisites for the emergence of liability for damages or not. The distinction lies in the fact that in fault-based liability for damages, fault is a prerequisite for the emergence of liability, whereas in objective liability for damages, fault is not a condition that must be fulfilled for the occurrence of liability for damages (Plavšak et al., 2003, str. 690).

In determining or assessing the basis of liability, the evaluation of unlawfulness is crucial, where the autonomous rules of individual sports play a key role (Možina, 2020, p. 117–119)

Given that each sport is governed by autonomous rules, any injury in sports is, by its nature, a unique case. Therefore, only judicial practice can provide definitive answers to questions about liability for damages arising from sports injuries (Cerar, 2007, e-source).

In the following parts of this article, it will be presented how Slovenian judicial practice assesses the existence of the prerequisites for liability for damages in cases where the question of liability for damages in cases of sports injuries arises. It will also be presented what determines the type of liability (subjective or objective) attributed to organizers of sports events or managers of sports equipment for the damage.

2. The peculiarity of assessing unlawfulness in sports

When assessing the unlawfulness of actions resulting in injury in sports, circumstances such as freedom of movement, the at-

tractiveness of sports competitions, and individual sports for all stakeholders are crucial. Additionally, autonomous rules established by sports associations, which have been adopted by sports federations, are highly significant in determining unlawfulness (Možina, 2020, p. 116–117).

These rules can serve as a valuable guide in determining the expected behaviour of athletes, organizers of sports events, or managers of sports facilities or equipment. They also define the permissible scope of the so-called *"combat element"*, preventing injuries caused by dangerous play, roughness, and unsportsmanlike behaviour (Možina, 2020, p. 117). Despite this, it is necessary to emphasize that sports rules do not constitute the sole source for distinguishing between permissible yet firm (rough) play and conduct that is prohibited, dangerous, or unsportsmanlike. Besides rules, other circumstances must be considered, especially the nature of each individual sport. Additionally, when evaluating what constitutes sportsmanlike or unsportsmanlike behaviour, a certain degree of discretion should be entrusted to the sports referee. (Možina, 2020, p. 129).

A drawback of sports rules is that they do not regulate all sports or all situations that may arise in a particular sport. Consequently, when assessing the unlawfulness of actions resulting in injury in sports, it is primarily necessary to consider the general obligation of exercising due diligence and avoiding causing harm. While sports rules can complement this obligation, they cannot replace it (Možina, 2020, p. 117).

The standard of due diligence also plays a crucial role as it is necessary, when assessing unlawfulness of actions resulting in injury in sports, to determine whether the responsible party, despite violating sports rules, acted differently than an average careful athlete would have in a comparable situation (VSRS Sodba II Ips 108/2016, 5. 1. 2017).

In any case, it holds true that an athlete who causes harm to another through their actions is not liable for damages if their behaviour is in accordance with the rules of the game, as it is not considered unlawful in such cases (Stanec, Milanović, 2019, p. 28).

Similarly, not every violation of sports rules implies unacceptable conduct as an element of liability for damages, as some rule violations in a particular sport are so common and characteristic that they have become an integral part of that sport. Without

such violations, the game/sport could become uninteresting, or at least significantly less appealing to both athletes and spectators. Demanding strict adherence to the rules during play could negatively impact the ongoing development of a sport. Athletes are undoubtedly aware that rule violations will occur during the game, as they often intentionally break the rules, creating hazardous situations for themselves and others. Consequently, minor rule violations committed through negligence during sports play cannot be considered unlawful or unacceptable conduct (VSRS Sodba II Ips 108/2016, 5. 1. 2017).

Within the framework of sports games, the basis for liability for damages should only be a violation of the rules that, by its nature and intensity, exceeds the framework of the rules of the game. Due to the nature of sports and sports delicts, each being unique, when answering the crucial question of what constitutes a violation of sports rules sufficient to deem it an unlawful act, it is necessary to assess the circumstances of each individual case and consider existing judicial practice (Cerar, 2007, e-source).

3. Reciprocal liability for damages of athletes

Sports can be divided into two groups based on their nature: individual sports, where participants generally do not have physical contact, and sports with a combat element, where physical contact among participants is quite common or even necessary. (Možina, 2020, p. 120).

The group of sports with a combat element includes various team sports such as football (soccer), basketball, handball, hockey (Stanec, Milanović, 2019, p. 28), and combat sports like boxing, where mutual physical contact among participants is inevitable (Možina, 2020, p. 120). Consequently, the risk and likelihood of injuries in these sports are much higher (Možina, 2020, p. 127).

