

Original Article

Changes in Polish legislation to do with sporting events - organizer responsibility not only for the health of players. A good example for other legal systems?

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Abstract

Introduction: The organization of mass sporting events poses numerous threats not only to athletes, but also to the spectators who participate in an event. **Problem and aim:** In 2009, in Poland, a law on the safety of mass events was enacted which comprehensively regulates the issue of organizer obligations and which is primarily to do with those participants of mass events who do not participate in sporting competitions. In practice, however, the act raises much doubt and the stringent effect of it is felt not only by spectators, but above all by organizers of mass events, which are often sporting clubs. The act on the safety of mass events also raises much doubt as to whether it complies with the fundamental principles of the rule of law; for example, the right of a person to a fair trial. **Methods of research:** The main method used for this publication was formal-dogmatic research, which mainly involved an analysis of the provisions of the act on the safety of mass events. Additionally, the study interpreted decisions of courts, opinions in jurisprudence, and to a minor extent involved comparisons; legal-historical methods were also used. **Results:** Sporting mass events are one type of mass event in Poland. An organizer is responsible for the safety of an event and the main duties of the organizer appear in the Polish act on the safety of mass events. The effect of unclear provisions in the act mean that there can be observed in jurisprudence and literature a tendency to extend the liability of an organizer for damages to an absolute liability; i.e., which liability always applies, regardless of whether the organizer undertook the duty of care that was required in the situation. **Conclusion:** The very idea of enacting legislation to ensure, comprehensively, the safety of spectators of such sporting events should be considered to be perfectly proper. The Polish law on the safety of mass events is an example of the tendency that is occurring in some European countries to regulate the obligations of organizers not only in relation to athletes, but also in relation to spectators. However, the example of the mentioned act indicates that an overly stringent application of legislation could have an opposite effect, which would be imposing on an organizer obligations that are impossible, in practice, to fulfill, and which could mean penal liability and, above all, liability for compensation.

Key words: sports, mass event, sporting event, the Act on Security of Mass Events, organizer of a mass event.

Introduction

The evolution of sporting events means that undertaking sport is associated with a high probability of harm to athletes themselves, despite the fact that we are dealing with the professionalization of it. Contemporary sport is an activity in which the probability of harm to those who pursue it is more and more frequent, if only because sports are being organized more and more often, and they are being internationalized (Parszowski&Kruczyński, 2015). Sport develops not only through the emergence of new sporting disciplines, but also through the commercialization of mass events which have become an arena for new records of endurance, speed, and distance (Antonowicz&Kossakowski&Szlendak, 2015).

The risk associated with sport does not only apply to contestants participating in sporting competitions, but also to spectators who participate in the events, who can be described as being passive participants (I describe sportsmen in sporting competition as active participants). The risk from negative incidents during such events is primarily to do with football matches, as a result of various antisocial behaviour of fans, whereby in publications there has even been created the phenomenon of "stadium hooliganism" (Chlebowicz, 2009; J. Melnick, 1986). Unfortunately, more and more often during such events there are also incidents of terrorism. (Struniawski, 2012). An example is the incidents during sporting events in Munich in 1972 and Atlanta in 1996, and also during artistic or entertainment events, such as in Paris 2015 or Manchester in 2017. It was the "stadium hooliganism" and terrorism that had had a huge effect on the creation of legislation that regulated not only the health of players, but also spectators who participate in such events (Giulianotti&Klauser, 2012). The phenomena has resulted in the fact that in some European countries, such as in Great Britain, we have to deal with "legal inflation" of the regulation of mass events [for football matches, the following were adopted: the Football Spectators Act of 1989, and then Football (Disorder) Act of 2000. Earlier there had also been established the Sporting Events (Control of Alcohol etc.) Act of 1985 and the Football (Offences) Act of 1991,

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and the Football (Offences and Disorder) Act of 1999. In addition, in the U.K., the Football Spectators (Prescription) Order 2004, as amended in 2006, 2010, and 2013, is also binding. That situation was perfectly well described by A. Pearson who in a publication stated that "These apparent protections are proving incapable of protecting the civil liberties of football fans that have been convicted of no offence from an overly zealous executive that has become obsessed with protecting the nation's reputation from the so-called "disease" that is football crowd disorder "(Pearson, 2002). Therefore, the example of Polish legislation on the scope of responsibility to spectators of mass sporting events should be assessed in terms of whether the legislation is good or bad; the more so that the issue is not subject to specific consideration in publications.

