Third-party liability in sports

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«There is no doubt that, in our present society, protection requirements are growing exponentially, in particular as regards third party liability, with insurance being the most efficient mechanism to cover this liability, and the best solution to approach indemnities to victims of accidents.»

Any human activity generates, to a greater or lesser extent, the probability of accidents. Among those, sports usually entail an essentially physical activity, aimed at leisure or competition, which is performed according to certain rules. This practice deriving from sports gives rise to an increased risk of suffering accidents, more so nowadays, when the so-called risk sports are proliferating, where risk is the main attraction and where accidents are significantly increasing.

WHO MAY BE POTENTIALLY AFFECTED?

When referring to the potential damages and risks emanating from the performance of sports, we must, in the first place, differentiate the situations. Several "third party" concepts may exist in a third party liability relationship arising from sports, depending upon the potential damages:

1. Injuries caused by sportspeople among themselves, as a consequence of playing sports.
2. Injuries or damages to those taking part in sporting activities, attributable to the organisation of such activities. By way of example, faulty installations, inappropriate materials, etc. (detachment of a basket, poor condition of the playing field, etc.).
3. Injuries that both organisations and sportspeople may cause to people not participating in playing itself. Such would be the injuries liable to be suffered by spectators, arising both from the activity itself (injuries to a spectator due to a blow with a ball) and from the organisation of the activity (unavailability of appropriate security measures or poor condition of the installations).

THIRD-PARTY LIABILITY IN THE CONTEXT OF SPORTS

When we speak of third-party liability we refer to the institution allowing to attribute to a person the consequences of his/her actions, charging that person with the obligation of remedying those that may be harmful for other people, provided that the essential elements generating the said liability exist, namely:

A) Harmful behaviour: Human behaviour for which the person causing it is liable, always on the assumption that it must be interpreted as an action or an omission, such action or omission being the cause giving rise to the injury/damage.

B) Injury/damage: Understood in the widest sense, namely, as the impairment suffered in a person's physical integrity (bodily or psychical) or the deterioration or destruction of the person's property as a consequence of the harmful behaviour.

C) Guilt: Assessment of a given action or omission to ascertain whether or not its author is liable for it.

There are two types of guilt, depending upon whether the action or omission arises from:

- failure to comply with the "duty of care" or omission on the part of the agent of the required diligence and previsions (negligence, carelessness or guilt);
- deliberation or bad faith in the act or omission (wilful misconduct). In this latter case, it will be considered under a different light, as the existence of wilful misconduct entails the consideration of offence, being a result of an event occurred with wrongful intent on the part of its author. In any case, any person criminally liable of an offence or fault is also liable under civil law, if the event gives rise to damages.

D) Cause-effect relationship: It is the element representing the link between the former, as it is not possible to attribute liability if no direct cause-effect can be established between the action/omission and the damage or injury.

AN APPROACH TO THE LEGAL TREATMENT

A liability relationship is established between the person causing the damage and the person suffering it, aimed at remedying such damage by replacing, returning or recovering the damaged property to its former condition and, at the same time, whether or not the said repair is feasible, at indemnifying the consequences of the damage by means of a financial compensation.

The said obligation may have an extra-contractual or contractual origin, with the indispensable condition, in this latter case, of a prior contractual link existing between the person causing the damage and the victim.

Notwithstanding the fact that third party liability arising as a consequence of an offence or fault is not frequent in sporting activities, it is indeed not infrequent in the case of contractual liability, considering the very many contractual relationships we find constantly in the performance of sports and leisure activities; by way of example, a trip organised by a private company, or the mere fact of buying tickets to attend sporting events.

There are no specific regulations on third party liability in the performance of sports, or on that deriving from the organisation of sporting activities. The rules basically addressing these aspects do not aim at establishing criteria for the damages arising in sporting activities, but rather on establishing rules for the maintenance of public order in sports events. In another words, they operate in the administration and sanctioning field. Therefore, in order to establish liability criteria in their various types, we must review the general rules and the applicable case law.

In the specific case of injuries caused by sportspeople among themselves, as a consequence of the performance of sports, we may state that, in principle, actions performed within the regulatory channels or the codes of conduct of sports do not give rise to liability, as the player is aware of the likely occurrence of those events and, therefore, they represent a voluntary risk to be personally assumed.

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In this sense, the judgement of the Supreme Court of 22 October 1992 establishes that "sportspeople's actions in any sporting event, even though aimed at achieving the most adequate plays, do not always obtain the intended result, as the conclusion cannot be reached that in a play such as Basque Pelota the player holding the stick intends to injure another competing player, in the same way that he cannot be expected to drive the ball to the desired place"; thus, the determination is that there was no negligence on the part of the person causing the injury, and the action was merely "a consequence, unfortunate and always regretted, of any type of play".

