

1-8-2015

Civil liability of sports participants for sports-related injuries in the Czech Republic

Michal Kralik

Supreme Court of the Czech Republic Europe

Follow this and additional works at: <http://epublications.bond.edu.au/slej>

 Part of the [Entertainment, Arts, and Sports Law Commons](#)

Recommended Citation

Michal Kralik. (2015) "Civil liability of sports participants for sports-related injuries in the Czech Republic" ,, : ISSN 1836-1129.

<http://epublications.bond.edu.au/slej/23>

Civil liability of sports participants for sports-related injuries in the Czech Republic

Abstract

This article concerns legal liability of sports participants for sports-related injuries and the approaches adopted by different jurisdictions. In particular, it discusses the Czech Republic's approach to incidents where a person participating in sports causes injury to another participant. This issue has only recently become the subject of serious study and analysis in the Czech Republic.

Keywords

sports law, civil liability in sports, Czech Republic and liability in sports, negligence in sports

Disciplines

Entertainment, Arts, and Sports Law

CIVIL LIABILITY OF SPORTS PARTICIPANTS FOR SPORTS-RELATED INJURIES IN THE CZECH REPUBLIC

MICHAL KRÁLÍK*

This article concerns legal liability of sports participants for sports-related injuries and the approaches adopted by different jurisdictions. In particular, it discusses the Czech Republic's approach to incidents where a person participating in sports causes injury to another participant. This issue has only recently become the subject of serious study and analysis in the Czech Republic.

LEGAL LITERATURE ON THE CIVIL LIABILITY OF SPORTS PARTICIPANTS

Historical civil law literature contains virtually no reference to sport, even on duties to prevent damage or on defences or specific preconditions for liability for damage.¹ A text published by the Faculty of Law in Brno in the last decade of the 20th century was oblivious to the issue of legal liability in sport.² A text published by the Faculty of Law in Prague, in its chapter on the 'general clause on damage prevention'³ (general duty to prevent damage), states that the regulation of civil liability for damage, as set out in the general clause on damage prevention, shall be achieved in a number of ways. These include the application of § 415 and imposing specific legal duties on natural or legal persons with a view to prevent damages, as well as taking into account the specific characteristics of the different sections of social life (for example, to prevent specific damage that may occur on roads or in connection with the provision of health care, in sport or during construction works).⁴ The textbook, however, does not go into any further detail and its contribution to the debate on the legal liability in sport is thus almost non-existent.

It is generally accepted that the fundamental legal rule governing the liability of sports participants for sports-related injuries in the Czech Republic is s 415 of the Czech Civil Code. No specific provisions on the liability of sports participants can be found in the Civil Code or in any other legal regulation. There is also no available Czech legal literature specifically dealing with legal liability of sports participants.⁵

* Judge of the Supreme Court of the Czech Republic, Czech Republic, Europe.

¹ See also, for example: Učebnice československého občanského práva, svazek I – obecná část, autorský kolektiv pod vedením Viktora Knappa a Karola Planka, Orbis – Prague, 1965, p 370 et seq or Nové občanské právo, autorský kolektiv pod vedením Zdeňka Kratochvíla, Orbis - Prague, 1965, p 553 et seq.

² See also Fiala, J a kol *Občanské právo /1/*, druhé upravené a doplněné vydání, MU v Brně – právnická fakulta, p 246 et seq.

³ This clause is incorporated in s 415 of the Czech Civil Code which states: 'Everyone must act so to avoid damages to health, property, nature and environment'.

⁴ See also Knappová, M – Švestka, J a kol: *Občanské právo hmotné*, svazek II, ASPI Publishing, 2002, p 403.