"Stadium hooliganism"during football matches and the organization of the EURO 2012 football tournament in Poland and Ukraine required not only the construction of an appropriate infrastructure, but also changes to many statutes. After short deliberations, the Sejm of the Republic of Poland enacted in 2009 a law on the safety of mass events which made it possible to ensure the safety and security of sporting events by significantly reducing anti-social behavior, in particular, during football matches. It was the second act in the history of Polish legislation that regulated mass events; the first was in 1997 and was repealed by the entry into force of the act on the safety of mass events (M. DróŹdź, 2020, Pałaszewski, 2012). However, some commentators indicate that the law is contrary to key principles in the Polish Constitution and other legislation. The fact that the legislator *expressis verbis* focuses on resolving problems mainly to do with football matches means that representatives of doctrine opine that the act breaches principles which include a multi-instance mode of settling disputes, the presumption that an accused is innocent, personal responsibility, the rights that an accused has to a trial, and examining whether administrative decisions comply with the law. The content of it is often criticized, justifiably, by participants in and organizers of mass events (Majewski, 2013). It is to be emphasized, however, that the restrictions in it were meant to lead to ending the problem of "stadium hooliganism", which was partially achieved.

In the act on the safety of mass events, the legislator created a model for the organization and conduct of such events, which is a configuration in the form of a triad: an organizer of a mass event, participants in the mass event, the police and other law enforcement officials. Responsibility for the safety of mass events, which includes spectators, was shifted on to the most important person in the triad that applies to mass events, which is the organizer of the event, by imposing on the organizer obligations, but which frequently were and are still are impossible to fulfill (DróŹdź, 2014).

Material & methods

The main hypothesis of this publication indicates that changes in Polish legislation regarding sporting events resulted in an organizer being responsible not only to competitors, but also to spectators. To that end, in this publication there is used mainly a formal and dogmatic method, which primarily analyzes the provisions of the act on the safety of mass events, and also the reports for 2019 and 2010 of the Polish Police Headquarters on the Safety of Mass Events. I also refer to the judgments of common courts and the comments of the representatives of doctrine, and I also use comparisons. In certain parts of the work, I also use a legal-historical method. Generally, however, the work was written on the basis of publications on mass events so that the work is a starting point for an analysis of the main issues contained in it, and for a possible assessment of the regulations for any possible use in other legal systems.

Results

The 2019 report of the Polish Police Headquarters on the Safety of Mass Events states that there were 7,873 mass events in Poland during which the police were engaged in security and protective activities (in 2018 there were 7,822 such events); 2,536 of which were sporting events and 1,102 were football matches (2019 report). There were 42 crimes during them (only 18 in 2018, and 32 in 2017); there were 425 during football matches (307 in 2018 and 350 in 2017). There were 148 offences during the mass events (64 in 2018 and 201 in 2017). As to football matches, there were as many as 4,275 (in 2018, 1,797, and in 2017, 1,864). Despite the fact that in 2019 there was an increase in the number of crimes and offences, the act on the safety of mass events to a large extent resulted in the fact that, in comparison, for example, to 2010, there was a two-fold reduction in the number of them (2020 report). The main reason for that was the adoption in 2009 of the act on the safety of mass events.

That act does not expressly have a definition of a "mass event". The legislator indicated that a mass event is to be understood to mean one of two types of events; i.e., a mass artistic-entertainment event, or a mass sporting event, which includes a football match.

Pursuant to the act, a mass sporting event is a mass event that has the purpose of competition in sport, or popularizing physical culture, which is organized in a stadium or an object that is not a building for which the number of places made available by the organizer for persons, in accordance with construction law and regulations on protection against fire, is not less than 1000, or for a sports hall or other building enabling a mass event, not less than 300, or for a site permitting a mass event, not less than 1000 (DróŹdź, 2013). Therefore, in the Polish legal system, a mass event is determined not by the number of actual participants, but by the number of places that are made available (DróŹdź, 2020).

The legislator in art. 3 of the act also defined the meaning of a football match; it is a type of mass sporting event that has the purpose of a competition in the sport of football, which is organized at a stadium or other sports facility, where the number of places made available by an organizer for persons, in accordance with construction law and regulations on protection against fire, is not less than 1000 (Suski, 2014).

