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Criminal Liability Of Sports Participants For Sports-Related Injuries In The Czech Republic

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I. Introduction

"In the ample literature dealing with very different aspects of sport, little attention has been paid to the extensive and complex legal implications of the practice of a sporting activity. The absence of any literature addressing the legal aspects of sports is certainly no coincidence. This branch of law is "young", in the fullest sense of the word, and is still in the stage of formation. There are still many questions to be solved and antagonistic tendencies emerging from the heated debates on the issue. It follows from the experience that there are many well-established legal concepts and constructs which cannot be automatically adapted to the issues arising out of the unusually rapid development of the sport which is now practised by masses of people in an ever-expanding scope of newly created and miscellaneous kinds of sport. At last, new and original legal constructs and solutions have been emerging recently which must nevertheless struggle to overcome the existing routine and conservatism in sport. It is thus no easy task to define and solve such issues. The novel nature of this branch of law is the reason why no consensus has been reached yet and why no unambiguous answers have been given so far in relation to many questions and issues concerning this topic. Everything is still in the stage of discussions, with legal experts trying to find compromise formulations that would respect the complexity of the issues in question."[1]

The above words were used by Dr. Jerzy Sawicki, professor of criminal law at the University of Warsaw, in the introduction of his ground-breaking book aptly called "Ryzyko w sporcie" (Risk in Sport) (sadly, he passed away before its publication). Although published forty five years ago, the book includes many reflections that have lost nothing of their topicality, on the contrary, some of them have gained new dimensions as the sport evolved as such development of the sport could not have been anticipated by the author at that time.

One of the problems discussed in the above mentioned book is also the issue of the determination of legal liability of sports participants for sports-related injuries, i.e. the definition of the prerequisites and conditions setting out the limits within which a sports participant is liable (or not) for an injury inflicted to his fellow participant during a sports event. The fundamental question may be defined simply. If a sports participant is injured during a sports event, under which conditions and to which extent does the existing law apply to such injury? Hundreds of monographs and court rulings and, to a lesser extent, also specific legislative initiatives have been trying to find the right answer. As early as the early eighties of the last century, the relevant legal literature had already mentioned more than 40 theories substantiating the exclusion or existence of the legal liability for sports-related injuries.[2] The civil law theories operate with many

[1] Sawicki J (1968) Ryzyko w sporcie. Wydawnictwo Sport i turystyka, Warsaw : 7; Translation: Hora J - Jędruch S (1980) Sport a právo. Acta Universitatis Carolinae Gymnica 2 : 83-84.

[2] For example: Gališin P (1986) Šport a právo III. ŠVOČ, Bratislava.

categories and alternatives when trying to answer the question whether or not and how it is possible to justify the decision of the court not to award damages under civil law in such cases. They try to find the solution using the criterion of adherence to (or violation of) the sports rules, limits of the negligent and intentional conduct, risky nature which is, to a certain extent, immanent in any sporting activity, or the consent of the victim, involvement of the state etc.[3]

This paper on the liability of sports participants for sports-related injuries in the Czech Republic discusses the issue of the criminal liability.

II. Legal literature on the criminal liability of sports participants in the Czech Republic

The first and, in fact, the only Czech author to address the issue of the sports law and also the criminal liability of sports participants for sports-related injuries in a more systematic way (in the late seventies and early eighties of the twentieth century), from the point of view of legal theory, was Jiří Hora who summarized his views on the criminal liability of the sports participants for sports-related injuries in one of his papers.[4] J. Hora uses the following basic principles to define the starting points for the reflections on the liability of the sports participants for sports-related injuries: 1) an exercise of a sporting activity is based on binding and internationally agreed rules of the sport, or, in some cases, on customs, 2) the essence of a sporting activity is a constant movement, frantic activity of the opponents fighting for victory, 3) a sporting activity aims to enhance physical fitness and health of the participants and plays an important role in the development of moral qualities of a man (the principle of fair play), 4) the government authorities do not intervene in sport by authorising individual sporting activities, they are, however, entitled to prohibit any kind of sports, 5) participation in a sporting activity is voluntary.