Sports with a combat element are practically inconceivable without mutual physical contact among participants or without violations of sports rules. In these sports, rule violations are practically an integral part, such as tactical fouls committed for strategic reasons and not with the intent to harm opposing participants (Praprotnik, 2017, p. 20–22).

As a result, in assessing the liability for damages of athletes,

the law must consider the fact that sports with a combat element inherently involve an increased probability of participant injuries. Moreover, the rules of these sports allow and anticipate physical contact, especially in the context of the sporting battle. In this type of sports, the principle of *alterum non laedere* is limited to the extent that participants are not held liable for injuries sustained by others, even if caused by a rule violation, if the violation occurred *»in the heat of the game«*, due to fatigue, thoughtlessness, or other similar reasons (Možina, 2020, p. 127).

In Slovenian judicial practice, for some time there was a prevailing view that the conduct of an athlete (specifically a football player) is not unlawful only in the case of intentional injury but also in the case of a serious violation of rules or when it involves particularly audacious moves. The conduct was deemed unlawful even if the athlete committing the offense should (just) have been aware that their actions could result in either hitting an opposing player or the ball (VSL Sodba II Cp 3900/2010, 20. 4. 2011; VSK Sodba I Cp 244/2015, 2. 9. 2015).

The described position of the judicial practice could be understood in a way that every foul, committed with a tackle from behind or any other intentionally committed offense, regardless of its intensity, constitutes unlawful conduct that forms the basis for liability for damages. However, this position was considered untenable, even by legal theorists, as such offenses are common in football matches (Praprotnik, 2017, p. 21). The Supreme Court of the Republic of Slovenia shared the same view, emphasizing that in sports with a combat element characterized by frequent direct contact between players, it would be overly strict for the court to label every action by a player who knowingly hits an opponent as unlawful. Fouls are an integral part of football, and the mere violation of the rules of the game, even when the perpetrator intentionally hits an opposing player, cannot be decisive in assessing the unlawfulness of the player's conduct. Consequently, the Supreme Court of the Republic of Slovenia defined a serious violation of the rules of football, emphasizing that such a violation occurs only when the player's behaviour is inappropriate and of an extreme nature. In simpler terms, a serious violation occurs when a player commits a foul using excessive force that the other player could not reasonably anticipate (VSRS Sodba II Ips 108/2016, 5. 1. 2017).

The same stance was taken by the courts in the case of other team sports. For instance, the Supreme Court of the Republic of Slovenia, when assessing unlawfulness in handball, concluded that the actions of a handball player are not unlawful if the rule violation was not committed in an unsportsmanlike or audacious manner or in excessively rough play (VSRS Sklep II Ips 208/2003, 11. 3. 2004). The absolute prohibition of physical contact and violations of handball rules, whether intentional or unintentional, would, in the view of the Slovenian judicial practice, effectively negate the essence of the handball game (VSL Sodba II Cp 2008/2011, 30. 11. 2011).

The Higher Court in Ljubljana made the same decision in a case where an injury occurred during a basketball game, emphasizing that the basketball player's conduct would be considered unlawful only if it was unusual for basketball and deviated from typical fouls in terms of aggression, excessive roughness, unsportsmanlike behaviour, and recklessness (VSL Sodba I Cp 1486/2013, 2. 10. 2013).

Similarly, this applies to martial arts, where an athlete's conduct is not unlawful if it adheres to the rules. It only becomes unlawful if the athlete intentionally and grossly violates the rules of the sport (Donnellan, 2016, e-source). This means that athletes, in these cases, are not liable for injuries, including those that may result in death, if the injury is a consequence of conduct in accordance with the rules (Možina, 2020, p. 130). This is also linked to the concept of the injured party's consent, as a person who voluntarily participates in sports activities is considered to consent to the risks inherent in that sport (VSRS Sodba II Ips 284/2016, 30. 8. 2018).

In the second group of sports, i.e., individual sports, there are activities in which physical contact between athletes is neither necessary nor desirable. However, this does not mean that injuries cannot occur. In most cases, injuries happen in sports conducted in confined spaces. Athletes must exercise care and behave towards others in a manner that does not endanger or inappropriately obstruct each other (Možina, 2020, p. 121).

The assessment of unlawfulness in individual sports has been much less common in Slovenian judicial practice compared to the evaluation of unlawfulness in sports with a combat element.

For example, the Higher Court in Ljubljana determined that a cyclist who collided with a parked car was deemed liable for damages. This was because he fell behind the closed section of the cycling marathon to the extent that he was actually riding outside of the closed section. As a result, he was subject to road traffic regulations, which he violated in his actions (VSL Sodba I Cp 312/2010, 24. 5. 2010).

