

Sports and Safety Inside and Outside the Stadium

Legal challenges

IBLC/Sports Law Subcommittee

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National Report of Switzerland

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1. General Safety Aspects

1.1 Legal Framework applicable to general safety aspects of big sport events in Switzerland (prevention of violence, access and behavior inside the venues)

On the level of international treaties, in 1990 Switzerland ratified the European Convention on Spectator Violence and Misbehaviour at Sport Events and in particular at Football Matches (CETS No. 120) which aims to harmonise the different national security standards within Europe. The convention obliges the contracting states to enact national laws based on which the authorities may issue certain security measures in order to prevent and avoid any acts of violence occurring during or in connection with football matches or other sport events. Even more, the contracting states are obliged to take measures for the stadium ban of so-called well-known troublemakers.

In 2007, Switzerland fulfilled its international obligations by enacting the Federal Act on Measures for Safeguarding National Security (BWIS, SR 120). The Swiss legislator had become aware that the local authorities and police were not able to prevent all acts of violence in connection with sport events on their own, but rather needed to be assisted by a federal law allowing to issue certain instruments of security and prevention: personal ban for the whole area in which the sport event takes place, stadium or travel restrictions, police custody for the duration of 24 hours, and so on. Even more, the legislator established a electronic information system – named HOOGAN¹ – enabling the authorities to detect all persons against which the instruments mentioned above were sanctioned. However, due to severe criticism because of possible non-compliance with the constitution of Switzerland, the Federal Act was only enacted for a limited period until the end of 2009 (with regard to the European Championship taking place in Switzerland in 2008).

In the last years, the Cantons of Switzerland concluded a so-called Concordat,² an inter-cantonal contract on the base of the Federal Act referred to above knowing comparable measures. In addition, the Concordat also knows the possibility of a stadium ban of persons which are from experience prepared to use violence only outside the stadium.³ In such case, the competent authority may recommend to an organizer of an event to exclude a specific person from the stadium. Besides that, according to the Concordat, the transport of pyrotechnical objects to a sport event is deemed as a dangerous behavior. In the meantime, all Cantons have joined the Concordat. However, certain Cantons

¹ See Art. 24a BWIS; a German, French and Italian version of the act can be found under <http://www.admin.ch/opc/de/classified-compilation/19970117/index.html>.

² See for more information about the Concordat the Report by the Bundesrat (08.3000) from the 8th December 2008, only available in German.

³ See Art. 10 of the Concordat.

intend to even include stricter measures. This is currently subject to controversial discussions.

Apart from the international or national public law, many registered sport societies and associations have enacted specific provisions and measures regarding their respective sport branch, for instance regarding the Swiss football and ice hockey.⁴ These security regulations are of contractual nature and sometimes go beyond the minimum standard of the public legal provisions.

Finally, there are legal provisions in the Swiss Criminal Code which might be of importance when it comes to violence or other forms of misbehavior in or outside the stadium.⁵

When it comes to the question of liability for all kind of damages resulting from violence or other misbehavior inside the stadium, the Swiss Code of Obligations knows certain grounds, contractually and non-contractually, which apply to these cases.⁶ However, the liability of the organiser of a sport event will be discussed later on in this report.

1.2 Legal Regulations applicable to specific sports

As already mentioned, especially the problems and experiences from the football and the ice hockey leagues have led to the enactment of certain security laws, for example the HOOGAN, which however should also be applied to other sport branches. Moreover, in 2008 the Swiss Football League enacted four instruments in order to prevent any forms of violence and misbehavior of certain fans, amongst others the framework “Prevention and Security”, or “No violence on football grounds”.

The same goes for the Swiss ice hockey league.⁷ But apart from these initiatives, there are no national laws that deal specifically with only one certain branch of sport.

⁴ See for example the security regulations of the Swiss Football League SFL, available on the website under www.football.ch/sfl/cm/Sicherheitsreglement. See for these branches of sport also the para below 1.2.

⁵ See for example Art. 111 et seq., Art. 137 et seq., Art 258 et seq. and Art. 261bis Swiss Criminal Code; an informal English translation of the Swiss Criminal Code is provided under <http://www.admin.ch/opc/en/classified-compilation/19370083/index.html>.

⁶ An informal translation is provided under <http://www.admin.ch/opc/en/classified-compilation/19110009/index.html>.

⁷ See under www.natiopnalleague.ch/media.

