THE CIVIL LIABILITY OF A FOOTBALL PLAYER THAT WOUNDS AN OPPONENT AT A CRITICAL MOMENT OF THE GAME

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SUMMARY: I - Introduction. II - Historical evolution of the civil liability as regards wounds between sportsmen. III - The most known decisions in Argentine Jurisprudence in the matter of wounds between sportsmen at a critical moment of the game. Cases "Cottroneo vs Banfield"; "Berman vs Goldin"; "Telechea vs Beldrio"; "Gil Osvaldo vs Sociedad de Fomento"; and "Pizzo vs Camoronesi". IV - The State authorization in football. V - The assumption of risks in football. VI - By way of conclusion.

INTRODUCTION

When a sportsman suffers an injury in the course of a sportive competition, there arises the issue of whether or not he is entitled to an indemnification and, if that is the case, who is in charge of the obligation. As a general principle, the natural characteristics of sport have determined that the eventual subjective liability of the participants cannot be judged with the same criterion with which the general liability is appraised (art 1109 Argentine Civil Code)[2] where, according to some authors, there is no "illicit action on part of the player that proceeded in a way that could commit his responsibility out of a game"[3].

The jurisprudence in the matter of grave injuries produced among sportsmen in the middle of the game, is scarce. This may be due to the fact that, since ancient times,

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[2] Trigo Represas and López Meza wonder whether there is a "sportive liability" and conclude that there are not essential liabilities but different ways of breaching the duty of care requirable of a person and that configurates liability. There is neither a sportive liability or a medical liability but some peculiarities of liable acting within the frame of a sport which should be taken in consideration at the moment of evaluating the diligence that the injurer owed. Cfr Tratado de la responsabilidad Civil L.L.TII pp. 800/801. Mosset Iturraspe, in a similar sense, sustains that the sportive liability undeniably has its peculiarities that cannot be set aside when appraising the sport activity: the aims of sport in general and of the kind of sport at issue in particular, the administrative authorization, the sports rules, the usages and customs regarding its practice, etc. To conclude, determining the existence or inexistence of liability in the intervening person but pointing out that in the subject of sportive liability there is no annulment of the general rules of appraisal of liability. Cfr *Responsabilidad por daños, Editorial.* Rubinzal Culzoni S.C.C., 6/11/1980 Sta. Fe T II B p 93.

[3] Cfr Bustamante Alsina "Teoría General de la Responsabilidad Civil" Abeledo Perrot Octava Edición ampliada y actualizada, Bs As 1993, p. 537.

the general principle has been criminal impunity and civil irresponsibility of the injurer, provided he had acted within the rules of a sport authorized by the State[4].

It should be pointed out that the jurisprudence in the matter of grave injuries produced among sportsmen during the game is scarce. This may be due to the fact that since Ancient Times, the general principle has been that as long as the injurer sportsman acted within the rules of a sport authorized by the state, he would be entitled to criminal impunity and he would not be civilly liable.

According to the authors that postulate[5] the above the State authorization as a justification cause comes from ancient times, more precisely from Greece or the Hellas that consisted of city- states called polis, each one with its own legislation and sovereignity but where the panhellenic competitions were regularly organized among the citizens of different cities.

In the inception of organized sport in contrast to nowadays, there was neither a centralized state that could eventually give an administrative authorization to sports, nor rules of the game as they are currently conceived[6]. However, as the authorities of the

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[4] According to Orgaz, the state authorization means the existence of a special regime, different from the ordinary one. In contrast to the latter that presumes that every injury caused to another person is illicit (art 1109 of the Civil Code) . The regime of the authorized sport creates a presumption of lawfulness as regards the practice of the sport and the consequences that result from it due to the naturel and ordinary cause of events(art 901 Civil Code)That includes the predictable mediate and immediate consequences: thus the injuries or damages derived from the inherent risks of the normal practice of an authorized sport are justified in advance the same as the activity they precede. (cause of justification). Cfr., "Lesiones Deportivas", LL 151P1055. Some important doctrine and jurisprudence think that this notion is only applicable to violent or dangerous sports but not to those that by nature are not normally risky. For example, Mosset Iturraspe, in his comment to the decision in the "Cottroneo case", points out that when Borda speaks of "surpassed liability, irresponsibility and permitted activity" regarding the sportsmen that expose themselves to the risks of sports stimulated and protected by the State, he exclusively refers to dangerous sports whose practice requires an expressed authorization of the state; where the participants expose themselves "voluntarily to the risk" of damage, and where the causing of harm is within the rules of the game. Borda refers to boxing, to the boxing match, as he explicitly states in his notes. But he hasn't wanted to include other sports that are either not dangerous in themselves, or entail risks to the participants, or contain rules that allow damage or need an express authorization for their practice as football or rugby. Ob cit p 386., In the same vein, Mayo JA "Daños sufridos por deportistas en la práctica de su actividad" in Revista de derecho de Daños 2010-2, Daño Deportivo, Rubinzal Culzoni editores, Buenos Aires- Santa Fe, p 40. See C N Civil y Comercial, Sala D 2/24/87, "Fernández de Lopez Dora N y otro c/ Asociación Civil Club Atlético News Old Boys" E D , 125-512.

[5] Among others, Orgaz (ob cit), Llambías ("Responsabilidad Civil proveniente de Accidentes Deportivos". ED.47; p947. , Núñez ("Tratado de Derecho Penal"; Lerner, Córdoba, 1987) and Jiménez de Asúa (Tratado de Derecho Penal, Losada, Buenos Aires,1961).

[6] The rules of the game applied in the Olympic Games were far from uniform and universal, on the contrary, they were of oral tradition; some judges called nomofilaces were in charge of transmitting the rules from one generation to another and to instruct other judges

most important cities of the Hellenic world attended and participated in the Panhellenic Games, it can be inferred that there was a certain kind of "State authorization".

On the other hand, the theory of "assumption of risk" that Camoranesi used for his defense, occasionally operates unconsciously in the sportsmen victims of injuries, persuading them that the harm suffered must be accepted as a "misfortune of Fate, no matter how serious".

This theoretical construction postulates that the "tacit consent" that the victim seems to give in all the cases in which he assumes the risk of being injured, would be a tacitly understood agreement with another person by which the victim waives the right to claim an indemnification for eventual damages[7].

The predominant jurisprudence regarding wounds between rivals in football,from the "Cottroneo" case to the Pizzo vs Camoranesi case is mainly based on the thesis that states that the state authorization creates two kinds of infringements to the sports rules of the game: the common ones in where the irresponsibility[8] is the rule ; and

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called hellanodika on applying the rules to the organization and development of the Games with the help of the Rabducos or cane carriers who were in charge of keeping order during the competition. These games were known as Olympiad which was one of the time measures of Ancient Greece. In this organization the first to be celebrated were the Olympic Games with headquarters in Olympia, in honour of Zeus in the first year. During the second year, the Nemean Games, honoring Zeus in Nemea, Corinthia and the Isthmian Games, honoring Poseidon in different months; during the third year the Pythian Games, of political character, were held in Delphi, in honor of Apollo and the Muses, and in the fourth year both the Nemean Games and the Isthmian Games were celebrated. Then the cycle was repeated beginning with the Olympic Games. The Games were organized in such a way that a professional athlete could take part in all of them. For a further analysis of this issue, see "El deporte en la Grecia Antigua, la génesis del Olimpismo". Centro cultural de la Fundación "La Caixa", Barcelona, 1992. "El Olimpismo" Cátedra Olímpica marqués de Samaranch, Universidad Camilo José Cela, Madrid, 2004; "Olimpia y los juegos Olímpicos antiguos", Pamplona, 1975 volumen 2, by Conrado Durantez and "Los Juegos Olímpicos y el Deporte en Grecia", Ansa Editorial, Barcelona, by Fernando García Romero.