⁵ See also Králík, M: *Právo ve sportu 1* vydání Prague: C H Beck, 2001, 278 p, and more recent publications, eg; Králík, M: *Právní odpovědnost sportovců za sportovní úrazy*, in: Kolektiv autorů. *Otázky sportovního práva*. Prague: Ústav státu a práva, 2008, p. 25 – 59; Králík, M: *Právní odpovědnost ve sportu*, in: Kuklík, J. – Hamerník, P – Sup, M – Králík, M – Haindlová, M – Kohout, D – Kučera, V – Carpenter, K – Radostová, K – Chizzola, P: *Sportovní právo*. Auditorium, Prague, 2012, p 61 – 86; Králík, M: *Právní odpovědnost sportovců za sportovní úrazy (vybrané otázky a úvod do problematiky)*, in: *Zborník z konferencie 18 slovenské dni práva*. Slovenská advokátska komora, Bratislava, 2012, p 27 – 46.

The Commentary on the Civil Code does not address liability in sport in its part on the liability for damage; the chapter dedicated to s 415 of the Civil Code merely refers to some of the judicial decisions dealing with the issue which will be mentioned below. In the list of relevant literature on s 420 of the Civil Code which governs the general liability for damage, the Commentary refers to a paper published by a Slovakian expert, Josef Prusák.⁶ This publication deals with liability for damage (not liability for damage in sport) and comes to the conclusion that the liability for damage arises in cases of a breach of duty to prevent damages and failure to fulfil other legal obligations. A footnote in the publication refers, once again, to the decision of the Regional Court in Brno, file no 21 Co 27/1977, which states:

Section 415 of the Civil Code is a provision of general application and due to this fact, the skiers going down the slope while making stem Christies turns are also obliged to act so as to avoid damage to health. There is no special legal regulation governing action of the skiers when going down the slope. However, the skiers are also obliged to observe what is going on around them and keep adequate distance between each other. They are further obliged to control their speed while skiing so as to be able to stop at any time when necessary or to avoid a collision by falling, in other words, they are obliged to act so as to avoid damage to health.⁷

The legal literature and judicial practice in the Czech Republic provides some contribution to the debate on the legal liability in skiing. Apart from the above decision, only two articles dealing with liability for injuries sustained on the piste have been published.⁸ Any change in this indifferent approach of the Czech legal theory and judicial practice cannot be expected even in connection with the preparation of the newly revised Civil Code. The principles and foundations of the draft regulation of tort obligations do not specifically mention any sporting activity. In connection with the general duty to prevent damage, the principle of *neminem laedere*⁹ is emphasised which provides basis for the decision-making of the Czech courts in cases regarding the civil liability of sports participants for sports-related injuries. For that reason, it comes as no surprise that the articulated wording of the newly adopted Civil Code from 2012, which will come into force on 1 January 2014, does not mention any sporting activity in connection with the liability for damage. However, s 5 (1) of the Civil Code states:

by engaging in the performance of a professional activity as a member of a certain profession or occupation, either publicly or in relation to another person, a person declares his/her ability to act with the competence and diligence connected with such profession or occupation. A person who acts without due care, shall be liable for the loss thus caused.

The Explanatory Report to the Code states that this provision is also applicable to sports participants.

CIVIL LIABILITY AND THE RELEVANCE OF SPORTS RULES

The fundamental legal rule of the Czech law applied by the courts to determine civil liability of sports participants for sports-related injuries is the general clause on damage prevention (general duty to prevent damage) incorporated in s 415 of the Civil Code. It states that: 'anyone must act so as to avoid damages to health, property, nature and environment'.

⁶ See also Jehlička, O, Švestka, J, Škárková, M a kol *Občanský zákoník* (Komentář 7 vydání Prague: C H Beck, 2002, p 461) 466.

⁷ For further details, see also: Holub, M – Bičovský, J – Pokorný, M – Hochman, J – Kobliha, I – Ondruš, R *Odpovědnost za škodu v právu občanském, pracovním, obchodním a správním* (praktická příručka, Linde, Prague, 2003) p 15.

⁸ See also Pecha, A, *Odpovědnost za úrazy na lyžařských drahách*, Zprávy advokacie, 1965, p 136 and Jankovská, M *Lyžařské právo ?* (Právní rádce, 1/1995) 53 et seq.