In general, participants in a cycling race are required to comply with safety rules, as rule violations form the basis for assessing unlawfulness in the event of an accident (Možina, 2020, p. 127). Similarly, this applies to golf, where it is possible to speak of a player's liability if they violate the rules of the game and golf ethics (VSL Sodba II Cp 1518/2022, 14. 11. 2022).

Unlike Slovenian judicial practice, German case law has also addressed the assessment of unlawfulness in other sports, such as skating, tennis, and squash. Decisions of German courts suggest that, especially in cases where there are no specific sports rules (e.g., in skating), it is necessary to consider the standard of due diligence in assessing unlawfulness. In cases where such rules exist, it must be determined whether they were violated at all, and if so, whether it was done intentionally or negligently, as otherwise, there is no liability for damages (Možina, 2020, p. 122–123).

A unique aspect of individual sports is represented by skiing, a sport in which participants move at high speeds in various directions on a limited surface. Despite its nature, i.e., its association with certain dangers or risks, skiing does not constitute a hazardous activity, and in the event of damage, it is not possible to speak of objective liability for damages (VSRS Sodba II Ips 787/2009, 25. 4. 2013).

The skier must assume the risks that are normal for skiing, such as the speed of skiing, specialized equipment, and the high likelihood of situations that are unpredictable for skiers (VSRS Sodba II Ips 661/2007, 10. 9. 2008). This does not include the improper conduct of other participants, especially if they violate regulations regarding prohibited and mandatory actions on the ski slopes (VSRS Sodba II Ips 1129/2008, 16. 2. 2012).

One of the key sources of rules for behaviour on the ski slopes is the International Ski Federation rules, which are in Republic of Slovenia largely reflected in Article 23 of the Ski Area Safety Act (ZVSmuč-1) (Možina, 2020, p. 121).

In assessing the liability of a skier, it is not only the skiing (sports) rules that matter but also general rules prohibiting causing harm to others. Consequently, when an injury occurs on the ski slope, it is necessary to evaluate on a case-by-case basis whether the skier primarily adhered to skiing rules and, secondarily, exercised appropriate due diligence, or behaved in a manner consistent with how an average careful skier would act in a comparable situation (VSRS Sodba II Ips 1129/2008, 16. 2. 2012).

4. Liability for damages of sports event organizers

In sports, in addition to the reciprocal liability for damages of athletes, there is also a multitude of various relationships of liability. Besides athletes, liability for damages can also be attributed to sports event organizers, associations, federations, teachers, coaches, facility managers, manufacturers, and sellers of sports equipment, etc. (Možina, 2020, p. 122–123).

The legal basis for the liability for damages of these entities, in addition to unlawful conduct, is also contractual relationships established between athletes and competition or event organizers, as well as facility managers, and also between organizers and spectators (Možina, 2020, p. 134). The organizer of a sports event or the manager of sports equipment can be held liable for damages to spectators under Article 157 of the OZ (VSL Sodba III Cp 3032/2010, 31. 8. 2010). This applies equally to damages incurred by those who gather in larger numbers in a specific area solely due to a sports event and who may be endangered precisely because of exceptional circumstances related to an unusually large number of people (VSC Sodba Cp 356/2021, 3. 11. 2021).

The organizer has a duty to, in accordance with relevant regulations (laws, rules of sports associations, technical rules, etc.), implement appropriate safety measures that can prevent those dangers exceeding the usual risks associated with the execution of a particular sports event (Možina, 2020, p. 134–135).

Stated differently, the organizer must take safety measures against all risks that are not typical for the execution of a particular sports activity and clearly visible to the participants and are such that participants cannot avoid them with average care (VSRS Sodba II Ips 313/2017, 7. 2. 2019).

The safety measures taken must prevent the danger that can be reasonably expected. Their intensity depends on the probability of damage, the extent of the danger, the imminent harm, and the possibilities and costs of averting the danger (Možina, 2020, p. 134–135).

In this regard, the Supreme Court of the Republic of Slovenia emphasized that the organizer is not free from the obligation to organize sports activities in accordance with the standards of professional care, even if the risk typical for a particular sport is assumed by the participant themselves (VSRS Sodba II Ips 690/2008, 9. 6. 2011). Nevertheless, these requirements should not be understood in a way that the organizer must take measures to prevent the occurrence of any accident or injury, as such a demand would establish the organizer's objective liability for all injuries, which would be contrary to the purpose of sports (VSL Sodba II Cp 1518/2022, 14. 11. 2022). In other words, it is not the organizer's duty to arrange the sports activity in a way that injuries could never occur (VSRS Sklep II Ips 208/2003, 11. 3. 2004). However, measures must be provided to ensure the safety and protection of spectators, judges, and residents in the vicinity of the sports facility where the sports activity is taking place (Možina, 2020, p. 140).

