

Sports and safety inside and outside the stadium Legal challenges

IBLC/ Sports Law Subcommittee

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National Report of Germany

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Questionnaire

1. General Safety Aspects

1.1 What is the legal framework applicable to the general safety aspects of big sports events in your country (prevention of violence, access and behavior inside the venues)?

The legal framework to safety aspects of sport events in Germany can be distinguished as follows:

- First of all, there are some public law regulations, mainly building law, trying to prevent dangers inside the stadium and regarding the access of the crowd of spectators to the stadium.
- There are also internal regulations established by the sports associations that have to be observed by the organizers of sports events.
- In case of damages caused by or occurred during a sports event, the question of liability is ruled mainly by the law of torts (especially concerning the general rule of observing legal duties to maintain safety) and by the contract between the organizer and the spectators (entered into when buying a ticket).



When buying a ticket, the spectators enter into a contract with the organizer and agree with the Terms and Conditions.

1.2 Are there any legal regulations applicable to specific sports or events?

In Germany, there is no specific law on sports events, although it is recognized that the social and economic importance of sports events have increased in the last decades, and several calls for a specific legislation come up from time to time.

It has been discussed, if the regulations for assemblies are applicable to sports events, but the Federal Constitutional Court has clearly decided that there is a

difference between an assembly, pursuing a collective (political) aim, and a crowd of people, who come together mainly for own purposes.¹

However, there are a few regulations for specific sports events, mainly dealing with sports events in public areas, such as:

- Art. 24 of the Bavarian Criminal Law and Regulations Act for ski, bobsleigh and luge races,
- the Regulation on Water Skiing,
- the Inland Navigation Regulation, dealing inter alia with water sports events,
- the Air Traffic Act, dealing inter alia with aviation sports events,
- Art. 29 and 46 of the Road Traffic Regulations (StVO), dealing with the prohibition and exceptional permissions of motorsport and bicycle races on public streets



Bike races on public streets are only allowed with permission.

1.3 Who is responsible for the enforcement of the relevant legal provisions during the event (owner of the facilities, promoter, organizer, police ...)?

The organizer of a sports event has to take care for the safety of the attendees (athletes and spectators) and has to observe the respective legal provisions and

¹ BVerfG, NJW 2002, 1031, 1032; NJW 2011, 1201, 1204.

duties. Usually the organizers assign security services, but at bigger sports events police forces are also at the venue to support the security service and to take appropriate action if necessary.

1.4 What are the competent authorities as regards the enforcement of the relevant legal provisions?

In the forefront of sports events, administrative bodies may have to be involved for permissions (see 1.2), but in cases of imminent danger during the sports events, the police is always competent to prevent any damages.

Therefore police forces usually attend bigger sports events as a measure of precaution. It is being discussed whether the organizers should pay for the costs of these police operations, but until now no specific legal provisions have been passed.

2. Insurance Coverage

2.1 Are there specific legal provisions applicable to the insurance coverage of big sports events in your country?

No, there are no obligations to insure the risks of sports events established by law. However, the permission of a motor sports event on public event is sometimes granted only if the organizer submits a general liability insurance.² Likewise, some sports associations demand such an insurance from the organizers of big sports events.³

2.2 What is the mandatory insurance coverage to be contracted as regards the celebration of big sports events? What are the minimum risks to be covered according to law?

As described above (see 2.2), there is no mandatory insurance coverage required by law.

² Fritzweiler, in: Fritzweiler/Pfister/Summerer, Praxishandbuch Sportrecht, Rn. 5/75.

³ Fritzweiler, in: Fritzweiler/Pfister/Summerer, Praxishandbuch Sportrecht, Rn. 5/77.

2.3 Who is legally bound to contract the relevant insurance policies in connection with big sports events?

Again, there is no legal obligation for an insurance (see 2.1). However, usually the organizers of big sports events enter into general liability insurance contracts voluntarily, as their risk of liability is comparatively wide.

3. Organizers: Potential Liabilities

3.1 What are the potential liabilities that might be faced in connection with big sports events (civil, administrative, criminal liabilities) and by whom?

