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Riots At Sports Events – Does A Club Have The Right To Apply Physical Force To Prevent Damage? By Dr. András Gurovits

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In conjunction with riots by rioting “fans” before, during and after a sports event, there are regularly calls for the organiser to be held responsible for the financial consequences. In this short article, it is shown that it needs to be differentiated whether a person comes to harm outside or inside the stadium.

The organiser can scarcely be made liable for damage caused by “fans” outside of the stadium because the so-called monopoly to use force (in Switzerland called Staatsmonopol) lies with the state and the club would not even be authorised to intervene in the public space. The club can be made liable for compensation vis-à-vis a spectator for damage caused by fans inside the stadium if it has failed to take protective measures appropriate under the circumstances. In the same way, a spectator can be made liable vis-à-vis the club if the spectator causes damage.



The clubs are set narrow boundaries when implementing effective protective measures. As the monopoly to use force lies with the state, a club may also not fundamentally take any measures within the stadium that require physical force. Solely the police are responsible and competent for this inside and outside the stadium. The below is written under a Swiss law perspective, but may be applicable in other jurisdiction in a similar way.

Some Specific Considerations

Liability in the event of injury to persons outside of the stadium

In case of riots outside of the stadiums, there are calls for the organisers to be asked to pay. The question which arises from a legal perspective here is: Is that possible? Can a club be made responsible for when “fans” demolish cars of local residents or other items as they march to the stadium?

A contractual liability on the basis of a spectator contract can be eliminated for this. The one thing (damage to his/her car by rioting fans) has nothing to do with the other (purchase of an admission ticket and the right to watch the game “live” in the stadium. It would go too far to derive from the sale of an admission ticket a (primary or ancillary) obligation of the organising club to protect the property of the local resident/purchaser also outside of the stadium and to hold him/her harmless in the event of any damage by rioting “fans”.

The question thus arises whether liability could be based on tort. Under Swiss law, liability from unlawful action necessitates, among others, that the damaging party is to be charged with an unlawfulness that caused damage (in an appropriately causal manner). As in the constellation to be examined here, the organising club does not cause the damage itself; it also does not breach such a protective standard itself. For this reason, liability from forbearance would be conceivable at most. A non-contractual liability due to forbearance

necessitates pursuant to the Federal Court non-action despite the existence of a legal obligation to act. If an absolute right is at risk (such as ownership), according to an unwritten legal principle a capacity to act exists for the person who has created a dangerous circumstance or otherwise is responsible for it in a legally binding manner. This so-called danger clause (Gefahrensatz) states that the person who creates or maintains a dangerous circumstance has to take the protective measures necessary to avoid damage. According to the Federal Court, it is suitable, in the event of breach of absolute legal assets, for establishing an unlawfulness in the event of a lack of a specific protective standard.

When applied to the question of a possible liability of an organising club for damage caused by rioting “fans” outside of a stadium, these principles confirmed by the Federal Court mean that an organiser could only be made liable from unlawful action if a local resident suffers damage in an absolute right (such as to his or her property, but not solely in his

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or her assets) and if the circumstances reasonably require action by the organiser to avoid such damage. However, in the writer's opinion the organiser's obligation of compensation would, however, regularly fail in that the organiser cannot take any effective measures in the first place to avert damage outside of the stadium. Any effective averting of damage caused by rioting "fans" by the club would require the security personnel ultimately also being able to take measures of force outside of the stadium. But this would be blocked by the Swiss legal system as the monopoly to use forth lies with the state authorities.

Liability for damage by spectators (inside the stadium)

A liability of an organising club vis-à-vis spectators for damage caused within the stadium will usually arise from breach of contract.

With the question regarding liability from contract, it is firstly of interest whether the organiser can become liable vis-à-vis spectators who incur dam-

age within the stadium; but secondly also whether a spectator can become liable vis-à-vis the club when he or she has caused damage.

Liability of the spectator

In legal literature, a football stadium is regularly referred to as a semi-public space. A space is deemed to be semi-public when it is private but is (also) to be made publicly accessible due to its designated purpose. To access this semi-public space and to watch a match, the spectators require a valid ticket. With the purchase of the ticket, a contract is reached between the spectator and the organising club. The specific contractual content also depends on the terms and conditions of contract of the club that the spectator expressly accepts before or during the purchase of the ticket. In addition to expressly written duties also implied obligation will be part of the contract. Irrespective of the specific formulation of the respective contractual conditions of each club, it can be assumed that the fundamental points of each such spectator contract consist

in a spectator being given admission to the stadium in return for a fee so that the spectator can follow a certain match "live".

If a spectator incurs damage in a stadium that he or she is permitted to visit due to the purchase of a ticket, under Swiss law the legal consequences can be determined from general contractual law principles. This means that even if the contract does not expressly ban the carrying of pyrotechnical or other potentially dangerous material the spectator doing so would breach an inherent contractual obligation.

Breach of the spectator contract by the spectators

If a spectator now breaches a primary or ancillary obligation under the spectator contract, he or she becomes liable for compensation pursuant to the general regulations of Swiss law if he or she cannot prove that he or she is not culpable. If he or she is obligated to pay compensation, he or she has to fundamentally pay for any damage caused to

the organiser.

Liability of the club / No application of physical force by the club

Another question is now whether the organising club can become liable for compensation vis-à-vis the spectators if damage is caused in the stadium which affects the spectators and is the result of "fan" riots. The decisive aspect when answering this question is whether the organising club has an obligation to protect the rest of the spectators from the rioting "fans". The club's inherent contractual obligations undoubtedly include the obligation to protect the spectators to a certain, reasonable, extent from damage.

However, it also needs to be checked in this context whether the club is obligated or entitled to also apply physical force in order to protect the spectators from harm. It has already been explained in brief that a stadium is viewed as a semi-public space. According to general opinion private individuals may only take measures in such a space that are

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derived from so-called house law as well as the relevant self-help measures, such as self-defence, (and the corresponding help for this).

However, on the basis of the state's monopoly on the use of force, all other measures are fundamentally reserved for the police, whereby there is consensus that the organising club, in addition to the self-help rights, may also take the measures that are needed to ensure an orderly course of the event if a special legal basis, for instance a contractual agreement in the spectator contract, exists. Based on a contractual consent of the parties concerned, the following safety measures are deemed to be permissible: Admission checks, intervention for the spatial separation of groups of persons, searches when they are con-

nected with the safety of the respective event, confiscation of items when they are associated with the safety of the respective event, recording of personal details; accordingly, however, own identification measures by the private security firms would be deemed unlawful.

It follows from all this that the state's monopoly on using force remains. If there are violent disputes in the stadium, it is the responsibility of the police to intervene, as is also the case outside of the stadium. The clubs have their hands tied with regard to effective measures to curb violence.

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