

Characteristic violence in sport governed by criminal law

by Sergio Garcia Ramirez



About the author:

Mr. Sergio Garcia Ramirez is a Doctor of Laws, professor of criminal procedure law and researcher at the National Autonomous University of Mexico. The author of several works on juridical and social subjects, he has occupied various functions in the civil service of his country, particularly the post of District and Federal Attorney General and Under-Secretary of the National Patrimony. Mr. Sergio Garcia Ramirez is at present Under-Secretary of the Ministry of the Interior.

The *Olympic Review* is happy to open its columns to him, and is very grateful for his kind collaboration.

This article was published in the first issue of the review of the "Academia Mexicana de Derecho del Deporte". We would like to thank its President, Mr. Rafael Garcia Garra, for this contribution.

1. Popularity and meaning of sport

Sport, in no way the heritage of our times¹, today enjoys a popularity unequalled in the other fields of man's activity. It is a compulsory subject in education programmes, a spectacle captivating the interest of the crowd, a pastime for millions of human beings—adepts or amateurs, the opportunity to obtain strength and force, quite often a very well-paid profession and which, sometimes, leads to surprising popularity.

A phenomenon of such scope is bound to give rise to interesting questions, of which

the first is: what is the fundamental meaning of sports activities? Some people give them enviable qualities and extend their spirit, "*the sporting spirit*", as an undeniable virtue to many fields, whereas others give these same activities a much humbler status, as the complement, the little brother of work, "*coming behind work in chronology and dignity*", with only two objectives: "*to compensate the disadvantages of sedentary life and to maintain the power of attraction of the struggle of the sexes*"². In principle reserved for men, sport has since become so popular that it has attracted many women who day after day devote themselves to it in ever greater numbers, even though it is accompanied by restrictions³ or sometimes a certain mistrust⁴.

Moreover, it is public knowledge that every country in the world attaches great importance to the development of sport in order to improve public health and strengthen the coming generations, hence the large number of governmental or paragonmental organisations which, in close collaboration with private bodies, administer and supervise the development of sport⁵. Hence also the increasing participation of many athletes from all over the world in the great quadrennial sports festival, the Olympic Games⁶, at which a varying number of sports disciplines are contested⁷.

However, these considerations must not dissemble but on the contrary reveal the fact that the development of sport should be limited solely to those disciplines which increase skill and physical strength and ennoble those who practise them, to the exclusion of all sports—pseudo-sports?—which deaden both the constitution and the mind of those who go in for them and which consequently are harmful in an often imperceptible way⁸. The State has a duty to intervene and indeed does so, sometimes pushed by public opinion. Yet it does not always act with all the desired severity⁹.

2. Sport and law

Such an important and complex subject cannot escape law, which has come to bring the various sports activities under regulation, thus opening a new field of activity to the jurist. For sport has some deep and very interesting implications in the various fields of criminal law, social law, civil law, industrial law, administrative law, procedure law and international law. Apart from the problems caused to sport by criminal offences taken up by the commission, apart from the study of this phenomenon in the light of social law (which we will look at later), it would be appropriate to stop at questions such as the legal status of sports organisations, sports enterprises, the contracts concluded between them and the athletes, the situation of the professional athlete, the administrative and fiscal regulation of sports events, etc.¹⁰

On account of the foregoing we are witnessing the birth of a specifically sports legislation, different of course from the rules of play sanctioned by the private national or international bodies, even if these rules are often assimilated by this legislation which, in our country, is only in its embryonic stage, since it limits itself, in very general terms, to giving the necessary authorisation for the practice of sport¹¹ or only mentions a few specific sports such as boxing and pelota¹².

a) Social law

We have already endeavoured to define the various acceptances of social law. We do not intend here to examine the law protecting the weak (individuals or companies), but the law introducing *“a rupture in the juridical monism organising the normative system vertically... a juridical pluralism comprising various legislators and multiple groups, governed by the said juridical standards... company, professional, group law, without transcending the borders of any one State”*¹³. But we could also speak of international social law in as much as the standards—technical rules of sport—surpass national frontiers and are accepted on a world-wide scale.

