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EMPLOYER'S LIABILITY IN SERBIA FOR DAMAGE CAUSED BY WORK INJURY: THE CASE OF PROFESSIONAL ATHLETES

***Abstract:** The right to safety and health at work is one of the fundamental human rights at work, which is protected by the highest international and national legal instruments. In Serbian law, such a right is protected, firstly, by the Constitution of the Republic of Serbia itself and then, further, through the Labour Law and the Law on Safety and Health, whose norms address this issue more thoroughly. These norms are embodied first and foremost in certain obligations of employers, with the aim of ensuring safety and health at work primarily for their employees. In cases where the employer fails to provide a safe and healthy work environment, or even when an injury happens despite everything in this process being done correctly, the question of the employer's liability for the damage which was caused at work arises. This paper provides an analysis of this issue, with emphasis on the issue of liability for the damage thus caused to the athletes with an employee status.*

Key words: safety and health at work, injury at work, employer's liability, professional athletes, sport, Republic of Serbia.

1. INTRODUCTION

The right to safety and health at work is one of the fundamental rights of employees and, as such, represents an essential reason for determining the employer's liability for damage that may arise as a result of non-compliance by the employer, but also in cases when the employer has undertaken all necessary measures so that the employees remain unharmed while performing their tasks. The question of the employer's liability for the damage caused to an employee by an injury at work, although by no means simple, is the subject of extensive case law, with apparent specificities caused by the fact that the weaker party of this contractual relationship is also the one that has sustained injury and damage. In theory, however,

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the question of liability for the damage caused to an employee by an injury at work is not a matter that has received excessive attention. Bearing that in mind, as well as the new dilemmas caused by constant changes of the world of work, the subject of this paper is not only to review the issue of employer liability for compensation of damage caused by an injury at work in general, but also to highlight new issues brought about by these changes. The issue of injuries sustained by professional athletes while doing sports, in that sense, is also an issue that requires special attention, not only due to the fact that they find themselves within a special employment relationship regime, but also due to the fact that this special employment relationship regime also implies a different regime of liability for the damage thus caused.

2. THE RIGHT TO SAFETY AND HEALTH AT WORK AS THE REASONING BEHIND EMPLOYER'S LIABILITY FOR DAMAGE CAUSED TO AN EMPLOYEE BY AN INJURY AT WORK

The right to safety and health at work is one of the fundamental human rights at work. It is protected by the highest international and domestic legal instruments. The right to a safe and healthy work environment was recently promoted into a basic standard of the International Labor Organization (ILO) and, accordingly, Convention No. 187 and Convention No. 155 were added to the order of fundamental conventions.¹ The text of the Revised European Social Charter, on the other hand, establishes the right of everyone to safe and healthy working conditions,² whose purpose is directly related to Article 2 of the European Convention on Human Rights, which recognizes the right to life.³ In this sense, the right of every worker to a safe and healthy work environment is a widely recognized principle, stemming directly from the right

1 International Labour Conference – 110th Session, Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work (10 June 2022).

2 Art. 3. of the European Social Charter (Revised), *Official Gazette of the RS – International Agreements*, No. 42/09.

3 Council of Europe, 2018, Conclusions XIV-2 (1998), Statement of Interpretation on Article 3, cited according to: Council of Europe, 2018, Digest of the case law of the European Committee of Social Rights, (<https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>, 03. 09. 2020), p. 72.

to personal integrity as a fundamental human right.⁴ The Charter of Fundamental Rights of the European Union,⁵ again, confirms the inviolability of human dignity, accompanied by the rule that the rights recognized by it are protected for the benefit of everyone, that “[e]veryone has the right to engage in work and to pursue a freely chosen or accepted occupation,”⁶ as well as that “every worker has the right to working conditions which respect his or her health, safety and dignity.”⁷ These protections, however, exist only for the benefit of EU citizens, while they apply to citizens of third countries only when they work in the territory of an EU member state.⁸

The protection of safe, healthy and dignified working conditions itself, again, represents the lowest threshold for basic working conditions that must be provided to all workers, regardless of the legal ground of their work engagement. Accordingly, the Framework Directive on Occupational Safety and Health,⁹ as perhaps the most relevant EU legal instrument in the field of safety and health at work, is also an instrument that applies to all activities in both the public and private sectors. An exception to that are cases where “characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it,” when the safety and health of these workers have to be ensured as far as possible, in the light of the objectives of this Directive.¹⁰ This exclusion, however, should be interpreted restrictively and includes only those cases in which such a restriction is strictly necessary, in order to safeguard the interest that the member states protect with it, therefore ensuring the proper operation of these services in situations in which it is of essential importance for the protection of public health, order or safety (as is the case with various disasters, the severity of which justifies this exception). Therefore, it

4 Council of Europe, 2008, Conclusions I, Statement of Interpretation on Article 3, cited according to: Council of Europe, 2008, Digest of the case law of the European Committee of Social Rights, (<https://rm.coe.int/168049159f>, 03. 09. 2020), p. 33.

5 Charter of Fundamental Rights of the European Union (CFREU), *Official Journal of the European Union*, C 326/391.

6 Art. 15, para. 1. of the CFREU.

7 Art. 31, para. 1. of the CFREU.

8 Kovačević, Lj., 2021, *Zasnivanje radnog odnosa*, Beograd, Pravni fakultet Univerziteta u Beogradu – Centar za izdavaštvo i informisanje, p. 892.

9 Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC), *Official Journal of the European Communities* L 183/3.

10 Art. 2, para. 2. of the Council Directive (89/391/EEC).

should be applied only with regard to certain specific activities of the services concerned, which, as such, must be carried out in a continuity that is of vital importance for the protection of people and property and which prevents the application of regulations on safety and health at work. Thus, it must not be interpreted as a general rule that should be applied to all of the activities of these sectors.¹¹

Regarding Serbian sources of law, Article 60 paragraph 4 of the Constitution of the Republic of Serbia¹² stipulates that “[e]veryone shall have the right to respect of his person at work, safe and healthy working conditions, necessary protection at work [...] No one may forgo these rights.” This constitutional provision is further specified through special laws, namely the Labour Law¹³ and the Law on Safety and Health at Work.¹⁴ The Labor Law stipulates the obligation of the employer to inform the candidate, prior to the conclusion of employment contract, about the conditions of work, rights and duties that arise from the employment relationship, and the rules contained within the general acts of the employer.¹⁵ Therefore, the employer is required to inform the employees about their rights and obligations deriving from the labor regulations, as well as from the regulations on safety and health at work. It is also necessary to bear in mind the legal rule on the nullity of provisions of the employment contract that set the working conditions which are based on incorrect information provided by the employer about certain rights, obligations and responsibilities of the employee.¹⁶ The employer’s

