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SURPRISINGLY LARGE COMPENSATION LIABILITY FOR THE "FOOTBALL FOOL"

On 10 January 2012, the Eastern High Court decided in the appeal case regarding the pitch runner from the international match between Denmark and Sweden in June 2007, also known as the "Football Fool" (hereinafter "the Spectator"). The Spectator, who entered the pitch during the European championships qualification match between Denmark and Sweden in PARKEN in Copenhagen, was by the High Court found to be liable to pay damages amounting to DKK 1.87 million, corresponding to the loss of The Danish Football Association ("DBU") following the subsequent sanctions from the European Football Association ("UEFA"). The decision is the first of its kind in Denmark.

The case in brief

During the critical European championships qualification match between Denmark and Sweden on 2 June 2007, the Spectator entered the pitch in the 89th minute, supposedly to carry out a psychical attack against the referee, due to him having awarded a Swedish penalty kick. Even though the Danish players prevented the attack of the Spectator, the judge decided to stop the match and ruled Denmark as loser with 0-3.

Subsequently, DBU was fined EUR 30,222 by UEFA and was deprived of the right to play the following two home matches against Liechtenstein and Spain in PARKEN. Additionally, two home matches were to be played at another stadium than PARKEN. Subsequently, DBU decided that the remaining qualification matches were to be played on the smaller NRGi Park in Aarhus, which has approximately half as many seats. During the case, DBU had presented an accountancy statement regarding the loss and had on this basis claimed damages amounting to DKK 2.2 million.

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The legal basis

Before the liability case, the Spectator was, in a criminal case, fined a suspended sentence of 20 days of imprisonment for attempt of violence and illegal encroachment, cf. Section 244(1), cf. Section 21 and 264(1 no. 1) of the Danish Criminal Code.

Hereby, the adequate basis of liability for the liability case was established.

Crucial for the assessment of the claim for damages was therefore whether the remaining requirements for liability were fulfilled.

Referring to practice, liability may only be incurred if causality (causal relation) and foreseeability exist between the damaging act and the damage. Additionally, it must be documented that the damaged part has suffered an economic loss.

For a loss to be foreseeable, it must to be predictable for the tortfeasor. When assessing this, the case usually rests upon what a rational person would predict that the consequence of the act might be.

When taking the far-reaching consequences of the damaging act in this case into consideration, it was mainly the question of foreseeability which was considered in the case. The requirement of causality was on the other hand clearly fulfilled.

The decision of the High Court

Regarding the question of foreseeability, the Eastern High Court assessed that it must have been predictable for the Spectator that DBU in consequence of his act could suffer the established loss, i.e. both that they would be fined by UEFA and that they would be deprived of the right of home ground, which would lead to an operating loss. Hereby, the conditions for liability were fulfilled.

The City Court had ruled that even though DBU had intensified the security measures in connection with the match, the security on the stadium during the match was insufficient due to the fact that the Spectator had been able to enter the pitch. As a consequence hereof, the City Court decided that there was a contributory fault on the part of DBU.

The High Court did not have the same opinion. The High Court found that DBU had not shown any fault in connection with the sequence of events, which might justify the com-

pensation being reduced. The regular adjustment rule in section 24(1) of the Danish Liability Act could also not be used.

Subsequently, the Eastern High Court ruled that the Spectator was liable for damages for the loss of DBU which could be estimated to DKK 1,869,269. The difference between the claimed damages and the final compensation was solely due to a disagreement regarding the expected number of spectators for the match against Liechtenstein.

Consequences of the decision

In our opinion, the decision is strict but fair.

The act of the Spectator constituted a violation against the integrity of Danish football, ruined the almost spotless reputation of Danish football in the international football world, had sporting consequences and imposed significant economic loss for various companies, among these DBU and PARKEN Sport & Entertainment A/S who had a contract on hiring out PARKEN to DBU for the home matches.

Conversely, the damages were so severe and of such an unusual character that it is at the border of what one could have foreseen in connection with the damaging act. From the perspective of the Spectator, the damage was not been incurred by the one who the attack was aimed at (the referee), but by the diverted loss by the organiser realised in a fine and a following loss of revenue.

Through many years, the football world has experienced a rising problem with pitch runners. Up until now, pitch running in Denmark has only been sanctioned against by the affected club, for example by issuing a suspension or a private charge for violation of the rules of order.

However, with the decision, the Eastern High Court has made it clear that pitch running may result in severe economic consequences. The view may now be taken that it can be predicted that pitch running and other disturbing actions, which may lead to a sporting event being interrupted, may impose significant economic losses on the organiser which can subsequently be imposed on the pitch runner.

Therefore, the decision is an important tool in the future fight against pitch running and other spectator disturbances.

If you have any questions or require additional information on the decision or sports law in general, please contact attorney Pernille Nørkær (pno@mwblaw.dk) or junior associate Mathias Wilhelm Warnøe Nielsen (mvn@mwblaw.dk).

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