The definition in law of an “organizer of a mass event” is in art. 3 (9) of the act on the safety of mass events. It is a key term for the application of the act because it appears in most of the provisions of it. Under the act, an organizer of a mass event can be a legal person, a natural person, or an organizational unit without legal personality (Lis & Tomanek, 2020). An interpretation of the provision indicates that the definition of an organizer of a mass event is broad because an organizer can be any entity regardless of legal or organizational form (Kałol, 2020).

Under the standard described in art. 5 of the act on the safety of mass events, an organizer of a mass event is responsible for ensuring the safety of an event. Under the act, requirements of security and organization of an event means that an organizer has a wide range of obligations, which the legislator continues to expand (especially, for organizers of football matches). The obligations are, for example, the provision of information about a mass event, the insurance of it, if it is chargeable, and even many more obligations that relate to the holding of a mass event. (Kotorowski&Kutrząpa 2010). The scope of obligations that are meant to ensure the safety of a mass event is in art. 5 (2) of the act on the safety of mass events, where four basic tasks are indicated. Next, a catalog of other duties was expanded in art. 6 of the act. Pursuant to the first of the provisions, safety of a mass event means that an organizer must fulfill the following requirements: ensure the safety of participants in the event, protect public order, ensure medical safety, and ensure the proper technical condition of buildings together with installations and technical devices serving the facilities; specifically, fire and sanitary safety. Under art. 6, an organizer of a mass event is to ensure: compliance with the requirements that are specified, specifically, in construction law, sanitary regulations, and protection against fire, participation of security services, information services, and the security manager of those services, medical assistance, hygiene and sanitary facilities, designation of evacuation routes and roads that are to enable access of vehicles of rescue services and the police, conditions for organizing communication between entities involved in security at a mass event, rescue and firefighting equipment and the extinguishants that are necessary for the safety of a mass event within the scope of rescue and firefighting, separate rooms for services managing security at a mass event. A mass event is possible only after a permit has been granted (in the form of an administrative decision) by a competent authority (which is the head of a village, mayor, president of a city). An organizer for the purpose of obtaining a permit must, as a rule, not later than 30 days before the intended date of commencement of a mass event apply to the authority that issues permits and request issuance of a permit, and apply to the appropriate local powiat (district, town) chief of police and powiat (town) chief of the State Fire Service, the administrator of medical rescue teams, and the state sanitary inspector, for an opinion on the necessary number of forces and resources needed to provide security at a mass event, objections to the technical condition of a facility (area), and anticipated threats (M. Dróźdź, 2020).

Discussion

Under article. 5 (1) of the act on the safety of mass events, an organizer is responsible for the safety of an event at the place and for the duration of it (Dróźdź, 2020). The provision is, therefore, one of the bases of liability for damages. It is also to be emphasized that the act contains a number of restrictive penal provisions that could apply to an organizer (e.g., for unlawfully conducting a mass event), but, above all, to passive participants in an event (e.g., for trespassing into a mass event or possessing pyrotechnics). Therefore, the main burden of ensuring the safety of a mass event has categorically been placed on an organizer.

In practice, an assessment of the liability of an organizer of a mass event for compensation raises the greatest doubt. Judicial decisions on interpreting the provisions are inconsistent, and it is difficult to indicate a prevailing position of Polish courts in point, although more and more often in judgments, but of which there is a dearth, there can be observed a tendency to extend the liability of an organizer of a mass event by assuming that, in fact, the liability is based on the principle of "special liability" which, in fact, resembles absolute liability (decision of the Supreme Court of September 26, 2003, IV CK 8/02, OSNC 2004, No. 11, item 180; decision of the of DC Kielce of 30.1.2017, II Ca 1313/16). That is mainly the result of the justifications of courts because many negative situations occur during such events and organizers have many times in the past avoided liability for the harm that resulted (Dróźdź, 2020). That approach has been criticized by some commentators who indicate that liability arises if it is proven that an organizer lacked the standard of care that was required, which to some extent corresponds to the Anglo-Saxon institution of a duty of care.