11 The provisions of Council Directive (89/391/EEC), therefore, also apply to the daily activities of firefighters (e.g., putting out fires), while the exceptions in this regard can only be justified in the case of exceptional events when, in order to protect the general public from certain serious dangers, such an objective must represent an absolute priority (in case of natural disasters, attacks or serious accidents). CJEU, Case C-52/04, *Personalrat der Feuerwehr Hamburg v. Leiter der Feuerwehr Hamburg*, Order of the Court (Second Chamber) of 14 July 2005, ECLI:EU:C:2005:467, paras. 42–55. A similar position was taken by the Court of Justice of the European Union (CJEU) regarding the emergency workers of the German Red Cross. See CJEU, joined cases C-397/01, *Bernhard Pfeiffer*, C-398/01, *Wilhelm Roith*, C-399/01, *Albert Sifß*, C-400/01, *Michael Winter*, C-401/01, *Klaus Nestvogel*, C-402/01, *Roswitha Zeller* and C-403/01, *Matthias Döbele v. Deutsches Rotes Kreuz, Kreisverband Waldshut eV.*, Judgment of the Court (Grand Chamber) of 5 October 2004, ECLI:EU:C:2004:584, paras. 51–57.

12 *Official Gazette of the RS*, No. 98/06.

13 *Official Gazette of the RS*, Nos. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 – Ruling CC, 113/17 and 95/18 – authentic interpretation.

14 *Official Gazette of the RS*, Nos. 101/05, 91/15 and 113/17 – other law.

15 Art. 27. of the Labour Law (LL).

16 Art 9, para. 2. of the LL.

duty to inform their employees is also confirmed by the Law on Safety and Health at Work, as part of the duty to train employees to perform their work in such a way that is safe and healthy.¹⁷ This is expected, given the fact that the concept of prevention of injuries at work and of occupational diseases¹⁸ represents the basic postulate of the entire system of protection of safety and health at work in international, comparative and domestic law. These provisions are further followed by the employer's duty to provide the employee representative for safety and health at work with access to all acts related to safety and health at work.¹⁹ This continues with the provisions on prevention of harassment (mobbing) at work,²⁰ since the concept of prevention is at the very core of legal regulations on preventing this type of risk to the health, dignity and wellbeing of employees at work.²¹

The Law on Safety and Health at Work, among other things, determines the employer's duty to provide the employee with work at the workplace and in a work environment where occupational safety and health measures have been implemented.²² Also, the employer is required to provide preventive measures in order to protect the life and health of employees.²³ This specifically means that the employer should: 1) possess an act on risk assessment, in written form, for all workplaces in the work environment, as well as to determine the method and measures for their elimination, 2) determine the rights, obligations and responsibilities in the field of safety and health at work with a general act, or with an employment contract if there are fewer than 10 employees, 3) designate a person for safety and health at work in a written act, 4) inform employees about the introduction of new technologies and means of work, as well as about the dangers of injuries and damages to health arising from their introduction, and 5) hire a legal entity with a

17 Law on Safety and Health at Work (LSHW) Art. 27, para. 2.

18 More on the concept of prevention of injuries at work and occupational diseases, as well as on incentives for investing in prevention in: Petrović, M., 2019, *Prevenција povreda na radu i profesionalnih oboljenja – pojam, troškovi i ekonomski podsticaji za ulaganje u prevenciju*, *Pravo i privreda*, 7–9, pp. 679–690.

19 Art. 45, para. 1, item 1. of the LSHW.

20 Law on Prevention of Harassment at Work (LPHW), *Official Gazette of the RS*, No. 36/10.

21 More about harassment (mobbing) at work and its impact on health of employees in: Petrović, M., 2021, *Radnopravna i socijalnopravna zaštita zaposlenih od povreda na radu i profesionalnih bolesti*, doktorska disertacija, Pravni fakultet Univerziteta u Beogradu, pp. 34–37.

22 Art. 9, para. 1. of the LSHW.

23 Art. 11, para. 1. of the LSHW.

license to carry out preventive and periodic inspections and checks of work equipment, as well as preventive tests of work environment conditions.²⁴

However, if an employee still gets injured at work, the employer is then required to compensate them for the damage.²⁵ The precondition for such liability is that the employee suffered an injury or damage at work, or in connection with work.²⁶ The basis of the employer's liability can be fault for a harmful action, that is, for failure to undertake an action, as well as the risk of a dangerous object owned by the employer or the risk of performing a dangerous activity that the employer is engaged in (strict liability).²⁷ If the injury occurs independently of a dangerous object or a dangerous activity, the employer will be liable on the basis of fault, while on the contrary, that is, if it was caused by a dangerous object or a dangerous activity, the employer will be liable on the basis of risk,²⁸ in accordance with the Law on Contracts and Torts.²⁹ With that said, as in accordance with the Labour Law the period of rest during daily work is also considered as working time,³⁰ it should be borne in mind that damage can also occur during the period of rest during daily work – if the period of rest is used in a common way.³¹ Additionally, for damage that occurred as a result of an injury at work, the right to employer's damage compensation can be exercised both by a person who has the status of an employee, as well as by a person engaged in undeclared work.³² A logical conclusion would be that this rule should also apply to damage caused by the occurrence of an occupational disease.³³

24 Arts. 13–15. of the LSHW.

25 More about the concept of an injury at work in domestic and comparative law in: Petrović, M., 2019, *Pravni režim povrede na radu i profesionalnog oboljenja u domaćem i uporednom pravu*, *Strani pravni život*, 1, pp. 103–113.

26 Art. 164. of the LL.

27 Andrejević, S., 2005, *Odgovornost za štetu na radu i u vezi sa radom*, in: Petrović, Z. (ed.), *Naknada štete i osiguranje*, Budva, Intermeks, p. 23.

28 Ivošević, Z., Ivošević, M., 2018, *Komentar Zakona o radu*, peto izmenjeno i dopunjeno izdanje, Beograd, Službeni glasnik, p. 351.

29 Law on Contracts and Torts, Art. 154, *Official Gazette of the SFR of Yugoslavia*, Nos. 29/78, 39/85, 45/89 – Ruling CC, 57/89, *Official Gazette of the FR of Yugoslavia*, No. 31/93 and *Official Gazette of the RS*, No. 18/20.

