

Legal Analysis of School Sports Injury Accident under the Background of Governing School by Law

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Abstract: Under the background of the development strategy with the key words of "governing the country by law", "governing by law" and "administration by law", to promote the integration of the construction of a country by law, government by law and society by law, the high quality development of school physical education in the new era should be guided by the concept of running the school by law, and maintain the health of our young students in an all-round and full cycle. The research holds that under the background of education administration and school administration according to law, it is urgent to discuss and improve how to use law to avoid school sports injury accidents, mainly including legal prevention and legal relief. Suggestions are put forward: improve the law of school sports injury accidents, clarify the rights and obligations of schools, teachers, students and other subjects, clarify the applicable principles of prevention and relief, and concretely implement them into the law; The Education Bureau should construct the school sports injury insurance system; The school sports safety supervision office has been set up, and professional posts such as physical therapists and school doctors have been set up to take full responsibility for the sports safety of school students and reduce the psychological pressure of PE teachers.

1. Introduction

The Fourth Plenary Session of the 18th CPC Central Committee made a major decision to comprehensively promote the rule of law, providing a strong legal guarantee for the modernization of the national governance system [1]. Under the basic strategy of adhering to the rule of law, the construction of the legal system has reached a new height. The successful transformation of China's socialist market economy and the all-round development of the people's livelihood fully reflect the legal thinking. To deepen educational reform, promote the high-quality development of China's educational cause, and re-examine the historical mission of educational work in the new era from a new perspective, we must adhere to the development concept of running schools according to law, and place educational management and school-running activities in a more prominent legal track [2]. The Ministry of Education promulgated Several Opinions on Strengthening the Work of Governing Schools according to Law and the Implementation Outline for Comprehensively Promoting the

Administration of Schools according to Law, which clearly stated: "The rights and interests of teachers and students in participating in school management, exercising supervision power, realizing self-development and other aspects are fully guaranteed, and the principal position of teachers and students is implemented" [3]. The content involved in the Outline covers a wide range of coverage, has great influence and has far-reaching significance, and puts forward clear tasks and specific operational requirements for all types of schools at all levels in our country to promote the construction of school management by law, and puts forward higher and updated requirements for the spirit and principle of school management by law implementation, as well as the transformation of the ideas, means and methods of educational governance [4]. Standing at the historical intersection of "two hundred years", fully implement the thought of governing the country according to law, and specifically implement the school education system is to govern the school according to law [5].

2. Research Methods

2.1 Documentation Method

This paper mainly studies the current legal provisions of school sports injury accidents. Through studying the Sports Law of the People's Republic of China, the Civil Code of the People's Republic of China, the Tort Liability Law of the People's Republic of China, the Contract Law of the People's Republic of China and the relevant provisions of the Washington State Law of foreign countries (represented by the United States), This paper probes into the similarities and differences of the laws on school sports injury accidents at home and abroad, as well as the judgment and basis of judges in specific cases, and makes a comparative analysis.

2.2 Case Analysis

By consulting the network of judgment documents and legal judgments related to sports injury accidents, the typical cases closely related to sports injury accidents are selected for analysis. Most of our country choose to solve them privately, rather than resort to the court.

2.3 In-depth Interview Method

Through in-depth interviews with experts in the field of school sports and leaders of the Department of Physical Health and Art, the process and principles of handling sports injury accidents in school sports are further understood, and corresponding suggestions are put forward in terms of legal protection system. At the same time, targeted with the first-line primary and secondary school physical education teachers in Zhejiang Province, school leaders, higher education institutions in charge of leaders to talk, in order to obtain more authentic and authoritative information.

3. Core Concept Analysis

The core concept of this paper is the sports injury accident in school sports. In general, the definition of the scope of sports injuries mainly refers to injury accidents closely related to sports events [6]. The causes and factors of school sports injury accidents are complicated, including personal sports skill level and ability, choice and preference of sports items, norms of sports venues and facilities, and warm-up activities before sports.

In this paper, school sports injury accidents are operationally defined as: physical injury

accidents of school students caused by physical education classroom teaching, school sports competitions, after-school sports training and other sports activities organized by schools, as well as extracurricular sports activities or sports competitions spontaneously organized by student sports clubs [7]. In school sports, sports injury accidents cannot be avoided fundamentally, which are mainly related to students' participation in sports and PE teachers' implementation of PE teaching and training. If we can't prevent and manage it effectively, it will hinder the development of school physical education in the new era.