In certain cases, the organizer may also have a duty to alert the athlete to an impending danger, unless it is obvious or apparent. Warning beginners and younger athletes about the impending danger is even more crucial (Možina, 2020, p. 135).

From established Slovenian judicial practice, it can be inferred that the liability for damages of the organizer towards athletes is mostly assessed based on the principle of fault, whether for contractual or non-contractual liability for damages. The organizer's objective liability for damages arises only exceptionally, i.e., in cases where particularly dangerous circumstances exist (VSL Sklep II Cp 1561/2018, 16. 1. 2019).

It is also crucial to distinguish between cases where an individual voluntarily chooses to engage in a sports activity (recreation and/or entertainment) and cases where participation in or at a sports activity is mandatory (in school or as part of work tasks). If an individual engages in sports voluntarily, the organizer of the sports event can only be held liable for damage resulting from their negligence. In such cases, the organizer is not liable for

damage caused by the inherent risks of the sport (VSL Sodba I Cp 641/2020, 4. 11. 2020).

Participants who voluntarily join an association engaged in a dangerous sport accept the dangers, risks, and the possibility of damage. Consequently, an association involved in a dangerous sport cannot be held objectively liable for the damage but only for negligence. In one of the cases, the sports club was not held liable for damages when the plaintiff suffered catastrophic injuries resulting in tetraplegia during the landing phase of a parachute training jump. The sole reason for plaintiff's fall upon landing was her sudden loss of consciousness while maneuvering before the landing, which no one could have anticipated (VSRS Sodba II Ips 222/2005, 26. 4. 2007).

The communicative significance of the cited decision of the Supreme Court of the Republic of Slovenia is that the positive aspects of a sports activity, even if it is dangerous, outweigh the risks associated with it, and the operator of the activity assumes these risks. The operator, defined as someone with an interest in the positive aspects of the activity, is considered the bearer of the activity. This is also linked to the voluntary participation or engagement in this activity. Nonetheless, this by no means implies that voluntary participation in a (sports) activity excludes the operator's liability for negligence (VSRS Vmesna sodba II Ips 110/2021, 1. 12. 2021).

When assessing the liability of a coach, it is necessary to consider that coaching requires professional knowledge, and coaches are expected to act with a higher due diligence, namely, with professional diligence or the care of a good expert. Due to the constant development of sports, coaches must continually update their knowledge, as neglecting such conduct could jeopardize athletes or expose them to unpredictable risks. In this regard, it can be concluded that the expected standard of conduct from a coach is dynamic and depends on the experience, abilities, and age of the individual athlete. Coaches are expected to exercise supervision over athletes, provide them with appropriate instructions, ensure the safe use of sports equipment, and, in the event of injuries, provide suitable and prompt medical care. It is also the coach's responsibility to prevent injured athletes from participating in sports activities, whether during training or competition (Zuljan, 2022, p. 65).

In connection with the question of the coach's duty of care in team sports, the Supreme Court of the Republic of Slovenia emphasized that such duty arises only when the athlete's behaviour deviates from the normal and customary aspects of the sports game, which a coach could have prevented through vigilant observation (VSRS Sodba II Ips 788/2008, 30. 9. 2010).

In this regard, the Higher Court in Ljubljana concluded that the omission of the coach's duty was not established in a case where, before the start of judo practice, another participant in the judo junior class ran past one of the judokas and pushed him, causing him to collide headfirst with the victim's nose. The court reached this decision because the coach managed to prove that he had been observing the children throughout the time (they were not running uncontrollably in the gym), but despite that, he could not have prevented the harmful event as he was not obliged to anticipate it (VSL Sodba I Cp 1635/2010, 9. 6. 2010).

Slovenian courts have addressed the evaluation of a coach's due diligence over several years in a case involving an injury to a ski jumper. The injury occurred when the ski jumper, following the coach's instructions, took off from a higher starting point (compared to previous jumps) during the last jump of the first training session of the new season. Consequently, he jumped too far and, upon landing, suffered injuries to the ligaments of his right knee due to excessive forces. In the end, an interim judgment was issued, which became final, establishing the basis for full (100%) liability for damages because the coach's conduct was deemed professionally unfounded. This conclusion was reached by the first-instance and second-instance courts based on expert opinion, which indicated that the coach's actions were inconsistent with professional standards. The appellate court added that proper training planning is one of the most critical aspects of the competitive sports process (VSL Sodba II Cp 1785/2020, 6. 1. 2021).