[7] According to Trigo Represas and López Mesa, this idea of the acceptance of risk results in the fact that in Argentine Justice, the indemnification for sports injuries is not as usual as it is in Europe. They quote Spanish and French jurisprudence that do not give priority to the assumption of risk on part of the victim but analyse the sportsman's training, the control on part of the sports event organizer and whether the novice sportsman was exposed to unnecessary risks or to risks he was not prepared to run to determine his liability. Cfr., ob. cit,, p.796. For a deeper study of the notion of "Assumption of risks" in general to see the excellent work of Mayo and Prevot "La idea de la aceptación de riesgos en materia de responsabilidad civil" L.L. T 2009- E, p. 992 and ss.

[8] Bueres in his vote "Cottroneo" called such conduct "objective illegality" and identified two situations in which the injurious party must respond: a) when there is an excessive action that openly and blatantly violates the rules of the game and b) when there is an intent to cause the harmful outcome either during the development of the game or when the game is detained. Cfr CNApel. Civil Sala D 12/17/1982, "Cottroneo Ricardo c/ Club Atlético Banfield y otros" LL (1983), with a note from Mosset Iturraspe.

the extraordinary ones that would be illicit in themselves without any possibility of justification on part of the injurer sportsman[9]. The purpose of this article will be, then, to analyse if such foundation is juridically appropiate and whether the "theory of risk" is applicable to the cases of injury between sportsmen of nonhazardous sports as football.

HISTORICAL EVOLUTION OF THE CIVIL LIABILITY IN THE MATTER OF WOUNDS AMONG SPORTSPEOPLE

Going over the cases in which the injured sportspeople sued the injurious party for damages caused during the game, it can easily be observed that, since ancient times, the jurisprudence is very scarce, mainly due to the fact that there is no awareness among the actors of the sport system that in case of injury or death produced during a sports competition, the sportsman who caused the damage may be held responsible.

In the Olympic Games of Ancient Times, (776 BC to 395 AD) there was a kind of legal immunity for athletes who accidentally injured or killed their rivals[10]. This is probably due to the fact that, at that time, in disciplines such as pugilism, wrestling and pancratium, the risks of grave injuries and death were considerable and the legislators, assiduous attendants and participants of the Panhellenic games may have been influenced to set the irresponsibility for the death of the adversary[11].

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[9] The first fatal accident dates from 554 BC in the pancratium test (a kind of fight where everything but biting and eye gouging is allowed), in which Arriquion was proclaimed posthumous victor because after he was proclaimed loser his adversary died of asphixia (apparently his neck had been broken). A case of simultaneous death of two contenders in combat, due to the equality of forces, an improbable but not impossible fact, since other cases in different times and cultures are also known. Among many others, the cases in which the athletes died, not during the combat itself, but little afterwards, as the pentoathlete Eneto of Amiclas who fell dead at receiving the honours of the victory, must be added. Cfr García Romero, F., *Los juegos Olímpicos y el deporte en Grecia*, Editorial Ausa Barcelona, pp. 98/99. On the deaths in ancient Olympic Games, R H Brphy "Deaths in the Panhellenic Games Arrichion and Ceyas" AJPH XCIX1978, pp. 363390; C A Forbes "Accidents and Fatalities in Greek Athletics, Classical Studies in honor of W.A. Oldfather" Urbana 1943, pp. 50/59 and M Poliakoff "Deaths in the Panhellenic Games. Addenda et Corrigenda", AJPH, 1943 CVII, 1986, pp. 400/402.

[10] In all the periods of the Games the legal immunity of the athletes that accidentally killed their rivals has been verified. The lack of responsibility for the death of the adversary appears in texts of Classical Times such as Plato (Laws- 865 BC), Demosthenes (25,35), Pseudo Xenophon (Constitution of the Athenians 53.3), the same rule is taken up in Roman law, as Gualazzini (Premesse storiche al diritto sportivo. Pubblicazione: Milano: Giuffre, 1965, pp. 18-19), both in public competitions and training sessions, which as to legal purposes held the same status as the certamina licita even when there was no audience. The presence of the public was taken into account by the legislator, in order to prevent the commission of murders disguised as accidental deaths. Idem, pp. 99/100.

[11] With the word injuria in a broad sense, they named every act against the Law in the first times. A more restricted construction, limited it to an attack to a person

In Rome, in the matter of damages caused between people, they resorted to a penal figure, the injuria[12] to refer to damages caused between people. The Law of the XII Tables (round about the middle of the V century BC) did not include more than attacks to the physical person, blows and wounds more or less serious but without distinguishing whether there was intent to harm or simple imprudence. In the Classic Law, the notion of injuria, on one hand was extended, as regards the facts it comprised, attacks to personality in different ways: blows or injuries, oral or written Defamation, unauthorized entry in a domicile, outrages to decourum, and in general, all the actions that compromised the honor or reputation of the victim were included. On the other hand, the concept of injuria was restricted: The intent to harm was deemed necessary for the crime to take place.

Notwithstanding the advance of Roman Law compared to other civilised people of Ancient Times in the matter of liability for damages, there is no theoretical development[13] of a general principle of responsibility but in the matter of accidents in sport there are antecedents that originated the answers of the iurisprudentes[14] and the

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[12] With the word injuria in a broad sense, they named every act against the Law in the first times. A more restricted construction, limited it to an attack to a person.

[13] According to Bustamante Alsina, "The casuistry, so characteristic, not only of the Roman legislation but also of the mind of the jurisconsults itself, is expressed here in the lack of a general principle of liability" (responsibility Cfr., ob. Cit. P. 27. Mosset Iturraspe, in the same sense, adds "The word responsibility is lacking in Roman Law, which doesn't mean that there wasn't a wide catalogue/list of delictum whose commission originated obligation to compensate the damages suffered by the victim (…) there are no traces of a distinction between contractual responsibility and criminal or extracontractual responsibility. However, this circumstance did not exert in itself any influence in the sanction regime". Cfr., Responsabilidad por Daños, Tomo I, Rubinzal Culzoni Editores, Santa Fe, 2004, pp. 18/19. In the Same sense, Sanz states Villey ("En torno al Contrato, la Propiedad y la Obligación", p. 69) shows that in legal language, the term "responsibility" does not exist. There is an antecedent notion that will be used by medieval cult jurists and by the ones preceding the revolutionary movement. This prerevolutionary use demands to link the notion – responsible – with the latin verb respondere and its origins: sponzio and spondere. Cfr "Apostillas en torno al tema de la Responsabilidad" Prudentia Iuris XI, pp.26/27.

