Civil Liability Resulting from Sport Referees Misjudgment

Seyyed Hassan Hosseini-Moghaddam 1 *

1 Assistant Professor, Department of Law, Shomal University, Amol, Iran

ABSTRACT:

There is no doubt that sport is helping people to have health and happiness. However, this has undergone several changes over time since but there was professional the sports mix with championship and all there phenomena. Nowadays, sport is considered as a profession and many companies and plus can see it as a business. Moreover, governments mix the scores with politics. Referees are not guaranteeing discipline in sport fields. The decisions referees make have some consequences including civil responsibilities. So, the referees are expected to make up for the loss caused by their decisions. From this point of view the responsibilities of the referrals should be investigated to clarify the limits of their responsibilities and the extent to which they have to make up for the loss. If these limitations are not clarified the maximum reaction the referee may receive would not extend notifications of unfair decisions which may not have any legal consequences for him. The may not be responsible to the loss caused by his decisions regarding the breakdown of club properties or viewers of the match. It should be noted that the referee alone is not responsible for making up the loss and should make up for that as one of the casual elements according to the civil law and Islamic punishment rule acted in 2013.

KEY WORDS sport referee, civil liability, harmful action, compensation
INTRODUCTION

The main responsibility of the referees in sport matches is to hold the discipline and safety of the match. His position in the field is similar to a judge in a court of law. However, there is a slight difference. The referees are not selected based on the agreement of the parties included in the case, but by the administrative officials. They are expected to judge fairly and put the rules into action. Some experts consider such a judgment more exciting and challenging than the judgment in court of law [1] although sport is thought mainly responsible to provide people with health and happiness, it is now viewed as a huge business. It is estimated that it holds 3-6 percent of the whole world trade financial transactions [2]. So, it is expected that the results of the matches entail economic consequences rather than strengthen the bond between two nations. The results of the matches are affected by referees’ decisions. FIFA considers referee to be a person who puts regulations in action. But, some experts believe that a referee is similar to a judge resolving tensions and is responsible for managing all the elements related to holding a safe and fair match [3]. This implies that they have to make sound decisions according to the law in order to avoid any consequences that may affect the players, viewers or other parties.

In case a referee makes an awry decision, he may face a legal, disciplinary or criminal consequence. This is because a crime may occur due to his decision and a civil liability may arise. This paper is not interested in criminal aspect of such decision or highlighting the punitive respect of referees or sportsmen actions. This paper is focusing on the issue of the civil consequences of referee’s decisions and explores if the referee is responsible for the loss occurred as a result of his decision. There is a need to ignore the superficial interpretation of the rules related to referees and conclude that they are responsible for compensating the loss. So, respecting the referee’s decision and keeping it unchanged may not be unlimited. Considering the common belief, a referee’s mistake does not entail any responsibility for him. Moreover, if we accept that his mistake has to entail a responsibility regarding compensating the loss, he may not be the only source of compensation. To shed light on the extent of referee’s liability, the limitations of his responsibility is determined.

THE BASIS FOR REFEREES’ CIVIL LIABILITY

Why a referee should be responsible for compensation is related to his responsibility as a judge. The experts on civil law in Iran usually rely on fault theory to justify the issue. That is, a person is responsible to compensate the loss except for the case he is identified as faulty. However, beside this one can rely on the situational factors and consider the waste of resources as the reason for compensating the loss [4, 5]. It seems logical to consider the referee as liable in compensating the loss since according to civil law principles, if one has not done any loss, one will not be liable for that. For example, if a boxer do something which is forbidden in boxing, say, hits his opponent on the face, and the referee pauses the match for recovery of the injured boxer, any loss occurring to the injured boxer, even death, will be independent from the referee’s civil liability since he has done according to the protocols. However, in the same example if the referee does not pause the match, he will be liable for any possible loss. Hence, it seems important to consider the concept of referee’s sport fault.

THE CONCEPT OF REFEREE’S SPORT FAULT

It is important to identify the faulty person since if he is identifies, the consequences will be his. This forms the basis for civil liability for compensating a fault or loss. Principle 953 of Iran’s civil law introduces taking an action to the extreme or offending a person as examples of fault. Principle 952 considers taking action to the extreme as not doing something according to an agreement to save one’s property. Principle 951 defines offending as offending a person’s permitted limits or common boundaries regarding a person’s property. Accordingly in case there is found to be offending or taking extreme action, a fault is occurred [4]. Nowadays, the experts believe that the concept of fault is considered from expertise perspective to identify the harmful factor from inner psychological perspective. According to some French experts, the normal reaction of a normal person in that given situation is considered as the basis of judgment [5].