As mentioned earlier, it is necessary to distinguish between cases where an individual voluntarily decides to engage in a sports activity (recreation and/or entertainment) and cases where participation in or attendance at a sports activity is mandatory (school, professional activity). Thus, Slovenian judicial practice has repeatedly dealt with assessing unlawfulness when an injury occurred during the performance of work duties or at school, and

when the sports activity was organized either by the employer or an educational institution. In connection with this, the question of the objective liability of the organizer arises. Slovenian judicial practice has addressed this issue in several cases.

For example, in the case of an employee's injury during a basketball game played by employees as part of practical training in martial arts (within the scope of regular work duties), the employer's liability was not established (VSRS Sodba II Ips 760/2005, 31. 1. 2008). The same decision was taken in the case of a police officer's injury during self-defence skills training as part of an exercise within the police officer's educational process. The court justified its decision by stating that the injured party was familiar with the execution of the exercise, having performed it several times before. Additionally, he chose his sparring partner himself, and the training took place after the warm-up and under the supervision of the instructor (VSL Sodba II Cp 2293/2009, 21. 10. 2009).

A diametrically opposite decision was made in a case where the injured party (a police candidate) was harmed during the execution of a martial arts exercise that he was not familiar with, and it was not practically presented to him, even though he was performing it for the first time. The decision regarding objective liability was justified by stating that, in this specific case, it did not involve an experienced fighter, or an individual engaged in martial arts for an extended period. Therefore, the specific situation had to be treated differently. In this particular instance, the activity was deemed unpredictable and dangerous because the injured party was performing the exercise for the first time, which was unfamiliar to him, and he lacked experience or knowledge of martial arts; therefore, the objective liability of the employer was established (VDSS Sodba Pdp 1376/2010, 11. 3. 2011).

The same decision was reached in cases where a soldier was injured during the execution of an exercise on a combined (gripping) climbing frame, popularly known as »Tarzan.« In this regard, the established Slovenian judicial practice holds the view that this exercise is considered a dangerous activity due to the height of the obstacle and the way it is overcome, especially if the bars are wet (VDSS Sodba Pdp 35/2014, 20. 2. 2014).

In assessing the liability for damages of the school or teacher, the courts must first determine the cause of the damage. They

must assess whether the damage is either the result of any unlawful conduct or the failure to perform the required actions by the teacher (acting with insufficient care), or it is the result of an unfortunate accident (Mandič, 2019, p. 8).

The school must organize classes and sports activities to prevent harm to participants and instructors, adhering to the principle of *"neminem leadere"* (VSRS Sodba II Ips 487/98, 26. 5. 1999) and acting in accordance with the rules of the profession, customs, and the diligence of a good professional (VSRS Sodba II Ips 299/2002, 19. 2. 2003).

The school must organize classes and a teacher must exercise careful supervision over students in their work, with the intensity of supervision varying according to the age of the students or pupils. The level of supervision that teachers must provide is highest in the first three years of schooling and gradually decreases thereafter. In high schools, it should be such that teachers, through their occasional presence, clearly communicate to students that they are not left to themselves or allowed to exceed the limits of what is permitted. Complete abandonment of supervision is never allowed (Mandič, 2019, p. 9).

Careful supervision represents a legal standard that needs to be filled with the use of substantive law, thus determining, from case to case, how a prudent teacher would act in a specific situation (VSRS Sodba II Ips 741/2006, 12. 7. 2007). In doing so, it is essential to consider that it would be excessive and contrary to the fundamental goals of the educational process to demand from educators the implementation of overly strict supervision. In such cases, educators might begin to avoid activities that are unpredictable yet essential for the healthy psychophysical development of children (Mandič, 2019, p. 8).

Consequently, when fulfilling the legal standard of careful supervision, it is necessary to seek a balance between the demand for ensuring the safety of children and the need to structure the educational process in a way that allows children a certain level of autonomy based on their age and abilities (VSRS Sodba II Ips 238/2011, 21. 3. 2013). Implementing excessive supervision could negatively impact the personal development and upbringing of children (Mandič, 2019, p. 8).

While the injured party can seek compensation directly from the teacher if they can prove that the teacher intentionally caused

the damage (OZ, Article 147, Paragraph 2), generally, the school, as the teacher's employer, is liable for damage incurred by students due to the teacher's unlawful actions or insufficient care, unless it can be proven that the teacher acted appropriately in the given circumstances (OZ, Article 147, Paragraph 1).