⁹ See also Eliáš, K – Zuklínová, M, *Principy a východiska nového kodexu soukromého práva*, (Linde, Prague, 2001) 240.

Only one of the Commentaries on the Civil Code mentions sporting activities in connection with s 415. It points out that s 415 is breached in cases where the damage occurred and there was no violation of a legal duty, only a breach of rule lacking any legal nature. This is the case where the rules of a sport are violated by practising the sport in a manner which is contrary to the rules. The sports rules lack legal authority but they impose a comprehensible duty on players to play solely in a manner within the scope of the rules, in an attempt to minimise any possible damage to health. Violation of the rules of the game resulting in damage to health or property also constitutes a breach of the legal duty under s 415 of the Civil Code. Provided that all other necessary conditions are met as well, liability for damage (s 420 (1) of the Civil Code) arises.¹⁰

When discussing the standard of care in various kinds of sport, T Doležal notes that the duty of carefulness (which is required in non-contact sports) is significantly limited in contact sports as physical contact is admissible. Therefore, not all physical conduct is unlawful, depending on how the contact of the participants is regulated by the rules of the sport. In such cases, violation of the rules does not necessarily constitute negligence (fault) – as opposed to non-contact sports.¹¹

The judiciary in the Czech Republic has always observed the issue of adherence to the sports rules, even though the courts, particularly in their earlier decisions, took into account other criteria in order to define the boundaries of the liability of a sports participant for injury. There are only three early decisions concerning this legal issue. Interestingly, all three concern injuries sustained in football.

The first decision was the ruling of the Supreme Court of the Czechoslovak Republic on 26 January 1954, file no Cz 486/53.¹² The decision points out that football, by its nature, aims to enhance, in particular, dexterity and rapidity, among other physical qualities, and such qualities can be developed only if the player puts his best effort into the game. On the other hand, the moral aspect of the sport requires that he must comply with the rules of the game while doing so.¹³ The decision includes a statement, pointing out that: ‘football would become largely pointless if the players were obliged to move carefully and slowly around the individuals who the referee possibly knows to be violating the rules of the game.’ The essence of the decision can be found in the following conclusion:

rapid movement of the players during this game does not, in itself, constitute negligence; on the contrary, it is a requirement and a useful element of this sport. Negligence may exist only if the movement of the player is unreasonably fast in situations where he is exposed to risks which are not inherent in the nature of the game. A conduct may not be classified as negligent if the player cannot foresee that the opponent will intentionally breach the rules of the game. However, negligence would exist where the player sees an opponent holding out his leg in order to knock the running player down and the player still runs fast into it.

The decision does not aspire to address the issue in its complexity or to define conditions for liability of a sports participant for sports injury. It only applies a set of opinions, dominated by the importance of adherence to a sports rule when trying to define the limits of the liability of a sports participant.

The second relevant decision is the ruling of the Supreme Court of the Czechoslovak Republic from 29 October 1962, file no 5 Cz 38/1962.¹⁴ This decision deals in more detail with the definition of the conditions for, and limits of, liability of a sports participant for an injury caused to his fellow participant. The decision stated:

¹⁰ See also Fiala J – Kindl M et al, (2009) *Občanský zákoník Komentář I díl* 1st edition. Prague: Wolters Kluwer ČR, a s, 637.

¹¹ Doležal T (2008) *Právní odpovědnost ve sportu – teoretické úvahy*, in: Kolektiv autorů. *Otázky sportovního práva. Ústav státu a práva*, Prague, p 65.

¹² Published in the Official Journal of the Supreme Court, 1954, Issue 5, pp 86 – 87, under serial no 88.

¹³ Compliance with the rules of the sport is commonly taken into consideration when determining the exclusion of liability of the sports participant for sports-related injury. This issue will be addressed below in more detail.

¹⁴ Published in the Official Journal of court decisions and opinions, 1963, under serial no 15.