4. Analysis of the Legal System of School Sports Injury Accidents

From the perspective of China's Sports Law at the present stage, how to prevent the occurrence of school sports injury accidents and how to provide relief through effective legal means are the core connotation and important content of law governing schools in the new era, and are closely related to the development of "integration of sports and education" in the new era. The development of the physical quality of our young students and the supplement and repair of our "Sports Law" have formed a positive trend. Due to the need of research, the author will take concussion, a sports injury symptom as an example, and specifically comb the domestic and foreign legal system for sports injuries.

4.1 Legal Prevention

In 2018, the Civil Code Tort Liability (Draft) was submitted to the second review of the Seventh session of the Standing Committee of the 13th National People's Congress to clarify the "self-risk" rule: it stipulates that "if the victim is harmed by voluntarily participating in dangerous activities, he shall not ask others to bear the tort liability, except that the other person has intentionally or grossly negligent for the occurrence of the damage [8]; The responsibility of the event organizer shall be governed by the provisions on the responsibility for security ". Generally speaking, the principle of self-willingness to risk refers to that the actor voluntarily participates in a particular dangerous situation and voluntarily bears the consequences of the possible damage or the consequences of the risk even though he has a certain understanding of the possibility and consequences (risk) of the situation [9]. At present, in our school sports tort prevention measures, there are mainly two ways: "express self-risk" and "implied self-risk". The former means that the plaintiff (the injured party) informs the defendant (the injured party) that he is willing to bear a specific risk and its consequences in a clear way (signing a written contract, reaching an oral agreement); The latter refers to the existence of voluntary risk assumption by others due to a certain behavior of the risk-willing actor [10], that is, through reasonable reasoning of the plaintiff's specific behavior, it is known that he voluntarily assumes risk [11].

In 2009, Washington State of the United States became the first region to enact the law on sports-related concussion. In terms of the prevention mechanism of sports injuries, the United States mainly has four systems, namely, the pregame education prevention responsibility subject system, the pregame education content system, the knowledge and detection system, and the prevention responsibility system. Pre-competition education and prevention responsibility mainly plays the purpose of sports injury prevention education for athletes, including school organizations, coaches, medical personnel, referees and administrative personnel of competition institutions, etc. They will provide pre-game education on the nature and symptoms of sports-related concussions, the dangers and conditions after a concussion, and how to get the right medical treatment. In addition, there is a know and test system, athletes need to fill in the concussion information survey form before the game, and accept the basic neurocognitive measurement before the game for timely health screening. The prevention and responsibility system requires doctors and coaches to attend the

entire competition, the manager to develop a written risk management plan, and the sports equipment supplier to assume product responsibility [12].

4.2 Legal Remedy

At present, when the liability of school sports injury accident is divided in our country, the court mainly adopts two principles of tort liability and fair liability of economic sharing. As the current Tort Liability Law of our country does not define sports injury accidents as special torts, but only as general torts. Therefore, most of our country's practices in school sports injury accidents are the application of the principle of fault liability. "Fault liability principle" is one of the most important imputation principles in China's Tort Liability Law, which is applicable to imputation of torts in school sports activities in China, that is, only when the rights and interests of students are infringed upon intentionally or negligently and damage is caused, the behavior shall bear the liability for damage. Different from school sports injury accidents, China's civil fault not only refers to the subjective state, but also needs to test whether the behavior violates the law and moral standards and causes damage to others, reflecting the negative evaluation of the behavior from the legal and moral aspects, that is, people do not need to take responsibility if they are not at fault. For students with full capacity for civil conduct, they should have sufficient self-cognition in terms of sports cognitive ability and preventive awareness, and then choose sports items suitable for their physical conditions and health conditions [13].

In the United States, the legal relief system of sports injury accidents mainly has four aspects. In order to meet the establishment of legal events, there need to be eligible subjects seeking relief, and the types of rights relief subjects mainly include athletes themselves, parents and guardians of athletes and other directly related interests. As a special relief subject, student athletes are different from ordinary relief subjects in that they have no employment relationship and can be regarded as infringing subjects. The second aspect is the determination of damage fact and causation, if there is no reasonable logical event relationship between the original defendant (causation), then it will not meet the requirements of legal composition. The judge should consider whether the damage was caused by the defendant, and in general, based on the principle of who claims and who proves, the plaintiff should prove the causation of the fact that the damage was caused by the defendant. Third, sports injuries need to be responsible for the subject, otherwise the victim's legal rights can not find the object of accountability. The infringers include doctors, referees, coaches and other athletes; The employer (liable for vicarious or breach of contract); Product manufacturer (responsible person for product quality problems); Athletes (responsible subjects at their own risk). The fourth aspect is the way to bear responsibility. The subject of responsibility needs to bear civil responsibility, criminal responsibility and administrative responsibility (revocation of qualification certificate, suspension of competition, punishment of administrative agency) according to the actual situation and the judge's decision.