In analysing the issue of the liability of sports participants for sports-related injuries, Hora tries to find the solution in the so-called material aspects of a crime, i.e. in the degree of danger to society of the conduct in question. Hora believes that it is possible to apply this criterion as it allows to consider the specific nature of the sporting activities which are different from other branches of human activity – in other words, by analysing the material aspects of a crime, it is possible to determine whether an act of a sports participant was malicious, whether the participant only pursued sporting goals or tried to harm his opponent, and to establish the extent of the ethical and legal liability of the perpetrator based on his status (which will be different in case of an athlete representing his country and in case of a person who does not participate in sport on the top level - mass sporting activities, competitive sporting activities), and finally, to determine whether the perpetrator complied with the rules of the game and similar aspects relating purely to sport. In concluding, Hora expressed his conviction that the legal regulation of the issue in question will probably tend to be based on the legal concept of "legitimate risk" which reflects the principle under which a criminal liability does not attach to a person who acts within the boundaries of the risk which is legitimate with regard to the needs of the society and purposes of the science and technology.

The criminal legal theory of the first half of the twentieth century does not deal with the issue of the legal liability for sports-related injuries. The criminal law textbook written by Professor Albert Milota did not address any aspects of the criminal law relating to sport even

[3] An overview of the most significant of these theories and their concise description can be found, for example, in: Králík M (2007) Úvod k otázkám právní odpovědnosti sportovců za sportovní úrazy. Právník 8 : 833 – 873; Králík M (2008) Právní odpovědnost sportovců za sportovní úrazy, in: Kolektiv autorů (2008) Otázky sportovního práva. Ústav státu a práva, Prague : 25 – 59 or Králík M (2012) Právní odpovědnost sportovců za sportovní úrazy (vybrané otázky a úvod do problematiky), in: Zborník z konferencie 18. slovenské dni práva. Slovenská advokátska komora, Bratislava : 27 – 46.

[4] Hora, J.: K otázce trestní odpovědnosti hráčů při sportovních úrazech, Acta Universitatis Carolinae Gymnica, Vol. 15, 1979, Issue 1, p. 15 et seq.

in the chapter dealing with the defences in criminal law or in the chapter discussing the crimes against "life and body".[5] The absence of any references to sporting activities in this literature seems to reflect the conviction that it was unnecessary to analyse the liability of the sports participants for sports-related injuries and to discuss this issue in the relevant legal literature, as opposed to the legal development in other countries where the issue of the criminal liability in sport started to become a regular subject of the relevant judicial decisions and legal literature as early as in the beginning of the twentieth century.[6]

Even the publication from the early fifties of the twentieth century commenting on the General Part of the Criminal Code is silent on the exercise of a sporting activity, in its part discussing the defences in criminal law.[7] It is probably not until the late fifties of the twentieth century that the first references to sports in relation to the criminal law and crimes in sport[8] start to appear in the Czech criminal legal literature. The chapter dealing with the defences not specifically mentioned in the Criminal Code included a description of the legal concept of the exercise of the "legitimate activity".[9] Absolutely identical conclusions of the same wording can be found in a university textbook on criminal law from 1969 which also referred to sports in connection with the exercise of a legitimate activity.[10]

A publication by Vladimír Solnař - Základy trestní odpovědnosti - was a shy, yet significant step forward in the development of the study of this issue in the Czech Republic. When discussing the defences, Solnař mentions sporting activities in connection with medical interventions. He says: "a certain analogy can be found in dealing with the issue of the exercise of a sporting activity, if such sporting activity is allowed and the action does not breach any rule of the said sport and pursues a sporting goal." When compared to the global development of the academic debate on this issue, Solnař's ideas are not in any way innovative, the conditions of the impunity for sport-related injuries (lawfulness of the sport, compliance with the rules of the sport and pursuit of sporting goals when exercising the sporting activity) defined by him are well-established conditions which are regularly used as arguments for the impunity of sports participants for sports-related injuries. In the Czech theory of criminal law, Solnař's publication is probably the most "in-depth" in terms of the attention paid to the sports-related injuries and legal liability relating to such injuries even if the author discusses this issue only on five lines of his publication.[11]

