

# CRIMINAL LAW AND CRIMINOLOGY ASPECTS OF VIOLENCE AT SPORTS EVENTS

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**Abstract:** Violence at sporting events is a serious social problem at the global level. The paper points to violence as an illegal behavior in today's modern civilized society, as well as to a specific form of violence based on the place and time of execution, to violence in sports. Sports halls and stadiums often become the scene of opposing sports clubs and fan groups, which leads to the progression and expansion of violence at sports events. Violence in sports then takes the form of criminality. The criminological aspect of the work refers to the etiological factors and causes that lead to the violent behavior of athletes and fans at sports events. The Criminal Code of the Republic of Serbia criminalizes violent behavior at a sports event or public gathering. This criminal act protects public order and peace, the safety of spectators (fans) and players. The paper contains an overview and analysis of criminal law decisions and provisions that regulate protection against violent behavior at sports events or public gatherings in the Republic of Serbia. In the paper, the author presented the state and trend of violent behavior at sports events or public gatherings in relation to reported, accused and convicted persons in the last five-year period. In accordance with the analyzed legal regulations and judicial practice, in the final deliberations, *de lege ferenda* proposals were given in order to prevent and suppress violence in sports and violent behavior at sports events and public gatherings.

**Keywords:** *violence, sports events, prevention and suppression, criminal law and criminological aspects.*

Field: Social Sciences

## 1. INTRODUCTORY CONSIDERATIONS

Violence implies illegal behavior in today's modern civilized society. Violence can be defined as a type of aggressive behavior in which a violent person hurts another person with the intention of harming them, hurting them, and causing them suffering and pain. Therefore, in order for it to be violence, it is necessary that there is a violent person (the perpetrator) on one side and a victim (the injured party) on the other side, whereby the violent person, with the intention of putting the victim under their control and supervision, hurts them, causes them fear, suffering and pain. As for the types of violence, it can be psychological, physical, verbal, direct, indirect, individual, group or mass. It is necessary to point out the distinction between the terms "violence" and "aggression", because aggressive behavior does not always lead to violence. If aggression can be controlled, it can, ultimately, be suppressed. However, in impulsive people, in many cases, aggression, which arises as a result of frustration, can lead to violence, therefore it can be concluded that by reducing and controlling aggressive behavior, violence would also be reduced. The concept of violence is very broad, especially considering that it can be used in any human activity as a part of everyday life, and it can also be an integral part of different types and forms of crime (Božić, Đukić, Jovanovski, 2020: 510). Violence today represents a very serious social problem, which, in order to reduce and largely suppress it, requires a comprehensive interdisciplinary approach. Given that violence is a comprehensive social phenomenon, both politically, culturally and ethically, by the nature of things, the study of violence is addressed by a number of scientific disciplines and fields, such as criminal law, misdemeanor law, criminology, psychology, sociology, philosophy, ethics and others. When we talk about violence in sports, we find various definitions in the literature from the fields of law, criminology, psychology, sociology, philosophy and other scientific disciplines. Violence and sport, in their interrelationship, refer to behaviors that lead to harmful events, behaviors that are contrary to legal regulations, behaviors that are unrelated to competitive goals, as well as behaviors that involve the use of physical force, which results in causing harm.

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## 2. VIOLENCE IN SPORTS

With the popularization and commercialization of sports in the 20th century, violence in sports and at sports events has become a serious social problem on a global level (Article 2, par. 1 Law on the Prevention of Violence and Misbehavior at Sports Events). Sports events mean sports competitions and sports events. Violence in sports represents a specific form of violence, precisely because of the specific location of the act of violence, the specific nature of its perpetrators, and the large (often massive) number of active and passive actors present. From just a few threats and insults, violence on sports fields and stands can escalate to serious physical injuries, group and mass fights between spectators and fans, fans of opposing clubs, but also between athletes and their coaches, all of which can lead to fatal consequences.

We would like to point out the distinction between the terms "spectator" and "fan." A spectator is a person present in the audience at a sports stand, hall, or other place where a sports match or other sporting event is taking place. In a large number of cases, it supports a sports club whose activities and results it follows. The fan is also part of the audience, he also supports and follows the activities and results of the sports club, however, he is a passionate fan, which he publicly shows with his behavior. His behavior in the audience is striking due to his clothing and the highlighting of fan symbols, so that his fan affiliation is clear to everyone.

In the literature, we find a large number of definitions related to sports violence. The term sports violence refers to any unlawful behavior that causes physical or psychological harm to another person, which is directly or indirectly related to sports events, performances or gatherings. Nowadays, sports and related events bring athletes, their coaches, and clubs extremely high profits. Supporters and fans of sports clubs in their country identify with their country and national team, which in relation to the opposing national team, in both, causes aggression, intolerance and anger, which already has some form of aggressive behavior underlying it that can result in violence and savagery. Violence and savagery can occur at any time during a sporting event, before, during or after the end of the sports game.