4.3 Case Analysis

The author found only 4 typical cases of such disputes by consulting the legal judgments related to sports injury accidents in the judgment documents network. At present, China is dealing with the disputes caused by sports injury accidents, the vast majority of them choose to settle privately, rather than resort to the court.

Case 1: (2015) Liu Cheng Minchuzi No. 1171. The plaintiff (the injured party) is an 18-year-old senior high school student, who was injured in class 10 due to a fall from a basketball hoop during school break. The court held that because the plaintiff's claim to the school was inconsistent with

the relevant liability principles and provisions of the Tort Liability Law, and the plaintiff could not find strong evidence to prove that the school was at fault in school management and rescue, the court hereby dismissed its claim. However, if the injured party is a minor, China's practice is more inclined to the provisions of Article 39 of the Tort Liability Law: "When a person with limited capacity for civil conduct suffers personal damage during the study and life of a school or other educational institution, the school or other educational institution that fails to fulfill the duties of education prevention and management shall bear the responsibility".

Case 2: (2015) Tang Minyichu No. 1072. The plaintiff (the injured party) is a school student who was injured when he fell while practicing skateboarding in physical education class. Since the school organized students to practice on their own without any safety protection measures, there was a lack of awareness of the risks of the movement, therefore, the court held that the school failed to fulfill its responsibilities of education prevention and management, and should bear the main responsibility.

Case 3: (2015) Fulin No. 877. The plaintiff (the injured party) is a school student who was injured in a tug-of-war game organized by the school voluntarily. The court held that since the school conducted safety prevention education for the students before the game, and conducted warm-up activities before the game on the premise that the competition venue was flawless, the school took active and effective treatment and care for the students in the first time after the accident occurred, and neither the plaintiff (the injured party) nor the school organization was at fault. In the end, according to the principle of fair liability, the school bears 40% and the plaintiff (the injured party) bears 60% of the economic loss. This case is a typical embodiment of the principle of fair liability and follows the principle of economic relief to further solve the problem of sharing economic losses.

Case 4 is determined through legal means. The plaintiff Li Mou is an athlete of Lianyungang City Sports School, and the defendant Shang Mingli is a coach of the cycling team of Lianyungang City Sports School. After Li opened the door to pick up the car by himself, he accidentally fell while training at the training ground, and was diagnosed with concussion, axial odontoid fracture, anterior atlas arch fracture, and multiple skin and soft tissue injuries. The court held that the defendant failed to fulfill the responsibility of safety education prevention and management, and finally decided that Lianyungang Sports School should bear 70% of the economic compensation liability for the plaintiff.

5. Legal Suggestions on School Sports Injury Accidents in China

From the perspective of judicial interpretation, the legal basis and support have been found for the treatment of sports injury accidents. In the "National Sports Commission on the Degree of Disability Insurance for National Team Athletes" issued in 1998, it is clearly stipulated that severe movement disorders (non-limb paralysis) caused by brain and spinal cord injuries of athletes are first-class disabilities, and the insurance amount is 200,000 yuan; Due to concussion and other reasons, the edge intelligence is grade 8 disability, and the insurance amount is 10,000 yuan. To sum up, the existing legal system is still not fully applicable to the treatment of school sports injury accidents, and there is still a certain gap in the legal governance of sports in China compared with the United States and other countries. On the basis of the national strategy of building a strong sports country and a healthy China, actively responding to the national call and implementing the educational concept of moral education and health first, the author puts forward the following suggestions for school sports governance.

