

## **SUMMARY**

### **Sports risk as a circumstance excluding the unlawfulness of an act in Polish criminal law**

The subject of the dissertation is the analysis of the non-statutory justification of sports risk as a circumstance excluding unlawfulness of an act.

The reason for choosing the topic of the dissertation was the fact that sporting accidents are becoming more and more frequent, and different theories and interpretations concerning exclusion of unlawfulness of an act for violation of legal interests in the course of sport competition arise. There are no monographs in which the problem of justification of sports risk is discussed in a comprehensive way, and this topic requires in-depth analysis and is attractive theoretically.

The basic purpose of the dissertation is to determine the legal nature of sports risk, to determine its admissibility as a circumstance excluding the unlawfulness of an act and to submit its constitutive elements to a thorough analysis.

The additional purpose is to compare the mentioned justification with other concepts regarding the exclusion of criminal responsibility for sports accidents and to determine which of the aforementioned theories most fully justified the exclusion of criminal liability for infringement of legal interests in the course of sport competition.

The thesis of the dissertation is the assumption that sports risk fulfills an important social role, however, the lack of its statutory definition creates significant difficulties in its correct application, and therefore it is necessary to regulate it in the penal code.

The dissertation is developed using the legal - dogmatic method, which is expressed through the examination of sports regulations and statutes of Polish sport associations aiming at establishing certain repetitive rules resulting from them. Linguistic and logical analysis of the texts of laws, regulations

and ordinances is related to the study and interpretation of the literature and judgments regarding the subject of the dissertation.

In the course of the considerations, the views represented in the doctrine were taken into account, which outlined a wide range of problems and highlighted significant discrepancies in understanding the individual premises of sports risk and the assessment itself of the legitimacy of using this justification and the suitability of other concepts to justify the exclusion of criminal liability for sports accidents.

In terms of individual sports rules, the integration method was used, which combines the subject of the dissertation with the norms applicable in other areas of law, i.e. labour law and administrative law, and the use of historical method allowed to illustrate the evolution of such concepts as: sports, athlete, sports discipline or competition.

The considerations are included in 10 chapters.

Chapter I is devoted to circumstances excluding criminal liability under Polish criminal law, among which one may find circumstances excluding the social harmfulness of an act, guilt and unlawfulness of an act. The significance of the social harmfulness of an act is discussed in detail and its various definitions are indicated. Insignificant social harmfulness of an act was distinguished from other circumstances excluding criminal liability. The problem of guilt was considered and various positions on its understanding were indicated. The views justifying guilt as the basis of criminal responsibility were presented and two theories: normative and psychological were distinguished in this respect. Discussed were the conditions of non-culpability and the following circumstances excluding guilt are described, i.e. 1) insanity, 2) minority, 3) error as to the fact constituting the mark of an offense, 4) error as to circumstances excluding unlawfulness, 5) error as to circumstances excluding guilt, 6) error as to the law, 7) state of higher necessity excluding guilt, 8) order of the superior. The premises of unlawfulness and elements of its structure were analyzed.

Chapter II presents the genesis of justifications in Polish criminal law and presents the views of the doctrine in terms of their meaning

and application. The features of justifications were discussed as circumstances excluding the unlawfulness of an act and attention was paid to discrepancies in this subject. The concept of negative attributes of a prohibited act and the arguments of supporters and opponents of this theory were analyzed. The classification of justifications was presented and some more important statutory and non-statutory justifications were discussed, i.e.: necessary defense, state of higher necessity, acceptable novelty risk, military risk, ultimate military need, consent of the victim, custom, justification of the art and sports risk.

Chapter III presents concepts justifying the exclusion of criminal responsibility for sports accidents. As the first one, the theory of sports law autonomy was presented, citing arguments for excluding the criminal liability of the perpetrators of sports accidents on its basis, and a critical attitude towards this theory was indicated. The term "sports law" was interpreted in both broader and narrower sense and an opinion was expressed on its usefulness.

Discussed was the concept based on the primary legality of sports behavior. The doctrine's position on the subject of its acceptance and rejection was presented. The most popular theories that justify the exclusion of criminal responsibility for a sports accident as part of the theory of the primary legality of sports risk were indicated; among them: the theory of lack of guilt of an athlete, so-called concept of professional law, social interest, custom, state permit, so-called the theory of purpose, the theory of Stoss, Kost, Karding, Vollrath, L. Le Roux, Schmidt, Klee or Villnow.

The scope of application of the victim's consent as a circumstance excluding unlawfulness of sports accidents was considered. In addition, the premises that consent must meet and the doctrine's position on the suitability of the concept were presented.

The conditions that should be met by the justification of sports risk were mentioned in detail. A position was also presented, according to which the sports risk does not constitute a circumstance excluding the unlawfulness of an act. An answer to the question which of the presented concepts most fully justifies the exclusion of criminal responsibility for sports accidents was also given.

Chapter IV began with reflections on sports accidents. Next, the evolution of such concepts as "sport", "athlete", "player" and the interpretation of these terms were analyzed. The chapter explains what sport competition is and what factors increase the risk of a sports accident. Categories of sports accidents were created and discussed according to: subjects taking part in it, type of effect, cause and number of victims. The categories of sports accidents that are important for excluding the perpetrator's criminal liability for violation of legal interests during sport competition in the context of sports risk were defined.

Chapter V defines the concepts of ordinary risk, novelty risk and sports risk. The reasons for admissibility of risky activities were mentioned and the doctrine on the codification of the tolerable risk justification was presented, and the limits of the risk allowed in sport were defined.

Chapter VI examines sports disciplines that are allowed to practice. Attention was drawn to the difficulty in clearly identifying the entity responsible for allowing the sport to be practiced. The definition of sports discipline was determined and sports disciplines allowed for practicing in Poland were listed. Divisions of categories of sports disciplines were presented.

The subject of Chapter VII are the considerations regarding the determination of the importance of sports rules in the assessment of criminal liability for sports accidents. The differences between the rule and the principle and the concept of sports rules were discussed. The legal nature of sports rules was determined and compared with the rules of caution. A comparison was made between the scope of duties and the legal character of organizational units that achieve sports goals, i.e. sports clubs, sports associations and Polish sports associations, and then separate entities responsible for establishing and implementing sports rules were distinguished.

Divisions of sports rules were presented, and security rules, disciplinary rules, organizational rules and customary rules were discussed. Reference was also made to the legal consequences of violation of sports rules.

Chapter VIII considers the problem of taking action during sport competition. An attempt was made to determine the time of action, i.e. the duration of sport competition. The time of negative effects in the form of a sports

accident was determined. The division of sports disciplines was carried out according to the duration of sports competition.

Chapter IX refers to the sports goal as a premise for sports risk. The "goal" and "sports goal" were interpreted, and then the doctrine on the suitability of the "sports goal" for the validity of the justification of sports risk was presented. Also presented were few definitions of the "sports goal" defined in the regulations of Polish sport associations.

In Chapter X, the problem of voluntary involvement in sport is described. The subjective and objective criteria of consent were discussed, with particular emphasis on the age and understanding of the athlete giving consent. The position of doctrine in this subject was presented and author's own ideas were formulated. The problem of involuntary involvement in sport and criminal liability for causing a sports accident in such conditions were considered.

The dissertation is concluded with an analysis of the considerations made, along with the formulation of conclusions *de lege lata* and *de lege ferenda*.