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Sports and safety inside and outside the stadium Legal challenges

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National Report of Poland

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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)?

Mass Event Safety Act¹, further referred to as **MESA**, provides general legal provisions regarding safety aspects of public events (including big sport events).

MESA regulates rules of conduct essential to ensure safety of mass events (e.g. safety requirements), rules and procedure regarding the issuance permits to organize mass events, and rules regarding the collection and processing of data referring to safety of mass events. The Act provides as well principals of liability of the organizers of mass events for damages caused in connection with the event.

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

MESA applies to any kind of mass event, i.e. entertaining and artistic events, sport, including football events. Events organized in theaters, cinemas, museums, libraries, art galleries and in similar places, held in schools, youth sport events, disabled sport events, recreation venues open for general public, and closed events organized by employers for employees are excluded from the MESA's scope.

Mass artistic and/or entertaining events must be made available for at least 500 spectators – in case of events in buildings, or 1000 spectators – in case of events held in a stadium, other structures that are not buildings and in the open spectators, in order to fall within the scope of MESA.

MESA requires mass sport events to be made available for at least 1000 spectators – in case of stadiums, other structures that are not buildings and in the open, or 300 spectators – in case of an event in sports halls.

In case of high risk mass events requirements regarding the minimum amount of spectators drop significantly:

- at least 300 for events held in a stadium and other structures that are not buildings and in the open,
- at least 200 for events held in sports halls or another building,
- at least 200 for a football match.

MESA provides a set of rules regarding the safety of football matches, which is regulated in a separate chapter of the Act. Those specific rules include duties of the organizer regarding identification, sale of tickets and requirements for imposing a ban for an attendee for club events.

¹ Polish: Ustawa o bezpieczeństwie imprez masowych, consolidated text – O.J. from 2013 pos. 611 as amended.

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

According to MESA (Articles 5 and 6), the organizer is responsible for the safety of the mass event (at the time and in the place of the event). The above includes:

- Providing safety for the participants during an event,
- protection of public safety,
- medical safety,
- providing required technical state of the buildings, including its installations and adjacent facilities, in particular fire protection and sanitary facilities.

The organizer is also responsible for providing security and information services, medical help, evacuation routes, as well as rescue and fire protection equipment.

Chapter 3 of MESA sets forth rules referring to safety of a football mass event (provisions from this chapter are also applied respectively to high risk sport events). An organizer of a football mass event is responsible for identification of people taking part in such an event. In order to enable identification on a wide scale, MESA introduces centralized systems of identification of participants in football mass events (separate for professional league and non-professional league). Scope of the data that is to be processed includes: name and surname, face image, national identification number (Pol. *PESEL*) and personal identification number together with information on the body issuing personal identification number. It is either an entity managing the league or a relevant sports club that is the administrator of the abovementioned personal data.

According to Chapter 4 of MESA, safety services of a mass event are allowed to verify for a mass event, identify participants, search their belongings (provided there is a suspicion that those people may carry in prohibited items), instruct participants to keep order at the event, seize persons directly endangering the safety of protected people and use direct coercive measures (on the basis of Coercive Measures and Firearms Act²). Safety services are obliged to deny access to a mass event of any person, who was granted a stadium ban, and/or who is under influence of alcohol or drugs, and/or who is carrying weapons and/or explosive materials, and/or who is behaving aggressively or provocatively, and/or who does not have a valid ticket to the mass event. Safety services are obliged to move out from the mass event's venue any person who is behaving disruptively and/or non consistent with the rules of the venue or the rules of the mass event in question. Other tasks regarding the safety of the mass event are done by information services (e.g. observation and controlling of crowd, informing on

² O.J. from 2013, pos. 628.

medical, sanitary and food facilities, reporting any disturbances to security services).

According to Article 22 Section 4, if during a mass event conduct of security services is insufficient, the organizer or security supervisor requests Police's help.

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

Article 24 of MESA sets forth that a territorial relevant mayor or a president of a city of the mass event grants a permit to organize a mass event (further referred to as the Authority).

The Authority, According to Chapter 6 of MESA, can verify the conformity of the course of the mass event with the abovementioned permit. In case of high risk events it is the Authority's duty to control the conformity of the course of the mass event with the granted permit. To exercise its duties, the Authority may use resources of the territorial relevant Police, State Fire Service and paramedic forces.