This was demonstrated in the case of a student's injury during a football game on an asphalt playground when a violation occurred against him during physical education class, leading to his fall and a broken arm. In this specific instance, the court concluded that the teacher could not have prevented the injury through more careful supervision, given that football is a sport involving physical contact, is highly unpredictable, and injuries are difficult to avoid (VSRS Sodba II Ips 414/2006, 9. 10. 2008).

On the contrary, the school's liability for damages was established in a case where a student was injured during a sports day involving ice-skating. At that time, other skaters were also on the ice rink, behaving recklessly and disturbing the students on the sports day. Consequently, the accompanying teachers should have either demanded that the rink operator remove the dangerous skaters from the rink or relocated the students away from the rink, as they are expected to act with greater care, equivalent to that of a good professional. However, they failed to take any of these actions (VSRS Sodba II Ips 299/2002, 19. 2. 2003).

The failure of careful supervision was also determined in a case where a student was injured during physical education class, specifically when falling from gymnastics parallel bars. According to the court, the physical education teacher should have anticipated that, without his presence, assistance, and supervision, a fall from the gymnastic equipment could occur. He should have expected it and consequently organized physical education class accordingly. In this particular case, it was found that although the physical education teacher provided instructions to the students regarding the exercise, he did not supervise the execution or was present during the exercise, as he was evaluating other students on the opposite side of the gymnasium. Consequently, the school was found liable for the damages incurred by the student (VSRS Sodba II Ips 668/2007, 23. 7. 2009).

A different standpoint, asserting that the school is not liable for damages, emerged in a case where a student was injured while jumping from playground equipment. The injured party accused

the school of negligence, contending that the teachers should have even prohibited her from using the playground equipment. The courts determined that the injured party had received warnings about using the playground equipment that, given her age, she was capable of understanding and should have heeded. Furthermore, the courts found that the injured party had used the playground equipment, which was not inherently dangerous, on multiple occasions before. The present teachers had monitored it through collaborative supervision at an appropriate distance, evident from their prompt detection of an awkward landing. The level of supervision advocated by the injured party, considering the minimal risk of injury during play in this specific situation, was deemed excessive by the courts and contrary to the goals of the pedagogical process (VSRS Sodba II Ips 594/2007, 16. 9. 2010).

5. Liability for damages of managers of sports parks and sports equipment

For the fault-based liability for damages of the manager of a sports park and/or sports equipment, it is not necessary for any legal norm to specifically prohibit or command certain conduct. The manager's actions can be unlawful even if their conduct (act or omission) is generally impermissible (contrary to commonly accepted rules). In these cases, when assessing unlawfulness, it must be determined whether it was (objectively) foreseeable that the omission would lead to the occurrence of damage (VSRS Sklep II Ips 46/2016, 1. 2. 2018). Throughout all of this, it is necessary to consider the general principle of *neminem leadere*, which, according to the stance of the Supreme Court of the Republic of Slovenia, is not so broad that injured parties can invoke it solely because the damage occurred on sports surfaces intended for a wider range of users. Consequently, they cannot demand compensation from the owners or managers based solely on this principle. It is entirely normal for various obstacles or devices to be present on sports surfaces, as they can be an integral or functional part of them. Users must also expect this and use sports facilities with the necessary care in a way that ensures their own safety. If they fail to do so, the actions of the manager or owner are not considered unlawful (VSRS Sodba II Ips 252/2016, 21. 6. 2018).

Considering the above, the Higher Court in Ljubljana, in a case involving an injury during rollerblading in a sports park (the injured party hit a stone on the asphalt surface, fell, and injured their wrist), upheld the decision of the first-instance court, which dismissed the injured party's lawsuit. The court based its decision on the fact that the occurrence of the damage was not objectively foreseeable because the manager regularly maintained and cleaned the sports park and periodically inspected it. Another crucial finding was that the stones on the sports park were evidently brought there, as the sports park was fenced and delimited by concrete curbs and greenery, and unquestionably flawless at all times (except for the critical day). In addition, the Higher Court in Ljubljana concluded that the injured party, by using the external asphalt surface, assumed the risk of the asphalt surface being scattered with small stones, a consequence of the sports park being located in nature. The court criticized the injured party for not acting diligently, as he did not inspect the asphalt surface before starting rollerblading (VSL Sodba II Cp 2555/2018, 8. 5. 2019).