[14] Ulpian states that "If, while throwing javelins for fun, a slave is killed, the Aquilia Law is applied. But if when others are throwing javelins in the field a slave crosses the field of reference, the Aquilia Law ceases because he shouldn't have crossed inopportunely the field where javelins were being thrown. However, whoever deliberately threw a javelin against him is obliged by the Aquilia Law" (Ulpian 18 ed) Digesto, D, 9,2,4, p.381. Wacke "Accidentes en el Deporte y Juego según el Derecho Romano y el vigente Derecho Alemán" sustains that as regards Aquilian responsibility, the fact that the javelin throwing had taken place in a public place, where it is not legal to generate potentially risky situations by practicing a dangerous sport is not indifferent since in that way the diligence to preserve the traffic is breached. Out of the specifically alloted places for the practice of the sport, whoever causes the damage cannot allege the victim's guilt for an eventual compensation of culpabilities and a lessening of the responsibility of the perpetrator of the damage. Cfr Trigo Represas, F., López Mesa, M. J.,

praetorian decisions that in short, clearly state that the sportsman's consent, provided he was a Roman citizen, that is, he had the three status: libertatis, civitates and familiae prevented any claim with the exception of intentional damage or damaged caused by violating the rules of the game[15].

In the Middle Ages there were no significant advances in the matter of responsibility for damages caused among sportspeople even though both tournaments and contests yielded a great number of injured people and many deaths[16].

There were no relevant changes in the Modern Age either, may be due to the fact that the sports that had reached a higher degree of development and organization since the Greek Olympic Games up to those times were practiced by the members of the higher social classes that viewed the practice of their favourite sports as a way to socially relate to peers with whom they shared a moral code that was above the simple rules of the game rather than just a means to social promotion or making a living.

"Tratado de la…" ob. cit. pp. 781/782. A deeper study of the theme can be seen in "Explicación histórica de las Instituciones del Emperador Justiniano" by M Ortolán, translation by Francisco Pérez de Anaya, Tomo II, 3ª edition. Establecimiento tipográfico D Ramón Rodríguez de la Rivera, Madrid, 1847, p 497 and ss. In 2012, confirming the danger that the sport entails, the French athlete, Salim Sdiri, when impacted in the back by a javelin at the Golden League Tournament, paradoxically in Rome (in 2007), sued the International Association of Athletics Federations(IAAF) and the Italian Federation of the sport at issue. Sdiri who beat the French record in the long jump was out of action for about a year after the Finn Tero Pitkamaki impacted him in the back with a javelin (With a launching of approximately 80 metres) causing serious damage to his liver. At the moment of the accident, Sdiri was warming up to compete, next to the javelin launching zone.

[15] Regarding the injuries produced at the pancratium, of Greek origin, the Digest states: "If in a fight or free pugilism one of the two fighters kills the other, if he kills him in a public competition, the Aquilia Law ceases because the damage is not deemed done with malice but due to glory and valour. This does not happen in the case of the slave, because the ones that participate in these fights are those who are born free. But the Aquilia Law is applied if a son of a family is injured. Of course, if the person who loses the fight is injured or a slave is killed in a private fight except when the slave was ordered to fight by his owner, in that case the Aquilia Law ceases". Digest 9,2,7,4 (Ulpian 18 ed) p.381.

[16] The medieval tournament was, in essence a combat on horseback among different teams that battled among themselves turning around to pursue the adversary (hence the origin of the name tournament). It was, in short, the imitation of a battle. The weapons used generally did not cause either serious injuries or death. It was practically a war exercise subject to certain rules made by ancient knights. The rules of the tournament were essentially six : 1- Not to hurt the adversary with the sharp end. 2- Not to fight out of the lines.3- Not to fight several knights at the same time. 4- Not to hurt the rival's horse.5- Strike blows only on the face and chest of the adversary.6-Not to hurt the knight who has put up the visor. Occasionally, in some tournaments, all kinds of weapons were used and when there was a national or particular enmity, the deaths per team were numerous. For instance in the Neuss Tournament in 1240, 60 people died. Cfr. Monroy Anton, a J and Saez Rodríguez, G., "Historia del Deporte de la Prehistoria al Renacimiento" Wanceulen Editorial Deportiva, Sevilla, 2007, pp. 152/159. Diem, C. "Historia de los Deportes" Vol I Luis de Caralt Editor, Barcelona, 1966, pp. 435/441.

In the twentieth century, with the coming of professionalism and the acknowledgment of the labour relationship of the professional sports person with the club, specially in football, as of the case "Eastham vs Newcastle" in England[17] in 1963 the values changed substantially. Amateurism demanded that sports be practised only by the members of a particular social club, thus their rules were created to keep the members of other social classes away[18] from the sport practice. Within that social structure if injuries were caused to sports people in the sports dispute, there was no possibility of starting legal action for damages.

Both in Ancient and Modern[19] legislations, the general principle has always been the criminal impunity and civil irresponsibility of the injurious player provided he has acted correctly and the sport has been previously authorized by the state. This distinction is essential: If there is no state authorization, the damages caused are regulated by the general rules of liability[20].

THE MOST KNOWN DECISIONS OF ARGENTINE JURISPRUDENCE IN THE SUBJECT OF WOUNDS BETWEEN SPORTSMEN AT A CRITICAL MOMENT OF THE GAME. CASES "COTTRONEO VS BANSFIELD",

[17] For a deep study of the aim of the "retain and transfer" system since the "Eastham vs Newcastle" case that brought about the acknowledgement of the labour relationship of the professional football players, first in England and then in the whole world, see chapter 12 headed "Sports and Contracts of Employment" of the book "Sports Law"(Cavendish Publishing London, second Edition, 2001, pp. 527-572) and "Professional Sport in the EU: Regulation and Reregulation" (Caiger and Gardiner Editors, TMC Asser Press, The Hague, 2000) where the cases "Eastham vs Newcastle" and "Bosman" are analysed in detail. An analysis of the restraint of trade doctrine in the cases "Eastman vs Newcastle" in football, "Grieg vs Insole" in cricket, and "Adamson vs New South Wales Rugby" can be seen in "Sports Law" by Beloff, Kerr and Demetriou, Hart Publishing Oxford,1999, p. 83.

[18] Vinnai, quoting Meisel ("The importance of being amateur") in "Sport and Society" A Natan Ed, p.129) sustains: "The rules of amateurism were created last century for the first time, a task that was in the hands of members of the superior English Stratum", not so much for idealism but to keep the common masses away from their exclusively private entertainment, the sport". Then, he adds "The members of the lower stratum of the population could only compete with the members of the upper class who, due to their wealth had a lot of time to practice sports. They had financial compensation in exchange for their athletic performance, compensation that enabled them to miss work without economic loss and to cover the sports costs. IF with the rules of amateurism all payment was forbidden, every sportsman who depended on such retribution would automatically be excluded from the sports competition". Cfr "El fútbol como ideología". Siglo 21 Argentina Editores SA, trad L Mamés, Bs As 1975.

[19] See Jiménez de Asúa, L., "Tratado de Derecho Penal", ob. cit., p.1466.

[20] Orgaz, A., "Lesiones deportivas", ob cit., p. 1055.

"BERMAN VS GOLDIN", "TELECHEA VS BELDRIO", "GIL OSVALDO VS SOCIEDAD DE FOMENTO" AND "PIZZO VS CAMORANESI"

Among the scarce judicial precedents on this subject in football, the first and most important one because of its influence on national jurisprudence is the case of "Cottroneo vs Banfield and other"[21] in 1982 , where the Court decided that "The obligation to respond for sports injuries originates in the following cases: 1- when there is an excessive action that openly and blatantly violates the rules and regulations of the game; 2 - when there is intent to cause harm either during the game or when the game is detained"[22].