30 Art. 64, para. 5. of the LL.

31 Lubarda, B., 2013, *Radno pravo – rasprava o dostojanstvu na radu i socijalnom dijalogu*, Beograd, Pravni fakultet Univerziteta u Beogradu – Centar za izdavaštvo i informisanje, p. 698.

32 “A person engaged in undeclared work has the right to compensation from the employer due to an injury at work.” Judgment of the Court of Appeal in Belgrade, GŽI No. 779/2011 of 11 October 2012, translated by author.

33 “An employee suffering from an occupational disease has the same position as the employee who has suffered an injury at work. Therefore, the employer is liable for da-

3. BASIS OF EMPLOYER'S LIABILITY FOR DAMAGE CAUSED BY AN INJURY AT WORK

In order for the employer to be liable for damage caused by an injury at work, certain conditions must be met: 1) that the employee suffered damage; 2) that there is a causal connection between the employer's action and the damage, as well as 3) that there are no reasons for exclusion of liability.³⁴ The concept of damage is defined by the Serbian Law on Contracts and Torts and represents the reduction of one's property (actual damage) and the prevention of its increase (lost profit), as well as the infliction of physical or psychological pain or fear on another (non-pecuniary damage).³⁵ At the same time, it is significant to the employee that it be established that the damage in question was the result of an injury at work,³⁶ in order for them to have the right to be compensated for the resulting pecuniary and non-pecuniary damage.³⁷ When it comes to compensation of pecuniary damage that occurred as a result of an injury at work, it refers to: lost earnings and other income during treatment and due to loss of working capacity, expenses related to treatment, care and recovery, destroyed or damaged belongings of the injured party, as well as expenses due to lost support.³⁸ The employee can exercise this right to compensation of damages only in the amount that is not compensated by benefits from the mandatory social insurance,³⁹ or other forms of

images caused by the occupational disease of the employee, under the same conditions under which they are liable for damages caused by an injury at work." Judgment of the Supreme Court of Serbia, Rev. No. 76/98 of 2 November 1998, translated by author.

34 Ivošević, Z., Ivošević, M., 2018, p. 351.

35 Art. 155. of the Law on Contracts and Torts.

36 Sudžum, R., 2004, *Pravni aspekti povrede na radu i profesionalne bolesti*, Beograd, Savremena administracija, p. 53.

37 For more on the compensation models for damages caused by injuries at work or occupational diseases see Petrović, M., 2019, Compensation of Work Injuries and Occupational Diseases – A Comparative Approach, *Strani pravni život*, 4, pp. 103–113.

38 Andrejević, S., 2005, p. 24.

39 "1. Benefits from health, pension and disability insurance are included in the corresponding types of compensation of damage so that the damage suffered by the insured person consists of the difference between the total damage and what the injured party receives on one or more of the abovementioned grounds. 2. The damage from the previous paragraph must be compensated to the injured party by the person who, according to the rules of compensation law, is responsible for the compensation of the damage." Principle position from the joint session of the Federal Court, the Supreme Courts and the Supreme Military Court of 26 March 1980, cited according to: Petrović, Z., Mrvić Petrović, N., 2006, *Naknada štete – odgovornost i naknada štete zbog povrede fizičkog integriteta: načelni stavovi i pravna shvatanja*, Beograd, Intermeks, p. 78, translated by author.

employee insurance,⁴⁰ while the amount of compensation to which the employee is entitled also depends on their contribution to the occurrence of the damage.⁴¹

Compensation of non-pecuniary damages, on the other hand, is awarded for suffered physical pain, for pain suffered due to reduced life activity, disfigurement, injury to reputation, honor, freedom or personal rights, death of a loved one, as well as for fear, while the court awards it if it finds that the circumstances of the case, especially the intensity of pain, fear and their duration, justify such a decision.⁴² Physical and psychological pain, as well as fear, in that sense, are a matter of the subjective experience of the injured party, which makes it difficult to establish the existence of non-pecuniary damage. Nevertheless, it is clear that, when determining the existence of non-pecuniary damage, one cannot solely consider the subjective experience of the injured party (on which the appropriate expert provides an opinion), but that social understandings and treatment of such a state must also be taken into account.⁴³ It is, however, indisputable that monetary compensation of non-pecuniary damage will be awarded independently of compensation of pecuniary damage, even in the case of its absence,⁴⁴ as well as independently of benefits that are not compensatory in nature.⁴⁵ The discussion in terms of the employer's liability (based on fault or strict liability) would not even be possible without a causal link

40 "Since the compensation of damage cannot be greater than the damage, the court, when deciding on the amount of damage suffered by the employee at work or in connection with the work, will examine whether and to what extent the damage was remedied by the amount of insurance, which the employee as the injured party obtained on the basis of insurance, provided that the employer paid the insurance premium against injuries at work." Decision of the Supreme Court of Serbia, Rev. No. 399/02 of 28 March 2002, translated by author.

41 "The employee's right to compensation of damages and its scope depends on his/her contribution to the occurrence of damages as well." Decision of the Supreme Court of Serbia Rev. No. 1587/04, of 9 February 2005.

42 Art. 200, para. 1. of the Law on Contracts and Torts.

43 Medić, D., *Neki aspekti naknade štete za duševne bolove zbog umanjnja životne aktivnosti*, in: Petrović, Z. (ed.), 2005, *Naknada štete i osiguranje*, Budva, Intermeks, p. 104.

44 Art. 200, para. 1. of the Law on Contracts and Torts.

45 "According to the opinion of the Supreme Court of Cassation, the said amount of money, paid to the plaintiff by the decision of the head of the unit, according to a special regulation, represents a form of specific social and material benefit to the employee in order to regulate the first harmful consequences of the injury, and given that it is defined as assistance to the employee, it is not calculated mathematically or taken into account at all (as a personal disability allowance) when calculating compensation of non-pecuniary damage for reduced life activity, the goal of which is primarily the satisfaction of the injured party for the mental anguish suffered." See

that directly or indirectly connects the damage to the employer.⁴⁶ Thus, in order for the employer to be liable for the damage suffered by an employee at work or in connection with work, and based on the risk of a dangerous object, i.e., the risk of engaging in a dangerous activity, it is necessary for the damage to originate from a dangerous object or a dangerous activity,⁴⁷ whereby, in this case, causation is presumed. Consequently, in order for the employer to be released from such liability, they must prove that they were not the cause of the damage.⁴⁸