It is the State's duty to give the rules of sport force of law by legally authorising their practice. For the State tacitly accepts that this practice should be governed by the standards generally accepted, not to men-

tion the cases where the State gives these standards, by regulation or law, specific official validity. It should here be pointed out that the technical rules governing the practice of a sport are drawn up and reviewed by supranational bodies grouping athletes in a complicated network which begins at the local level and passes by the national level to arrive at the world level. Thus we have the national federations which, from the international aspect, belong to the International Federations¹⁴ and which, from the national aspect, form the constitution of the National Olympic Committees.

These in their turn lead to the International Olympic Committee (IOC), a permanent body composed of members of various nationalities, able to recognise the National Olympic Committees¹⁵ and International Federations, the supreme arbitrator for any dispute concerning the Olympic Games and Movement, and which, from the technical point of view, delegates to the International Federations the power to control the various sports. Such is therefore the structure of these supranational organisations, these legislators of sport¹⁶. The athletes are subject to the rules thus decreed, which do not however need to be founded on the regulation or jurisdiction of the public authorities but benefit from their implicit recognition.

Apart from the existence of offences and sanctions which we shall deal with later, we should also take into account in social law the presence of sports authorities—in the wide sense of the term—that is, all persons who in one capacity or another exercise a certain power of control, however limited, over the practice of sport. Their organisation is very often hierarchical, whether for the international administration of sport (International Federations' congresses) or to regulate, supervise, observe or qualify its concrete practice. Here there are very many sports authorities¹⁷.

b) Criminal law

The practice of sport unfortunately gives rise to attitudes or acts which, for various reasons, are governed by criminal law, the more so as certain sports involve resorting to violence. We therefore witness many manifestations of this violence, whether physical (assault, injury, homicide) or verbal (insulting language).

This article proposes to look at the various forms of physical violence without discussing—although admitting—other acts of delinquency peculiar to sport¹⁸ such as fraud and misdemeanours against health due to the possession, use and traffic of various drugs¹⁹.

Let us note, for the sake of good order, that the interest which specialists in criminal law give to sport is so great that it has given rise to a voluminous bibliography and many rich debates.

In due course we will look at the principle explaining the reasons for the impunity shown to those who commit acts of violence in sport, and we will go into the intention to create a "sport offence". Let us also note, before ending this section, that a study has even been made of "*the criminal anthropology of the sportsman*".

3. Classification of sport in criminal law

If the jurist is to define the reasons for the impunity enjoyed by violence in sport, it is essential to undertake a classification of the various sports activities. We therefore need a classification established according to juridico-penal demands.

The first phenomenon to strike those studying the question is the recourse to violence in the practice of sport. Straight away the border can be seen between sports introducing a struggle between two or more competitors and those involving only an individual exercise of skill, with the presence or absence of other competitors being extraneous.

In view of the above remarks, specialists in criminal law have the habit of making a classification on the following lines (there are many variations in form but not in content):

1. Sports practised individually or by several persons together but which involve no physical struggle and in which the possibility of injury or death is very limited (golf, swimming, equestrian, vehicle races, etc.)²⁰.
2. Sports which involve a struggle between several persons, as well as physical skill,

with no question of injuring or killing, although the risk factor is higher than in sports of the first category and acts of violence may occur (football, basketball, fencing, polo, etc.).

3. Sports which, in addition to involving a direct physical struggle between the competitors, contain deliberate—and moreover statutory—recourse to violence, leading to assault and injury to the adversary (boxing, wrestling, etc)²¹. In this latter case the risk of injury is not only higher, but the competitor attempts to wound his adversary in order to put him out of action and thus win²². As far as it concerns criminal law, we consider this classification both useful and sufficient, with all due deference to those who maintain that certain acts of sports violence do not come under the following headings: "*A) Sports which do not involve recourse to acts governed by criminal law, and B) sports of which the development directly implies recourse to acts governed by criminal law*"²³.