The doctrine of the sentence "Cottroneo was followed and extended by the Cámara Nacional Civil in 1995 in the Court decision Berman Gerardo R vs Goldin Jorge N" [23] but making a distinction with the precedent by not adhering to any doctrine in particular, pointing out that whatever the doctrinal position, in the matter of wounds due to sports accidents, it should be concluded that the liability would originate from at least an excessive action or notorious imprudence or clumsiness, adding that even assuming that the football sport's normal practice has inherent risks, and that according to Orgaz, the state authorization creates a presumption of legality as regards the consequences of its practice according to the natural and ordinary course of events (art 901 Civil Code), so that the injuries derived from such actions would be justified in

[21] The Cámara Nacional de Apelaciones en lo Civil, Sala D, had to resolve the claim filed by Cottroneo that, as a Banfield Club player, went to fetch the ball in the rival team's area and, as he couldn't pitch it with his head, he touched it with his hand. Therefore, the umpire stopped the game and set forth "hand". Notwithstanding, the goal keeper of Almirante Brown Club, Domingo Violi, continued what he was doing/ running and hit Cottroneo in the renal area with his knee. As a result of the blow Cottroneo lost a kidney. The Chamber resolution on December 17, 1982, confirmed the decision of First Instance in all its parts, thus imposing both Violi and Almirante Brown Club the obligation of paying Cottroneo an indemnification. C.N. Apel. Civil, sala "D", 12/17/1982, "Cottroneo Ricardo D. c/ Club Atlético Banfield y otros"L.L. (1983), D, 385, with comment by Jorge Mosset Iturraspe.

[22] As to the facts, the Tribunal deemed that the defendant's behavior had transgressed the normal limits; as it was proved that he had violated the rules. In that respect, it clearly stated: "… one thing is for the goalkeeper to forward the knee in a defense of his corporal integrity attitude, as it is usually done, notwithstanding the natural or normal violation of the rules, and another thing is to strike a blow with violence enough to tear a rival player's kidney to pieces…" Ibidem.

[23] The Tribunal had to decide on the events produced during an amateur football match. The goal keeper of one of the teams, Gerardo Berman, by a blow of the ball stricken by the forward player of the rival team, Jorge Goldin, who was launching forth. The blow produced, among other physical consequences, the exposed fracture of Berman's right shin bone. C. N. Apel Civil, Sala "A" "Berman Gerardo R c/Goldin Jorge N", L. L.(1996), C, 701, with a note by Jorge Adolfo Mazzinghi (h); DJ 1996-2, 400.

advance the same as the activity they come from, it should be concluded that the case at issue is within the frame of those hypothesis that, according to the author himself, cause civil liability[24].

In both cases, the sportsmen were held liable for injuries produced during the sports event but not at a critical moment of the game since in "Cottroneo" a fault had been sanctioned seconds before the blow and in "Berman" the ball was in the plaintiff possession when he was injured. In none of the afore mentioned cases the possession of the ball was in dispute, that is the reason why the decision issued by Sala I of the Cámara Civil y Comercial of Azul in the case "Telechea c/ Beldrio" in 2005 that partially confirmed the decision of First Instance and convicted a football player who wounded another one at a critical moment of the game, when the possession of the ball was in dispute[25], is extremely interesting.

In this case, the Court adhered the state authorization thesis to justify the presumption of legality of all sports injuries and set forth that this postulation comprises all the harmful consequences caused by the game within the rules and regulations and every breach of the rules and regulations that is "normal" or "inevitable" according to the characteristics of the activity at issue substantially sharing the position set in the "Cottroneo" case and the thesis of Alfredo Orgaz which was expressly referred to.

In the case "Gil Ezequiel Osvaldo y otro c/ Sociedad de Fomento Deportivo y Cultural Siglo XX y otro. Daños y Perjuicios"[26]. The Suprema Corte de la Pcia de Buenos Aires, (Supreme Court of Provincia de Buenos Aires), focused on the risks of

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[24] According to Mazzinghi, "The decision refers – with justice – to 'An excessive action or of notorious imprudence or clumsiness" on part of the defendant that in no way could be deemed Force Majeure'. The sentence is founded on the liability and does not need- which is undeniably right , to qualify the defendant's action as intentional or deceitful" , Cfr Mazzinghi (h), J. A.ob cit, p. 702.

[25] The claim originated in what happened during a football match organized by the Asociación de Fútbol Argentino between the amateur teams of first Division: "El Fortín de Olavarría" and "Defensores del Este" of Pehuajó. Fernando Germán Telechea, player of El Fortín de Olavarría, instants before being passed the ball by a team mate, is hit in his left knee by a break/ "plancha" made by Beldrio. The impact caused a grave injury, he had to undergo two operations on one knee and was left with a partial permanent injury that put and end to the victim's sportive career. CC Azul, sala I, 3/31/2005 "Telechea Fernando G c/Beldrio, Carlos y otro" L.L. Buenos Aires, 2005 p. 695 and ss.

[26] It was a case of injuries of a minor who, as a goal keeper of a team of infantile football, category 82 of the "Centro Cultural y Social Florentino Ameghino" received a blow with the ball in his left eye which produced injuries. The Suprema Corte de Justicia de la Provincia (Supreme Court of the Province) ratified the position of the majority a little time later, on November 24, 2011 in the case 95.241, "Z.O.A. c/ Club San Marcos/ Daños y Perjuicios" Available on http://www.scba.gov.ar/jubanuevo/integral.is

sports and their limits, stating that in every football match, the players lay themselves open to all the risks of the sports activity at issue that many times turn into injuries. When the aforementioned injuries arise from the normal risk imposed by the rules of the game, they are covered by the "legitimacy" of the activity.

It also added that the irresponsibility in sports accidents arises from the concurrence of several elements: the legality of the game or sport itself; the consent of the victim to lay himself/ herself open to the inherent risks of the sport he/she practices; the lack of intent to harm, negligence, imprudence or other circumstances that entail the liability of the damage doer and finally the observance of the rules either pragmatic or canons of the game or sport at issue[27].

Finally, the Tribunal acknowledged that the practice of all sports activities requires more that habitual physical and/or intellectual effort and, at the same time entails a risk for the contenders and adhered to the position that stipulates that the state authorization is a justifying cause to exclude the illegality as a requisite for civil liability but expressely excluding the assumption of risk as an exoneration cause provided that no fault of the victim has been proved[28].

With special reference to "Cottroneo", the Tribunal concluded that the sport legality comprises the harmful consequences that the game entails within the rules and regulations, the same as those infringements to the rules that are normal or inevitable according to the characteristics of the game at issue.

That's the reason why the sports injuries suffered by a player only originate the obligation to indemnify when the rules and regulations of the game are violated and the injuror is liable either by negligence or imprudence, or there is dolo, that is, intent to harm.

Lastly, in the "Pizzo vs Camoranesi"[29] case it was decided, following the jurisprudence of the Cottroneo case, that the obligation to indemnify damages derived

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[27] From the vote of Dr Kohan that quoted Rezzonico, L.M. "Estudio de las Obligaciones" T II 9 Ed. Depalma, 1961, p. 1579.

