

The consent of the offended party as the disqualifying reason of the culpability -with great consideration for the criminal evaluation of the injuries caused on the sport events

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I. The connection between the sport and the criminal law:

Primarily the application of the special penalties set out in the Sport Law and the Association regulations is allowed in case of offences committed on the sport courses. As the result of the ultima ratio character of the criminal law its punishments can only be used in exceptional serious cases. We will deal with the assault from among the punishable actions committed during sport activities. We consider this issue from the aspect that how long it is qualified as permissible or appurtenant to the game, and from what time we have to put up with the devices of the criminal law against the delinquent or the injurer.

II. The consent of the offended party as the disqualifying reason of the culpability:

We can find the consent of the offended party among the disqualifying or tortuous reason of the culpability that was worked out by the jurisprudence. The point of this is that the offended party gives his consent for his possible injury with expressed intention declaration. In this case the fact kind behaviour loses its riskiness for society and falls out from the threat of the criminal law. Since there is no need for the protection of the legal object against determined attack if the owner of the legal object requires no criminal protection against the assault. The criminal liability for the body injuries caused during sport fights is usually precluded.

The consent of the player has to be considered obtained relating to the possible injuries when he steps on the course and with this indicative behaviour he accepts the competition rules of the certain sport as compulsory and the offences necessarily adjunct to it. The deliberate offences of the adversary fall into this same category. However the consent does not cover that case when the deliberate offence directly aims causation of injury. In this case the action is already qualified as an offence that result in criminal responsibility. Since the player does not give his consent to brutal and serious attacks that is not in connection with the sport activity and threaten his body soundness and health on the sport course.

III. What time do we have to consider the consent of the player obtained and for what does the player give his consent?

More common terms have to exist for the consent of the offended party being legal force:

- appropriate good sense of the offended party,
- his serious and voluntary consent,
- the consent being granted before or during the offence.

These terms are supplemented by additional ones in the field of the sport activity which derive from the special character of the activity:

- the fight has to be accomplished in the frame of an officially admitted sport,
- the event has to be in accordance with the current effective game and competition rules,
- the injury has to derive from a typical and inevitable offence that occurs during the exercise of the sport of concern.

If any of these conjunctive terms are missing then the injurer cannot refer to the consent of the offended and will be accountable to him with criminal responsibility.

The sport player gives his consent to the injuries adjunct to his own sport. That until what time these injuries can be considered to be typical it has to be examined with respect to the rules of the sport and the certain situation. The tolerance *limen* is very various regarding the individual sports. While the fight sports are accompanied by the causation of the injuries in case of the sports requiring no physical contact – like the chess or the swimming – the minor offences fall out of the limit of the consent and they should result in criminal responsibility.

It is extremely hard to judge different situations in case of the team games where the physical touch of the players is allowed in a certain degree and one part of the offences can even result in body injury in course of the sport event. In my opinion the consent of the player has to be considered obtained in every case of even deliberate offence which was not committed with the intention of causation of injury. Because this belongs to the picture of the game.

If the injurer expressly desires the occurrence of the injury and acts accordingly that already falls out of the circle of the „allowed” offences and is a criminal category. So regarding the injuries on the sport courses criminal demand can be put into act in case of only double deliberateness.

IV. The issues of the double deliberateness:

Double deliberateness is that when the deliberately caused offence deliberately focused on the causation of injury.

The Hungarian criminal law is aware of two cases of the deliberateness. The direct and eventual deliberateness. We speak about direct deliberateness when somebody envisages and desires the consequences of his behaviour. The eventual deliberateness is that when delinquent resigns to these consequences.

In my opinion for the criminal accountability of the sport players only the actions committed with direct deliberateness are relevant. The reason of this is that in case of most sports the sense of player covers that he can possibly cause injury with his action and nevertheless he acts in resigned way. His adversary, however, is aware of this also, what's more they acts in the same way and consider the possible injury as a risk that belongs to the sport. Since for example if the basket ball players jump up to get the fly off then the sense of both players is aware of the chance of a possible injury that they consider as „it is in the game”. So there is an eventual deliberateness but the consent of the offended excludes the culpability of the injurer. The situation is different when if somebody in the same situation strikes in the face of his adversary with deliberate movement and breaks his nose bone. In this case we have to assume the direct deliberateness of the causation of the injury. However the consideration always depends on the certain situation and requires accurate deliberation. If the direct deliberateness is established the injurer must be convended before the court because of the causation of serious injury.

V. Judicial practice:

The judicial practice in this subject is very modest. Only the flagrant cases are convended before the criminal courts. Partially the reason of this is that the parties go before the civil courts and request for indemnification. On the other hand the courts also beware of interference in the autonomy of the sport and the opening of official procedures. The reason of this is that there is no a standard accepted standpoint with respect to the consent of the sport player and the reasonable sport risk and the behaviour that already falls out of this. In my view more determined judicial presence would be required for the protection of the further vulgarization of the sport events. Since it admits of no doubt that offences committed on the sport courses are dangerous for the society.

VI. Summary

The sport player gives his consent to the occurrence of the injuries resulting from his sport when participating in a sport competition. However there consent does not cover the deliberate attacks just because they pursue sport activity. So the deliberate offences aiming the causation of deliberate injuries already belong to the area of the criminal law and we cannot make an exception to the criminal responsibility of the injurer. However neither the jurisprudence nor the practice deal with this issue too much, only the really flagrant and media sponsored cases appear before the courts. In these cases usually suspended injunctions are issued which in my opinion have small retentivity. The recent enbruting sport and sport players would require retentivity stronger then provided in the legal consequences of the sport law. The objective of the criminal law is ultimately the general prevention through the penalties for the individual injurers.

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