A criminal law textbook from the seventies picks up where its predecessors from the late fifties and sixties of the twentieth century left off and, once again, discusses the issue of the liability in sport in an almost identical and brief way, in connection with the exercise of a legitimate activity while containing none of the ideas which appeared in Solnař's publication.[12] It is impossible to observe any significant change in this trend which mostly ignored the issue of the sports law even during the late eighties and early nineties. A university textbook from 1994 discusses the issue, once again, in absolutely identical words as the previously published textbooks while adding no new information to the debate.[13] However, some

[5] See also: Milota, A.: Učebnice obojího práva trestního platného v Československé republice. Právo hmotné, J. Gusek, nakladatelství v Kroměříži, 1926, p. 30 – 34, 243 – 264.
[6] See also, for example: Karding, E.: Straflosevorsätzliche Körperverletzungen bei Bewegungsspielen, Freiburg, 1902.
[7] See also, for example: Filipovský, J. – Tolar, J. – Dolenský, A.: O obecné části trestního zákona, Orbis, Prague, 1951, p. 76 – 80.
[8] We are still speaking of the "standard" sporting activities, i.e. the liability for injuries caused during the exercise of a sporting activity, without addressing any other issues concerning the criminal activities connected with sport (e.g. bribery, corruption etc.).
[9] See also: Československé trestní právo, svazek I., obecná část, Orbis, Prague, 1959, p. 233.
[10] See also: Československé trestní právo, svazek I., obecná část. Druhé, částečně přepracované vydání, Orbis, Prague, 1969, p. 143.
[11] See also: Solnař, V.: Základy trestní odpovědnosti, Academia, Prague, 1972, p. 111.
[12] See also: Československé trestní právo, svazek I., obecná část, Orbis, Prague, 1976, p. 127.
[13] See also: Novotný, O. – Dolenský, A. – Jelínek, J. – Vanduchová, M. : Trestní právo hmotné. I. obecná část. 2.

changes in the approach to this issue can be detected in the late nineties. A textbook published by the Faculty of Law in Brno departs from the until-then uniform approach to the sporting activities which were regarded as an exercise of a legitimate activity and mentions sport in connection with the legitimate risk (legitimate degree of danger). However, it only speaks of the existence of a risk in sport in just one sentence without going into any further analysis of the issue. Another author from the Faculty of Law in Brno, Josef Kuchta, mentions sport in a publication discussing the risk in law. This book, once again, contains no in-depth analysis of the issue. Kuchta only says that there are various kinds of risk that are specific to a certain extent (while mentioning, among others, also the risk in sport) while stating that the general criteria applicable to the risk must be further modified when analyzing those specific risks. Kuchta himself does not proceed to analyse the risks in sport.[14]

The most recent development in the legal literature has not also helped to unify the approach to this issue.[15] The Czech legal community is currently rather reluctant to accept the prosecution for sports-related injuries. The conclusions of an internet discussion on the Law and Economics Blog in 2007 are also critical to the possibility of the prosecution of the sports participants.[16] Judge J. Fastner expressed a similar view on the minimum involvement of the criminal law in the relationships in sport.[17] On the other hand, T. Hrnčiřík believes that the criminal liability of a sports participant may arise, in particular where the injury is caused by an especially reckless action, or by a deliberate action intended to cause injury.[18]

III. Decisions of the Czech courts on the criminal liability of sports participants

The absence of any judicial decisions on the criminal liability of sports participants for sports-related injuries was aptly described by Jiří Hora already at the late seventies of the twentieth century. Hora said that the higher judicial bodies had not as yet had the opportunity to take a stand to this issue.[19]