On the other hand, when fault is taken as the basis of the employer's liability, it represents liability for a harmful action, i.e., for failure to undertake an action, and thus it is expressed as a legal standard determined by the relationship between expected and concrete behavior.⁴⁹ The presumption of fault, which is determined by the corresponding regulation governing the field of obligation relations,⁵⁰ applies only to the mildest degree of fault, i.e., ordinary negligence of the harming party, while a more serious degree of fault can be assumed only if it is expressly established by law, i.e., if it undoubtedly follows from the meaning of the corresponding legal rule.⁵¹ However, the presumption of liability based on fault is rebuttable and the employer can prove that the damage occurred without their fault.⁵² In such cases, the employer may also be liable for the resulting damage according to the principle of shared liability, if the employee contributed to the damage, where the court, taking into account all the circumstances of the case, will determine the percentage of the employer's and the injured party's contribution to the damage, and, accordingly, make a decision regarding the amount of compensation for the employee.⁵³ However, the reasons for the exclusion of liability provided

Judgment of the Supreme Court of Cassation, Rev 2, No. 154/2016 of 9 March 2017, translated by author.

46 Antić, O., 2010, *Obligaciono pravo*, Beograd, Pravni fakultet Univerziteta u Beogradu – Centar za izdavaštvo i informisanje, p. 495.

47 "A worker can exercise the right to compensation of damages from their primary organization only if the damage is causally related to the actions of the workers who work in it, i.e., to its dangerous objects or dangerous activities." Decision of the Court of United Labor of Serbia 10812/85, of 5 December 1985. cited according to: Sudžum, R., Stamatović, M., 1995, *Povrede na radu i profesionalne bolesti – prava i obaveze*, Beograd, NIP "Zaštita rada" d. d., p. 71, translated by author.

48 Art. 173. of the Law on Contracts and Torts.

49 Andrejević, S., 2005, p. 23.

50 Art. 154. of the Law on Contracts and Torts.

51 Sudžum, R., 2004, pp. 58–59.

52 Andrejević, S., 2005, p. 23.

53 An example of this practice: Judgment of the Court of Appeal in Belgrade, Gž1 No. 3405/16 of 21 April 2017.

for by the Law on Contracts and Torts, i.e., legitimate self-defense, state of necessity, right to self-help and the consent of the injured party,⁵⁴ are not applicable here due to the fact that this is a violation of the right to safe working conditions, and violations of rights, as such, cannot be justified by any means whatsoever.⁵⁵

The employer is liable for the damage caused to the employee even if the damage occurs as a result of the actions of another employee, and in accordance with the rules that apply to the employer's liability for damage caused to a third party (vicarious liability).⁵⁶ In other words, the employer is liable for the damage that occurred to the employee as a result of the actions of another employee, unless they prove that the employee acted as they should have in the given circumstances.⁵⁷ This is primarily the case when it comes to actions that lead to the exclusion of the obligation to compensate for damage, such as legitimate self-defense, state of necessity, right to self-help and the consent of the injured party, as well as actions of the employee that are not causally related to the damage, due to breakage of the causal link (e.g., action of the injured party).⁵⁸ The Serbian legislator sets the requirement that such damage must be caused in the workplace or in connection with work, as the prerequisite for the employer's liability for damage caused by the actions of an employee (in accordance with the idea that a certain barrier must be established against the unrestricted expansion of such liability).⁵⁹ In other words, in Serbian law, the employer cannot be released from liability for the actions of the employee by proving that the employee acted wrongly but can be released from liability for the resulting damage, even if the employee is clearly guilty, if the court is convinced that the damage itself is not sufficiently connected to jobs and employer's scope of work.⁶⁰ At the same time, in accordance with the relevant regulations, the injured employee has the right to demand compensation directly from the employee who intentionally caused the damage to them.⁶¹ The employee will then either be solely liable for the damage caused, or jointly liable with the employer, in accordance with the rules on joint and several liability. At the same time, it should be borne in

54 Arts. 161–163. of the Law on Contracts and Torts.

55 Ivošević, Z., Ivošević, M., 2018, p. 352.

56 Judgment of the Court of Appeal in Novi Sad, Gž. No. 1945/12 of 23 August 2012.

57 Art. 170, para. 1. of the Law on Contracts and Torts.

58 Ivošević, Z., Ivošević, M., 2018, p. 345.

59 Karanikić Mirić, M., Granica odgovornosti poslodavca za zaposlenog, in: Ignjatović Đ. (ed.), 2020, *Kaznena reakcija u Srbiji*, Beograd, Pravni fakultet Univerziteta u Beogradu, p. 165.

60 *Ibid.*, p. 171.

61 Art. 170, para. 2. of the Law on Contracts and Torts.

mind that the employer is liable to a third party for all forms of fault of their employees (both for intent and gross negligence, as well as for ordinary negligence) while, if the employer is the one who compensated the damage to the third party, they will have the right to demand compensation for the amount thus paid from the employee who caused the damage if it occurred as a result of intent or gross negligence,⁶² as the employee is not liable for ordinary negligence.⁶³ The same applies to damage caused by one employee to another. And although the fault of the employee is a precondition of the employer's liability for damage caused by the employee, such a precondition does not make this type of liability a liability based on fault. The employer's liability, namely, in this case is strict, because their own fault is legally irrelevant, while someone else's fault cannot be the basis, but only a precondition of the liability of the person responsible.⁶⁴

When, on the other hand, it comes to liability based on the risk of a dangerous object or engaging in a dangerous activity, the norm that refers to the liability for damage caused by a dangerous object or a dangerous activity is incomplete in itself, considering the fact that the basic concept (the concept of dangerous object or dangerous activities) is not determined even in the form of a legal standard.⁶⁵ It is therefore up to the judicial practice to make a decision in a specific case, whether the object or activity in question is such that it could be qualified as a dangerous object or dangerous activity.⁶⁶ In this sense, "dangerous objects are all objects (movable and immovable) that, due to their position, properties or their very existence, represent an increased danger to the environment. They create a risk of damage that cannot always be avoided, even with