Regarding the referees, it should be noted that their fault is professional and what a normal referee does in the given situation has to be the basis for judgment. So, the action of a faulty referee has to be compared with that of all other normal ones in the given situation. The term common has been emphasized in principles 951 and 952 of Iran’s civil law and has to be as the basic criterion for judgment. Moreover, sport laws are not passed in a countries parliament and are held by international or national federations. Hence, these laws are interpreted as the common reference of judgment. For example, the rules passed by FIFA or FILA for soccer or wrestling respectively are the frame of reference for holding a safe fair match and the referee is responsible for monitoring the sound execution of these rules. If they are taken to extreme or offended the referee will be faulty.

ADAPTING REFEREES POWER WITH THE LAW RELATED TO HIS FAULT

It is believed that players should not object to the referees’ decisions, otherwise they may face the consequences. For example, according to the principle 5 of the FIFA laws, each match has one referee who has the ultimate power and makes the final decisions regarding the match. Moreover, he is not responsible in the following cases: player's injuries, officials or viewers, and any loss or damage to the properties of federation, club, committee or associations that may occur as the result of his decisions.

According to the rules acted by disciplinary committee of Football Federation of Iran in 2010, the principle 6 emphasized that no party can
complain about the referee's decision. However, in case of offending or injuring the players or the team officials, bribery and so on, the committee will be responsible for judging the faults.

Moreover, objection to referee's verdict in action or in words is considered as an example of fault and the player who does that has to bear the consequences. However, it should not be assumed that if a referee has a verdict, it is not possible to object to it in any condition. The purpose of such a rule is that to respect the referees' verdicts in the match field and keep the discipline in the playground. In case a player objects to a referee's verdict and the spectators together with the officials on the bench support the player in terms of offending the referee, it would be unimaginable what would happen in a stadium where thousands of angry people exist in an atmosphere full of enthusiasm and excitement. Accordingly, the players and club officials are not permitted to object to the verdict of the referee right at the time of the match.

Although the players and officials are not permitted to object to the referee at the moment, there are other possible ways of complaining such as disciplinary committee or international judiciary court (CAC) [6]. In other words, if the referee is not responsible for the loss occurred to the club or the public properties or even to the players, he will be sentenced to compensation of loss if he does not judge according to specific rules determined by the federation. In addition, if the referee has a verdict based on the rules and regulations declared by the federation, any loss occurs to the club properties, officials, players and even the public will not be related to him.

For example, if a referee of a football match punishes a team by a free kick which is scored a goal leading to a team's victory, the opponent cannot object to the verdict and claim for the loss made to the club because of the failure resulted from that goal. In the same way, if in a match of a martial art a player has a fault leading to a point for his opponent and loses the match due to that specific point, he cannot object to the verdict which led to his losing the match and the big reward or the medal.

In such cases, the power of the referee is kept safe and respected and his verdict is the ultimate decision made in the match. The players or the officials are not permitted to object to the verdict in such cases and as reflected in the related literature, the player would be considered faulty in such cases due to violating the common restrictions held by the match regulations [9]. However, the question remains that if a referee ignores the execution of the rules and does not let an injured player to be cured at the match or does anything beyond the common framework of the match regulations, can the verdict of the referee be pursued in the court of law? The answer is certainly positive and the referee has to be trialed in the court of law.

**CRITERIA OF IDENTIFICATION OF REFEREES' FAULTS**

The criterion for identifying the referee's fault is actually his behavior which is against the common normal reaction of a normal person in a similar situation. However, the question is how this normal behavior is accessible. This is accessible according to the passed rules by international or national federations and committees. The awry behaviors are distinguished and defined according to these rules [7]. if the referee breaks the rules and regulations announced by the international federation or national committees or any related reference, it can be claimed that an instance of uncommon behavior has occurred and so the referee as liable for any loss entailing his verdict since his decision may be joined to other elements of liability in civil law such as causal relationship and the occurrence of loss. A second glance at the principle 5 of FIFA rules show that the referee is not liable as far as the decisions are made according to the rules held by international or national federations or the committees or associations responsible for holding the league or match. Moreover, according to the rules held by Iran Football Federation, principle 6, the manner in which a referee judges may not be objected to. However, accordingly, any violation of the rules in terms of the use of rude offensive words, bribery, injuring the player or any official of the clubs, as well as any instance of doing any uncommon behavior in terms of violating the framework of the rules and regulations can be objected in the disciplinary committee or CAC. In addition, the civil liability of the decisions can be considered in any proper court of law. This means that, any uncommon behavior of the referee can be traced in court of civil law if it has led to loss to a person or an organization. However, not all behaviors of the referee can be considered as instances of uncommon behavior and a compensation is claimed. In the following section the instances in which a referee is not liable in terms of the civil law is discussed.