As a form of violence, violence in sports is specific because of the place where the use of physical force or coercion may occur. Thus, violence in sports can occur in sports stands, sports fields, sports halls, that is, in places where sports events are held and held, but also in places that are located outside the venue of sports games, but are the cause of events and confrontations related to sports events. Disagreements, insults, verbal and physical attacks can occur between athletes - players, sports coaches, sports referees, spectators, fans, family members of the player, persons who have a certain influence on the player, and even skilled criminals and embedded terrorists. A violent fan refers to a specific type of fan group that is considered very aggressive, as they use sports competitions to present their violent affirmation at and through them, so that sports stadiums and city streets are ideal spaces for them to release their pent-up energy (Jovanovski, Božić, Atanasov, 2019: 512). The most common forms of violence are: "individual physical attacks on other fans or bystanders, group fights between opposing fan groups, bringing and throwing pyrotechnic devices and other objects into the field or audience." (Milojević et al, 2013: 13). The Law on the Prevention of Violence and Inappropriate Behavior at Sports Events (Article 4) states taxatively that violence and inappropriate behavior at sports events are considered to be: „physical attack on participants in a sports event, or physical confrontation between participants in a sports event; throwing objects on the sports field or in the auditorium; attempting to bring or bringing into a sports facility or displaying in a sports facility signs that offend national, racial, religious or other feelings or otherwise incite hatred or intolerance that may lead to physical conflicts; damaging a sports facility, equipment, devices and installations at a sports facility where a sports event is held; causing disorder or destroying property when arriving at or leaving a sports event or in a sports facility, disrupting the course of a sports event, endangering the safety of participants in a sports event or third parties; unauthorized entry into the sports field, or into the official premises and official passages of the sports facility or into the part of the auditorium of the sports facility intended for opposing fans; attempted entry, or entry into the sports facility, possession or use of alcohol or other intoxicants; attempting to bring, or bringing into a sports facility or using pyrotechnic devices and other objects and means that may endanger the safety of participants in a sports event or disrupt its course; possession of pyrotechnic devices, objects and means that may endanger safety when arriving at or leaving a sports event; setting fire to fans' props or other objects; masking of the face to conceal identity in the event of any form of violence, using clothing or other objects". Sport and sports events represent the "image and opportunity" of a certain society, community and its individual. In accordance with the above, we can conclude that one of the causes of violent behavior lies in the upbringing and culture of the society to which the individual belongs, the circumstances and conditions in which he grew up, as well as in the personal characteristics,

attitudes, opinions and beliefs of a particular individual. Therefore, despite good criminal law solutions and prescribed repressive measures, violence at sporting events and public gatherings was, is and will be an expected negative phenomenon. Eventually, adequate preventive measures can be taken in order to prevent violent behavior and to improve the existing repressive measures in order to suppress violence in sports, because this type of violence can hardly be eradicated.

### 3. VIOLENCE IN SPORTS AS A FORM OF CRIME

The task of criminal law involves the protection of society from criminality in such a way that criminal law prescribes and applies criminal sanctions against the perpetrators of criminal acts (Božić, Tančić, 2022: 22). Organized crime represents (or as some use the term "crime") the most dangerous and serious form of association of several persons with the intention of committing criminal acts (Breneselović, 2009: 542-548). The concept of organized crime first saw the light of day in 1951, when the term was mentioned in the Report of the US Senate Committee, chaired by Senator E. Kafanner (Skorupan, 2003: 687). Given that organized crime appears in many different forms, there is no single definition of its concept (Božić, 2016: 286). One of the first definitions of organized crime in our region, which was adopted in the late 1990s by criminologists, criminalists, judges, prosecutors, and professors of criminal law, defines organized crime as systematically planned, prepared, and by dividing roles intentionally committed criminal offenses by persons associated in an organized criminal group with continuous criminal activity with characteristics of violence, intimidation, corruption, regardless of national state borders, for the purpose of gaining financial gain or social power (Božić, 2012: 29).