[28] Vote of Dr Soria, Dr Genoud and Dr Pettigiani adhered to it.

[29] In this case, the player Pizzo received the ball on the left strip of the middle sector of his own field, when on his right appeared the player Camoranesi who, with his left leg extended, impacted Pizzo's left knee with the sole of his half boot. As a result of the blow, the plaintiff suffered injuries in the crossed ligaments, both anterior and posterior, in the external lateral ligament, in the internal and external meniscus, in the knee capsule, in the biceps' tendon, plus bruises and lacerations, the femoral artery being on the verge of being sectioned. In those circumstances, the umpire of the match immediately suspended the game, called the paramedics and expelled Camoranesi.

from sports injuries originates when: a) the injury has been caused by an excessive action that blatantly violates the rules and regulations of the game. b) The dolus or intent to harm either in the development of the game or when the game is detained is evident in the action. Even if the deliberate intention to cause harm on Camoranesi's part was doubtful, there was no reason to doubt that the conduct of the defendant fitted the concept of excessive action that blatantly violates the rules and regulations of the game[30].

STATE AUTHORIZATION IN FOOTBALL

As it has already been said, a part of the doctrine headed by Orgaz, has sustained that the legal authorization of a sports practice acts as a justification cause. Therefore, due to the intervention of the State, the injuries that result from the practice of authorized sports as long as they are typical actions of the game will not generate either civil or criminal liability for the illegal act. In that case, the actions wouldn't be guiltless but legal[31].

The thesis is based on art 2055 of the Civil Code[32], that, tacitly acknowledges the legality of the sport games. As of 1904, Law 4.345 Fostering of athletic games and football was enacted, in 1969 Law 18.247 of fostering and development of Sport was added and finally in Ley Nacional del Deporte 20655[33] of 1974, still in force and in many national and provincial laws of fostering and promotion of Sports[34]by virtue of the fact that the sport is not a matter expressly delegated to the Federal State.

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[30] Chamber Judge Lustanau stated: "I have seen thoroughly, step by the step and at normal speed the moment of the game, no less than twenty five times and I keep on doubting if Camoranesi went for the ball or deliberately intended to hurt his rival. In doubt I have to say that there was no dolus in the terms of art 1072 of the Civil Code". For a deeper analysis of the "Pizzo vs Camoranesi case" it is advisable to see the excellent note to the sentence by Márquez and Calderón headed "Lesiones en el fútbol" published in L.L. on 09/03/2010 and the Comment of the suscriptor published in the Revista Digital de Derecho del Deporte de la Universidad Austral (number 4, March 2013). La responsabilidad civil del futbolista que lesiona a un contrincante en un lance de juego. Comentario al caso "Pizzo c/ Camoranesi".

[31] Orgaz, A, La ilicitud (extracontractual) Lerner, Córdoba,1973, p. 178.

[32] Art 2055 states: "It is forbidden to sue for gambling debts or bets that have not originated on exercises of strength, arms skills, races and other games or similar bets as long as no law or police regulation has been breached".

[33] For a deeper study of this Law, Vittar Smith, E, "El Derecho Deportivo en la Argentina. Una visión esquemática". Revista Jurídica del Deporte N 6, Aranzadi,, Navarra, 2001.

[34] A detail of the many provincial laws on that matter can be found in "La licitud de las prácticas deportivas y la responsabilidad Civil" by Schmoisman, M. and Dolabjian, D. A. , en RC y S, 20120-V,24.

According to the professor from Córdoba, the injuror sportsman would only be liable for damages caused when breaching the rules of the game with manifest imprudence or clumsiness (excessive or brutal actions): Civil and criminal liability for "excess" in the practice of the sport (art 35 of the Penal Code)[35]. Another part of the doctrine based on the different hierarchy of the administrative norms that authorize the sport's practice and the ones that criminally sanction or determine the liability for damages[36], dispute the above mentioned position.

Apart from the aforementioned jurisprudence, it has also been decided that the "legality" of the sport practised with a state authorization comprises all the harmful consequences that the game causes within the rules and regulations and those infractions pertaining to the bylaws that are "normal" or "unavoidable" according to the characteristics of the activity at issue[37] and the state authorization to practise a risky sport constitutes cause of justification enough to exempt both the club and the civil association that organises the event from civil liability as to the injuries suffered by a player as a consequence of a normal and habitual move in the game[38].

New doctrines consider that according to the current doctrine of liability, the authorization of the state to develop a determined activity does not intercede in the

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[35] Carlos M. Bosso has carried out the following classification based on the doctrine of Orgaz: a) Damage caused while observing the rules of the game, if the damages are not commonplace, they aren't indemnifiable or punishable because it was force majeure; b)Damages caused in violation of the rules of the game, but a natural and common violation (sports culpa): there is cause of justification ; c) Damages caused violating the rules of the game and notable imprudence : Criminal liability(crime by culpa) and civil liability(art 1109 Civil Code) and d) damages caused in violation of the rules of the game and with intent to harm: criminal responsibility (crime by dolus) and civil liability (art1072 Civil Code) Cfr., "La responsabilidad civil en el deporte y en el espectáculo deportivo" Editorial Némesis, Buenos Aires, 1984, p72.

[36] Brebbia sustains that it is inconceivable for a municipal ordinance to determine the justification of an action that the Penal Law deems punishable and gives an example: "The municipal authorization for a combat of gladiators to take place wouldn't either have the effect of rendering the Penal Code inapplicable to the case or prevent the injured from starting the pertinent legal actions" Cfr "La responsabilidad en los accidentes deportivos" Abeledo Perrot, Bs As , 1962, p. 22.

[37] C6aCCom of Cordoba, 2-7-2008, "Cáceres, Leonardo Javier c/ Instituto Atlético Central Córdoba. Ordinario. Daños y Perjuicios. Otras formas de responsabilidad extracontractual. Recurso de apelación. Expte 506.447/36", quoted by Márquez, J.F. and Calderón, M: R. in "Daños sufridos por el futbolista profesional" in Revista de Derecho de Daños 2010-2, Daño Deportivo, Rubinzal Culzoni Editores, Buenos Aires- Santa Fe, p.112.

[38] C8aCom. De Córdoba, 3-1-2001, "Z., G. F. c/ Asociación Cordobesa de Fútbol y otros", L.L.C. 2001-799, AR/JUR/1083/2001. Quoted by Márquez, J.F. and Calderon, M. R. in "Daños sufridos por el futbolista profesional" Revista de Derecho de Daños 2-2012, Daño Deportivo, Rubinzal Culzoni Editores, Buenos Aires- Santa Fe, p. 112. In Rugby, the same jurisprudence is observed: CCCom of Morón, Sala II, 5-18-99, "P., J.L.c/ Club Curupaytí", L.L. B.A.2000-1262.

concretion of the obligation to indemnify the damage. Such obligation would be under specific rules which will determine, in each case, whether the activity, authorized and therefore legal, depending on its characteristics, generates the obligation to repair the damage caused. The above mentioned position has set up the premise according to which, the legal activity even if authorized, turns into illegal when it causes damage, that being a violation to the general duty of not to harm, implicit in art 19 of the national Constitution[39].