62 Ivošević, Z., Ivošević, M., 2018, pp. 345–347.

63 Lubarda, B., 2013, p. 686.

64 Karanikić Mirić, M., 2020, p. 168.

65 Antić, O., 2010, p. 492.

66 A significantly different approach was taken in the Republic of Croatia, where instead of the Labor Law, which refers to the application of the general rules of the law of obligations (which would imply the necessity to determine in each individual case whether the activity in which the damage occurred is dangerous or not, in the sense of the corresponding law, with fault as another possible basis of liability for damage), as *lex specialis* the Law on Occupational Safety is applied, which directly refers to the employer's strict liability. Frntić, F. D. *et al.*, 2017, *Detaljni komentar Zakona o radu*, Zagreb, Rosip, p. 558. The principle that the employer is always liable in accordance with the rules on strict liability – as a different approach to the issue of the employer's liability for damage caused by an injury at work, compared to the one within the Serbian law, is also applied in Hungarian legislation. More on this subject in: Kun, A., 2014, Work Accident Compensation in Hungarian Labour Law – Liability Rules and Compensation, *Hungarian Labour Law E-journal*, (https://www.hllj.hu/letolt/2014_1_a/04.pdf, 20. 04. 2019), pp. 71–75.

the greatest possible care, and that is what makes them dangerous. Some objects are dangerous solely due to the fact that they exist, others due to their position. The same object can be dangerous and harmless depending on whether it is in motion or at rest. A dangerous activity can be defined in the same way as a dangerous object. It is any human activity that threatens a greater, unusual danger, damage, which cannot always be avoided even with the greatest possible attention.⁶⁷ In essence, therefore, the risk of a dangerous object, or of performing a dangerous activity, represents a business risk for the employer.⁶⁸ And while the owner is responsible for the damage that occurs in connection with the dangerous object, and while the person responsible for the damage from the dangerous activity is the one engaged in it,⁶⁹ the employer can also be liable for damage caused by an employee's injury when it was caused by a dangerous object belonging to another person, while the employee was performing certain tasks in the interest of the employer, if such damage is causally related to the work the employee.⁷⁰ Strict liability, in itself, creates an (ir)rebuttable presumption of liability, which is why only in exceptional cases can the employer be released from liability for the resulting damage.⁷¹ Therefore, when it comes to damage that occurred in connection with a dangerous object, or a dangerous activity, it is considered that it originates from that object, i.e., that activity, unless it is proven that they were not the cause of the damage.⁷² The liability of the employer, based on strict liability, is excluded in the case of the fault of the injured party, the existence of fault of a third party, as well as in the case of force majeure (where, in the first two situations mentioned, the employer can be released from liability in whole or in part).⁷³ In this sense, the employer bears the burden of proving the existence of reasons for the exclusion of strict liability.⁷⁴

67 Judgment of the Court of Appeal in Belgrade, Gž1 No. 5851/10 of 17 November 2010, translated by author.

68 Ivošević, Z., Ivošević, M., 2018, p. 350.

69 Art. 174. of the Law on Contracts and Torts.

70 Judgment of the Supreme Court of Serbia, Rev. No. 1190/96 of 20 March 1996.

71 Antić, O., 2010, p. 486.

72 Art. 173. of the Law on Contracts and Torts.

73 See Art. 177. of the Law on Contracts and Torts. "The fault of the employee, in the sense of the provisions of article 177 of the Law on Contracts and Torts, excludes the employer's liability based on the risk of a dangerous object or dangerous activity only if the objective working conditions did not affect the occurrence of the cause of the damage, *i.e.*, if the damage occurred due to the actions of the employee which could not be foreseen and the consequences of which the employer could not avoid or remove." Decision of the Court of Appeal in Belgrade, Gž1. No. 4207/18 of 21 February 2019, translated by author.

74 Judgment of the Court of Appeal in Belgrade, Gž No. 774/16 of 22 March 2017.

In accordance with the judicial practice in Serbia, the fault of the employee also exists in cases where the employee put himself in a state of distorted consciousness due to the use of alcohol.⁷⁵ The possibility of the employer being completely freed from liability due to this reason still seems questionable if the activity they were engaged in is, by its nature, dangerous, due to the fact that in such cases the employer can be expected to control employees in terms of usage of alcohol and psychoactive substances. Such encroachment on the employee's privacy would be fully justified in accordance with the risk to which they are exposed by performing work in such activities.⁷⁶ On the other hand, in terms of force majeure, due to the fact that it can be considered as a cause which lies outside of the object, and the effect of which could not be predicted, avoided or eliminated,⁷⁷ it is necessary to point out that "the inevitability of natural events or the effects of human action is assessed according to the state that should exist in order to ensure safe working conditions."⁷⁸ Thus, the Supreme Court of Serbia, during the revision in the case concerning the policeman who was struck by lightning while securing the rally race, assessed that: "in order for a natural event, as a force majeure, to exclude the employer's liability for damage caused at work or in connection with work, it must be unforeseeable, exceptional, unexpected and irreversible. A lightning strike is a natural event, but it is not force majeure if it could have been avoided by stopping work during the storm."⁷⁹

Finally, the employer is not liable for damage caused by the injury that an employee suffered on the way from home to the place of work and vice versa, if it was not caused by fault or a dangerous object, or a dangerous activity of the company, regardless of whether that injury is considered as an injury at work according to the regulations on pension, disability and health insurance.⁸⁰ In this sense, there can be no mention of the employer liability for damage from an injury caused to the employee by a third party on the way home from work, although the employee will certainly

75 Judgment of the Supreme Court of Serbia, Rev. No. 687/07 of 18 April 2007.

76 The relevant research conducted by ILO experts nevertheless established that in the construction industry, only large companies carry out alcohol tests at worksites. On the other hand, it was determined that not a single construction company test for drugs. Bulat, P., Hirose, K., Protić, J., 2018, *Occupational Safety and Health in the Construction Sector in Serbia*, Geneva, International Labour Office, p. 11.

77 Art. 177, para. 1. of the Law on Contracts and Torts.

78 Andrejević, S., 2005, p. 24, translated by author.

79 Decision of the Supreme Court of Serbia, Rev. No. 246/01 of 17 January 2002, translated by author.

80 Judgment of the Supreme Court of Serbia, Rev. No. 2178/93 of 24 April 1993.

be able to exercise the rights based on health insurance, as well as pension and disability insurance.⁸¹ On the other hand, the possibility will exist for the employee to request compensation from that third party and, thus, for example, if an employee falls into the shaft while going home from work or vice versa, they can file a lawsuit against the city and water and sewerage utility company.⁸²

A new challenge for domestic practice, on the other hand, will be the issue of determining liability for damage suffered by a temporary agency worker as a result of an injury at work.⁸³ This is somewhat expected, because the right to safety and health at work must be exercised by the temporary agency worker at the premises of the user undertaking,⁸⁴ while the temporary work agency has no influence, nor can it take appropriate measures to eliminate the risks that could cause this kind of damage.⁸⁵ And while the Law on Agency Employment prescribes exclusively subsidiary liability of the temporary work agency for this kind of damage⁸⁶ (which, in the author's opinion, is unacceptable), it remains to be seen how the injured parties will behave as plaintiffs. This is due to the fact that it cannot be ruled out that, because of the need to adapt to life, as well as the impracticality of waiting itself, and bearing in mind the principle of judicial economy, they will probably be forced to, with an explanation of the elements and circumstances of the case, in these cases file a lawsuit with a joint claim.