Liability of a player for the damage caused to the health of his opponent during a football match is deduced from the liability of a perpetrator for the damage caused to the victim by his intentional or negligent violation of his obligation or another legal duty. It is based on the established facts of the case, i.e. whether or not the injury occurred during the game and whether or not the conduct of the perpetrator was allowed or not allowed (forbidden) by the rules of the game and whether or not the intentional or negligent conduct was (un)reasonable. It is also not irrelevant whether the perpetrator is an experienced player of the game (e.g. a long-time player).

Once again, it underlines the necessity of establishing whether the conduct of the sports participant was in compliance with the sport's rules or not. However, it is also necessary to determine whether the injury occurred during the game, ie, during the practice of the sport. In this regard, these criteria are objective. Apart from that, the decision points out that culpable violation of a legal duty, whether intentional or negligent, must be established. The decision also stresses the necessity of analysing reasonableness of the intentional or negligent conduct; however, in this respect, it goes somewhat beyond the content of the decision. This criterion has, in fact, not been analysed in the decision itself, although it would be indeed worthy of more extensive analysis considering its significance. In regard to the requirement to adhere to the rules of the game, the decision includes an interesting reference, stating that in the previous decisions of the lower courts, certain sports participants were found liable (albeit for an accident) even where the existing disciplinary bodies of the sport had decided that the conduct of the sports participants was not in conflict with the sports rules. In this respect, the decision emphasises that such an approach does not help the practice of collective sports, ignoring the role of the referees and disciplinary committees of the Czechoslovak Association of Physical Education.

The ruling of the Municipal Court in Prague from 17 May 1978, file no 10 Co 190/76¹⁵ (in the absence of any Czech civil law experts dealing with this legal issue) serves as a theoretical basis for the current decision-making of the Czech courts when determining liability of sports participants for injuries sustained during the practice of the sporting activity. This decision comes to the conclusion that the violation of the rules of a sporting game must qualify as action which is in conflict with the duty to act to prevent damages to health (s 415 of the Civil Code).¹⁶ Consequently, it constitutes violation of a legal duty which gives rise to liability for damage (s 420 of the Civil Code).¹⁷

In this case, the plaintiff claimed damages for the harm to his health, caused by the defendant during a football match by an act of foul play. The decision was analysed by J Prusák, a Czechoslovak legal expert (now of Slovak citizenship). We can use his analysis as a basis for further reflections.

The following circumstances before the Court of Appeal, and its reasoning are particularly worth mentioning:

- 1) The liability of a player for damage sustained by his opponent on the playground cannot be in principle excluded (s 420 (1) of the Civil Code);
- 2) The rules of a sport are no legal rules, but violation of such rules by the players constitutes breach of their duty to prevent threatening damages, ie the general duty to act so as to avoid damages to health, property and other values as stated in s 415 of the Civil Code;
- 3) The culpable unlawful action was the result of an act of foul play which was in conflict with the rules of the game. As to the degree of culpability, it is necessary to exclude any possible conditional intent if the injury was caused in the heat of the game, so the unlawful act was caused through negligence; and

¹⁵ Published in the Official Journal of court decisions and opinions, 1980, under serial no 16.

¹⁶ Under s 415 of the Civil Code, anyone must act so as to avoid damages to health, property, nature and environment.

¹⁷ Under s 420 (1) of the Civil Code, everyone shall be liable for damage caused by violating a legal duty.

- 4) The causality between the culpable action and the damage objectively exists as no actual bodily harm (damage) would occur if the player did not play in a manner forbidden by the rules of the game.

In the 25 years following the publication of this decision, the judiciary did not have the opportunity to give an opinion on the issue of liability in sport. The current approach of the courts is represented by two decisions of the Supreme Court of the Czech Republic which, as opposed to the earlier decisions, do not concern any collective sports (football), but injuries sustained during the practice of karate and skiing.

The first of these decisions is the ruling of the Supreme Court of the Czech Republic from 17 December 2003, file no 25 Cdo 1960/2002¹⁸ in which the Supreme Court, for the first time in Czech history, commented on the liability of sports participants for injury caused during the practises of an individual sport. The plaintiff claimed compensation for pain and reduced social opportunities as a result of permanent injuries suffered in violation of the rules of karate during a match of the first league of the Czech Karate Association.