But, may be the most important criticism received by the "state authorization" thesis is the one that finds an error of principle in the legal positivism that sustains the thesis at issue: it aims to solve the sports injuries issue only through positive law precepts, from which it can be deducted that that to cause injuries or death in sports, within certain limits, is a permitted act[40]. In order to do this, examples of activities authorized by the state, and thus, legal that don't mean that whoever carries them out is exempt from indemnifying the damages caused by them[41].

THE ASSUMPTION OF RISKS IN FOOTBALL

The so called assumption of risks doesn't arise from Argentine Positive Law, if we add the great variety of criteria both in national[42] and international[43] doctrine, it can

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[39] Cfr Márquez ,J. F. and Calderón, M.R., Ob. Cit.,p113.

[40] Cfr Tale C., "Accidentes deportivos: Responsabilidad por daños causados por un deportista a otro", in "Daños sufridos por el futbolista profesional" in Revista de Derecho de Daños2- 2010, Daño Deportivo, Rubinzal Culzoni Editores, Buenos Aires- Santa Fe, p.224.

[41] Among them, Civil Code art 2618 that sets forth the obligation of indemnifying on part of those establishments whose activities caused prejudice to their neighbours even though such activities had been authorized by the Public Administration. The art states: "The inconveniences occasioned by the smoke, heat, smells, light, noise, vibrations or similar damages due to activities in neighbouring immovables, shouldn't exceed the normal tolerance taking into account the conditions of the place and even in the case of administrative authorization for them. According to the circumstances of the case, the judges may decide the compensation of the damages or the end of such inconveniences. In applying this disposition, the judge must balance the demands of the production and the respect due to the regular use of the property. He should also take into account the priority in the use. The trial will proceed summarily".

[42] In Argentine, Pizarro and Vallespinos sustain that "the acceptance of risks is a crafty form/ figure that has no justification in a legal system such as ours that acknowledges the liberation of the alleged responsible when the action of the victim is proved. To know a risk doesn't mean to accept it and even less to submit to it meekly, without the possibility of making any claim for the future. **harmful consequences.**", *Instituciones de Derecho Privado*. Obligaciones. T3, Hammurabi, Buenos Aires, 1999, 116/117 and following..

[43] In Compared Law, it has been said that the assumption of risks is a hazy figure (Proenca José, "A conducta do lessado como pressupostoe criterio de imputacao do daño extracontractual" Editora Almedina., p.615, Coimbra, 2008, reimpressao da edicao de Novembro de 1997) heterogeneous (Cavanillas Migica Antonio "La asunción del riesgo por la

be inferred that its conceptual demarcation is impossible to reach. The acceptance of risk as a factor that allows to impute the damage to the victim himself, is a creation of French jurisprudence about the middle of XIX[44] and it happens when a person, consciously and voluntarily, lays himself open to a specific danger created by another one[45].

If the injury is caused during a practice of a sport, with total fulfilment of the rules of the game, the injuror does not have to indemnify the victim. The basis of this theory is the acceptance by the participants of the risks inherent in each game[46]. In our

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víctima" in Reglero Campos, Fernando Herrador Guardia, Mariana(Coord.), "Ponencias sobre la responsabilidad civil y su prueba" p. 62, Sepín Editorial Jurídica, Úbeda 2007) dogmátically inaccurate (Medina Alcoz María, "La asunción del riesgo por parte de la víctima. Riesgos taurinos y deportivos." , Madrid, Ed Dickinson, 2004,p.40) and with oscillating boundaries (Solé Feliú , Josep "Los perfiles borrosos de la asunción del riesgo en el derecho comparado" in Estudios jurídicos in honour of Professor Luis Diez Picaso t.II Derecho Civil. Derecho de Obligaciones, p.3097and following. Editorial Thomson Civitas, Madrid, 2003) and generally we tend to abuse it (Deliyannis Jean, "La notion dácte illicite. Considere en sa qualite d'element de la faute delictuelle", p. 177, LGDJ, Paris, 1952), which no doubt turns it into a changing and indeterminate notion (Piñeiro Salguero, José, "Responsabilidad Civil. Práctica Deportiva y asunción de riesgos", p. 117, Civitas Thomson Reuters; Madrid 2009). Cfr., Mayo and Prevot, ob. cit., pp. 992/993.

[44] According to Mayo and Prevot it has been elaborated fundamentally by the French jurisprudence(Flour, Jacques, prefacio a la tesis doctoral de Jean Honorat, "L ideé d'aaccceptacion des risques dans la responsabilité civile",P. XV, Ed. Librairie Génerale de Droit et de Jurisprudence, Paris, 1969), more specifically as of a set of decisions issued by tribunals in the middle of XIX century(Deschizeaux; Jean, "Influence du fait de la victime sur la responsabilité civil delictuelle", p. 79and following, Imprimerie Guirimand, Grenoble, 1934), ob. cit., p.992.

[45] Its application extends to other hypotheses, among which: 1- the exposition to risks entailed by the participation in transport activities that, depending on the means used are intrinsically dangerous. 2- The exposition to the risks that entering another person's rural property entails. 3- The exposition to the risks entailed by the use of another person's movable and inanimate thing.4- The exposition to the risks derived from the participation in leisure activities that by virtue of the animals involved become intrinsically dangerous., 5- The exposition to the risks derived from the use of one's own thing that has been manufactured and traded by others among which tobbaco smoking related risks can be mentioned 6- The exposition to the risks consequential to the participation in leisure fair activities that depending on the artefacts used are intrinsically dangerous7- The exposition to risks derived from the participation in pyrotechnical spectacles. 8-The exposition to risks derived from participating in taurine spectacles. 9- The exposition to the risks that the public activity facing the journalistic informative activity entails.(Medina Alcoz, Ob Cit p.93 and following. Idem p. 993.

[46] In the Foreign doctrine, this theory has been applied to sports by Lalou (Traité practique de la responsabilité civile Libraire Dalloz, Paris, 1949), Savatier (Traité de la responsabilité civile en Droit francais, First Ed. Librairie General de Droit et de Jurisprudence, Paris,1939), Visintini (Tratado de la responsabilidad Civil, trad Kemelmajer de Carlucci, Astrea, Buenos Aires. T2) and Esser (Lesiones deportivas y derecho Penal. En especial la responsabilidad del futbolistas de una perspectiva alemana, La Ley, Madrid6-9-1) Cfr., Tale, ob. cit. p.230.

country, there is no agreement in doctrine on this issue, some authors state that it is an autonomous exemption, others opt for the opposite stance[47].

The Project of Civil and Commercial Code 2012 stipulates that the voluntary assumption of risks on part of the victim will be determinant in cases in which such conduct implies a causal contribution to the harmful outcome, [48]but, notwithstanding the lack of positive legislation up to now, the courts have applied this legal construction to free the tortfeasor sportsman from the duty to indemnify the damage caused to the victim[49].

