

The ELSA Law Review

Volume – Issue 1 – 2018

Jakub Čája
Kerli Kalk
Constantina Markou

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1050 Brussels, Belgium

academicactivities@elsa.org

<https://elsa.org>

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Editor(s)-in-chief

Jakub Čája

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About ELSA

ELSA (The European Law Students' Association) is an international, independent, non-political, non-profit-making organisation run by and for students. It is comprised of students and recent graduates who are interested in academic and personal excellence in addition to their studies at their universities. ELSA has 44 Member and Observer Countries with more than 375 Local Groups and 54,000 students. It was founded in 1981 by 5 law students from Poland, Austria, West Germany and Hungary.

ELSA offers law students a perfect platform to develop their existing skills, acquire new skills and meet fellow students and legal professionals throughout Europe. Our aim is to encourage individuals to act for the good of society in order to realise our vision: "*A just world in which there is respect for human dignity and cultural diversity*". You can find more information on <http://www.elsa.org>.

About this Law Review

The ELSA Law Review is a student-edited and peer-reviewed law journal published by the European Law Students' Association (ELSA). The ELSA Law Review strives to create an open forum for legal analysis and discussion and it serves as an international platform through which engaged Law students and graduates and young legal professionals can showcase their legal research.

Additionally, the ELSA Law Review aims to provide an enthusiastic international readership with access to scholarly discussion of contemporary legal issues, exposure to which they may otherwise not have. The Editorial Board invites article submissions from current law students, recent law graduates, and young legal professionals. The ELSA Law Review was one of the first and major projects of ELSA in the past, having been established in 1989 and re-established by ELSA in 2015.

Prior volumes

ELSA L.R., 2015, No. 1.

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IS IT NECESSARY TO UTILISE THE CRIMINAL JUSTICE SYSTEM IN CASES OF VIOLENCE WITHIN SPORT AND TO WHAT EXTENT, IF ANY, SHOULD SPORT BE GOVERNED INTERNALLY?

Sophie Adams

The notion of sports law is a relatively new area of practice for lawyers and is already causing big debates as to whether the utilisation of the law within sport is entirely necessary and if so, to what extent the law should be involved. The biggest question raised by academics such as Edward Grayson and Simon Gardiner, is the use of criminal law within sport and whether sport's National Governing Bodies (NGB's) are well enough equipped to cope with seemingly criminal actions by athletes, to avoid the necessity of using the criminal justice system.

We must firstly consider the definition of sport. There is no precise legal definition of sport in English Law¹. The dictionary defines sport as “an activity involving physical exertion and skill in which an individual or team competes against another or others for entertainment”². A definition of sport is important for the sake of criminal liability. The athletes need to be fully aware of what they are consenting to in their chosen sport and the risks that may be involved. It would be far more difficult to create rules without a definition. It is important to understand whether athletes merely consent to the rules, or whether they have an acceptance of the culture of the sport, especially where that sport is a contact sport, as we are then able to determine if there has been a breach of the sporting rules, or even the law. As a general proposition it is undoubtedly true that there can be no assault unless the act charged as such be done without the consent of the person alleged to be assaulted, for want of consent is an essential element in every assault, and that which is done by consent is no assault at all³. This approach was approved much more recently in *Collins v Wilcock*⁴, wherein consent was held to be a defence to a battery. This is an idea supported by Lord Woolf in *R v Barnes*⁵. The Defendant in this case had inflicted a serious leg injury upon the victim whilst attempting to make a sliding tackle during an amateur football match. The Defendant accepted that the tackle had been hard, but maintained that it had been fair, and that the injury caused had been purely accidental. He was convicted on one count of unlawfully and maliciously inflicting grievous bodily harm, contrary to Section 20 of the Offences Against the Person Act⁶. He appealed against the conviction. The appeal was allowed on the basis that firstly, criminal prosecutions should be reserved for situations where the conduct is sufficiently grave to be properly categorised as criminal. Civil remedies are often available and most sports have disciplinary procedures, so prosecutions will usually be unnecessary and undesirable. This is to protect the reputation of the sport and the

¹ S Gardiner, J O'Leary, R Welch, S Boyes and U Naidoo, *Sports Law* (4th edn, Routledge 2011) 11.

² Oxford Dictionary (10th edn) 727.

³ B Livings, “A different ball game - why the nature of consent in contact sports undermines a unitary approach” (2007) *J. Crim. L.* 2007, 71(6), 3.

⁴ *Collins v Wilcock* (1984) 1 WLR 1172.

⁵ *R v Barnes* (2004) EWCA Crim 3246.

⁶ Offences Against the Person Act 1861, s 20.