The Criminal Code of the Republic of Serbia contains a large number of incriminations that may be related to organized crime (Criminal Code, "Official Gazette of the RS", no. 85/05, 88/05-corrected, 107/05-corrected, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19, 94/24) (Božić, 2023: 69). Violent crime includes those acts in which the victim is attacked or threatened with an attack in order to achieve a specific goal. Elizabeth Englander defines violence as aggressive behavior undertaken with the intention of harming another person, with intent, as a form of guilt, being a necessary subjective element of the nature of a criminal act, because if there is no intention, it will be a matter of chance (Englander, 2003: 2). Violence in sports, in a large number of cases, manifests itself as a form of organized crime, given that violent behavior at sporting events and public gatherings is, for the most part, very well planned and conceived in advance. Extreme forms of violence with fatal consequences have often occurred at sporting events. The French magazine "L'Equipe" conducted a study in 1997 in which, up to that time, 1,300 violent acts with fatal consequences had been recorded at football matches around the world (Bodin, Robene, Heas, 2004: 23).

Unfortunately, sports fields, stadiums and halls have been and remain places of violent clashes between passionate fans and their violent organized groups. Crazed and furious fans, expecting the victory of their sports club, forget about the rules of behavior in the sports stands, which become places of savagery. Sports competition venues a priori convey an image of vandalism and violence to the public, unconsciously inviting violence. Namely, if we look at the very place where the sports match should be played, at the very appearance of the stands and stadium, at the high wire fences, at the presence of armed police officers with batons and aggressive police dogs, nothing else can be expected.

Very rarely is violent behavior at such mass events spontaneous and unexpected. Sometimes, the manifestation of violence is not causally related to a sporting event as a type of sports match, nor to its result, nor to the behavior of the players. Two questions arise: should we accept violence at sporting events as a "normal" occurrence, since there is almost no significant sporting event that does not involve some form of violence, and whether society can only protect itself and resist "aggressive, violent beings" through repressive measures. The answer to this question is given by England, which has managed to solve violent behavior at sporting events through a strict punitive policy by sanctioning violence in sports with high fines and prison sentences.

### 4. CRIMINOLOGICAL ASPECTS OF VIOLENCE IN SPORTS

When we talk about violence in sports, as well as when violence in sports occurs, we ask ourselves why it happened, what are the causes of violence. The causes are, unfortunately, numerous and very often directly or indirectly correlated with each other. The criminal behavior of a delinquent is related to his personal traits, but also to social factors. In some criminal acts, the perpetrator is more influenced by his social milieu and environment, in others, the perpetrator's personal traits and character prevail, while in still others, the intensity of both factors is equal. Only a cumulative number of the mentioned factors can

lead to criminal behavior, one factor alone is not enough. In explaining the causes of violence at sporting events, Otašević states that an individual in a crowd feels much more powerful, and due to the hidden anonymity, their sense of personal responsibility weakens, which is why individuals in a crowd can do things that they might never do individually (Otašević, 2010: 520). Some theorists believe that violence on sports fields occurs due to the presence of excess aggression in people, which must be expressed in some way, and they see the solution to the problem only in a harsh punitive policy. Psychologists thus find the causes of violence in sports in the degree of aggressiveness of fans, while on the other hand, sociologists discover the causes of violence through theories of collective behavior. The levels of violence at sporting events can vary, from milder forms and intensity of violence, to more serious forms of violence, all the way to vandalism and serious criminal forms of violence.

Biological, psychological and sociological theories are the three theories that deal with violence in sports. Biological theories assume that the commission of criminal acts is associated with certain biological traits of the perpetrator, primarily with physical constitution and genetic factors (Ignjatović, 2023: 68). Criminologists are divided in their opinions regarding the connection between committing criminal acts and physical constitution. The first believe that committing a crime is a consequence of degenerative features of the body constitution, so that murderers are more often thin people, fraudsters are more often tall people, thieves and burglars are mostly shorter people, while rapists are short and fat people. Another group of criminologists believes that a person's physical constitution is connected in some way with his criminal behavior (Hooton, 1939). In his research, William Sheldon pointed to three basic types of human body constitution: ectomorphic, endomorphic, and mesomorphic. Ectomorphic types are tall and thin people who have strong self-control and the ability to control their own reactions, speed of reaction, and are more prone to self-isolation. The endomorphic type is represented by shorter and heavier people who are very sociable, slow to react, and quite emotionally stable. The third, mesomorphic type, includes athletically built people who have a drive for physical activity and aggression, often get into risky situations, and have no feeling for others (Sheldon, 1940). Konrad Lorenz, as a representative of biological theory, believes that all people are born with a certain level of aggression, aggression that is expressed through sports. According to psychological theory, criminal behavior is determined by the psychological traits of a particular person, so aggressive behavior comes as a result of present frustration due to, for example, poor results achieved in a sports game, a referee's decision, a player's behavior, or disappointment from the audience. According to sociological theory, we find the causes of crime in social conditions. Gabriel Tarde states that committing a crime is essentially imitation. Some authors understand imitation as creating a reality that is as true as possible, while others see imitation as a search for the inner essence of reality (Božić, 2018: 70). Aggressive behavior is learned through imitation, with the help of rewards and punishments. One of the most important representatives of sociological theory, Franz von Liszt, holds the view that crime is most influenced by social causes, although the special characteristics of each individual perpetrator should not be ignored, as they are equally important, both inherited and acquired. Eric Dunning states that the combination of violence, extremist ideologies, as well as the factor of the social status of delinquents is very pronounced in sports (Dunning, 1999: 43). The initial hypothesis that violent behavior at sporting events originates mainly from hooligans of lower social status has been partially refuted by modern research, as the results have shown that the stated hypothesis is basically correct, but that the violent and hooligan style of behavior is to a large extent an individual choice of perpetrators who are of middle or even higher social status. The delinquent adopts a violent and hooligan style of behavior (socially unacceptable, antisocial behavior) and identifies with the fan group, with which he replaces his previous social and family community.

