

## ***Bulls***

### ***Pablo Salvador Coderch and Carlos Gómez Ligüerre***

#### ***Summary***

- Consent and Risk
- Competent Jurisdiction
- Sentences of the First Court of the Supreme Court
- Links

At half-past three in the afternoon on August 12, 1990, Juan Antonio jumped into the bullring and ran to its center. He shouted and waved his arms as he approached the young bull, which then charged straight at him. They were both knocked to the ground and as the bull went wild, its horn pierced Juan Antonio's jugular. His corpse was carried out before taking down the bullring.

The widow and daughter filed a civil lawsuit against the City Council of Amurrio (Vitoria), which organized the *encierro*<sup>1</sup>, and against the Basque Regional Government. They claimed a compensation of 162,273 euros. The defendants were acquitted in the first instance but sentenced on appeal to pay a compensation of 54,091 euros. The SC 13.2.1997 annulled the Court of Appeal's sentence and replaced it with the decision in the first instance.

Between 1996 and 1998, the First Chamber of the Spanish Supreme Court decided five cases of accidents related to *encierros* but only the preceding case involved a fatal accident. In all five, the plaintiffs sued the city councils that organized or co-organized the public festivities. The city councils used two main arguments in their defense. First, that the victim had assumed the risk involved with participating in an *encierro* with *reses bravas* (fierce bulls). Second, that the civil courts were not the appropriate Court to decide such a case.

#### • ***Consent and Risk***

Occasionally, it appears as if the victim has either unconsciously pursued disaster or consciously sought out her own ruin: The courts speak of “**victim's contributory fault**,” as if one really has the duty to take precautions for oneself. In the end, nobody has: A person cannot take legal action to claim a compensation from herself. For this reason, it is preferable to speak of Consent or Assumption of Risk.

In the case decided by the SC 25.9.1998, Pedro F. had participated in an *encierro* organized by the City Council of Navas del Madroño (Cáceres), during the local celebrations in the summer of 1992. He was drunk and suffered from serious injuries when he was tossed by a bull. The victim claimed a compensation of 60,384 euros from the City Council and its insurance company. The SC upheld the rejection of the lawsuit by the lower courts.

---

<sup>1</sup> Bull pen; also refers to the bullfight as an event.

In the SC 3.4.1997 the plaintiff, José L., sued the same City Council for the injuries he suffered in an *encierro* of fierce bulls on August 26, 1989. José L. had fled from a bull and desperately tried to reach safety behind a covert of the bullring. Both of his legs were seriously injured. The SC upheld the rejection of the lawsuit by the lower courts. They said the accident, “was due to the inexperience of the plaintiff” (F. J. 3).

The exception of the victim’s consent or assumption of risk could only be raised if it did not go beyond the level of generally acceptable risk. If the activity in question exceeds these limits, then the celebration’s organizers are at least partially liable for consequent accidents. As with everything, sometimes the assessment is carried out *ex post facto*.

In the case of the SC 31.12.1996 a teenager became hemiplegic after being tossed by two bulls. Twelve years after the terrible accident, the SC finally came across a reason to find against the defendant: The municipal organizers of the *encierro* had let the second and third bulls out before retrieving the first one, “... which heightened the risk above that considered normal at this type of celebration” (F. J. 3). The SC upheld the Court of Appeal’s sentence that required the City Council of Barrios (Cádiz) and the bullfighting club “El Toro Embolado” to pay a compensation of 60,101 euros.

There is one exception to this rule during the period studied: SC 17.10.1997.

On October 8, 1988, in an *encierro* organized by the City Council of Velayos (Ávila), a bull fractured the plaintiff’s left tibia. The victim claimed a compensation of 36,060 euros from the City Council and the insurance company<sup>2</sup> in charge of the celebration. The first instance court sentenced the defendants to pay a compensation of 20,723 euros to the victim. The Court of Appeals acquitted the City Council and reduced the compensation required of the insurance company to 2,404 euros. The SC rejected the plaintiff’s appeal.