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[47] Aciarri, González Rodríguez and Tolosa carry out a complete synthesis of the topic: some authors sustain that it is an autonomous exemption (Mazzinghi, J., "La víctima del Daño y la Aceptación de los Riesgos", ED, 76-876; "Responsabilidad Objetiva: uso de la cosa contra la voluntad del dueño y la asunción del riesgo", La Ley, 1995-E, 205. Some of them say that it is an autonomous exemption of liability in the contractual liability field(See Agoglia, MM;Boragina,J. C. and Meza,J.A., Responsabilidad por Incumplimiento Contractual, Hammurabi,2nd edition, Buenos Aires, 1993.), whereas others, the majority, think the opposite(Zavala de González, M.,Resarcimiento de Daños, Volume 4, Hammurabi, 1999, p.287; Pizarro, D. "Causalidad adecuada y factores extraños" in Derecho de Daños, collective work directed by F.A. Trigo represas and R. Stiglitz, "Homenaje a Mosset Iturraspe", Buenos Aires, La Rocca,1989,p.269; Prevot, J:M: and Mayo, J. cit., p. 992; Mosset Iturraspe, J. "La Responsabilidad Civil por Aceptación de Riesgos. Retroceso en la Responsabilidad Civil por Actos Ilícitos" in Estudios sobre la Responsabilidad por Daños, v1, Rubinzal Culzoni, Santa Fe, 1980, p.115). Within this last approach, some think that the assumption of risks is an exemption located in the causality orbit: that it is verified when the behaviour of the victim, at assuming a risk, determines its contribution, total or partial- to the production of the damage. (Marchand, S., Parellada ,C. and Burgos, D. "La asunción del Riesgo: Causa Eximente o Causal de Justificación?", La Ley, 2009-E, 1065; Bustamante Alsina, J.; Teoría General de la Responsabilidad Civil, cit.,p. 141 et seq; Pizarro, D. "Causalidad Adecuada y Factores Extraños", in Derecho de Daños, collective work directed by Trigo Represas and R. Stiglitz, "Homenaje a Mosset Iturraspe", cit.; Prevot, J.M. and Mayo, J. ,cit.; Marcellino, L., "Algunas Ideas sobre la Teoría de la Aceptación o Asunción del Riesgo", LLC , March 2010, p.123). As it generally happens, when judging the influence of the victim in the causation of injury, some authors demand that the victim´s behavior (an action, omission or group of facts) be also guilty, whereas the more modern positions focus on the causal influence of the victim´s actions regardless of their classification in terms of guilt. Cfr., "Daños en el Deporte. Su tratamiento en el marco de la teoría general de la responsabilidad civil y la eficacia de los instrumentos probatorios" in RCyS, 2013 II, p.4

[48] Art 1719 states: "Assumption of risks. The voluntary exposure by the victim to a situation of danger neither justifies the harmful event, nor exempts from liability unless that, due to the circumstances of the case, it would qualify as an act of the victim that either totally or partially interrupts the causal link".

[49] In football: "Gil Ezequiel Osvaldo vs Sociedad de Fomento Deportiva y Cultural Siglo XX y otro s/ Daños y Perjuicios", JUBA SUM B2002222; "Rodríguez Carlos c/ Moriset, Rosendo s/ Daños y Perjuicios" CCCom de Quilmes Sala I, 15/12/2008, JUBA SUM B 2904190. In car Racing: "Angelakis, Nicolás G vs Tamagno, Sergio C s/ Daños y Perjuicios" JUBA SUM B 2550490; RC y S 2005-V-37, with a note by Barbieri Pablo; L.L.B.A. 2005 (February), 83. In cycling: "Fernández Julia Irene y otros c/ Agrupación Ciclista Azuleñay otros s/ Daños y Perjuicios" CCCom de Azul Sala II, 27/2/2009,LLBA 2009-305; La Ley Online: AR/JUR/479/2009. In horseracing: "D.Y.B. c/Fisco de la provincia de Buenos Aires/Daños y

In practice, in most cases there is no agreement of irresponsibility, but, as the assumption of risks may be unilateral, what generally happens is that, without any statement in this respect, there is a tacit acceptance of the risk derived from the sport activity and the actions of each player[50]. Anyway, when the damages are suffered in one´s own person or physical integrity, the acceptance of risks is not apt to make the wrongfulness of the tortfeasor´s action disappear, since people lack power of disposition over such items that are of public interest and out of Commerce[51].

Some authors believe that the acceptance of risk as a factor that allows to attribute the injury to the victim, only takes place when somebody assumes an abnormal or extraordinary risk, and such conduct is suitable for damage[52]. And in football, the players are not exposed to an abnormal or extraordinary risk[53], thus the liability of the

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Perjuicios"; C 2da Com de la Plata, Sala III, 18/9/2008, JUBA SUM B355008. In hockey: "G.J.M. c/Pcia de Buenos Aires y otro s/Daños y Perjuicios" CCCom de mar del Plata, Sala II, 8/8/2009, LLBA, 2010,504, with a note by Fernández Puente, M. Estela, L.L. Online: AR/JUR/72054/2009. According to Prevot, in rugby, the assumption of risks is irrelevant because the risks of the activity are absorbed by the legality of it and not by the victim´s consent, but points out that the injuries turn into illegal when the tortfeasor incurs either in serious culpable conduct or intent to harm as it happens with the culpa with representation or prevision and conscious guilt in the sense that the normal limits of the rules of the activity have been overcome to cause damage out of the normal context as long as it wasn´t a consequence of the victim´s predisposition or a fortuitous event. Cfr "Daños ocasionados en la práctica de rugby" Revista del Derecho de Daños 2010{2. Daño Deportivo, Rubinzal Culzoni Editores, Buenos Aires, Santa Fe, p. 104

[50] Cfr Tale ob. Cit. p.231, who adds that it does neither include the risks derived from the conditions of the stadium or premises where the activity takes place, nor the concentration of the public, that is, it does not exempt the organizer of the sports competition. Mosset Iturraspe in reference to the tacit irresponsibility clauses, states: "Apart from the resource being fictitious and forced, it is well known that the irresponsibility pacts or clauses are, as a rule, incompatible with the responsibility for illicit acts" ("La aceptación de los riesgos" in Estudios sobre la Responsabilidad por Daños, V. 1. Ed. Rubinzal Culzoni, Sta Fe, p.119), Mayo adds "Apart from pointing out that in most cases the tortfeasor is a third party stranger to the victim, so it is not clear how a previous agreement of that kind could have generated between them". Cfr "La denominada aceptación de los riesgos en un fallo de la sala penal del Superior Tribunal de Justicia de Córdoba", LLC, 2005 (June)489, p.1

[51] Among others, Trigo Represas and López Mesa…, ob. Cit., p.810.

[52] Cfr Zavala de González, M., resarcimiento de Daños, v 4, Presupuestos y Funciones del Derecho de Daños, Hammurabi, Buenos Aires, 1999, p.287.

[53] Unlike the case of sports where the participant accepts to play being aware that necessarily, with a very high probability, he is to suffer some damages that are connatural to the sport due to the physical contact it supposes according to the rules of the game or other circumstance of the practice´s own alea .This is seen with crystal clarity in box, since it cannot be deemed that the blow that the victim receives from his opponent is an illicit action, or that the consequences of such blow constitute unfair damage that has not been assumed by the victim. In those cases the situation is equivalent to the damnified´s consent, even if the damage is not

protagonists of the game should be assessed according to the performance of each player in the damaging event[54].

BY WAY OF CONCLUSION

The Camara Nacional Civil, sala D, in the "Cottroneo" case has set a doctrinal orientation in the subject of injuries between football players, that has been kept up throughout the years in each of the most transcendent cases and has been confirmed in the last of them, "Pizzo c/ Camoranesi". The central grounds can be summarized in the following words: "When the infractions do not exceed the normal, they are covered by the arising legality of state acquiescence (…), under it the obligation to respond for sport injuries arises in the following cases: a) when there is an excessive action that grossly and openly violates the rules and regulations of the game. b) when there is intent to harm, be it in the middle of the game or when it is stopped"[55].