In practice, we most often encounter the following forms of violence in sports: verbal or physical attacks on fans or persons who happen to be at the scene of an escalation of violence, group physical attacks between opposing sports clubs, physical attacks on a national basis, destruction and smashing, vehicles with license plates of the country from which the opposing sports club comes, damage to property of a sports facility, the use of pyrotechnics that are dangerous to the lives of spectators, fans and athletes during a sports event, as well as the introduction and consumption of alcoholic beverages and narcotic drugs during sports events. All of the above forms of violence at sporting events and public gatherings can lead to serious crimes such as serious bodily harm, murder or aggravated murder. It is not even possible to determine in numerical terms how many possible types of violence there are at sports events, because with the development of society, the modus operandi of violence has simply become unpredictable. The number of causes leading to violence has also increased, and they depend on the cultural, economic and political development of a particular country. It is very important that new forms of violence are recognized in a timely manner, so that repressive measures aimed at suppressing and preventing violence are successful.

The criminological aspect of violence in sports is important for defining the causes that lead to this form of violence and for taking adequate preventive measures to prevent and suppress violent behavior. Although the Law on the Prevention of Violence and Inappropriate Behavior at Sports Events obliges sports federations, sports associations, sports organizations, and sports clubs to take preventive measures to reduce the risk of possible violent and inappropriate behavior by spectators, we continue to witness various forms of violence at sports events. Preventive measures prescribed by law are as follows: encouraging fans and their clubs to behave in a good and appropriate manner, informing their fans through meetings, printed newsletters, coordinating activities with their fans' clubs during organized visits to sporting events, activities in adopting measures by event organizers for those sporting events considered high-risk, encouraging positive behavior and actions of players and officials before, during and after the sporting event. However, the increasing escalation of violence at sporting events and public gatherings is still influenced by the insufficient implementation of preventive and repressive measures in the fight against this form of violence and crime. As follows from case law, this criminal offense is most often punished with conditional prison sentences, security measures such as a ban on attending certain sporting events for a period of one year, and excessively lenient fines. This is confirmed by the judgment of the Supreme Court of Cassation of the Republic of Serbia:

*„By the judgment of the High Court in Novi Sad K-161/17 of 10.05.2018. the defendant AA was found guilty of committing the criminal offense of violent behavior at a sports event or public gathering under Article 344a par. 1 CC and was given a suspended sentence of 10 (ten) months in prison, which will not be executed if the defendant does not commit a new criminal offense within 3 (three) years after the verdict becomes final, and he was also given a fine of 10,000.00 (ten thousand) dinars.... By the same verdict, a security measure was imposed on the defendant, banning him from attending sports events, namely all official football matches between OFK “...” from ... and FK “...” from ... for the duration of 1 year, counting from the date of finality of the verdict...” (Judgment of the Supreme Court of Cassation of the RS, no. Kzz 1242/2018 of November 14, 2018.)*

Same as: *“By the judgment of the High Court in Belgrade, K. No. 240/17 of 05.03.2018, the defendant AA was found guilty of the criminal offense of violent behavior at a sports event or public gathering under Article 344a, par.1 CC and he was given a suspended sentence by determining a prison sentence of three months and at the same time determining that it will not be executed if the defendant does not commit a new criminal offense within one year after the verdict becomes final and was sentenced to a fine of 10,000.00 (ten thousand) dinars... Based on Article 344a, par. 6, in conjunction with Article 89b CC, the defendant was banned from attending sports events-matches of the RK “BB” for a period of 1 year, counting from the date the verdict becomes final...”*

(Judgment of the Supreme Court of Cassation of the Republic of Serbia, no. Kzz 1244/2018 of November 15, 2018.)

