

SLOVENIA

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Tortious Liability of the Operator of a Sports Park for Mountain Biking (Judgment of the Supreme Court II Ips 284/2016, 30 August 2018)

- **Brief Summary of the Facts**
- In 2012, the plaintiff fell while cycling downhill in a cycle park and injured his backbone. He became a paraplegic.
- The plaintiff was riding the easiest route. The route followed by the plaintiff was 2.24 metres wide, marked with a reinforced bank and clearly separated from the surrounding grassed area. The plaintiff fell because he rode into a drainage ditch about four metres to the left of the track.
- The drainage ditch, which was one metre wide and eighty-eight centimetres deep, ran under the track and did not pose an obstacle for cyclists on the route.
- The bend that the plaintiff cut was not demanding but visible, the terrain was undemanding and moderately steep.

- **First instance court**
- Dismissed the plaintiff's claim for compensation
- The injury was due to the negligent conduct of the plaintiff because he left the track
- **Second instance court**
- Dismissed the plaintiff's claim for compensation
- The injury was due to the negligent conduct of the plaintiff because he left the track

▪ **Supreme Court**

- The Supreme Court partially upheld the plaintiff's revision and ruled that the plaintiff's substantive claim was well founded to a level of 50% and returned the case to the first instance court to decide on the amount of compensation and costs of the proceedings.
- The Supreme Court stressed that, although involvement in dangerous sports is voluntary, this does not mean that an injured party renounces a claim for compensation and that the unlawfulness of the organiser or operator is necessarily excluded. The organiser of sports activities may still be liable for damages, but only for harm caused by his negligence, not for harm caused by the risk inherent to the sport itself.

- The Supreme Court highlighted as crucial the question of whether, despite the fact that it was not a dangerous bend, the operator should have expected cyclists to cut the corner because of the apparently easy terrain.
- Further it was questioned whether the drainage channels should have been marked or at least whether the grass around them should have been mown regularly in order to make them visible.

- An **operator** of sports activities is obliged to ensure safety measures that fall within the scope of still reasonable expectations. The extent and intensity of safety measures to be undertaken by an operator depends on the extent of the threatened danger and harm, the likelihood of its occurrence, the possibilities and costs of avoiding the risk of harm, as well as the possibilities of an injured party himself to avoid harm.
- The operator knew that there were drainage ditches on the slope and, with relatively simple safety measures, could have significantly reduced the risk of injury to cyclists. The Supreme Court therefore considered that the operator of the park, in view of the danger of the sports activity, violated safety standards and acted negligently.

- The Supreme Court did not only reproach the operator of the cycle park of lack of care, but also **the plaintiff**.
- Despite the explicit prohibition in the rules of use of the sports park, the plaintiff left the track and cut the corner.
- He should also have been aware that natural terrain can hide many traps and significantly increase the likelihood of falling.
- In the view of the Supreme Court, the plaintiff contributed to 50% to the occurrence of his injury.

- ***Significance of the Judgment of the Supreme Court***
- Development of court practice from the point of view of a victim's contribution
- Delineation between strict and culpable tortious liability