Organizers of sports events have to observe legal duties to maintain safety. If they do not comply with such legal duties, the following consequences can arise:

- The organizers are liable under civil law, based on their contracts with the spectators and with the athletes, and under the law of torts.
- Bodily injuries or deaths caused by negligence are also liable to prosecution.
- Administrative consequences are rather unusual, but can arise concerning building law and regarding the costs of a necessary police operation.
- Finally, the organizers can be punished by their sports association. Recently there have even been cases, in which the German Football Association (DFB) fined clubs for excesses of their supporters, even though the clubs did not act carelessly and did everything to avoid such excesses. It is still being discussed, if these penalties have been lawful, but the clubs have accepted the fines.

There is a wide field of legal duties to observe. In a nutshell, the organizers have to take all reasonable measures, that a sensible person would consider necessary to prevent damages from the involved persons. The most interesting judgments in Germany have dealt with the following cases:

- An ice hockey club has been held liable for not having necessary safety appliances, when an attendee was hit by a puck, although the administrative provisions for ice hockey stadium and the regulations of the German Ice Hockey Association were fulfilled (but not the international regulations).⁴

⁴ BGH, NJW 1984, 802.

- Likewise, the organizer of a discus event was liable for the damages caused by a discus thrown into the crowd, even though the rules set by the German association were fulfilled.⁵
- A football club was held liable for not preventing the crowd from getting to the pitch and pushing over the coach's bench, so another spectator was hurt.⁶
- On the other hand, organizers are not obliged to remove trash from the tribunes and stairs during the event, so an attendee will not fall down.⁷

3.2 Distribution of liability: is it possible to distinguish liabilities arising from sports events to an extent where each of the involved parties is held liable only for damage resulting from some specific risks or situations?

It is quite common that an organizer of a sports event does not take care of everything by himself, but assigns agencies with specific tasks. However, the organizer cannot transfer the liability to such third parties, but is still responsible for the correct performance by the assignee.

On the other hand, the assignee may also be liable for not having observed the legal duties to maintain safety. The Federal Court of Justice has held in a motorsports case in 1974, that (apart from the organizer) eight (!) further defendants were liable.⁸

3.3 On the contrary, might someone be held liable for any damage occurred during the celebration of some sports event (owner of the facilities, promoter, organizer, police ...)?

As described above (see 3.2), the organizer can be held liable for any damage, provided that he (or the assignee) did not observe legal duties to maintain safety.

Therefore it is quite important to define the organizer: This is the person who organizes the event and who takes the financial risk.⁹ For example, the organizer of the FIFA World Cup 2006 in Germany was not the FIFA itself, but the German Football Association (DFB).

⁵ OLG München, VersR 1982, 105

⁶ OLG Düsseldorf, SpuRt 1994, 147.

⁷ OLG Köln, SpuRt 1994, 145.

⁸ BGH, NJW 1975, 533.

⁹ Adolphsen, in: Adolphsen/Nolte/Lehner/Gerlinger: Sportrecht in der Praxis, Rn. 877.

3.4 As an attendee, what legal action may I take in case of suffering damage on the game day? Against whom?

The following cases have to be distinguished:

- First of all, an attendee can have a claim based on the infringement of the contract with the organizer or based on the law of torts, provided that the organizer has not observed legal duties to maintain safety.
- If a human being is killed or if the body or the health is injured or a thing is damaged by the collapse of the stadium or by parts of the building or structure breaking off, then the possessor of the stadium (not being the organizer who is already liable as described above) is liable to make compensation to the injured person for damage resulting from this, to the extent that the collapse or severing is a consequence of defective construction or inadequate upkeep (§§ 836, 837 German Civil Code (BGB)).
- If a necessary permission for the performance of the sports events has been granted by an administrative body contrary to law and the damage has been caused by this, the respective authority may be liable, too.
- If a damage has been caused by an athlete, the athlete may also be liable. This is usually only the case if the athlete has intentionally violated the rules of the sports events. However, the Federal Court of Justice held in 1952, that the driver of a racing car has to drive so careful that he does not endanger the spectators and may not rely on the organizer's safety appliances only.¹⁰
- Finally, an attendee can also have a claim against another attendee who caused harm to him.

In all these cases, the attendee can claim for damages and (in cases of injuries to body or health) for pain and suffering.



A calm crowd means no liability

¹⁰ BGH, NJW 1952, 779 (I do not think Formula 1 drivers would agree...).