The aforementioned criminal sanctions can hardly achieve the purpose of punishment. Namely, in the fight against preventing and suppressing violence at sporting events, a stricter punitive policy by the courts is necessary.

## **5. CRIMINAL LAW PROTECTION AGAINST VIOLENT BEHAVIOR AT A SPORTING EVENT OR PUBLIC MEETING**

With the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (Law on Ratification of the EU Convention on Spectators Violence and Misbehavior at Sports Events and in particular at Football Matches, “Official Gazette of SFRY - IA”, No. 9/90), as one of the most important sources of international law in this area, it should be noted, in addition to the Criminal Code and the Law on the Prevention of Violence and Inappropriate Behavior at Sports Events, the Law on Private Security (“Official Gazette of RS”, no. 104/13, 42/15 and 87/18) and the Law on Public Order and Peace (“Official Gazette of RS”, no. 6/16 and 24/18), as an important part of the national legislative framework of the Republic of Serbia regarding this criminal law matter. The purpose of adopting the convention is to prevent violence and inappropriate behavior by spectators, to ensure the safety of spectators during sporting events, and to establish supervision over the prevention of violence (Božić, Đukić, Jovanovski, 2020: 513). It should be noted that the aforementioned international convention refers only to violence and inappropriate behavior of spectators at sporting events, especially at football matches, and thus narrows the circle of possible perpetrators of criminal acts of violence and inappropriate behavior at sporting events in relation to the incrimination of violence and misconduct in the Criminal Code of the Republic of Serbia in terms of possible perpetrators (“who”...delictum communium), as well as the definition of possible perpetrators under the Law on the Prevention of Violence and

Inappropriate Behavior at Sports Events ("all persons present at a sports event"). The Criminal Code, in Chapter XXXI - Criminal Offenses against Public Order and Peace, prescribes the criminal offense of violent behavior at a sports event or public gathering (Article 344a CC). This criminal offense represents a special form of the criminal offense of violent behavior (Article 344 CC). The legislator justified introducing this incrimination into the Criminal Code of the Republic of Serbia, given the specific place and time of the commission of the criminal offense of violent behavior at sports events or public gatherings, the nature of the perpetrator, as well as the specific expected intensity of violence and possible serious consequences. The place of commission of this criminal offense is considered to be a sporting event, while according to the Law on the Prevention of Violence and Inappropriate Behavior at Sports Events, sports competitions and sports manifestations are considered sports events. The criminal offense of violent behavior at sporting events or public gatherings protects public order and peace, the safety of spectators (fans) and players. The time of the sports event is considered to be the time interval from two hours before the start of the sports event to two hours after its end, and in the case of sports events of increased risk, the time of the sports event is considered to be the time interval from four hours before the start of the sports event to four hours after its end (Article 2, par. 3 Law on the Prevention of Violence and Misbehavior at Sports Events). The perpetrator of this criminal offense is "anyone who physically attacks or physically fights with participants in a sports event or public gathering, commits violence or damages property of greater value when arriving at or leaving a sports event or public gathering, brings into a sports facility or throws onto the sports field, among spectators or participants in a public gathering, objects, pyrotechnics or other explosive, flammable or harmful substances that may cause bodily injury or endanger the health of participants in a sports event or public gathering, enters the sports field or part of the audience intended for opposing fans without authorization and causes violence, damages the sports facility, its equipment, devices and installations, or, through his/her behavior or slogans at a sports event or public gathering, incites national, racial, religious or other hatred or intolerance based on some discriminatory basis resulting in violence or physical confrontation with the participants" (Article 344a, par.1, CC). The action of the criminal act of violent behavior at sports events or public gatherings is alternatively determined (physically attacks, physically assaults, commits violence, damages property, brings in or throws objects, pyrotechnics or other explosive, flammable or harmful substances, enters the opponent's field without authorization, incites national, racial, religious or other hatred or intolerance, etc.) For the existence of a criminal offense, it is not necessary that the defendant's actions caused a riot. The same answer is given by case law:

*"According to the Supreme Court of Cassation, in the act of committing the basic form of the criminal offense of violent behavior at a sports event or public gathering under Article 344a, par. 1 CC which was charged to the defendant and for which he was found guilty in this specific case, namely physical assault on a participant in a sports event, as one of the alternatively envisaged acts of committing the criminal offense, for the existence of a criminal offense, it is not necessary that the defendant's actions caused a riot, as the defendant's defense attorney incorrectly states in the request, it is sufficient that the defendant physically attacked a participant in a sporting event, where physical attack implies an aggressive action directed at the body of a passive subject that does not always include direct physical contact, e.g. a swing of an arm or leg or throwing an object at a passive subject."*

(Judgment of the Supreme Court of Cassation of the Republic of Serbia, no. Kzz 985/2019, dated October 2, 2019).