However, the current practice of the criminal courts seems to depart, at least partially, from this trend. This is apparent from the recent decisions on the criminal liability of sports participants for sports-related injuries. One of those decisions is a resolution of the Supreme Court of the Czech Republic from 11 December 2002, file no. 5 Tdo 997/2002 - the decision was published with the following part of the statement of the reasons summarising its conclusions: “Criminal liability in sport arises if the perpetrator violates the limits of the risk inherent to the game which is assumed by every sports participant, the specific circumstances of the incident being crucial for the conclusion of the court on the guilt”.[20] Although the above mentioned decision contributes to the case-law on the liability in sports, it is impossible to ignore that the reasoning does not really go into much detail. The reference to the risk inherent to the game would indicate

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přepracované vydání, Codex, Prague, 1995, p. 140.

[14] See also: Kuchta, J.: Riziko v pojetí kriminologickém a juristickém, Brno, Masarykova univerzita, 1997, p. 85.

[15] See also other publications of the Author on the issue in question, for example: Králík, M.: Trestněprávní odpovědnost sportovců za sportovní úrazy (teoretický a doktrinální úvod do problematiky), Trestní právo, 2006, Issue 7 - 8, p. 61- 72 (Part I), Issue 10, p. 20 – 24 (Part II), Issue 11, p. 18 – 24 (Part III), Issue 12, p. 15 – 22 (Part IV). See more recent publications, e.g.: Králík, M.: Právní odpovědnost sportovců za sportovní úrazy, in: Kolektiv autorů. Otázky sportovního práva. Prague: Ústav státu a práva, 2008, p. 25 – 59; Králík, M.: Právní odpovědnost ve sportu, in: Kuklík, J. – Hamerník, P. – Sup, M. – Králík, M. – Haindlová, M. – Kohout, D. – Kučera, V. – Carpenter, K. – Radostová, K. – Chizzola, P.: Sportovní právo. Auditorium, Prague, 2012, p. 61 – 86;

[16] See also: Sport a odpovědnost - Law&Economics Blog - Blog o právu & ekonomii, November 2007.

[17] Fastner, J.: K trestněprávnímu postihu nedovolených zákroků ve fotbalu, Trestněprávní revue, 2007, Issue 11, Section: Dotazy a odpovědi, p. 330 – 331.

[18] See also: Hrnčiřík, T.: Trestněprávní odpovědnost sportovců za zranění způsobená při výkonu sportovní činnosti – 31 August 2005 (www. ipravnik.cz).

[19] See also: Hora, J.: K otázce trestní odpovědnosti hráčů při sportovních úrazech, Acta Universitatis Carolinae Gymnica, Vol. 15, 1979, Issue 1, p. 15 et seq.

[20] www.nsoud.cz

that the Supreme Court determines the issue of the limits of the criminal liability of sports participants for sports-related injuries while considering the risk inherent to the game as a defence, but the decision does not in any way specify, define or delimit the limits of such risk in sport. The decision also contains no guidelines on how to define the risk which is voluntarily assumed by the player by his participation in the game and it also does not specify the action violating the limits of the risk inherent to the game in this particular case. The decision tends to define a dividing line which is probably the risk inherent to the game, this notion (risk inherent to the game) is not, however, in any way outlined or explained in the decision.

The limits of the criminal prosecution of sports participants for sports-related injuries have been in practice outlined by the following two decisions of the Supreme Court from the recent past.

The first of these two decisions is the resolution of the Supreme Court of the Czech Republic from 21 March 2007, file no. 3 Tdo 1355/2006 [21] which was published with the following summary of its conclusions: "The purpose of the rules of a sport (e.g. football) is not only to lay down equal conditions for the competing parties but also to protect the health of the players against acts that may lead to their injury, with regard, among other aspects, to the nature of the sport. However, the rules of a sport, in themselves, cannot penalize such situations where a breach of such rules by a participant of the game results in harm to health caused to another player.