Again, an additional challenge must certainly be work performed outside the employer's premises, because it raises the question of the employer's ability to supervise the employee's work, to a sufficient extent, as well as the ability of the employer to ensure the enjoyment of the right to a safe and healthy work environment. In this sense, the new Draft Law on Occupational Safety and Health is also interesting, due to the fact that it would decisively define the employer's obligation to ensure occupational

81 Judgment of the Supreme Court of Cassation, Rev. No. 438/17 of 22 March 2017.

82 Despotović, D., Praštalo, T., 2018, Odgovornost poslodavca usled povrede na radu i profesionalne bolesti sa posebnim osvrtom na naknadu materijalne štete, *Poslovne studije*, 19–20, p. 81.

83 "Temporary agency worker is a natural person who is employed in the Agency in accordance with this law and the law regulating work, and who is being assigned to the user undertaking for the purpose of temporarily performing tasks under its supervision and management, in accordance with this law." Law on Agency Employment, Art. 2, para. 2, *Official Gazette of the RS*, No. 86/19, translated by author.

84 Reljanović, M., 2014, Privremeno zapošljavanje u Republici Hrvatskoj – Pouke za buduće regulisanje u Republici Srbiji, *Strani pravni život*, 2, p. 201.

85 Frntić, F. D. *et al.*, 2017, p. 258.

86 Art. 33. of the Law on Agency Employment.

safety and health, specifically for this category.⁸⁷ What this means in terms of the employer's liability in the event that such an employee is injured in the premises where the work is performed is not especially clear. In other words, the question here is whether this means that the injury suffered by an employee by them slipping and falling on the tiles of their kitchen floor, could also be qualified as an injury at work?!⁸⁸

4. COMPENSATION OF DAMAGE SUFFERED BY PROFESSIONAL ATHLETES DUE TO INJURIES AT WORK

Of particular interest is the issue of liability for compensation of damage caused by an injury while doing sports, suffered by a professional athlete who has the status of an employed person.⁸⁹ Namely, every sport is played both in accordance with its formal rules and in accordance with tacit, informal rules, which is why certain behavior may be technically unacceptable, while in practice it can be seen as a normal and completely acceptable way of behaving, that is, the way athletes play.⁹⁰ This is especially so considering that the nature of certain sports, such as soccer or rugby, in itself implies the possibility of injuries even if all of the players respect the rules of the sport.⁹¹ In this sense, "almost every sport carries a certain degree of risk of getting injured. The degree of threat to life and health of people, participants in a sports game (fight-competition) varies depending on the type of sport and the way the sport is played. As a rule, the degree of threat to human health and life is already visible from the rules of the game. It is impossible for certain sports games (especially team sports such as soccer, basketball, etc.) to take place without breaking the rules of the game. We could even say that certain injuries are so common that they are almost an integral part of a certain sports. Those

87 Serbian Government, 2021, Law Proposal on Safety and Health at Work (http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/13_saziv/295-23.pdf, 31. 03. 2023).

88 This is, for example, the case with Austrian law, where any injury suffered by an employee in the "home office" is to be considered as an injury at work. Eurofound, 2020, *Regulations to address work-life balance in digital flexible working arrangements*, New forms of employment series, Luxembourg, Publications Office of the European Union, p. 33.

89 Art. 13. of the Law on Sports, *Official Gazette of the RS*, No. 10/16.

90 Đurđević, N., 2012, Osnov odgovornosti za štetu koju pretrpi sportista na sportskom takmičenju, *Zbornik radova Pravnog fakulteta u Splitu*, 4, pp. 755-756.

91 See James, M., 2006, Liability for Professional Athletes' Injuries: A Comparative Analysis of Where the Risk Lies, *Web Journal of Current Legal Issues* (<http://usir.salford.ac.uk/id/eprint/1058/1/james1.pdf>, 01. 01. 2020).

injuries already seem quite common for the participants. Without those injuries, the sports game might even become uninteresting both for the participants and for those following the game.”⁹²

Therefore, according to the ruling point of view, a sports accident always exists when an athlete’s injury is in a direct temporal and spacial connection with his/her sports activity – which implies that the accident is related to the typical risks of a certain sports activity. Consequently, one cannot speak of the existence of a sports accident if one hockey player hits another player on the head with a hockey stick in anger, given that such behavior cannot be considered to be a typical risk inherent to that sport. In other words, although the so-called typical sports violations of the relevant sports rules should be tolerated, the same cannot be said when talking about a particularly gross violation of the rules.⁹³

In this sense, the Law on Sports (*lex specialis* in this matter) establishes a special liability regime in domestic law concerning liability for damage suffered by athletes. Namely, although this law stipulates that the general rules on liability for damage apply to the issue of liability for damage suffered by athletes and sports experts when engaging in sports, i.e., performing professional work in sports, the particularity of the regime of liability for possible damage caused to athletes is reflected in the fact that the legislator here does not include damage that, in accordance with the sports rules, is the result of the usual dangers and risks of engaging in a certain sports activity, i.e., performing certain professional work in sports.⁹⁴ The law as such does not make a distinction between strict liability and liability based in fault, and thus it can be assumed that the victim is exempt from liability for damage both on the basis of fault and on the basis of the risk of a dangerous object, or a dangerous activity, if the damage itself is the result of the usual dangers and risks of engaging in a certain sport, i.e., performing certain professional work in sports, and if it occurred in accordance with the rules of the sport.⁹⁵

92 Conclusion from the conference of the civil and civil-economic departments of the Federal Court, the Supreme Courts and the Supreme Military Court, of 15 and 16 May 1985, cited according to: Petrović Z., Mrvić Petrović, N., 2006, pp. 98–99, translated by author.

93 See Đurđević, N., 2012, pp. 753, 761.

94 Art. 23. of the Law on Sports.

95 A similar solution is contained in the Law on Public Ski Areas (Art. 6), according to which the general rules on liability for damage are applied to liability for damage caused on public ski areas, while the right to compensation of damage caused on public ski areas does not include those damages that are the result of the usual hazards and risks of skiing. *Official Gazette of the RS*, No. 46/06.