In order for it to be a criminal act of violent behavior at sports events or public gatherings, it is necessary that the perpetrator of this criminal act has the status of a participant in a sports event, and participants of a sports event, in accordance with Article 2, par. 5 of the Act on the Prevention of Violence and Misbehavior at Sports Events, are considered to be all persons who are present at the said event (spectators, fans, players, judges and others). The same is confirmed by case law: *"Therefore, the perpetrator of the criminal offense under Article 344a, par. 1 CC committed in the manner determined by the first-instance verdict (physical attack on a participant in a sports event) can be anyone who commits that act against any person present or participant in that event at a sports event, regardless of the capacity in which they are present."* In accordance with the above, the Supreme Court of Cassation finds that players and referees as participants in a sporting event can be both active and passive subjects of this criminal offense, because the legal description of the nature of the criminal offense in Article 344a, par.1 CC implies that they are also considered persons present at the sporting event." (Judgment of the Supreme Court of Cassation of the RS, No. Kzz 947/2021 of October 14, 2021). The form of guilt required for the execution of this criminal act is intent (*dolus directus* or *dolus eventualis*). The basic form of the criminal offense of violent behavior at sporting events or public gatherings is punishable by a cumulative sentence, a prison sentence of one to five years and a fine.

The legislator has also prescribed several qualified forms for the criminal offense of violent behavior at sports events or public gatherings. The first qualified form will be if the aforementioned criminal offense is committed by a group (Article 344a, par. 2, CC). A "group" represents at least three persons who are connected for the purpose of permanently or occasionally committing criminal offences, which does not necessarily have defined roles for its members, continuity of membership or a developed structure (Article 112, par. 22, CC). The threatened penalty for this first qualified form of violent behavior at sports events or public gatherings is a prison sentence of two to eight years. Another qualified form refers to the ringleader of a group who commits a crime of violent behavior at sports events or public gatherings, for which the legislator has prescribed a prison sentence of three to twelve years (Article 344a, par. 3, CC). The same punishment is prescribed for the third qualified form of this criminal offense, in which a disorder occurred in which a person was seriously injured or property of greater value was damaged (Article 344a, par. 4, CC). This is an act qualified by a more serious consequence (serious bodily injury or damage to property of greater value). Given that infliction of minor physical injury is not a legal feature of a criminal offense, so that the occurrence of the said consequence is not necessary to realize the essence of a criminal offense, the legal feature of a criminal offense is only serious bodily injury, which is prescribed in the qualified form of this criminal offense. We find the same answer in case law: „*To bearing in mind the cited legal provision of Article 344a, par. 1 CC (basic form) from which it follows that inflicting light bodily harm is not a legal characteristic of the criminal offense under Article 344a, par. 1 of the CC (the occurrence of the stated consequence is not necessary in order to the existence of a beings of a criminal offense from Article 344a of the CC) for which the defendant was found guilty. At the same time, it should be borne in mind that even in the qualified forms of the criminal offense from Article 344a par.1 CC, light physical injury is not provided as a legal feature of the criminal offense, but only serious physical injury, namely in par. 4 of Article 344a of the CC (qualified form).*” (Judgment of the Supreme Court of Cassation of the RS, no.Kzz 1259/2019 of December 5, 2019).

This third qualified form raises the question of the justification for such a strictly prescribed punishment, a prison sentence ranging from three to twelve years, given that the perpetrator of violent behavior at a sporting event or public gathering is required to have the intent to cause disorder, but not *dolus directus* in relation to the resulting consequence, i.e. serious bodily injury or damage to property of greater value. The perpetrator of the criminal offense of violent behavior at sports events or public gatherings, both for the basic form of the offense and for the three specified qualified forms, must be imposed a security measure of prohibition from attending certain sports events, which is carried out in such a way that the perpetrator of a criminal offense is obliged to report in person to an official in the regional police department or police station, in the area where the perpetrator happened to be, immediately before the start of certain (specified) sports events (Article 89b, par. 2 and Article 344a, par. 6, CC). The perpetrator of the criminal offense is obliged to stay in the premises of the police administration or the police station during the sports event, with the provision that the duration of this security measure cannot be shorter than one nor longer than five years, counting from the day the decision becomes legally binding (Article 89b, par. 3, CC).