Just like when using a sports facility, the user of fitness equipment must also be attentive and mindful of typical and foreseeable risks. Therefore, according to Slovenian judicial practice, the duty of the manager of fitness equipment is to ensure safety measures that go beyond ordinary risk, excluding the provision of a person who would constantly monitor or control each individual user of fitness equipment. Similarly, the manager of fitness equipment is not obligated to employ a person with a personal trainer license (VSC Sodba Cp 192/2013, 29. 8. 2013).

If the occurrence of damage or injury were due to the incorrect use of fitness equipment, which would be a direct result of the absence of instructions (especially if fitness equipment did not have labels with information about the manufacturer and instructions for use) and supervision by the manager of sports equipment, the latter could be accused of acting with insufficient due diligence (unless the injury occurred when the participant was not using the equipment, as in that case, instructions on the correct use of the equipment and supervision could not prevent the injury). The same could be concluded if the manager of fitness equipment did not provide appropriate protective equipment (VSL Sodba II Cp 138/2021, 3. 6. 2021).

Despite the above, the manager of fitness equipment is not liable for damages that occur to the user of fitness equipment if, after being informed of the correct use, they still use the fitness equipment incorrectly or in a manner that exceeds their physical capabilities (VSRS Sodba in sklep II Ips 187/2011, 20. 3. 2014).

A certain peculiarity exists when it comes to ski area operators, as they bear a specific responsibility to ensure that avalanche protection is arranged on avalanche-prone parts of the ski slopes. Additionally, they must provide protection for dangerous areas unsuitable for skiing, secure areas around the pillars of ski lifts and snowmaking devices. Furthermore, they are required to safeguard waiting lines in front of ski lifts and organize skiing programs on connecting, entry, and exit trails. They must also ensure proper marking and surveillance of the ski slopes, as well as emergency services or a rescuer with rescue equipment for smaller ski resorts. Moreover, they should appropriately arrange and mark the space for the arrival of the rescue vehicle, ensure an adequate number and equipped supervisors, and provide devices (auditory and visual) to inform skiers that motor vehicles are used on the ski slopes during operation (ZVSmuč-1, Article 5 Paragraph 1).

In addition to the mentioned responsibilities, ski area operators must conduct safety inspections of the ski slopes before the start of operation, during operation, and after the end of operation. They should ensure that all trails (including entry and exit paths) are properly prepared, and the snow surface is appropriately treated with a snow groomer. Surfaces that are not groomed must be adequately marked and maintained in another suitable manner. Ski area operators must also develop an emergency response plan for cases of injury or sudden illness on the ski slopes (ZVSmuč-1, Article 6 Paragraph 1–3).

In simpler terms, ski area operators are obligated to implement safety measures on the slopes in accordance with the ZVSmuč-1, professional standards, and common practices (VSRS Sodba II Ips 1129/2008, 16. 2. 2012). However, this doesn't mean that skiers can use the ski resort entirely carefree; they must also take actions to protect themselves and other skiers (VSRS Sodba II Ips 116/2005, 28. 4. 2005).

Contrary to users of the ski area, its operator is generally always liable for damages according to the principles of fault-based

liability for damages (VSRS Sodba in sklep II Ips 525/92, 17. 2. 1993), i.e., if they act improperly or with insufficient due diligence when managing the ski area (VSRS Sodba in sklep II Ips 246/2007, 8. 10. 2009). Their liability for damages could only become objective in extremely exceptional circumstances that would transform the ski area into a hazardous object, which is not inherently the case (VSRS Sodba in sklep II Ips 525/92, 17. 2. 1993). Similarly, managing a ski area is not considered a hazardous activity (VSRS Sodba in sklep II Ips 246/2007, 8. 10. 2009).

The ski area operator can be relieved of liability if they prove that the skier's damage occurred without their fault because they ensured the proper maintenance of the ski area in accordance with the provisions of the ZVSmuč-1 (VSL Sodba II Cp 358/99, 12. 12. 1999), professional rules, and customs (VSRS Sodba II Ips 1129/2008, 16. 2. 2012).

For damage caused among skiers themselves, the ski area operator is liable for damages only if the skier's actions that caused the damage are a result of the operator's negligence. The operator is not liable for damages resulting from the unauthorized actions of the skiers themselves (VSRS Sodba II Ips 1129/2008, 16. 2. 2012).

