

# Particularities of an Effective Playground – Related Accident Investigation

**Ioana Alexandra Curcă**

*"Dimitrie Cantemir" Christian University of Bucharest, Bucharest, Romania, allecsis@yahoo.com*

**ABSTRACT:** Establishing the circumstances of an accident is essential in determining the elements that provide an adequate analysis of legal classification as well as in identifying any criminal liability and form of guilt. Therefore a conclusion regarding culpability should be based on whether the material evidence can accurately indicate the circumstances of the accident, especially when all measures regarding the safety of the play environment and the conformity of the equipment's have been complied with.

**KEYWORDS:** accident, child, culpability, investigation, playground

## **Introduction**

Many playgrounds are not properly certified or do not comply with the specific provisions; or if the safety standards are met and all security measures are taken, in fact it can be that the play equipment's are not always individually accompanied by certain warnings in usage as they should; and so it is up to the parents and children themselves to assess their level of skills in choosing the right one to use. Children need to learn to cope with the risks and this can lead to blows and bruises and even occasionally to broken limbs (ASRO, SR EN 1176-2, 2010).

The main duty of any investigator in such events is not only their discovery and comprehensive examination of the circumstances, but also the responsibility in taking action to remove any element that might facilitate the occurrence of similar incidents – prevention activities. This consists in detecting the causes and disclosing them to the other relevant organizations, so that everyone can join forces to eliminate the deficiencies arising from the investigation (Golunski 1961, 395).

Playground accident prevention initiatives, focused on making these spaces as safe as possible, were launched in the 1970s (Canadian Public Health Association 2019, 3). Since then, worldwide implemented safety standards include provisions such as the use of impact-absorbing surfaces, height and weight restrictions, safety margins, materials that have to meet certain requirements and so on, for all types of play elements.

According to specific regulations, the manufacturer, authorized representative, importer or distributor, as the case may be, has the obligation to provide the operator/ administrator/ tenant, along with the leisure equipment's, the following documents (H.G. 435/ 2010, Art. 5):

- a) The overall drawing of the equipment;
- b) Instructions for use, assembly and maintenance instructions;

These documents must be presented to the relevant authorities, upon request. At the same time, they need to be accompanied by a detailed description of the risks that children are exposed to when choosing to use a certain equipment and how to manage them, such as:

- choosing the appropriate play space according to the age group;
- supervising children under the age of five and those with health issues while they are playing and overseeing the way they use the equipment's according to the instructions displayed.
- clothes with ropes and cords should not be worn in the play area as they are a cause of accidents;

The rest of prevention activities should present the risks that the operators of the play space are to avoid by following these measures.

For example, the contact surfaces need to absorb any shock and to not show traces of sharp or deteriorated objects, the surface of the impact areas and the space between the devices need to be accurately calculated and protected in order to avoid potential collisions.

### **Crime scene investigation of playground accidents**

This action is of great importance as the actual resolution of the case depends on its overall quality (Stancu 2015, 665).

It is natural that the initial measures should be aimed exclusively at administering first aid care to the victims of the accident, limiting or removing imminent danger and returning equipment's to operation as urgently as possible.

Rapid transformations might occur at the scene, and material evidence must be protected so as not to be destroyed or altered (Ionescu, 2007, p. 28). Therefore, the investigator must urgently apply measures both for preserving the traces and for preventing other similar incidents.

The objective of the crime scene examination is to allow the investigating authorities criminal investigation body to learn with utmost precision the place of the accident, the traces left, the remaining material objects, their position and condition, in order to be able to come to a legitimate conclusion regarding the unfolding of the entire event (Nedelcu 2014, 282). The evidentiary material can answer all the main questions such as who committed the crime and whether or not it was intentional, what are the reasons and the aim - in case the culprits are identified and the existence of an actual crime can be established - for the correct determination of the circumstances.

One of the initial matters that require special attention is the establishment of the modifications inflicted on the scene (Stancu 2015, 666). Any change, of any kind, in the position of objects that were involved in the accident, is strictly forbidden. The state of affairs resulting from the occurrence of the event should not be transformed, but if maintaining it facilitated the appearance of other events or aggravated the condition of the injured, then on site situation could be modified. In this situation, it is mandatory to sketch or photograph the place, to identify and bring in any item bearing traces to be handed over to investigators. Such changes will be recorded by the owner of the playground in a report representing evidence.

There is also a particular type of situations called controversial circumstances, determined by the contrast between the different categories of traces. It sometimes happens that the culprit, wishing to evade responsibility for his actions, tries to conceal his felony by forging another, for which he creates at the scene fragments that are usually formed by committing the simulated act or tampers with some existing ones instead. But almost always he ineffectively mimics another crime by failing in fabricating other evidence, so that there is an indisputable discrepancy between them, which highlights the artificial climate at the crime scene (Mircea 2010, 237).

Elucidating these possible controversial circumstances is important in the elaboration of criminal prosecution versions, but they also represent the intention of the perpetrators to conceal their act or even to throw off the investigation. Thus every side needs to be turned in order to verify and confirm the crime scene findings through accurate results from the activities undertaken (Vasile 2013, 49).

The judiciary bodies must gather all the necessary and indispensable information to prove the material existence of the imputed fact, the existence of the crime with all its elements and the guilt of the culprit, by resorting to those means of evidence which are appropriate to the requirements of the criminal case.

The method of investigating the different types of crime does not set as its primary scope the elaboration of indications that will be applied mechanically in each specific case. The methodical indications find their application, first of all, in the typical cases, but at the same time they are formulated so that they allow the criminal investigator to apply them, creatively, under the concrete conditions of each criminal case (Golunski 1961, 388).