Obviously, not all damages occurred in the course of sporting events represent risks assumed by sportspeople, but, for the liability to arise, the essential elements giving rise to it must exist. Namely, in the case of actions performed within the codes of conduct of the various types of sports, with the injury being the result of a risk inherent to playing such sport, there would be no liability; on the contrary, if elements have existed which, due to carelessness, negligence or even wrongful misconduct, aggravate the risk or generate damages, these may not be considered as damages inherent in the activity and they fall therefore outside the scope of the assumed risk, generating liability to the person causing them.

For this reason, the judgement of the Navarra Provincial Court of 11 January 2001 reaches a different conclusion; in this case, also when a Basque Pelota match was being played, one of the players got hit by the stick of another one, this being considered a violation of the rules of caution in the play, and the person causing it is imputed with liability on the basis that "had he acted with due care, he would have necessarily seen the position of his player mate, thus refraining from hitting the ball in such circumstances…".

PERCEPTION OF RISK BY ORGANISING COMPANIES

With respect to the companies organising sporting events,

they must not be regarded, in terms of the applicable liability, as different from other companies liable of causing damages. Indeed, to the extent that the damage or injury caused may be considered as voluntarily assumed by the player, liability will be excluded; however, if the damage cannot be considered as assumed by the player because of the existence of elements aggravating the assumed risk, or having directly generated the damage because of undue care in the organisation or maintenance of the installations, any subsequent liabilities shall necessarily be attributed to the organising person or company.

From the insurance perspective, it is becoming increasingly frequent to see rules requiring the transfer of the risk deriving from the performance or organisation of sporting events by taking a third party liability policy up to a given amount, this being established as a prior requirement to the development of the activity, under the control of the Administration or through sports federations.

We may define third party liability as that covering the insured person against the possibility of his/her property being affected by the legal obligation of indemnifying a third party for any damages caused. Nevertheless, this definition should be further clarified, due to the fact that the purpose of this type of compulsory insurance is not covering the policyholder's interest in protecting his/her property, but remedying the damage or injury caused to the victim, which might entail certain objectification of liability (a risk related liability, where the guilt factor disappears).

THIRD PARTY LIABILITY OF SPORTS AMATEURS

An example of the cover of third party liability with respect to the natural persons taking such insurance in order to covering their liability in playing sports as amateurs, would be that when the cover relates to the following events:

- Third Party Liability corresponding to the Policyholder for the injuries caused to other participants in the play.
- Third Party Liability corresponding to the Policyholder for the damages or injuries caused to other people not participating in the play.

THIRD PARTY LIABILITY FOR ORGANISERS OF SPORTS EVENTS

When the person taking insurance is the organiser of the event, the cover relates to the following:

- Damages deriving from the preparation, tests and installations prior to holding the event.
- Third Party Liability corresponding to the Organisation's staff, including race managers, sporting commissaries, timekeepers and any other staff mandated by the Organisation, as well as the people in charge of keeping order.
- Third Party Liability corresponding to the Policyholder for the damages caused as a consequence of the Organisation to participants in sports events (but not the damages caused by another player), to the Organisation Committee and voluntary personnel.
- Third Party Liability corresponding to the Policyholder as a result of the total or partial collapse of portable grandstands having been provisionally installed, ramps, platforms, tents or pavilions.
- Expressly included is the organisation and operation of the medical services fulfilled by professionals, acting as voluntaries under the Organisation's guidelines.

TRADITIONAL EXCLUSIONS

Paying attention to the contractual nature of the cover of risk by means of insurance, the parties usually agree to a section on excluded risks. The specific case we are reviewing excludes, inter alia, the following risks:

- Third Party Liability deriving from the ownership, operation or use of motor vehicles.
- Third Party Liability deriving from wrongful or deliberate acts.
- Third Party Liability deriving from the actions of members of the police forces and brigades.
- Damages arising from the failure to comply with the rules applicable to the organisation of the event.
- Primary damages to property.

In either case, the insurance policy covers the policyholder's defence against claims, assuming any court and out of court costs and expenses, as well as the deposit of judicial bonds required to guarantee the Policyholder's third party liability.

CONCLUSIONS

There is no doubt that, in our present society, protection requirements are growing exponentially, in particular as regards third party liability, with insurance being the most efficient mechanism to cover this liability, and the best solution to approach indemnities to victims of accidents.

Lastly, it is worth mentioning that insurance is established as a compulsory requirement, imposed by the Administration for the performance of certain activities, by means of clearly faulty regulations that hinder or render unfeasible the insurance market's ability to give an appropriate response. ■