Doubt to do with the liability of an organizer of a mass event is not only the domain of Polish law. Disputes in that respect are also the subject of numerous judgments in the common law system and in German judicature (James, 2002, vol. 65). It is as it is in Poland and doctrinal discussion concerns mainly determining when a specific event can be considered to be unlawful [decision in the cases: *Yates v. Chicago Nat. League Ball Club, Inc.* (1980), 595 N.E. 2d 570; *Watson v British Boxing Board of Control* (2001), QB 1134]. It is to be emphasized that common law courts have developed a rich line of jurisprudence on the liability of organizers of

mass events for own action that is based on a duty of care, but that, however, is not based on the principle of absolute liability (similarly, judgments were also given in the German system).

Objectivity of the liability for damages of an organizer of a mass event, which occurs in practice in the Polish legal system, and also in other European judicature, is in fact largely devoid of formal argumentation, and motives of a substantive nature such as an organizer obtaining a financial benefit for the organization of the event are very dubious. The guiding principle to establish the liability of an organizer of a mass event is the principle of fault for which the assessment that has a special role is unlawfulness of the act in issue. An assessment is made by analyzing whether an entity has undertaken the standard of care that is required, which includes meeting the requirements that are required for a "prudent organizer of a mass event" (Dróźdź, 2020). That argumentation is also supported by the liability of the entity in terms of penalisation whereby the organization of a mass event, contrary to the conditions that apply to it, or because of unlawfully conducting it, is subject to a just sanction, but when the culprit is proven to be at fault.

Conclusion

The organizer of a mass event has a central and at the same time a priority role in ensuring, above all, the security of the event. The organizer of a mass event should act to ensure the safety of all participants of a mass event, i.e., it must, as must every entity, take the care that is required to ensure the life and health of other legal entities (Westfal, 2017). In a situation where that has not been done, the responsibility in law of an organizer of a mass event could apply to passive participants of the event, but also to those whom I have identified in this work to be active participants of a mass event (Dróźdź, 2013).

The act on the safety of mass events is not, however, a perfect example to follow. In my opinion, the act in many places violates the rule of law. It is worth once again being reminded that the concept of resolving such a difficult problem as is aggression, or the antisocial behavior of a certain group of persons, should occur by primarily considering social, psychological reasons, rather than only by law that is directed at repressing a subject. Legal norms to eradicate stadium hooliganism should be created by a rational legislator that takes into consideration the principles of democratic rule of law, regulating through use of prohibitions, orders, and sanctions. The implementation of such instruments does not always result in the application of them, which is confirmed by the application of the act on the safety of mass events. Very often, such a situation leads to a different effect. Instead of issuing strict penal regulations, a legislator should skillfully use the methods of decentralization and consult various associations, local governments, and even other civil society organizations about the changes at issue. Further, a legislator should use various methods that are known as infrastructure steering and, for example, not to devote all funds to punish the persons concerned, but it should also reward those who do not commit, or try to eradicate, such behavior (e.g., increasing funds for associations that promote cultured cheering at stadiums), so that the quality of law is at least "satisfactory". Finally, one cannot forget about the powerful instrument that is known as persuasive control. Sometimes a simple message addressed to a specific subject is clearer than a complex normative content in a specific provision (Dróźdź, 2013). A legislator in targeting a statute to have restrictive operation against fans also indirectly affects the content of the duties of an organizer of mass events, which are often impossible to fulfill (e.g., with regard to the transfer of data to the police on the specific attire of fans), which could mean an extension of the liability for compensation, and also penal liability.

As I mentioned earlier, modern sport has changed, and the norms that regulated it must be different from, for example, those that were established in the middle of the 20th century. However, a legislator must not in the situation forget about the fundamental principles of the rule of law. Further, it is to be emphasized that often the behavior of some fans is more a sociological matter than a matter to do with the law. That is why it is so important to create legal norms that will ensure safety at sporting events, but which will also comply with the rule of law and will not impose absolute liability on an organizer. If a legislator does not remember that rule, that which it establishes could be completely ineffective, or could lead to a resignation from organizing mass events. Therefore, the mentioned consequences prove the economic ineffectiveness of existing solutions.

With the above in mind, it is to be emphasized that legislators in other countries that have not at present adopted standards within the scope of responsibility to spectators should avoid the mistakes that have been made in the Polish legal system (e.g., with regard to the use of overly general terms, or concentrating when drafting regulations solely on the aspect of regulating football matches, or establishing standards that strictly exacerbate the process of privatization of security), which would permit them to better and more effectively manage mass events, which includes security, through considering the interests not only of participants of such events, but also of organizers.

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