The insurance company could not escape paying even though the City Council it insured had fulfilled all the organizational precautionary measures required for a bullfight. Insurance once again acted as a magnet for imputation. Although any specialist in insurance law knows that just because a defendant is insured is not in and of itself a good reason for her to have to provide compensation for damages. The legal policy of the Court seems to indicate that the organizers should be insured. In contrast to other dangerous activities, Spanish law does not require a participant to sign a liability waiver in order to take part in an *encierro*. The obligation is transferred to the organizers, which are almost always public entities. The taxpayer pays the insurance premium except in those rare cases in which the cost is included in the ticket price of the bullfight.

- **Competent Jurisdiction**

As we have shown, city councils tend to argue that civil courts have no jurisdiction upon these lawsuits. The celebration of bullfights is an intensely regulated activity but none of the related provisions establish rules for their competent jurisdiction.

The basic disposition on the subject is the Law 10/1991, April 4, of *Potestades Administrativas* (administrative control) on the celebration of bullfights (BOE num. 82,

---

<sup>2</sup> Hispana, SA.

April 5), developed by the *Reglamento de Espectáculos Taurinos* (regulations for bullfights) approved by Royal Decree 145/1996, February 2 (BOE num. 54, March 2). In the last two years, the Royal Decrees 1649/1997, October 31 (BOE num. 271, November 12) and 2283/1998, October 23 (BOE num. 265, November 5) have been approved. These provisions modify the *Reglamento de Espectáculos Taurinos* (regulations for bullfights) dispositions on medical emergency services and the public identification of the type of bull, respectively.

The gap may possibly be filled by the *Law 7/1985, April 2, Reguladora de las Bases de Régimen Local* (local government act)<sup>3</sup> whose article 54 provides that:

*“The local entities will be held directly liable for damages to the rights and goods of an individual that are a consequence of the functioning of the public services or of the behavior of its authorities, employees or agents, based on the terms established in the general legislation on administrative liability.”*

This rule leads us to the *Law 30/1992<sup>4</sup>, November 26, of Régimen Jurídico de las Administraciones Públicas (public administration’s legal system) and of the Procedimiento Administrativo Común (common administrative procedure)*, now modified by the *Law 4/1999, January 14* and the art. 2.e) of the recent *Law 29/1998, July 13, of the Jurisdicción Contencioso-administrativa (administrative court’s act)*<sup>5</sup>:

*“[T]he Administraciones públicas (public administration) cannot be sued, regardless of the nature of the activity, before civil or labor courts.”*

• ***Sentences of the First Court of the Supreme Court (1996-1998)***

<b>Date</b>	<b>Ar.</b>	<b>Ponente</b>	<b>Parties</b>
31.12.1996	9053	Pedro González Poveda	José O. v. City Council of Barrios (Cádiz) and the Club ‘El toro embolado’.
13.2.1997	701	Alfonso Barcalá and Trillo-Figueroa	María Ángeles G. and Vanesa A. v. City Council of Amurrio (Vitoria) and the Basque Government.
3.4.1997	2729	Francisco Morales Morales	José L. v. City Council of Navas del Madroño (Cáceres), Delegation of Cáceres and the Board of Extremadura.
17.10.1997	7269	Alfonso Barcalá and Trillo-Figueroa	Anselmo M. v. City Council of Velayos (Ávila) and “Hispana de Seguros, SA”.
25.9.1998	7070	Ignacio Sierra Gil de la Cuesta	Pedro F. v. City Council of Navas del Madroño (Cáceres) and “Mutua General de Seguros”.

<sup>3</sup> BOE num. 80, April 3.

<sup>4</sup> BOE 27.11.1992, num. 285; corrections in BOE 28.12.1992, num. 311, and BOE 27.1.1993, num. 23.

<sup>5</sup> BOE num. 167, July 14.

- ***Links***

<http://www.eltoro.org>

Web page of a cultural organization in Madrid. They are not profit-driven and are dedicated to the defense of the Fiesta Brava fans' rights and of the promotion of bullfighting interests. Offers very good links in various languages and chats on the subject.

<http://www.mundo-taurino.org/>

Web page in English with film clips, books, photographs, music and links related to the world of bullfighting.