The investigation of the crime scene implies that the prosecution body is notified about a criminal offence being committed, through official documents concluded by other bodies established by law or *ex officio* and entails the observance of general tactical and procedure rules, so that the outcome is achieved (Nedelcu 2014, 286).

In the static phase of the investigation, the overall appearance at the scene will be established - the placement and condition of the equipment's, analyzing, among others, whether they were

supervised by trained personnel (in the case of indoor play spaces), if no anomalies were observed in their functioning, etc.

In the dynamic phase, the thorough research of the traces will be carried out, as well as the detection, consolidation and collection of all the means of evidence that can serve to clarify the circumstances of the event. Moreover, all documents will be verified (registries, journals) together with records and diagrams that include data regarding the condition of the play equipment's, to determine if the periodical check-ups and proper maintenance have been performed.

At the same time, it is extremely important to gather copies of documents attesting the conformity, certification, guarantee, safety of the equipment's, which confirm the compliance of the requirements regarding the security of the playground, the right of operation, approval and authorization necessary for the activity, as well as the identification data, the job description, the labor agreements of all the employees who performed their activity at the time of the accident - in the case of indoor play spaces that involve clients paying an access fee so that their children can play inside a supervised playground.

Settling the results of the investigation is done by known means, the minutes being the main way of recording them. The document concluded by the criminal prosecution bodies will be accompanied by photographs (overall and detail), videos, sketches, notes.

It is important to note that these video recordings taken at the scene can be compared to those from the time of the event (caught by video cameras in the premises or its proximity) to check illicit activities of hiding / modifying / replacing certain equipment's that might be involved in the accident.

### **Organizing and enforcing the legal expertise**

Over time, it was provided that the evidence represents any factual element that is destined to confirm the existence or non-existence of a crime, to identify the perpetrator, instruments and harmful substances, to know the circumstances in which the event took place, being necessary for the just settlement of the case. In addition to forensic expertise, they can determine the causes and nature of the injuries caused by the accident, as well as the technical-scientific expertise and data (Voinea and Teodorescu, 2018).

Traces will be picked up through known methods and sent to the forensic laboratories.

If in the nature of these traces there have been various modifications, the investigators are obliged to mention them in a procedural document through a detailed description of these changes and the determinant causes, so that the relevant information is brought to the knowledge of the specialists. The experts must take into account also the videos and photographs taken at the scene of the accident in order to be able to correctly interpret the traces and objects subjected to the expertization process and to acknowledge their subsequent alterations.

In such situations where traces and objects cannot be submitted to the expert, their features must be described as accurately as possible while being individually determined and located. All modifications and any other external elements allowing the reconstruction of the conditions of evolution of the trace will be recorded (Ionescu and Sandu 2011, 26).

Experts must also evaluate and determine the technical condition of the play equipment involved in the accident, concluding if it has shown any defects or non-conformities in use before the accident occurred and if it could have actually been the cause of the event. At the same time, they must also establish whether or not faulty mechanical parts of the device have been changed during the investigation and replaced with functioning ones.

### **Hearing the witnesses and parties involved in the accident**

The witness can be any natural person, regardless of social status, age, sex, religion, citizenship, including persons with sensory or mental deficiencies, but also persons in the process of executing a sentence deprived of liberty (Buzatu 2013, 118).

Witnesses or the parties involved in the accident are most able to sustain some aspects that clarify the circumstances of the event. That is the reason why the objective and subjective

conditions that could influence the perception process (distance, speed, lighting, etc.) should be taken into consideration. These individuals could indicate if at the moment of the incident, the injured one was using equipment intended for their age category and the device was displaying the risks in use, if the technical prescriptions were observed, and in the case of an indoor space, if supervision was properly ensured and by a sufficient number of trained personnel.

It is imperative to hear also the technical staff /in charge of the maintenance of the equipment, to determine if the procedures were followed according to training and if the device was working accordingly.

In order to establish the truth and accountability of all those involved, other acts of criminal prosecution may be carried out if necessary, such as reconstitutions, searches, confrontations between the parties.

However, in such situations that involve playground-related injuries in children as a result of the use of an equipment, these prosecution acts are somewhat inconclusive, because they cannot accurately verify or compare all the specifics arising from the event. On one hand, the circumstances might be determined by the details presented by the witnesses, but on the other, they usually perceive them differently from the victim, who may detail them in a divergent or inaccurate manner, or not to remember them at all.

## Conclusions

The evidentiary material must clarify without a doubt whether the owner of the play space has operated compliant equipment's with a valid warranty and usage term, with all the certifications in force, according with European standards and norms. Moreover, it is necessary to prove the level of preparation for the employees who attend to the playground, general and specific procedures for each position, periodic trainings, in the attempt to prevent accidents of this kind.

Provided that the evidence cannot demonstrate the non-observance of any legal obligation on behalf of the owner of the play space, or the performance of any unlawful act, then all the elements of the accident converge upon the idea of a fortuitous event.

This is another explanation of how such an incident can occur, being a situation that can neither be predicted nor prevented by the person held accountable. According to doctrine, the fortuitous case describes an external cause that materializes into an unpredictable and inevitable event, the source or presence of which is found in the human field of activity and of nature to remove the guilt of the person held accountable, precisely because of the unforeseeable component such an event involves.

The grounds of an effective investigation rises from the validation of the circumstances of the accident, in order to establish the elements that dictate a proper legal classification of the offence; and in case there are culprits, to identify them and to establish the form of guilt.

Therefore a conclusion regarding culpability should be based on whether the material evidence can accurately indicate the circumstances of the accident, especially when all measures regarding the safety of the play environment and the conformity of the equipment's have been complied with.

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