Therefore, if, during the course of a game, any player culpably violates (Section 4 and Section 5 of the Criminal Code) the defined rules of the game and such violation results in harm to health caused to another person (another player), then the possible criminal liability of such injury-causing player cannot be excluded (for example criminal liability for actual bodily harm as specified in Section 224 (1) of the Criminal Code) while taking into account, in particular, the nature of the game and the seriousness of the breach of the said rules."[22]

The above mentioned decision was challenged by a constitutional complaint which was dismissed as manifestly unfounded by the resolution of the Constitutional Court of the Czech Republic from 28 February 2008, file no. I. ÚS 1939/07. However, in this respect, the Constitutional Court unambiguously stated that the fundamental constitutional rights of the claimant had not been violated by the decision of the Supreme Court. Moreover, the Constitutional Court expressly pointed out that it did not feel to be competent to comment on whether, and how, it is relevant for the existence of the criminal liability of the player whether or not there was a breach of the rules of the game during which the injury occurred, as this is a typical task of the Supreme Court. Furthermore, it stated that it was also not for the Constitutional Court to determine whether the risk inherent in sport constitutes a valid defence or to choose from other legal concepts relating to legal liability of sports participants for sports-related injuries that have been developed in other countries of the world. However, from the positive point of view, the Constitutional Court emphasised that the consent of the victim with the participation in the game may not extend to the action of the player who caused the injury.

The decision of the Supreme Court underlined some of the rules that are decisive for the judicial practice:

A)The principle of subsidiarity of the criminal law (criminal law as the last resort (ultima ratio)): This general principle is rightfully applicable also in the field of sports even though it is impossible to ignore the increasing global trend of the recent years towards possible criminalisation of sports participants for sports-related injuries. However,

[21] Published in Soubor trestních rozhodnutí Nejvyššího soudu, C. H. Beck, 2007, Vol. 36, under reference no. T 995. Its detailed analysis is included in: Králík, M.: K trestněprávní odpovědnosti sportovců za sportovní úrazy podruhé, Trestněprávní revue, 2008, Issue 2, p. 33.

[22] This case concerned a match in an amateur football league.

this trend is no breakthrough in the principle of subsidiarity of the criminal law, it is only a response to the developments in the world of sports which is characterised by increased violence and ever-growing economic pressure on sports. This trend promoting the involvement of the criminal law in sport is sometimes explained by the increasing commercialisation of sport or by the fact that the injured sports participants have become more "courageous" to invoke their rights[23] and, further, by the serious consequences of the practice of sport and by the increasing number of violent incidents on sports fields[24], and, in some cases, also by the mere fact that, according to some, there is no reason why the practice of sports should be exempt from the scope of the criminal law.[25] The essence of the involvement of the criminal law in the sphere of sport, as far as legal liability of sports participants for sports-related injuries is concerned, was aptly outlined in the legal literature: "….the function of the criminal law in sport is to lay down distinctions between conduct which is tolerated in the context of sports involving physical contact – and would not necessarily be tolerated outside that context – and conduct sufficiently extreme as to transgress the criminal law irrespective of its sporting context and, sometimes, irrespective of the consent of the victim."[26]

B) Individualisation of the case: the decision correctly underlines the necessity to take into account both the type of the sport and the specific circumstances of the case in relation to the conduct of the perpetrator. The general reference, in the decision, to the individualisation with the general reference to the typology of the sports reflects the views maintained, in the European context, in particular, by the German legal theory which is characterised by a very high number of relevant publications. The German legal theory distinguishes between the so-called "combat sports" (Kampfsportarten) within which the general principles of legal liability may be modified when dealing with sports injuries and the so-called parallel sports (Parallelsportarten) within which, in principle, the general principles of legal liability apply without any change.[27] This view reflects the opinion that the approach to legal liability of sports participants for sports-related injuries necessarily depends on the kind of the sport in question; the earlier German legal theory referred to the "Mann neben Mann" (i.e. man alongside man) sports and the "Mann gegen Mann" (man against man) sports.[28] J. Fritzweiler, a German scholar, correctly describes the essence of the issue of legal liability of sports participants for sports-related injuries. He notes that the fundamental point of difference concerning legal