5.1 Improve the Law on School Sports Injury Accidents

In view of the dispute settlement and economic compensation of sports injury accidents, it is difficult to find a legal compensation system that directly reflects sports injury in China's Sports Law at this stage. Therefore, in most cases, the discretion is basically in the hands of the judge. In the case of dispute compensation, China is more in accordance with the "Contract Law of the People's Republic of China" and the "Tort Liability Law of the People's Republic of China" in the judgment of the relevant civil provisions. Therefore, it is necessary to clarify the rights and obligations of schools, teachers, young students and other subjects, and clarify the applicable principles in prevention and relief and implement them into law. The author believes that: in the school sports whether to apply the principle of "self-risk", do not agree to adopt strict school sports safety attention and organizational management obligations, because in a 45-minute physical education class if a long time of rules, safety education, it will lose the true meaning of "sports" and the national will. Tan Xiaoyong believes that the only way to fundamentally solve the problem is to legislate to clarify the application of self-risk rules to school sports. We should seize the opportunity of the forthcoming legal interpretation of the Civil Code, strive to further clarify the application of self-risk to school sports, and completely remove this major bottleneck restricting the development of school sports from the legislative level [9].

5.2 Construction of School Sports Injury Insurance System

At present, the insurance system of sports injury in our country is not mature, both athletes and ordinary students often need to bear huge expenses after experiencing sports injury accidents, and can not be held accountable. From the perspective of judicial interpretation, the legal basis and support have been found for the treatment of sports injury accidents. In the "National Sports Commission on the Degree of Disability Insurance for National Team Athletes" issued in 1998, it is clearly stipulated that severe movement disorders (non-limb paralysis) caused by brain and spinal cord injuries of athletes are first-class disabilities, and the insurance amount is 200,000 yuan; Due to concussion and other reasons, the edge intelligence is grade 8 disability, and the insurance amount is 10,000 yuan. By learning from the experience of sports governance in foreign schools, the compulsory and public welfare of sports undertakings are guaranteed, and the accident insurance system for sports is improved. The construction of a sound social security mechanism such as insurance and fund is the basic security project of school sports governance in the new era [9]. The author believes that: actively promoting the voluntary purchase of accidental injury insurance by young students, and vigorously developing and establishing a social public welfare "School sports injury special security fund" and other measures will effectively manage the urgent problems in the development of school sports in the new era, and further improve our school sports injury insurance system.

5.3 Establish the School Sports Security Supervision Office

The 14th Five-Year Plan for Sports Development clearly states: The concept of "health first" has been deeply rooted in the hearts of the people, and substantial progress has been made in the integration of sports and education. Young people generally master 1-2 sports skills, sports activities are more extensive and in-depth, and new progress has been made in promoting physical and mental health of young people through sports. A training system for reserve sports talents with diversified subjects and adapted to needs has been basically established, with a more solid foundation for reserve talents and comprehensive quality improvement. Under the background of the "double reduction" policy, it is bound to win more time for school sports activities for young students, which

not only conforms to the connotation of "strong sports makes China strong, but also closely links with national development strategies such as "strong sports ", "healthy China", "national health" and "integration of physical education". Therefore, under the premise of realizing the grand goal of "civilized spirit and barbaric body", facing the practical needs of the state to vigorously improve the physical health level and health literacy of young students, facing the urgent need to implement the healthy China action, and facing the reform needs of the modernization of school sports governance in the new era, we must clearly take the concept of "governing schools according to law" as the guide. It actively promotes and sets up professional posts such as physical rehabilitation teachers and school doctors nationwide, which are fully responsible for the sports safety of school students, thereby reducing the psychological pressure of physical education teachers, on the other hand, it can also promote the development of students' physical and mental health and protect their legitimate rights and interests.

6. Conclusion

Throughout the current research on school sports injuries, most of them focus on the perspective of sports injury prevention, and the countermeasures proposed are how to avoid sports injuries. However, from the point of view of the antagonism and high intensity of sports, there is a great difference with ordinary injuries, because sports injury accidents can not be fundamentally avoided. After the occurrence of sports injury accident, how to pursue responsibility and compensation, and how to avoid the legal responsibility and consequences of school sports injury through law are of great social significance. The "14th Five-Year Plan" period is the first five years after China completed the building of a moderately prosperous society in all respects and achieved the first centenary goal. It is also the first five years for China to embark on a new journey to fully build a modern socialist country and march toward the second centenary goal. It is also the first period for China to build a solid foundation of sports power and strive to realize sports modernization. Sports is an important embodiment of comprehensive national strength. Therefore, the concept of "governing education according to law" and "governing schools according to law" requires school educators to keep the legal system in mind and abide by rules and regulations. At the same time, more sports legal talents are needed to promote the development of China's "Sports Law" and school sports system.

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