S.G.R.

(To be continued)

Notes and works of reference

¹ The first Greek Olympic Games took place in 884 BC. 291 Games were held until they were forbidden by Emperor Theodosius (in 393 AD). Then, as now, several athletes, champions of many events, distinguished themselves: Pantacle of Athens, Filombrotos of Sparta, Chio of Sparta, Ippostenes of Sparta, Tessander of Naso, Astilos of Croton, Iero of Syracuse, Doricos of Rhodes, Cairon of Pellenes, Philipinos of Cos, Leonidas of Rhodes and Herogenes of Zante. All these feats took place many centuries before Pierre de Fredi, Baron de Coubertin, renovated the Olympic Games of the modern era.

² Maranon, Gregoria. *Work and sport, three essays on sexual life*. Published by Diana, Mexico, 1953, page 66. The author makes a distinction between work and sport, maintains that the former is always creative while the latter is sterile except when it improves health and favours the attraction of the sexes. Op. cit. page 67-68. Maranon continues: "One can say what one wishes, but sport as the sole occupation of life is the characteristic of inferior beings who practise sport so that nature will pardon their mortal sin of not working." Op. cit. page 68. Speaking of athletes and workers, Maranon mentions of course the extreme cases and not

normal average ones which combine sport and work harmoniously. "Fertility and pleasure: work and sport. The perfect formula." Op. cit. page 72.

³ Thus, according to rule 29 of the International Olympic Committee (IOC): "Women are allowed to compete in archery, athletics, canoeing, equestrian sports, fencing, gymnastics, shooting, figure and speed skating, skiing, swimming, volleyball and yachting according to the rules of the International Federation concerned, and to participate in the fine arts exhibition."

⁴ In this respect, see rule (24, 4, i) governing athletics, in the case of dispute of a world or national record: "In the case of records set up by women, all requests must be accompanied by a sex certificate issued by a qualified doctor recognised by the federation of the athlete claiming the record." The rules governing the various sports have been published by Ediciones Deportemas, Mexico D. F.

⁵ Let us remember, for Mexico, that the Sports Board comes under the Federal District Department. The physical education board works within the Secretariat for Public Education. The National Mexican Youth Institute works for the constant development of sport. The National Polytechnic Institute has a physical education department. Similarly, the National Autonomous University of Mexico has a physical education board. On a national scale, the local public education boards often have physical education departments which are responsible for developing sport.

⁶ In 1896 13 countries, totalling 285 athletes (no women) took part in the Games of the 1st Olympiad. The XVIIIth Olympiad in Rome (1960) numbered 84 countries and 5,337 athletes (537 women). The XVIIIth Olympiad in Tokyo (1964) numbered 94 countries and 5,568 athletes (732 women).

⁷ The number of sports varies according to the Olympic Games. Thus, the programme of the Games of the XIXth Olympiad in Mexico contained athletics, basketball, boxing, canoeing, cycling, equestrian sports, fencing, football, gymnastics, field hockey, weightlifting, wrestling, swimming, water polo, modern pentathlon, rowing, shooting, volleyball and yachting.

⁸ Ignacio Villalobos rightly condemns "acts which, instead of favouring the author, cause him physical, intellectual or moral harm especially when they are carried out professionally, for profit. The huge majority of the population gains nothing from them except the satisfaction of morbid or similar tendencies". Mexican Criminal Law. Published by Porrúa, 2nd printing, Mexico 1960, page 349.