The Authority, while exercising the above control, has the right to demand from the organizer of the mass event information, documentation and data necessary to conduct the control, access to the place of the mass event and to investigate those places. If the Authority finds the mass event to be inconsistent with the permit, the Authority may issue a decision ordering a termination of the mass event. The organizer may appeal from the decision.

Other administrative supervisory powers are exercised by the governor of the province (Pol. *wojewoda*, a governmental authority). These powers include a possibility of imposing a ban on organizing the mass event in question or a ban on organizing mass events by the organizer in the whole province or its part, provided that from the security and public safety point of view, the assessment of mass event is negative. The organizer may appeal from the decision.

The specific procedure of issuance of abovementioned decisions and appeals is regulated by the Administrative Procedure Code³.

2. Insurance Coverage

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

Chapter 8 of MESA sets forth rules of responsibility for damage regarding securing of a mass event. More specified provisions are embodied in administrative regulations to the Act: Regulation of Minister of Internal Affairs and Administration on specific procedure of determining damage arisen in

³ Pol. *Kodeks postępowania administracyjnego*, consolidated text O.J. from 2013, pos. 267 as amended.

connection with operation in the time and at the place of mass event, and specific procedure of application for the compensation⁴ (further referred to as the **DDAR**). DDAR sets forth rules for determining compensation of damage in Police, Military Police, Municipal Police, State Fire Service and in health services' property used at a mass event. Another regulation covering the issue of insurance during a mass event is the Regulation of Minister of Finances on the mandatory civil liability insurance of the organizers of mass events⁵ (further referred to as the **MCLIR**). § 2 of MCLIR lays down specific rules regarding the distribution of liability. Organizer's mandatory insurance does not cover damage caused by the insured (i.e. the organizer) to an item of his or her close relatives (spouse, ascendant, descendant, sibling, in-law of the same line and decree, adopted or adopting person and their spouse, and by a person living with the insured). Moreover, mandatory insurance does not cover damage resulting from contractual penalties and military actions.

All of the above mentioned acts apply only to mass events against payments, i.e. admission free events are excluded from the scope of this regulation. It is noticeable, that no other legal act specifies rules regarding the insurance coverage of admission free mass events.

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?

The issue of mandatory insurance coverage is regulated entirely by MCLIR. § 5 of the Regulation sets forth that minimum civil liability insurance for sport mass events is to be set at a level of:

- a. 30.000 euro for a sport mass event organized in a stadium or another object which is not a building, if the number of seats is at least 1 000 and not higher than 2 000, and for every 100 seats exceeding 2 000 the minimum insurance rate increases of 1.500 euro;
- b. 6.250 euro for a sport mass event organized in a sports hall or another building, if the number of seats is at least 300 and not higher than 500, and for every 100 seats exceeding 500 the minimum insurance rate increases of 1.250 euro;
- c. 30.000 euro for a sport mass event organized in the open air, if the number of seats is at least 1 000 and not higher than 2 000, and for every 100 seats exceeding 2 000 the minimum insurance rate increases of 1.500 euro;
- d. 30.000 euro for a football match organized in a stadium or another sports object, if the number of seats is at least 1 000 and not higher than 2 000, and

⁴ O.J. from 2009 No. 121, pos. 1006.

⁵ O.J. from 2010 No. 54, pos. 323.

for every 100 seats exceeding 2 000 the minimum insurance rate increases of 1.500 euro;

- e. 35.000 euro for a high risk sport mass event organized on a stadium or another object which is not a building, if the number of seats is at least 300 and not higher than 2 000, and for every 100 seats exceeding 2 000 the minimum insurance rate increases of 1.750 euro;
- f. 8.150 euro for a high risk sport mass event organized in a sports hall or another building, if the number of seats is at least 200 and not higher than 500, and for every 100 seats exceeding 500 the minimum insurance rate increases of 1.750 euro;
- g. 35.000 euro for a sport mass event organized in the open air, if the number of seats is at least 300 and not higher than 2 000, and for every 100 seats exceeding 2 000 seats the minimum insurance rate increases of 1.750 euro;
- h. 8.150 euro for a high risk football match organized in a stadium or another sports object, if the number of seats is at least 200 and not higher than 500, and for every 100 seats exceeding 500 the minimum insurance rate increases of 1.650 euro.