1.3 Responsibility of enforcement

As typical for Switzerland, the responsibility to enforce respective security laws is distributed between the federal and cantonal competences of authorities and police. Furthermore, the observance and adherence of certain security provisions for big sport events may also lie within the responsibility of the stadium owner or organizer of the sport event. In particular, the organizer is obliged to take safety precautions that are reasonable considering the type of event.

1.4 Competent authorities regarding the enforcement of the relevant legal provisions

Either the federal or the cantonal authorities are competent to enforce the security laws (see also para 1.3 above). As a rule of thumb, the cantonal authorities are in charge. However, often they are supported by other cantons or even federal authorities.

2. Insurance Coverage

2.1 Specific legal provisions applicable to the insurance coverage of big sports events

Basically, cantons have the competence to enact laws requiring an insurance coverage for specific fields, actions or branches. However, there are no specific mandatory provisions applicable to the insurance coverage of big sports events in Switzerland at the moment.

2.2 Mandatory insurance coverage (minimum risks to be covered)

None.

2.3 Parties to the insurance policies

It lies within the scope of responsibility of the respective organizer or stadium owner to conclude an insurance contract which covers all kinds of potential risks.

3. Organizers: Potential Liabilities

3.1 Potential liabilities that might be faced in connection with big sports events

Generally, every organizer of a sport event – no matter of which size – may be potentially held liable - under the Swiss Code of Obligations - for any damages

resulting from a violation of one of his duties. These duties may originate from contract, e.g. between organizer and athletes or organizer and attendees, or from non-contractual obligations. Even more, the sport event organizer may face consequences based on the Swiss Criminal Code (in particular if attendees are injured or their lives are put at risk).

The non-contractual liability is namely based on Art. 41 Code of Obligations, the liability of the owner of the stadium or of the respective area is based on Art. 58 Code of Obligations. Regarding the scope of liability for non-contractual obligations, it is decisive to determine the content and scope of the duties which fall under the responsibility of the organizer. Generally, the organizer or owner of the sport facilities has to take over all safety and protection risks which are reasonably foreseeable and which may differ from sport area to sport area. In order to define the relevant duty of care, the courts often refer to existing rules in the specific environment. For sports events this would be, e.g., the FIFA Stadium Safety and Security Regulations or the International Ski Competition.

Basically, (contractual and non-contractual) liability for own fault can be excluded in a contract, however not for willful intent and gross negligence. Moreover, exclusion or limitation of liability for damages as a result of an injury is not possible. Liability for sub-contractors can be excluded. However, liability often is not validly excluded or limited because the respective wording or the reference to the applicable general terms and conditions is printed on the ticket and was not available to the consumer before purchasing the ticket.

If the damage (partly) arises because of the own fault of the person suffering the damage, a court could reduce the compensation to be paid. E.g., a court held that a woman who was hit by a puck during a hockey game was standing at a spot that clearly was not protected. According to the court, the woman must have been aware of the danger. Therefore, the organizing club's liability was reduced by 25%.

3.2 Distribution of Liability

The owner of the stadium is, if he is only renting out the facility, only liable for damages resulting from a defect of the building (e.g. the ceiling of the stadium breaks down), whereas the company organizing the event (and finally selling the tickets to the spectators) will be liable for damages arising from a breach of its duty of care (e.g. if people get injured as a result of a missing security concept).

3.3 Strict Liability

There is no strict liability in terms of a liability regardless of any fault. However, article 58 of the Swiss Code of Obligations stipulates a non-contractual liability of the owner of a building for damages as a result of defects in the construction of

the building or its design or by inadequate maintenance. In other words: The owner is liable, irrespective of a personal fault, if the building has a defect. Unlike under article 41 of the Swiss Code of Obligations, the basic ground for non-contractual liability, the behavior of the person causing the damage is not relevant. Therefore, article 58 of the Swiss Code of Obligations is sometimes also referred to as a sort of strict liability.

3.4 Attendees - which legal actions and against whom?

As an attendee, one enters into a contract with the organizer or a third party by buying a ticket for the sport event or the sport area. Therefore, attendees may take legal actions against the responsible organizer based on the non- or bad-performance of the contract. Moreover, they could sue the organizer on the basis of non-contractual liability. This may include e.g. damages resulting from a poor adherence to safety regulations.

The attendee may further bring proceedings against the owner of the stadium or the building where the event is held if the damages result from a defect of that building (see para 3.4 above).

Bibliography and Materials

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