In this sense, in the statement of reasons of the judgment of the Appellate Court in Novi Sad from 2014, it is emphasized that “athletes, regardless of whether they are amateurs or professionals, take upon themselves, that is, voluntarily accept the so-called usual risk of playing a certain sport, which is often incorporated into the rules of the sport itself [...] This is because the application of general rules on liability for damage (whereby the *lex specialis* does not make a distinction between liability based on fault and strict liability) is excluded in the case of regular, i.e., usual risks and dangers for that branch of sport. And vice versa, the extraordinariness, i.e., the exceptionality of the risk and the unusualness of the danger of the specific case, represent a precondition for the application of general rules on liability for damage suffered by an athlete while engaging in sports activities or which they cause another person. In the specific case, the plaintiff did not prove that the resulting harmful consequences were the result of extraordinary, i.e., exceptional risks, unusual in the field of cycling, and whether those circumstances concern the condition of the bicycle itself, or some other, external factors, such as the condition of the road, atmospheric conditions, and the like. In other words [...] a special basis for the exclusion of liability for damage is prescribed, which must be understood as the consent of the injured party, i.e., as the rules of the game or the permitted risk, which are the circumstances that deny the possibility of applying the general rules on liability (based on fault or strict liability) to the resulting damage.”⁹⁶ However, in this judgment, unusually, the court refers to the fact that the athlete accepts the usual risks of playing a certain sport, which consequently means that they also accept the consequences of such risks. And even though this stand can certainly be acceptable when it comes to athletes who are not in an employment relationship, the application of the institute of consent to the risk of injury still seems inappropriate when it comes to employed professional athletes.⁹⁷ The latter due to the fact that, in that case, the sports activity itself is carried out in the economic interest of the employer, which raises the question of the justification of such a legal fiction.⁹⁸ In other words, the position of an

96 Judgment of the Court of Appeal in Novi Sad, Gž. No. 5073/13 of 17 April 2014, translated by author.

97 This stand was taken by the District Court in Užice in 2008, finding that, if it is a player who is registered as an amateur and a member of a sports club and who as such does not have the status of a professional athlete, if they suffer a physical injury during training, on the defendant's playground, without contact with other players, it is considered to be consented by the injured party. Judgment of the District Court in Užice, Gž. No. 1393/08 of 18 June 2008.

98 The position of an amateur athlete is significantly different, so, for example, in contrast to the damage caused by a bodily injury for which a participant of a sports game

employed professional athlete and the position of an amateur athlete is significantly different, bearing in mind that a sports club whose members play sports as amateurs cannot be equated with an employer. This, among other things, is due to the fact that the position of an amateur athlete is not the same as the position of an employed athlete, bearing in mind that there is no relationship of subordination between the amateur club itself and the amateur athlete, and the fact that an amateur athlete does not earn an income that would give the amateur club the right to require him to achieve certain results. On the other hand, we come across a different situation when it comes to employed athletes, whose sports activity requires significant allocated funds and who are rewarded depending on the achieved results. The latter, after all, is also due to the fact that sports clubs also earn profit in this way. Furthermore, professional athletes do not engage in sports every day only to achieve better health, or for pleasure and fun, but also to earn an income for themselves.⁹⁹ After all, consent to the risk of injury is an institute that rather corresponds to Anglo-Saxon law and its doctrine of contributory negligence (formerly referred to as the *volenti non fit injuria* doctrine), which in literal translation means that no injury was done to the one who gave their consent. Nevertheless, when it comes to the employer's liability for compensation of damage caused by an injury at work, the success in applying this doctrine as a basis on which they could eventually be released from liability is exceptionally rare.¹⁰⁰

In the judgment in *Condon v. Basi* case, the court opted not to apply this theory even when deciding on the liability of the athlete for the damage he caused by an injury he inflicted on the player of the opposing team.¹⁰¹ However, this decision was made in accordance with the fact that

who deliberately caused the damage or grossly violated the rules of the game is liable, along with their sports club (jointly, on the basis of fault), such liability of the club does not exist when it comes to an amateur athlete. See Judgment of the Second Municipal Court in Belgrade, P. No. 481/00 of 4 April 2002; and Judgment of the District Court in Belgrade, GŽ. No. 5166/03 of 17 July 2003.

99 Conclusion from the conference of the civil and civil-economic departments of the Federal Court, the Supreme Courts and the Supreme Military Court of 15 and 16 May 1985, cited according to: Petrović, Z., Mrvić Petrović, N., 2006, pp. 100–101.

100 Cotter, B., 2006, Contributory Negligence, Consenting to the Risk of Injury and Unpaid Volunteers, in: Cotter, B., Bennett, D. (eds.), *Munkman on Employer's Liability*, London, LexisNexis Butterworths, pp. 207–208.

101 Namely, in the specific case, when deciding on the liability for the damage caused due to the injury inflicted by Gurdaver Basi to James Cordon, when he executed a slide tackle that was assessed as a reckless and dangerous behavior and a serious foul play, the application of this theory was completely ignored as Basi's action was such that in no way it could have been expected that the injured party would have given his consent to it. More on this in: Opie, H., 1986, *Condon v. Basi*, *Melbourne Univer-*

awareness of certain risks can only exist if the risks themselves are simply inherent to certain sports activities, which is why the consent to the risk itself can only exist in situations when a sports activity is unimaginable without the involvement of such risks.¹⁰² In this sense, athletes actually accept risks that are unavoidable, even though they may be the result of breaking the rules, as it is about breaking the rules, that they themselves commit¹⁰³ which is why only in exceptional circumstances the liability for damage can be discussed. Here, however, the main premise is that the athlete believes that the injury itself will not occur – although individuals are also inclined to assume that certain dangers are greater when it comes to other people than when it comes to themselves and that, therefore, employees, as a rule, are inclined to estimate that the probability of them experiencing an accident at work is lower than it actually is.¹⁰⁴

When it comes to Serbia's domestic law, the application of the institute of consent to the risk of injury in sports, as a potential reason for the application of a different approach to liability for injuries at work, does not seem convincing, among other things, because it has the potential to open the issue of the application of such a basis for exemption from liability with regard to other high-risk jobs, such as the job of a miner. Accordingly, the fact that the employee is aware of the risk to which they have decided to expose himself, does not mean that they have given their consent to fully bear the consequences of its occurrence.¹⁰⁵ A special liability regime is therefore justified here by the very nature of sport as an activity. The employer's liability will also exist if an athlete who is employed in one club causes damage to another employee of the same club, if it is not the result of the usual dangers and risks of playing that sport (based on rules on the third-party liability of an enterprise). Again, due to the very nature of sport as an activity and, in this regard, the special liability regime in that sense, the possible strict liability of the employer should be an exception rather than the rule. After all, this is in accordance with the fact

sity Law Review, Vol. 15. No. 4, (<http://classic.austlii.edu.au/au/journals/MelbULawRw/1986/24.pdf>, 09. 12. 2019).