As it has been mentioned, those grounds were followed by Sala A of Cámara Nacional Civil in the sentence "Berman Gerardo c. Goldin Jorge N" on April 6, 1995; were shared by Cámara Civil y Comercial de Azul Sala 1in "Telechea Fernando G. c. Beldrio, Carlos D y otros", have also supported the decision of the Suprema Corte de la Provincia de Buenos Aires in "Gil, Exequiel O. y otro c. Sociedad de Fomento Deportivo y Cultural Siglo XX y otro. Daños y Perjuicios" and finally by Cámara Civil y Comercial de Mar del Plata "Pizzo c. Camoranesi"[56].

Out of the five judicial precedents quoted, in more than half ("Berman", "Telechea" and "Pizzo") the serious injuries suffered by the victims were produced by a

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actual, because the participation in the game cannot be conceived without consenting in advance the damage that is a consequence of the licit blow under the rules of the game as long as there is not dolo, negligence or abuse of rights.

[54] Cfr Orgaz,A.,La Culpa…ob. Cit., p. 242.

[55] From the vote of Dr. Bueres.

[56] The minority vote of Judge Menendez in the "Pizzo c. Camoranesi" case may have been surprising: He proposed to reject the claim on the grounds that the action by which the defendant injured Pizzo "was one of the frequent or habitual actions in football matches". According to the judge" the fact that the injury suffered by the plaintiff was caused by an excessive, brutal or imprudent action of the defendant was not proved. It was rather a common action with the velocity and momentum typical of football. It is remarkable for the magistrate not to deem "excessive, brutal or imprudent" the maneuver of going to dispute the possession of the ball to a rival, hitting the knee of the opponent with the sole of the gym shoe ("Plancha"), with great violence , when there was no material possibility, the ball was too far from the defendant , to otherwise take possession of the ball; when it is well known that the grave injuries originated in this activity have, as a common cause an action in particular , the "plancha".

"plancha" (a football player hitting an opponent with the sole of the shoe) that reached its objective. By the way the specific rules and regulations of the activity sanction the conduct at issue (with the longest suspensions) it can be inferred that due to the high degree of danger of the action, the purpose is to make the players desist from employing that resource.[57] If the football players who resorted to "plancha" were punished with the penalty of expulsion[58], perhaps the above mentioned action would not be so frequent in the practice of football, but anyway, that should not be casting in determining the duty to indemnify the victim[59].

Having analized both the theory of the "state authorization" and the thesis of the "assumption or acceptance of a risk", it can be remarked that it is not necessary to resort to legal constructions created by either doctrine or jurisprudence to decide on the duty to indemnify of a football player who injuries another one at a critical moment of the game. Football is a legal activity in which damages are habitual contingencies of the activity that, in principle, have no juridical relevance (except for the sport sanctions), because the characteristic risks of the activity, are absorbed by the legality of the latter[60].

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[57] Since 1886,the maintenance or modification of the rules of football is in the hands of one institution: The International Football Association Board composed by eight members, four representatives of the national federations of England, Scotland , North Ireland and Wales and four from the International Federation of Associated Football. In practice this organism is controlled by FIFA, since both the President and Secretary of IFAB are chosen among the representatives of the former and at the moment of voting the amendments of the Rules of the Game have double vote. The Rules of football amount to 17. In Rule 12, fouls and misconduct, the "plancha" has not been typified as such, but the "grave brisk game" for the cases where the football player employs "excessive force or brutality against his rival at the moment of disputing the ball of the game" is mentioned. Besides, the association members of FIFA have Discipline Rules and Regulations that should set the sanctions on each case, based on the decisions taken by the umpire in the field and his report. In Argentina it is called Reglamento de Transgresiones y Penas and under the heading "Sanction to a player for an action violent and prohibited by the Rules of the Game., art 200/8 punishes with suspension from 3 to 15 matches the player who performs a 'plancha' that reaches its target, no matter whether the ball is being disputed between the two sportsmen". And art 201/5 sets forth a suspension of two to twelve matches to the player who attempts a plancha that does not reach its target whether or not the ball is being disputed between both players.

[58] As it happened, for instance, with the introduction in the Rules of the Game of Football, of the so called "law of the last resource" that punishes with expulsion the football player that commits a fault to prevent the conversion of a goal.

[59] It would only be an important element to be taken into account by the judge.

[60] The legal activity even if it is authorized, turns into ilegal when it causes damage by violating the general duty of no to harm another one, implicit in art 19 of the National Constitution. Cfr Márquez, J. F. and Calderón, M. R., ob. cit., p.113.

Thus, the injuries caused to the opponent become illicit when the tortfeasor acted either with dolus or "intent to harm" or grave negligence as it happens with culpa with representation or prevision and conscious culpa[61] in the sense that the normal limits of the rules of the activity have been overcome to cause damage out of the normal context[62], as long as it had not been the outcome of the victim´s predisposition or force majeur. Therefore, the legitimating fact is given by the Law and not by the state authorization or the so called acceptance of the risk[63] and it is the law itself that sets the limit that divides the lawful from the unlawful.

[61] Mayo sustains that "Even if the notion of culpa comprises disimilar hypothesis whose common feature is the foreseeability, it is justified, to differentiate it from dolus, to carry out the following distinction: a)Unconscious culpa/ negligence: the agent, having the obligation to foresee it and being able to do it, has not foreseen the possible illegal result; b) Culpa with representation or foresight: the author foresees that the unwanted result will not happen because he trusts his skill no to let it happen, he does not act at random; c) Conscious culpa: the agent foresaw the result and only hoped that the illegal result would not happen at random". Cfr Mayo, J.in Belluscio Zannoni, Código Civil Comentado, Astrea,v.2., p.629, n=29.

[62] As regards what should be deemed "normal context", Eduardo Galeano sustains: "There currently exists a competitive recrudescence among the rivals that is expressed in very frequent physical contacts, more rigorous marking/ following up and more narrowing spaces for personal display. A quicker game with high athletic preparation has been incorporated, which leads to confront technical skill with physical rigour, which gradually results in a more frequent contact game with an increase of very quick moves, not exempt from violence, this is the current natural and ordinary course of things" (art 901CC). This is not the ideal "fair play" but it is the reality where competitive football has lead us, and both Law and its doctrinarian construction have to adapt to that reality and not the other way round. It is a gradual return to the harshness of the games in the Ancient Times (…) in which the assumption of risk was so stressed as to become the tacit consent of the injured sportsman Cfr. class given in Diplomatura de Derecho del Deporte of Universidad Austral, Argentina,2013.

[63] As it has been said from the Ancient Times, the consent is contrary to a legal prohibition or the good customs or ineffectual for other reasons, when the legal right at issue, for instance, human life, is substracted from the norm; to kill someone who consents is also illicit; the consent to the injury on one´s own body is also immoral except for insignificant injuries, unless they have been inflicted for a rational purpose, as a medical action according to Law, Medical Science and the Codes of Ethics; that is what Enneccerus- Lehman said (Derecho de Obligaciones. Trad. Cast., Bosch, v2, 2 part, p. 1041) Cfr Mayo, ob. cit., "La denominada aceptación…" p.3.