According to MCLIR, insurance liability covers almost all kinds of damage suffered by participants that can occur during a mass event and is not allowed to be limited in the insurance contract. The exclusions from this general rule are as follows:

- a. damage caused by the insured (i.e. the organizer of the mass event) regarding defects, devastation and loss of an item of his or her spouse, ascendant, descendant, sibling, in-law of the same line and decree, adopted or adopting person and their spouse, and by a person living with the insured;
- b. damage resulting from a contractual penalty;
- c. damage occurred due to a military action.

In order to analyse the scope of mandatory insurance regarding mass event, it is necessary to refer to Law on Mandatory Insurance, Insurance Guarantee Fund, and Polish Motor Insurers' Bureau⁶, further referred to as **MIL**. According to Article 9 of MIL, mandatory civil liability insurance agreement covers civil liability of the obligatorily insured for damage caused by their unlawful acts and non-performance or misperformance of their obligations, provided it does not breach any statute or is not in conflict with the nature of the relationship in question. Moreover, Article 11.2 of MIL sets forth that a mandatory civil liability

⁶ Pol. *Ustawa z dnia 22 maja 2003 r. o ubezpieczeniach obowiązkowych, Ubezpieczeniowym Funduszu Gwarancyjnym i Polskim Biurze Ubezpieczycieli Komunikacyjnych*; consolidated text – O.J. from 2013, pos. 392 as amended.

insurance agreement covers as well damage caused as a result of gross negligence of the insured or persons the insured is responsible for.

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

Article 53 of MESA obliges the organizer of a mass event to conclude an insurance contract covering the civil liability for the damage suffered by the participant in the event. This is limited only to mass events against payments. Therefore, as stated before in point 2.1, it is not mandatory for the organizer of an admission-free mass event (including big sports events) to conclude a civil liability insurance contract regarding the event.

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?

An organizer of a mass sport event may face civil liability regarding damage suffered by participants of an event due to organizer's non-conformance with the requirements of MESA; for instance, if due to the lack of required medical care or security of the event, a participant suffers damage (e.g. is beaten by a person who uses a weapon carried in to mass sport event) – which by the way is covered by mandatory insurance. Other situations that may establish liability on the side of the organizer of a mass sport event include:

- cancellation of the event;
- postponing of the event,

which may result in duty to compensate damage to supporters (e.g. refund of tickets and/or transportation costs) or to athletes (e.g. damage in form of loss of actual or expected profit). The two abovementioned kinds of damage are to be compensated according to general rules regarding non-performance or misperformance of an obligation (Article 471 et seq. of the Civil Code⁷).

A number of potential civil liabilities may be faced by participants themselves (due to their behavior during a mass sport event). Their own actions may result e.g. in personal and/or property damage, which are to be indemnified according to general rules of Civil Code (Article 415 et seq.).

An organizer of a mass sport event is also responsible for compensation of damage in Police, Military Police, Municipal Police, State Fire Service and in health services' property used at a mass event (on the basis of DDAR).

⁷ Pol. Ustawa z dnia 23 kwietnia 1964 r. – *Kodeks Cywilny*, O.J. from 1964 No. 16, pos. 93 as amended.

Administrative sanctions that may be faced by the organizer of a mass sport event were discussed in point 1.4 above.

Chapter 9 of MESA introduces a number of criminal regulations. Some of them refer to nonconforming with instruction orders, Police or Military Police orders, carrying in and possession of alcoholic beverages, covering faces or passing on untrue information about the security of the mass event. Anyone who trespasses against those regulations is liable to restriction of liberty or a fine not lower than 2 000 PLN.

According to Article 58.1 of MESA, anyone who organizes a mass event without a permit or not consistent with permit requirements, or in spite of a ban to organize a mass event, is liable to fine, restriction of freedom or imprisonment from 6 months to 8 years. An organizer a mass event who does not meet security requirements may be sentenced to a fine.

Article 59 of MESA introduces a ban on carrying in and/or possession of weapons, pyrotechnics, explosives, other fire hazardous materials and other hazardous materials – anyone who does not conform with this provision may face a fine, restriction of freedom or imprisonment from 3 months to 5 years. Other criminal regulations regard security of mass event (a force entry to a mass event punishable throwing objects or transgression of personal inviolability – all punishable with fine, restriction of freedom or varying imprisonment up to 5 years). MESA punishes as well conduct that provokes participants of a mass event to hazardous activities. The court may also impose a ban on a person sentenced for offences listed above from taking part in mass sport events (a stadium ban).