[23] See also, for example: Bondallaz, J.: Le juge, cet arbitre suprême, Magazine Responsabilité pénale du sportif, La Gruyère, 3 April 2004.
[24] See also, for example: Beloff, M. – Kerr, T. – Demetriou, M.: Sports Law, Hart Publishing, Oxford – Portland Oregon, 1999, pp. 33 – 34.
[25] See also, from the recent publications, for example: Havranová, M.: Trestná odpovednosť v športe, Športová humanistika v systéme štúdia športových pedagógov, Zborník referátov z medzinárodnej konferencie, Bratislava, 2003, pp. 60 – 62 or Sakáčová, Z.: Právne aspekty zodpovednosti v športe, ACTA FACULTATIS EDUCATIONIS PHYSICAE UNIVERSITATIS COMENIANAE, Publicatio XLV, Univerzita Komenského Bratislava, 2004, pp. 153-168.
[26] See also: Beloff, M. – Kerr, T. – Demetriou, M.: Sports Law, Hart Publishing, Oxford – Portland Oregon, 1999, pp. 33 – 34.
[27] See also, for example: Fuchs, M.: Deliktsrecht, 4th edition, 2003, p. 72.
[28] The author of this classification of the "Mann gegen Mann" sports and the "Mann neben Mann" sports is A. Vollrath, a German author, whose classification of sports used to be very popular in the sports law theory (see also, in this respect, for example: Vollrath, A.: Sportkampfverletzungen im Strafrecht, Leipzig, 1931, p. 47). Further, see some of the earlier publications, for example: Becker, W.: Sportverletzung und Strafrecht, Deutsche Justiz, 1938, pp. 1720 – 1722, Nürck, S.: Sport und Recht (Die Leibesübungen in Gesetzgebung und Rechtsprechung), Reichssportverlag, Berlin SW 68, 1936, pp. 276 – 278, Mletzko, K.W.: Die strafrechtliche Behandlung von Kőrperverletzungen und Tőtungen beim Sport, Erlangen, 1935, pp. 10 – 11, Mahling, G.: Die strafrechtliche Behandlung von Sportverletzungen, Borna – Leipzig, 1940, pp 6 – 7 or Brunner, A.: Die Sportverletzung im schweizerischen Strafrecht, Zurich, 1949, pp. 16 - 17. However, the above mentioned classification of sports was not the only one that appeared in the legal literature. A very detailed and sophisticated analysis of different approaches to the classifications of sports appearing in the literature on sports law can be found, for example, in: Szwarc, A. J.: Karnoprawne funkcje reguł sportowych, Poznań, 1977, pp. 20 - 46.

liability of sports participants for sports-related injuries is the issue of permissible danger or increased risk of injury which may be caused to another person, regulation of such dangers and risks in the rules of the respective games or sports and their legal classification.

C : Emphasis on the violation of the sports rules: The role of the sports rules in possible legal liability of sports participants is the golden thread of all the concepts and opinions that have appeared throughout the time. At the present time, it seems that the overly rigid position that the existence or absence of any legal liability depends on the adherence to (or violation of) the rules of the sport has been abandoned for good. Nevertheless, the decision also emphasises that it is necessary to examine the degree of violation of the rules of the sport in question.[29] The currently prevailing trend in the judicial practice (or at least one of the most prominent) may be identified in the approach of the Swiss courts according to which judges tend to approach criminal cases concerning sports-related injuries with certain restraint and punish only gross violations of the rules of the game since there is a risk of unbearable increase in number of this type of proceedings if the State started to punish minor offences. In this respect, the arguments presented by the Supreme Court in the above mentioned decision are limited (unfortunately) to the laconic statement that the conduct of the perpetrator must be in conflict with the rules of the sport, with a "postscript" that the sports rules do not penalise such conduct as far as the consequent harm to health is concerned. The idea formulated in the "postscript" is innovative in the context of the European judicial practice and is probably unprecedented.