⁹ In Oaxana, decree no. 29 of 11th November 1953, published in the Official Gazette of 14th November 1953, stipulates: "In order to preserve public health the State of Oaxana forbids the spectacle called 'free wrestling, super-free'." However, this ban was repealed by decree no. 119 of 11th June 1959, published in the Official Gazette of 29th July, which stipulates in article 2 that the taxes levied by the State on wrestling spectacles will be used to promote social providence activities as part of the children's days. This tax has been fixed at 15 % on the gross amount of entry tickets in accordance with decree no. 124 of 25th July, completing paragraph b) of article 282 of the State fiscal law.

¹⁰ All these subjects appeared in the programme of the first international sports law congress at the

same time as other subjects which were not properly speaking juridical, for example: "Sport, international link and means of peaceful co-existence", "Sport, youth's right", "Cultural education and physical education" and others. Of course all these subjects could be dealt with from the juridical aspect, but this was not the intended aim.

¹¹ Here authorisation is expressly granted for "ball games in every form, side arm shooting, races of persons, vehicles and animals, wrestling, boxing and all classes of sport" in accordance with article 1 paragraph 1, games regulations for the federal district and territories, of 18th July 1947 published in the Official Gazette on 13th August of the same year. In article 2, paragraph 1 of the federal law on games and gambling of 30th December 1947 published in the Official Gazette of 31st December of the same year, "ball games in all forms, races of persons, vehicles and animals, and, in general, all classes of sport" are authorised.

¹² Concerning the former sport, see the regulation on professional boxing spectacles on the territory of the federal district of 21st November 1946 published in the Official Gazette of 5th December 1946. On this subject it is stated: "Public spectacles presenting professional boxing matches have grown in importance on the territory of the federal district. On account of this development, these various aspects should be duly brought under regulation with a view to protecting the interests of the public, taking into account the different factors which intervene directly."

As far as pelota is concerned, see the police regulation for the game of pelota of 6th July 1945, published in the Official Gazette of 2nd August 1945, and the regulation of the decree of 28th June 1945 modifying and completing the federal emergency law on games and betting of 27th July 1945 published in the Official Gazette of 14th September 1945.

¹³ García Ramirez, Sergio, Social law, reviewed by the Mexico Faculty of Law, vol. 15, no. 59, page 363. This is a panoramic view of what has come to be known as social law in two of its most important meanings. In this connection, see also the works which will shortly appear in the Institute of Juridical Research's bulletin. The social aspect in contemporary international and constitutional juridical systems, and three texts precursory to social constitutionalism.

¹⁴ The International Olympic Committee recognises the following International Federations: amateur athletics, amateur basketball, bobsleigh and tobogganing, amateur boxing, canoeing, amateur cycling, equestrian sports, fencing, football, gymnastics, amateur handball, hockey, judo, weightlifting, amateur wrestling, luge, amateur swimming, rowing, skiing, archery and volleyball; the International Unions of skating, modern pentathlon, shooting and yachting and the International Ice Hockey League. The following International Federations have informed the International Olympic Committee that they observe Olympic standards: baseball, bowling, pelota, roller skating, rugby, tennis and casting; the International Aeronautic Federation, the International Sports Medicine Federation, the International Silent Sports Committee, the International University Sports Federation, the International Sports Press Association and the Maccabi World Union.

¹⁵ See IOC rules 10 and 23. Only the National Olympic Committees recognised by the International Olympic Committee are able to enter competitors for the Olympic Games (rule 24). Up to 1966

this recognition extended to 123 National Olympic Committees.

¹⁶ See IOC rules 23, 39 and 40. Rule 39 stipulates: "Each international Federation recognised by the International Olympic Committee has full control of the technical direction of its sport, and all grounds, tracks, courses and equipment must conform to its rules..."

¹⁷ Without wishing to draw up an exhaustive list of officials, let us however mention some as an example: judges, linesmen, judge's assistants, referees, umpires, officials, team captains, timekeepers, note-takers, assistant referees, lap-counters, markers, track inspectors, aides (seconds in boxing), heat directors. In athletics let us note an official with a picturesque title, the "camp marshal". In these same sports the chief authorities during competitions are the directors, secretaries, technical directors and the jury of appeal.