The Court of Appeal concluded that the defendant was liable for damage under s 420 (1) of the Civil Code, as the violation of the rules of karate must be qualified as an action which is consistent with the duty to act so as to avoid damage to health (s 415 of the Civil Code). The Supreme Court of the Czech Republic pointed out that a hit or blow violating the rules of karate is punishable not only by the rules of a karate match but it also constitutes a breach of the duty to prevent damage as set out in s 415 of the Civil Code. Therefore, one of the conditions exists to establish the liability of the defendant (karate fighter) for the damage caused to the health of the plaintiff within the meaning of s 420 (1) of the Civil Code, ie, the violation of a legal duty. Considering the existence of all other conditions for general liability for damage on the basis of presumed culpability, ie, existence of damage and causality between the violation of a legal duty and the damage, the defendant is liable for the damage sustained by the plaintiff. The Supreme Court referred to a decision which had been published in the Official Journal of court decisions and opinions, dealing with the liability of a football player for the damage caused to another player by an act violating the established rules of the game (R 16/80).

The decision states that violation of the sports rules also constitutes violation of the duty to prevent damages as set out in s 415 of the Civil Code. However, it is necessary to make a few additional comments that properly explain this fundamental premise because, at first glance, it seems that if no violation of a sports rule occurs, there may also be no legal liability for any possible damage. The adherence to a sports rule may not, in itself, be the reason for the exclusion of the legal liability in sport, in particular because:

- 1) A rule in sport is not enforceable by the State;
- 2) The rules of a sport competition are usually laid down by the respective Associations as a legal entity incorporated under Act No 83/1990 Coll (s 7 - s 8 of Act No 83/1990 Coll). The State does not review the content of such rules or their compliance with the law (and it may not, as a matter of fact); and
- 3) According to the applicable law, formation of new kinds of sports and their rules is not based on any principle.

The final decision of the Supreme Court to be discussed is the resolution from 23 February 2005, file no 25 Cdo 1506/2004¹⁹ which is interesting due to the application of Italian law by the court in order to determine the legal liability of the sports participant. The decision stated that: 'the Rules of conduct for

¹⁸ Published in the Collection of the decisions and opinions of the Supreme Court on civil law matters, C H Beck, 2004, under serial no C 2352.

¹⁹ The resolution was published in the Collection of decisions and opinions of the Supreme Court in civil matters, C H Beck, under serial no C 3268.

the skiers published by the International Ski Federation (FIS) do not constitute any generally binding legal regulation but are binding for the skiers on the piste and their breach constitutes breach of the legal duty to prevent damage’.

The Court at First Instance established that on 4 February 1998, when skiing on the piste in Gitschberg, the plaintiff collided with the defendant. The plaintiff was skiing downhill, making a wide turn on the slope. The defendant was behind the plaintiff, only seeing him moments before collision, coming from behind an edge of the slope. The plaintiff suffered a luxation of his right shoulder and his skis were damaged. The Court of the First Instance determined the case on the basis of Articles 2043, 1223, 1225 and 1226 of the Italian Civil Code, and Article 2, 3 and 4 of the Rules of conduct for the skiers of the International Ski Federation (FIS). The Court came to the conclusion that the defendant violated duties imposed on her as a skier by the above mentioned rules when she did not adapt her speed and manner of skiing to the best of her personal ability and to the prevailing conditions of terrain, particularly in a place where visibility is restricted due to a terrain obstacle. Her objections that the plaintiff did not take into account the difficulty of the piste and that he should have been ready to make a manoeuvre to avoid the collision, were not found to be valid. The pistes are public and it is up to the individual skier to determine which piste is appropriate. It was the defendant who was approaching from behind and was therefore obliged to choose her route in such a way so as not to endanger skiers ahead as provided in Article 3 of the Rules of FIS.