Apart from the above, mass event specific criminal regulations of MESA, there is of course a number of criminal provisions from Criminal Code⁸ that may be applied to the conduct of participants of mass sport event, especially fans gathered on a stadium. Those offences include i.a. homicide (punishable with imprisonment for a minimum term of eight years, imprisonment for 25 years or imprisonment for life), involuntary manslaughter (punishable with imprisonment between three months and five years), grievous bodily harm (punishable with imprisonment between one and 10 years), non-grievous bodily harm (punishable with fine, the restriction of liberty or imprisonment up to five years – depending on the harm), fights and beatings (punishable with imprisonment up to three years), use of dangerous object in a fight (punishable with imprisonment between six months and eight years), causing a life-threatening event punishable with (imprisonment between one and 10 years), or public insult to state symbols, including destruction and removal of an emblem, banner, standard, flag, ensign or other state symbol (punishable with fine, the restriction of liberty or imprisonment up to one year), property damage (punishable with imprisonment between three

⁸ Pol. Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny, O.J. from 1997, No. 88, pos. 553, as amended.

months and five years). There are as well misdemeanors that may be committed by an attendee of a mass sport event, according to Code of Misdemeanors (Pol. *Ustawa z dnia 20 maja 1971 r. – Kodeks wykroczeń*, consolidated text – O.J. from 2013, pos. 482, as amended), which include: causing disorder through loud behavior (punishable with arrest, restriction of liberty or fine), interfering in the organization or the course of an assembly, chairing an assembly after its dissolution, refuses to leave the premises of the venue after an assembly (punishable with arrest up to 14 days, restriction of liberty or a fine).

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 possible to distinguish liability of any person who causes damage during a mass sports event. Civil liability of the organizer of a mass sports event covers damage caused by organizer's unlawful acts and non-performance or misperformance of organizer's obligations, provided it does not breach any statute or is not in conflict with the nature of the relationship in question. What is more, it covers damage incurred as a result of gross negligence of the organizer or persons the organizer is responsible for. The organizer is also – of course – responsible for his or her own deliberate actions or his or her employees (however mandatory insurance of organizers of mass sports events does not include those actions – this means that for instance if the organizer allows more people on a platform in the stadium than it is permitted, according to the platform's specification, the mandatory insurance would not cover this action).

Liability of the organizer of a mass sport event regarding damage caused to an item of his or her close relatives is covered by general rules laid down in Civil Code in Articles 415 et seq.

As already stated in point 3.1, participants of a mass sport event are responsible for damage caused by themselves (personal and/or property damage), according to general rules of Civil Code (Articles 415 et seq.).

Of course, other rules apply to distribution of liability towards sportsmen, e.g. football players. If one of them was fouled by another player, general rules of Civil Code apply (Articles 415 et seq.) when it comes to indemnification. This means that there has to be an act causing the damage (in our example a foul), damage on the side of another player (e.g. an injury) and casual nexus between the act and damage suffered.

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 ...)?

According to the relevant legal framework, it is impossible for a single person or entity to be held liable for any kind of damage occurred during the celebration of

sports event. Therefore, the organizer of a mass sport event is not responsible for damage caused by one supporter to another (e.g. personal damage), provided this damage is not connected with e.g. security negligence on the organizer's part consisting in allowing an armed person to enter the area of a mass sport event.

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

An attendee who suffers damage during a mass (sports) event may take several steps, depending on the person responsible for the damage.

If the damage was suffered as a result of the conduct (or misconduct) of the mass (sports) event's organizer, the injured party has to:

- report the damage to the mass (sports) event's organizer;
- provide evidence regarding the damage (witnesses, a video footage, etc.; some of the biggest sports events are thoroughly filmed, therefore the problem of providing evidence is not great);
- gather all of the documentation regarding the damage and costs thereof (e.g. medical documentation);
- turn to the organizer (or directly to the insurance company) for damages.

Usually only organizers of mass events against payments are insured, so the last step would apply probably only to those organizers. If the organizer is not insured, an injured attendee has to turn to the organizer himself.

If the damage occurred as a result of intentional conduct (see example from point 3.2. – an overcrowded stadium's platform), the insurance company cannot be held liable and it is the organizer who has to compensate damage (unless the insurance contract stipulates otherwise).

Similar conduct would apply to an attendee who suffers damage caused by another person outside the responsibility of the organizer of a mass (sports) event. In such a case, however, an injured attendee would have to inform a party responsible for the damage and – provided this party would be insured – turn to his or her insurance company.