102 Masel, D., Costaras, D., *Voluntary assumption of risk – Sporting injuries and voluntary assumption of risk*, (https://foleys.com.au/resources/Voluntary%20Assumption%20of%20Risk_15Oct2015.pdf, 31. 12. 2019), pp. 4–5.

103 Mićović, M., 2015, *Povreda sportskih pravila i odgovornost sportista za štetu*, *Zbornik radova Pravnog fakulteta u Splitu*, 4, p. 1040.

104 Drakopoulos, A. S., Theodossiou, I., 2016, *Workers' Risk Underestimation and Occupational Health and Safety Regulation*, *European Journal of Law and Economics*, 3, pp. 641–643.

105 Cotter, B., 2006, p. 208. Judgment of the Supreme Court of Serbia, Rev. No. 1360/01 of 6 June 2001.

that “a sports game cannot be considered as a circumstance with increased danger, if appropriate measures are taken during the game so that it takes place in a sporting spirit and in accordance with the rules.”¹⁰⁶ A different situation would arise if the professional sports club were also the owner of the sports facility, and when it comes to liability for damage suffered by athletes due to deficiencies in the sports facility itself (flawed construction, poor maintenance, etc.), where the *lex specialis* itself stipulates that in such cases, general rules on strict liability shall apply.¹⁰⁷

5. CONCLUSION

The right to safety and health at work is a fundamental human right and, as such, is the subject of protections derived from the highest international standards, but also, accordingly, from various domestic legal instruments. In Serbia, the right to personal dignity at work, as well as the right to safe and healthy working conditions, is already protected by the Constitution itself, while such protections are further regulated in more detail by the Labour Law and the Law on Safety and Health at Work, and also in part by other regulations, such as the Law on Prevention of Harassment at Work.

The obligations arising for the employer from the aforementioned regulations also raise the question of their liability if such a right is not ensured, despite the established obligations, but also in the case when an employee is injured, even when all the necessary safety and health measures at work have been undertaken by the employer. Thus, specifically, in the Serbian legal system, the employer can be held liable both based on fault for a harmful action, i.e., for failure to undertake an action, as well as based on the risk of a dangerous object owned by the employer or the risk of performing a dangerous activity that the employer is engaged in.

This, however, provided that the damage actually exists, i.e., that the employee suffered damage at work or in connection with the work and, in this regard, that there is a causal connection between the work itself and the resulting damage, as well as that there are no reasons for exclusion of such liability of the employer. And even though the judicial practice in this respect is already quite rich, the changes brought about by time also bring challenges that have yet to be tackled. This is, *exempli causa*, the

106 Judgment of the Municipal Court in Niš, P. No. 1521/03 of 27 October 2005; and Decision of the District Court in Niš, Gž. No. 1148/06 of 5 June 2006, translated by author.

107 See Art. 155, para. 3. of the Law on Sports.

case with liability for damage suffered by the so-called temporary agency worker (an employee of a temporary work agency), caused by an injury that occurred at the premises of the user undertaking. In author's opinion, the fact that the legislator, in this sense, determined the subsidiary liability of the temporary work agency, which formally and legally speaking is also the employer, is an unacceptable and an extremely illogical solution, which also raises the question of its application in practice.

On the other hand, the issue of liability for damage caused to professional athletes with the status of employees when injured while engaging in sports activities is particularly interesting, since it raises the question of the basis for establishing a special regime of liability for such damage. The latter is due to the fact that the Law on Sports, under the term damage, does not include the damage that occurred in accordance with the sports rules, or that is the result of the usual dangers and risks of engaging in a certain sports activity, i.e., performing certain professional work in sports. Accordingly, in these cases there will be no place for the application of general rules on liability for damage, which the legislator refers to in other cases. The very element of employment, in the author's opinion, plays a key role in this sense, since professional athletes do not engage in this type of activity only for the sake of better health or entertainment, and certainly not exclusively in their own economic interest, but also in the economic interest of the sports club, i.e., their employer. Therefore, in the author's opinion, one cannot talk about the consent of an employed athlete to certain risks – and, therefore, to injury – as a basis for determining a special regime of liability in this regard, but rather such a basis must be sought in the nature of sport itself as an activity. In that sense, the position of an amateur athlete, whose relationship with a sports club includes neither subordination nor profit for the sports club (based on possible positive results of the amateur athlete), is different, which is why in that case one could discuss the athlete's consent to the usual risks associated with practicing a certain sport, as a basis for establishing a special liability regime for damage.

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ODGOVORNOST POSLODAVCA U SRBIJI ZA ŠTETU PROUZROKOVANU POVREDOM NA RADU: SLUČAJ PROFESIONALNIH SPORTISTA

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APSTRAKT

Pravo na bezbednost i zdravlje na radu jedno je od osnovnih ljudskih prava na radu, koje je zagarantovano najvišim međunarodnim i domaćim pravnim instrumentima. U srpskom pravu takvo pravo je zagarantovano, najpre, samim Ustavom, a zatim Zakonom o radu i Zakonom o bezbednosti i zdravlju na radu, kroz norme koje detaljnije pristupaju ovom pitanju. Ove norme otelotvorene su pre svega u određenim obavezama poslodavca, u cilju obezbeđenja bezbednosti i zdravlja na radu prvenstveno zaposlenih kod poslodavca. S druge strane, u slučajevima kada poslodavac ne uspe da obezbedi bezbedno i zdravo radno okruženje, pa čak i u slučajevima kada do povrede dođe iako je sve u ovom procesu urađeno kako treba, postavlja se pitanje odgovornosti poslodavca za štetu koja je povredom prouzrokovana. U ovom radu autorka stoga daje detaljnu analizu ove problematike, s posebnim osvrtom na pitanje odgovornosti za štetu koja je na ovaj način naneta sportistima u statusu zaposlenih lica.

Ključne reči: bezbednost i zdravlje na radu, povreda na radu, odgovornost poslodavca za štetu, profesionalni sportisti, sport, Republika Srbija.

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