**ILLIABILITY OF REFEREES**

Considering the discussion above, it may be concluded that any uncommon decision made by a referee may be considered as an instance of faulty decision which can be traced in a court of civil law. However, in reality, not all such decisions are considered faulty. It is believed that the referee's decision is considered an ultimate verdict and it will not be changeable. It, however, should be noted that referees awry decisions may be partly due to a number accidental reasons. Scientific research has also proved this to be true. For example, it was shown that when football referees are moving from right to left and with the right hand identify more instances of faults while when moving from left to right with the left hand, they identify fewer instances of fault [8]. A referee may make a wrong decision due to faulty sight, improper position in the sport field, etc. [9]. Standing in a suitable place at the right time is essential in identifying the faulty behaviors of the players and hence making a right decision. But this is not always possible due to the fact that the players are moving so fast in team sports or in individual sports some sportsmen have some
unpredicted movements that do not let the referee to have a right angle to the scene and hence make a proper decision. A good example of such a phenomenon is the goal scored by Diego Maradona in a match between Argentina and England in 1986 World Cup. Many experts believe that he scored the goal by a hand strike rather than a head strike as the referee thought at the moment [10].

Another issue to be considered is the matter of interpretation. Sometimes the same scene is interpreted differently by several referees or experts viewing the same scene from the same angle. Sometimes the players are pretending to do something or to be a victim of a fault but in reality they are trying to deceive the referee.

Moreover, improper function of devices [10]. Nowadays, it is common to use mechanical and electronic devices to help the referees have a better view of the match. However, these facilities may malfunction or have some errors. Electric boards may have some fluctuations regarding their function under different conditions or the electronic devices such as beepers, hands-free, etc. may not function on time.

Also the crowded stadiums [11] may also be another reason. It is expected that the stadiums are full of spectators making a lot of noise while encouraging or supporting the favorite team. it may hinder the proper function of referee due to the fact that he may not hear a player saying some offensive words or may not hear a player hitting or striking the opponent unfairly, or even may not hear the player who is constantly complaining about an uncommon unfair behavior of another player in the match or sitting on the bench. Such instances are the ones in which a referee may not be identified faulty.

THE INSTANCES OF REFEREES LIABILITY

The criterion for identifying the fault of the referee is the uncommon behavior he does while judging the match events. In addition, the uncommon behavior is defined as the not executing the rules and regulations of a given sport event or not putting the rules into action on time. In other words, referees have to make right decisions the lack of which will end up in loss to the player or the team. Sometimes, the wrong decision may have such a consequence. For example, in most sports there a number of forbidden actions. If a sportsman is going to do such an action or is doing this, a referee has to separate the player from his opponent or stop the match. If the referee does not make such a decision in a match, he will be faulty beside the aggressive player. For example, in a boxing match, in case a boxer sits on a knocked down fighter and hits him on the head, the referee has to pause the match and stop the winning boxer. Similarly, in wrestling each technique has to be executed following appropriate defined movements and directions. In case a wrestler is executing a technique in a wrong way, for instance with extra pressure on his opponent's neck, the referee has to instantly stop the faulty wrestler.

Generally, the referee has to stop the match in case there is a faulty behavior and prevent the players from being injured. Moreover, a referee may make a wrong decision which leads to loss to a sportsman. provided that such a decision entail a loss to a sportsman or the equipment he carries, offense and assault to the player or the team, or an injury to his organ, the faulty referee is obliged to make up for the loss.

In some cases, a referee may ignore a fault of a player or a team or declare a non-faulty action a misbehavior which leads to a point for the opponent since he was bribed to do so or he may later gain a financial profit based on that. For example, he may punish a football team with a penalty kick while there was no instance of fault occurred in reality just because he was bribed by the opponent team. Such an action may make the fan of the losing team angry and aggressive so that they attack the other team’s fan or destroy and damage the public property. Although the destruction and waste is attributed to the spectators of the match, the referee is thought to be responsible for the loss occurred by the actions of the spectators.

Beside the wrong decision, violation of the rules and regulations which were considered for the referees may lead to loss to the sportsmen. Such a causal relation may lead the referee to be liable to compensation of the loss. According to principle 1 of the Iran's civil law, if a person makes a loss to a person's health, life, property, freedom or fame on purpose, and cause a financial or spiritual loss, he has to compensate the loss made by his action. However, it has to be said that, estimation of such a loss is not easy task. For example, it a referees assignment to test the water in swimming, or the mat in wrestling or the bars in football to be made according to the standards defined by the rules of the federations. Moreover, a referee has to control the sportsmen equipment to see if they are the standard ones and safe enough to be used in the match. The referee is responsible to prevent the player from taking dangerous things such as ring, necklace, earrings or any additional unnecessary things to the match. This is because he aims at preventing the players from hurting themselves or any of their opponents intentionally or by accident. The referee has to check the sportsmen before the match starts [12].