In accordance with Article 2, par. 2 of the Act on the Prevention of Violence and Misbehavior at Sports Events, the organizer of the sports event is "sports association, sports society, sports organization - club, other legal or physical entity that is permanently or occasionally engaged in the organization of sports events, that is, that has taken over the organization of a certain sports event, or the performance of certain tasks in the organization of a sports event." A special form of criminal offense, violent behavior at sports events or public gatherings, as a *delictum proprium*, prescribes the liability of an official or responsible person who, when organizing a sports event or public gathering, fails to take security measures to prevent or eliminate disorder.

In order for this form of criminal offense to exist, it is necessary that security measures were not taken, that there is a causal nexus (that the failure to take the aforementioned measures resulted in disorder) and that a more serious consequence occurred (that the life or body of a larger number of people or property of greater value was endangered), (Article 344, par. 5, CC). The organizer of a sporting event is legally obliged to "establish an appropriate security service or engage a legal entity or entrepreneur to perform physical security and maintain order at the sporting event" (Article 8, Law on the Prevention of Violence and Misbehavior at Sports Events). The security service is obliged to prohibit persons who are visibly intoxicated or under the influence of narcotics from accessing the venue where the sports event is being held. Persons whose behavior indicates that they are prone to violent or inappropriate behavior should also receive a ban on access. The security service is obliged to separate the fans by separating visiting fans from home fans, to guide them through special entrances and exits to a special part of the auditorium intended for them, to monitor and prevent the entry and sale of alcoholic beverages in the area

where the sports event is taking place, as well as to prevent the entry of objects that can be used in violent confrontations (bottles, sticks, pyrotechnics), to prevent the entry of objects that spectators can use to disrupt the course of a sports game (banners that incite hatred and intolerance based on belonging to a certain race or nation, mirrors, lasers), (Article 8a).

The Law on Liability of Legal Persons for Criminal Offenses prescribes the liability of a legal person based on the guilt of the responsible person. According to the model of derivative liability of legal entities, the liability of a natural person is imputed to the legal entity (Božić, Josipović, 2020: 373). According to the law, for this special form of criminal act, violent behavior at sports events or public gatherings is threatened with a cumulative penalty, a prison sentence of three months to three years and a fine. In accordance with the analysis of the basic form of the criminal offense of violent behavior at sports events or public gatherings and its qualified forms, certain gaps were observed. One qualified form refers to the situation if the basic form of the criminal offense was committed by a group. A justified question is raised, why the execution of violent behavior at sports events or public gatherings by an organized criminal group, "a group of three or more persons, which exists for a certain period of time and acts in agreement with the aim of committing one or more criminal offenses for which a prison sentence of four years or a heavier sentence is prescribed, for the direct or indirect acquisition of financial or other benefits" is not criminalized (Article 112, par. 35, CC). Likewise, by analyzing the provisions of the Criminal Code, it is concluded that *de lege ferenda* it is necessary to prescribe two more qualified forms of the criminal offense of violent behavior at sports events or public gatherings. One qualified form should apply to situations when a riot occurs in which a person is intentionally caused serious bodily harm or property of greater value is damaged. Another qualified form should regulate violence at sporting events or public gatherings that resulted in the death of one or more persons.

## 6. ANALYSIS OF THE STATE AND MOVEMENT OF VIOLENCE AT SPORTS EVENTS

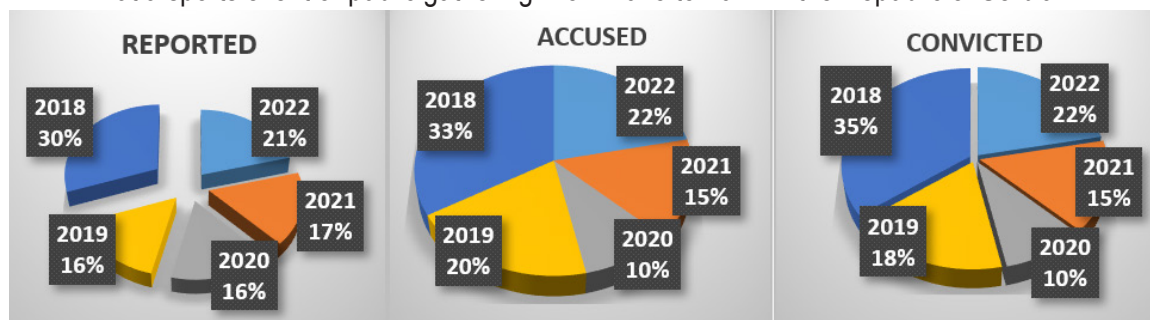
In Table 1, we have presented the numerical situation related to the reported, accused and convicted number of adults for the criminal offense "Violent behavior at a sports event or public gathering" in the five-year period from 2018 to 2022 in the RS. The largest number of people reported for violent behavior at a sporting event or public gathering was recorded in 2018 (143 people). In the same year, compared to the observed five-year period, there were the most accused persons (103), as well as the most convicted (94). Compared to the remaining four years of the observed period, 2018 recorded almost twice the number of reported cases (143) compared to the reported cases in the following year 2019 (75), which at first glance represents a positive step forward in combating violent behavior at sports events and public gatherings. The question arises, is this really so? Or certain violence is not even reported at all, and consequently it cannot be prosecuted nor can it be socially condemned.