¹⁸ In this respect Raul F. Cardenas mentions the initiative of Prof. Carlos Broudeur proposing the creation of a repressive law against offences in sport, in order to combat the corruption and crime which take place under cover of sport and its apparent goodness (see Mexican Criminal Law, published by Jus, 1st printing, Mexico 1962, page 164).

¹⁹ Sportsmen worthy of the name categorically reject the use of these drugs. Rule 20 governing athletics states: "1) The term 'stimulants' is applied to drugs used with the intention of increasing athletic effectiveness on account of their stimulating action on the muscles or nerves or to curb the sensation of fatigue. It is earnestly recommended not to use such substances, not only for moral reasons (advantages over other competitors) but also on account of the dangers which these substances may have on health. 2) Any competitor using the above-mentioned products shall be suspended from all active participation in amateur athletic events for the length of time laid down by the Council of the International Federation and the Mexican Athletics Federation. Any person aiding or abetting the use of these substances shall be permanently excluded from any ground governed by the rules of the International Federation and the Mexican Athletics Federation."

²⁰ It is interesting to note the inclusion of vehicle races; this sport does not give rise to a physical struggle between two persons and does not attempt to cause injury. However, both serious and frequent accidents injure or kill not only the racers but also the spectators.

²¹ In this connection see Majada Planelles, Arturo. The criminal problem and death, and sports injuries. Bosch, Barcelona, 1946, page 23 onwards (the author undertakes a classification according to whether or not sport exerts violence on a person and whether this violence is immediate or eventual,

pages 26-27); Jimenez de Azua, Luis. Treaty on criminal law, published by Losada, Buenos Aires, 1953, volume IV, pages 727-728; Gonzales de la Vega, Francisco. Mexican Criminal Law, published by Porrua, 4th printing, Mexico 1955, pages 30-31; Pavon Vasconcelos, Francisco, Notions of Mexican criminal law, published by the Institute of Autonomous Sciences, Zacatecas, 1964, vol. II, pages 144-146; Villalobos, Ignacio. Mexican Criminal Law, op. cit. page 350; and Cardenas, Raul F., Mexican Criminal Law, op. cit. pages 165-166.

²² The risk of injury is so immediate that the rules of sport provide for it as a current event demanding no important interruption of play, except of course when there are only two players. Suspension is limited to three minutes in water polo (rule 140), this interruption being in fact only a possibility to replace the injured player (142). In basketball injury does not entail any interruption in the match unless the injured player needs to be protected; as a general rule the match is not suspended if the ball is in play but continues until "the ball has been played, that is, until the team having it in its possession shoots for a basket, loses it, keeps it without playing it, or puts it out of play." The injured player has one minute to take up his position in the team or to be replaced (rule 20).

As far as boxing is concerned, "Harold Barnes, ex-official of the New York athletics commission, boxing judge for more than thirty-eight years, tells of his long experience in the following singular way: 'For me boxing is legal assassination. If it were up to me it would be outlawed.'" Quotation by Cardenas, Mexican Criminal Law, op. cit. page 165.

During a match the referee may suspend the fight if one of the boxers is injured so badly he cannot continue (rule 12). If the wound, inflicted by his opponent, does not contravene the rules, the opponent is declared the winner (rule 15). Here the act of injuring... is rewarded. If a boxer is knocked out he is banned from taking part in new fights for four weeks following the match in which he was knocked out. If he is knocked out twice, his rest period is extended to three months; knocked out three times, the rest period is extended to twelve months. Before going back into the boxing ring the boxer is to undergo a medical examination (rule 19-A). As far as professional boxing in Mexico is concerned, see article 133 and 134 (sub-paragraph 12 of the regulation on professional boxing spectacles on the territory of the federal district).

²³ This classification is due to Ignacio Villalobos. Mexican criminal law, op. cit. page 350.