The defendant’s appeal on the merits of the decision of the Court at First Instance was rejected by the Court of Appeal which shared the view of the Court of the First Instance. The Court of the First Instance was also correct in establishing the liability of the defendant for damage under the Italian substantive law. Article 2043 of the Italian Civil Code states that anyone who causes wrongful harm to another by their action, whether intentional or negligent, is liable for the damage thus caused. In this case, the defendant was a skier coming from behind and was therefore obliged to choose her route in such a way so as not to endanger the skier ahead. According to Article 3 of the Rules of conduct for the skiers published by the International Ski Federation, both of the participants were obliged to adapt their speed and manner of skiing to their personal abilities and to the prevailing conditions of terrain. This duty was breached by the defendant crashing from behind into the plaintiff who was making a wide turn as a member of a group of skiers.

The Supreme Court of the Czech Republic rejected the appeal of the defendant. The Court did not accept the argument of the appellant (ie, defendant) that the lower courts failed to address the issue of possible contributory negligence of the plaintiff. The Supreme Court explained that the contributory culpability of the victim which limits the liability of the perpetrator can only consist in such conduct that contributed to the damage. This legal construct is also incorporated in Article 1227 of the Italian Civil Code which states that where the negligent act of the creditor contributes to the damage, the amount of the compensation to be paid is reduced with respect to the importance of the negligent conduct and of the consequences arising from the same. The Supreme Court concluded that the lower courts had reached the correct conclusion that the damage was caused exclusively by the conduct of the defendant since no negligent conduct of the plaintiff was established which would have contributed to the damage caused to the plaintiff. The objections of the defendant that the plaintiff was skiing too slowly on the piste, that it was too difficult for him considering his personal ability as a skier and that he was practising a turn below a terrain edge which was not visible from above, was rejected by the Supreme Court. These circumstances did not cause damage to the plaintiff’s individual health or personal property. It is not possible to attribute fault to the plaintiff for causing the damage by doing nothing before the collision in order to avoid it. It was not the plaintiff’s duty to choose his route depending on the manner of skiing of the skier coming from behind him or to get out of the way of such a skier.

As for the conduct of the defendant, the Supreme Court emphasised that it was her duty to observe what was going in front of her and to behave on the piste in such a way so as not to endanger skiers ahead. Thus, as for the damage caused to the plaintiff, the defendant was not liable for breaching the

duty to adapt her speed to the fact that there was a terrain edge, but liable for not adapting her speed and manner of skiing to the situation on the piste, ie, adapting for poor vision in front of her, and skiing at such a speed that she did not notice the slowly skiing plaintiff until the moment when she could not avoid the collision.

The Supreme Court pointed out that the Rules of Conduct for the skiers published by the International Ski Federation (FIS) includes rules which, if adhered to, should ensure the safety of the users of the piste, thus aiming to prevent damage which gives rise to liability as set out by the law. Despite lacking the nature of a binding legal regulation, these rules are binding for the skiers on the piste irrespective of whether they constitute a source of law or not.

CONCLUSION

These decisions can be generalised as follows: the courts in the Czech Republic apply s 415 of the Civil Code when deciding on liability for sports-related injuries arising in a case of a breach of the 'general clause on damage prevention', ie, a breach of the duty to avoid threatening damages. It is difficult to expect any substantial changes in this development of the judicial practice. Although the courts always consider the particular circumstances of the case in their decision-making, the existing decisions on sports-related injuries tend to conclude that the duty to prevent damage is violated whenever the rules of the sport are breached, even if such rules lack legal force. Compliance with such rules is crucial in order to determine whether a sports participant committed an unlawful act or not. It is, however, necessary to add that the judicial practice has so far dealt only with the question of the conditions under which the liability of a sports participant for a sport-related injury arises. It has come to a general conclusion that the liability arises in the case of a breach of the rules of a sport which also constitutes a breach of the duty to prevent damage. Not yet defined, in the form of a decision of the Supreme Court, are the conditions under which the liability of a sports participant for damage may not arise.