Table 1. Reported, accused and convicted adults for the criminal offense of "Violent behavior at a sports event or public gathering" from 2018 to 2022

<b>Article 344a of the Criminal Code - Violent behavior at a sports event or public gathering</b>			
<b>Year</b>	<b>Reported</b>	<b>Accused</b>	<b>Convicted</b>
<b>2022</b>	99	67	59
<b>2021</b>	78	47	41
<b>2020</b>	77	30	26
<b>2019</b>	75	62	50
<b>2018</b>	143	103	94

Source: Official data from the Republic Statistical Office

Chart 1,2,3. Reported, Accused and Convicted adults for the criminal offense of "Violent behavior at a sports event or public gathering" from 2018 to 2022 in the Republic of Serbia



Source: Official data from the Republic Statistical Office

Jurisprudence shows that the sanctions imposed for violence at sports events are too mild, while there are cases where punishments are imposed below the legal minimum. As for the sentences imposed, suspended sentences or fines predominate in convictions for violent behavior at sports matches. In addition to light sentences, those accused of violent behavior at sports events or public gatherings also have to wait a long time for a court decision, as criminal proceedings take a long time. The year 2020 recorded the lowest number of those accused of violence at sports events (30), as well as the lowest number of convicted persons (26). Although the number of people reported for a criminal offense in the aforementioned year (77) is almost identical to that in 2019 (75), we believe that the aforementioned situation cannot be attributed to isolation and the reduction of social life due to the outbreak of the coronavirus and the declaration of the Covid-19 pandemic. In 2021, the number of people reported for violent behavior at sports matches was similar to the previous two years (78), however, the number of accused and convicted people increased significantly compared to the previous two years. In the last year of the observed period and available data, 2022, there was an increase in the number of people reported for violence on sports fields (99), but also an increase in the number of accused (67) and convicted persons (59).

## 7. CONCLUDING CONSIDERATIONS

Sport should imply a healthy lifestyle, synonymous with enjoyment of sporting activities, sporting events, a healthy and positive competitive spirit, socializing, and the desire to achieve top results in both individual and team sports. However, unfortunately, in a large number of cases, sporting events are accompanied by violent behavior by spectators, fans, players, coaches and other persons present on sports fields, stands or sports halls, as well as in other places where sporting events take place. Violent behavior is a form of aggressive behavior and is certainly the result of several related factors: social, educational, cultural, inherited, ideological, sociological, and psychological. It is undeniable that the causes of violence at sports events and public gatherings are woven through the hatred, passion and intolerance of fans towards the rivals of the opposing club, which escalate during the sports event due to poor results achieved by the club they support, the lack of or unprofessional security at the sports event, the bringing in and consumption of alcoholic beverages and narcotics in sports halls, on sports fields and stands, before, during and after the sports event.

It is necessary to monitor all new and possible forms of violence and violent behavior in sports in order to sanction all potential perpetrators of this form of criminal behavior (spectators, fans, players, coaches, and others present at sports events), which would achieve the purpose of punishment, but also individual and special prevention. It is important to point out that fans cannot be viewed as a homogeneous whole because fans do not lose their individuality simply by belonging to a certain group. They can only share their identity with the group, but retain their individuality, therefore it is necessary to distinguish between fans within the group who are ready for violence and those who are not ready for violent behavior. Preventive measures are key in preventing violent behavior at sports events and public gatherings, especially through work with fan groups (lectures and education) in order to improve communication between fans and their leaders. Although the penalties prescribed by law are satisfactory, we encounter the problem of imposing very lenient criminal sanctions. Thus, for the criminal offense of violent behavior at sports events or public gatherings, suspended prison sentences, low fines, and security measures of banning from attending sports events for a short period, within the specific legal minimum of one year, are generally imposed.

It is necessary, *de lege ferenda*, to tighten the penal policy of the courts for criminal acts of violent behavior at sporting events by increasing the amount of fines, as well as by imposing unconditional prison sentences for more serious forms of violence. In addition to more serious forms of violent behavior, it is proposed to the legislator *de lege ferenda* to criminalize qualified forms of violent behavior at sports events or public gatherings related to an organized criminal group, as well as qualified forms of violence and violent behavior at sports events that result in the death of one or more persons.

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