The most recent decision on legal liability of sports participants is the resolution of the Supreme Court of the Czech Republic from 17 February 2010, file no. 8 Tdo 68/2010[30]. As opposed to the above described decision in a case concerning football, this decision concerned an accident caused during skiing. The decision clearly follows the approach of the Czech civil courts to incidents occurring during the practice of skiing as expressed in the resolution of the Supreme Court of the Czech Republic from 23 February 2005, file no. 25 Cdo 1506/2004. After all, the Supreme Court expressly refers to this decision in its conclusions by stating that a skier must adapt his speed and manner of skiing to his personal ability and experience and to the overall situation in the place he is skiing (in particular, to the prevailing conditions of terrain, snow, weather and visibility, number of other skiers and other persons and their movement etc.) in order to be able to react, in time and at sufficient distance, even to an unexpected obstacle in the way. If a skier culpably violates these rules, it is possible to establish a violation of the so-called "general duty to prevent damage" imposed on anybody under Section 415 of the Civil Code or a failure to meet the required standard of due care on his part. If he causes serious harm to health to another person by his negligent conduct, he may be found liable for the crime of actual bodily harm.

The rules of conduct for the skiers published by the International Ski Federation (FIS) do not constitute any generally binding legal regulation but they are binding for the skiers on the piste and any culpable violation of the above mentioned rules constitutes violation of the legal duty to prevent damage within the meaning of Section 415 of the Civil Code. In this respect, the Supreme Court emphasised its acknowledgement of the role of the rules issued by the International Ski Federation (the so-called FIS rules) as the sole regulatory instrument in skiing - which is, to a

[29] The so-called concept of adherence to sports rules is the alpha and omega of the reflections on legal liability of sports participants for sports-related injuries. The role and extent of this concept in the history of the legal development of this issue are so far-reaching that this legal concept could be easily examined in an extensive monograph; let me only refer to my papers concerning this concept which were published in various Czech and Slovak legal magazines in 2006 a 2007, in particular, for example: Králík, M: Právní význam sportovních pravidel pro právní odpovědnost sportovců za sportovní úrazy ve světle doktrinálního vývoje, Časopis pro právní vědu a praxi, 2006, II., pp. 122 – 131.

[30] The resolution was published in the Official journal of court decisions and opinions of the Supreme Court, 2010, under serial no. 55

certain extent, a risky recreational activity - since the role of the above mentioned rules may not be trivialized in the absence of any other rules regulating the practice of skiing and the need for such rules is evident. In general, it may be inferred from these rules of conduct that a skier must adapt his speed and manner of skiing to his personal ability and experience and further to the conditions of terrain, snow, weather and visibility and to the overall traffic on the piste, in other words, to the overall situation on the piste or on a track for cross-country skiing in order to be able to react even to an unexpected obstacle in time and at sufficient distance. This, at the same time, means that he cannot go where he cannot see. If a skier fails to respect these rules, he cannot be deemed to have acted in accordance with the requirements of Section 415 of the Civil Code, i.e. in compliance with the so-called general duty to prevent damage or to have met the required standard of due care which could be expected from him both objectively and subjectively.

This decision is applicable in its entirety also to cases which will be determined under the newly-revised Criminal Code, and, in particular, to such crimes as negligent homicide as defined in Section 143 and grievous bodily harm caused by negligence under Section 147 of the Criminal Code. The decision was published in the Official Journal of court decisions and opinions, thus providing guidance for the courts that will be dealing with similar cases in the future.

IV. Conclusion

Although the discussion on the criminal liability in sport in the Czech Republic has only started to develop, it is possible to observe a conflict of two concepts, as in other countries – an approach which accepts the involvement of the criminal law in the exercise of a sporting activity and an approach which refuses such involvement. The approach which approves of the prosecution of sports participants, under strictly defined conditions, not only for intentional but also for negligent crimes that may occur during a sports event is starting to prevail.