The requirements for a properly maintained ski slope cannot be understood in a way that the ski area operator must eliminate slippery spots, clumps, ridges, or minor bumps on the slope. The occurrence of these features is entirely common on ski slopes, and a skier must expect and adapt their skiing to them. According to the Supreme Court of the Republic of Slovenia, clumpy remnants from grooming and frozen ridges or depressions on the ski slope do not pose such a danger that the operator should remove them or specifically warn skiers about them. Similarly, the ski area operator is not obliged to provide specific protection, such as a fence or net, for the strip of untouched snow located next to the slope, as it does not constitute a hazardous area like a gap. Consequently, when fulfilling the legal standard for the other dangerous place from the second indent of the first paragraph of Article 1 of ZVSmuč-1, it must be interpreted restrictively (VSRS Sodba II Ips 661/2007, 10. 9. 2008).

Although ZVSmuč-1 prescribes that the ski area operator must ensure an adequate number and equipment of supervisors, these requirements should not be interpreted in a way that the ski area

operator (through supervisors) must exercise absolute control over all skiers and snowboarders. It would be excessively strict and unreasonable to demand that supervisors prevent every unsafe skiing (VSRS Sodba II Ips 1023/2008, 19. 1. 2012) and, in the case of unsafe skiing, exclude a skier or snowboarder from the ski slope (VSL Sodba I Cp 1104/2017, 10. 1. 2018).

However, the failure to suspend operations in dense fog or adverse weather conditions, which are so deteriorated that a skier cannot follow signs and other participants on the ski slopes, constitutes conduct contrary to the due diligence expected of the ski area operator (VSRS Sodba II Ips 116/2005, 28. 4. 2005).

6. Conclusion

In light of the above, it can be concluded that the assessment of unlawfulness in cases of sports injuries could be divided into two groups, both sharing the commonality that unlawfulness in sports is more of an exception than a rule.

In sports with an element of combat, only those extreme actions and serious violations of sports rules that clearly deviate from the criteria of ordinary rule violations for a particular sport can be considered unlawful.

Such a violation can occur in practice either when the perpetrator intentionally and/or grossly violates sports rules and aims to cause harmful consequences (injury), i. e, acts with direct intent or when they are aware that their actions can cause harmful consequences and accept the possibility of their occurrence, but nevertheless continue with their actions and carry them out with the thought »whatever happens, happens«, i. e., acts with eventual intent.

Consequently, in practice, actions in sports with an element of combat could be defined as unlawful only when the perpetrator acts intentionally (either with direct or eventual intent), as in sports with an element of combat, a sportsperson, in a practical sense, cannot »seriously or grossly« violate sports rules merely through negligent (unintentional) actions.

On the other hand, in individual sports, unlawfulness is established if the athlete violates sports rules even through negligent behaviour (or omission) or acts contrary to the general prohibition of causing harm (the principle of *neminem leadere*).

The basis for the »stricter« treatment of athletes in individual sports undoubtedly lies in the fact that in this type of sports, physical contact between athletes should not occur in principle. Consequently, the possibility of injuries due to the actions of another athlete in these sports is considered to be much smaller. Therefore, in cases of such injuries, they are subjected to a stricter assessment due to their exceptional nature.

A special position is held in assessing the unlawfulness in the individual sport of skiing since permissible and impermissible actions in this sport are regulated in the International Ski Federation rules, which are in Republic of Slovenia largely reflected in Article 23 of ZVSmuč-1. Consequently, the unlawfulness of a skier's conduct is already established *ex lege* if it does not comply with the provisions of the International Ski Federation rules or, in the Republic of Slovenia, with the provisions of ZVSmuč-1.

In the context of liability for damages for organizers of sports events, gatherings, and managers of sports parks and equipment, the conclusion can be drawn that, in Slovenian judicial practice, the predominant decisions generally affirm the liability of these entities for damages to participants or users, relying on the principles of fault-based liability for damages. Nonetheless, it cannot be unequivocally asserted that the mentioned entities would never be held liable for damages to participants or users based on the principles of objective liability for damages.

One could say that the use of rules regarding the fault-based liability for damages of organizers and managers is the norm, while the use of rules regarding objective liability for damages is the exception and a rarity in practice. Rules of objective liability for organizers or managers can only be applied when circumstances are present that exceed the ordinary for a specific sport and collectively make the sports activity hazardous. Such circumstances are extremely rare in practice and mostly occur in cases where the injured party does not voluntarily participate in the sports activity but rather as part of their work duties. An additional argument in favour of applying rules of objective liability for damages in such cases is the circumstance in which the injured party encounters a specific sports activity for the first time.

When participants voluntarily engage in hazardous (adrenaline) sports activities, the use of rules regarding objective liability for damages is conceptually excluded, and in these cases (in

adrenaline or dangerous sports), organizers and managers can be held liable for damages solely based on the principles of fault-based liability for damages.

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