Moreover, referee has to consider the weather condition in which the match is going to be held. If there is a risk of hot or cold weather or icy field which may threaten the safety of the sportsmen, he has to either stop or forbid the match. Such conditions may either lead to a player's injury for example in a soccer match or facilitate it.

There a many examples of such regulations under principle 5 of FIFA rules. An important instance of such regulations is the necessity of curing an injured soccer player. It is expected that a sportsman is injured in individual matches such as boxing, wrestling, judo, karate, etc. as well as team sports such as football and volleyball. The referees are expected to let the team officials cure the sportman who is injured and is bleeding. Otherwise, they would be responsible for the loss since
he has not done what he was assigned to do and has to compensate for the loss. In accordance with it, some experts believe that referees are not immune to objection and can be claimed to compensate for the loss made for financial or health loss they had made.

REALM OF REFEREES’ LIABILITY

In some cases, a referee may be considered to be liable with regard to combination of the elements came up in a given situation. The question is if the referee has to compensate the whole loss. In answering this question, it has to be noted that if the referee is the cause of loss alone or he is not directly related to the loss and has been along with the other causes. If the whole loss is attributed to the referee, he has to compensate alone. However, this is a rare case since his position is mostly so that he may not be the only direct cause of loss. Accordingly, principle 328, if a referee is the cause of a waste and is found to be directly related to the destroyed case, he has to compensate that by himself.

This principle obliges that in case a person wastes one's property on purpose or by accident, he has to compensate for the same property or pay for that. Accordingly, a referee causes a loss by his lack of proper decision, not making a sound decision on time, not executing the rules and regulations or not executing the assigned roles. In such cases, he should not be sentenced as the only cause of loss and should not be claimed to compensate the loss by himself. Legally speaking, this action may be attributed to him and according to principle 331 of civil law in Iran, it should be concluded that if a person causes a waste of property, he should offer the same property or pay for that and if he causes a deficiency in a property, he has to pay for the deficiency. Since a referee is one of the causal elements in such a case, it is not fair to ignore the causal role of the other engaged elements and sentence the referee to compensate for the total loss.

For example, if a boxer or wrestler has not executed a technique properly and has caused an injury in his opponent, he has to be considered as the direct cause or loss. In case the referee has not paused the match and has not declared the aggressive sportsman faulty, he has to be sentenced as partially faulty for the loss and to compensate for it.

In addition to abovementioned principles, principle 14 of civil liability law acted in 1960 in Iran also supports such cases. It claims that if several people cause a loss together, has to compensate for that together. Regarding the extent of liability, each party’s share is determined independently based on the extent of interference by the court of law. In addition, principle 506 of Islamic punitive law acted in 2013, cause of crime, an instance of which is a referee’s action, is defined as “if a person wastes or injures another without being directly engaged in the crime … person” – this includes the attribution made to the referee. This principle is applicable to such cases because the referee does not hurt a sportsman directly. His fault is caused by a number of indirect reasons such as not controlling the equipment; for example, a boxer puts a metal peace in his glove and hurts the opponent fighter. In such a case, the boxer is faulty; however, the referee's lack of controlling the equipment has paved the way for such a loss. principle 526 of the punitive law in Iran states that if two or several elements are causing a crime, some as causes and some as joined action, the one element who is attributed as the cause has to compensate for the loss and if the crime is attributed to all the elements of cause, all of them are equally liable to compensate for it, unless the effects of their actions are different. In such a case every party is liable according to his share of action. Accordingly, the referee is not the direct cause of the loss and is considered to be one of the parties engaged. So, his share has to be determined by the court of law according to the share attributed to his action; that is, the effect of his behavior or decision. He is responsible for the compensation of loss accordingly. Experts name such a case causal interference.

CONCLUSION

According to the rules held for sport matches, it seems that the referees are not liable for the decisions they make. However, they are expected to be on the safe side when making decisions. Accordingly, they are faulty when they do something uncommon; that is, something that is not done by a normal referee in a given situation. If so, they have to face the consequences according to the principles 951 and 952 of Iran's civil law. So, if the referees act according to the passed rules, they do not face any consequences, if they do not observe the rules of sport matches held for the given sport event such as monitoring the sport faults done by the players, pausing the game for a player's recovery, checking sport utilities to see if they are standard or according to the rules of the match, etc., they are thought to committed uncommon behavior in comparison to normal referees and are thought to have done a fault beside the player's fault in the match. Hence, the referee and the player are both are considered liable according to the principles of 1 and 14 of the Iran's civil law and principles 506 and 526 of the Iran's punitive law and have to compensate for the party suffered from the loss.
REFERENCES