

Security Policies & Human Rights in European Football Stadia

Anastassia Tsoukala

This paper addresses the issue of the increasing infringement of European football supporters' civil rights and liberties since the mid-1980s. The analysis of the national and supranational regulation of football hooliganism in the light of the evolution of crime control policies in Europe reveals that this jeopardising of freedoms, owing to the institutionalisation of the control of deviance and the blurring of the frontiers between the executive and the legislative powers, is not a side-effect of the counter-hooliganism policies. It is inherent to the very structure of the regulation of the phenomenon in that it stems from the rationale of the crime control patterns that frame it.

An Integrated Project Financed by
the Sixth EU Framework Programme



Generated by the CEPS CHALLENGE programme (Changing Landscape of European Liberty and Security), CHALLENGE Research Papers focus on the implications of the new security practices being implemented throughout Europe for civil liberties, human rights and social cohesion in an enlarged EU. Unless otherwise indicated, the views expressed are attributable only to the author in a personal capacity and not to any institution with which he is associated.

ISBN-13: 978-92-9079-701-2

Available for free downloading from the CEPS website (<http://www.ceps.be>)
and the Challenge website (www.libertysecurity.org)

© Copyright 2007, Anastassia Tsoukala

Contents

Introduction	1
1. General regulation	2
2. Normative specificity	4
2.1 The framing of football hooliganism.....	4
2.2 Values to be protected	6
2.3 Coping with the threat at the EU level	10
3. Normative vagueness.....	12
Concluding remarks.....	16
References	18

SECURITY POLICIES AND HUMAN RIGHTS IN EUROPEAN FOOTBALL STADIA

ANASTASSIA TSOUKALA*

Introduction

Research on football violence has continually grown since the late 1960s in Britain and, later on, in many European countries. Yet, despite the diversity of their epistemological origins and approaches, academic explanations of the phenomenon have scarcely gone beyond the analysis of football supporters' behaviour. Focusing thus on a sole aspect of the issue, scholars have practically excluded from their work all themes related to the control of football crowd disorder. Hence, the regulation of the phenomenon, the modes of its policing as well as the embedding of counter-hooliganism policies in the broader field of security have drawn little attention among European scholars.

This low level of academic interest in the conception and implementation of counter-hooliganism policies has severely hampered our understanding of the social interactions and dynamics that lie beneath the development of the phenomenon in Europe. But, most of all, it has practically blotted out the fact that the implementation of these policies has led to the increasing infringement of football supporters' civil rights and liberties, owing to the introduction of an expanding network of control devices that target both criminal and deviant behaviour. Going from electronic surveillance, inside and outside of football stadia, to the collection and exchange of intelligence on known and suspected hooligans, this control of deviance has been further enhanced by the introduction of football bans that impose serious restraints on the freedom of movement of a person in the absence of a criminal conviction for a football-related offence.¹ Presently applied in many European countries,² football bans imposed upon suspected hooligans have been extensively used since the 2000 European Championship.

Lately, some British scholars have denounced the infringement of English football supporters' civil rights and liberties through the enforcement of football banning orders and called into question the legal grounds of these measures.³ While sharing their criticism, this paper argues

* Anastassia Tsoukala is a Maître de Conférences (Senior Lecturer) at Paris XI University and a Research Fellow at GEPECS, Paris V University.

¹ In such cases, football bans are not imposed by a court on conviction. They are imposed either by the executive or by a court on complaint from a senior police officer. In both instances, they may have domestic or international effects (or both). Domestic football bans make it a criminal offence to attend designated football matches for a determined period. Usually, a person subject to a ban has to attend a police station when these matches are taking place but may also have to comply with additional requirements. For instance, he may be banned from using public transport on match days or from visiting town centres, pubs and bars during risk periods. International football bans prevent a person from leaving the country by imposing the surrender of his/her passport during designated football matches or tournaments. In the UK, football banning orders introduced by the Football (Disorder) Act of 2000 combine the effect of domestic and international football bans.

² These namely include Belgium, Italy, Germany, France and the UK.

³ See G. Pearson, "Qualifying for Europe? The Legitimacy of Football Banning Orders 'On Complaint' under the Principle of Proportionality", *Entertainment & Sports Law Journal*, Vol. 3, No. 1 (2005) (<http://www.warwick.ac.uk/eslj>); see also C. Stott and G. Pearson, "Football Banning Orders, Proportionality, and Public Order Policing", *The Howard Journal*, Vol. 45, No. 3 (2006), pp. 241-54.

that, far from revealing a recent change in the control of football spectator violence, football bans are embedded in a security *dispositif*⁴ that has been violating football supporters' rights and liberties all over Europe since the mid-1980s. The forms and the importance of the control of deviance within this security *dispositif* have been studied elsewhere.⁵ In this paper, the issue is addressed in relation to showing that this jeopardising of freedoms for the sake of security is not a side-effect of counter-hooliganism policies. It is inherent to the very structure of the regulation of the phenomenon in that it stems from the rationale of the crime control patterns that frame it and from the consequent dichotomy between the individual-based legal protection of freedom and group-based, risk-focused social control.

To highlight these interactions, this paper reviews counter-hooliganism regulatory texts, adopted during the last four decades by national,⁶ EU and European⁷ institutions, in the light of the evolution of crime control policies in Europe. In so doing, the paper focuses on the tension between security policies and freedoms, setting aside the question of the development of long-term preventative projects in several European countries since the early 1980s. Following the criterion of the changes undergone by the normative precision of the phenomenon, this period will be divided into three phases, respectively called general regulation, normative specificity and normative vagueness.

1. General regulation

From the late 1960s to 1985, despite the increasing frequency and dangerousness of violent football-related incidents and the ensuing rise in moral panics,⁸ football hooliganism was seen as an ordinary public order problem, the control of which did not require the introduction of specific laws. In continental Europe, the punishment of football hooligans relied on the provisions of national penal codes, while in England and Wales it was based on many common law and statutory offences, provided by acts dealing with the protection of public order in general.

The same indulgence prevailed at the EU level where football hooliganism led to the adoption of only one Resolution by the European Parliament, in 1984, the authors of which mainly

⁴ According to M. Foucault, a *dispositif* is a heterogeneous set of discourses, institutions, architectural arrangements, regulations, laws, administrative measures, scientific statements, philosophic propositions, morality and philanthropy that forms an intensified surveillance and control mechanism.

⁵ See A. Tsoukala, *Sport et violence. L'évolution de la politique criminelle à l'égard du hooliganisme en Angleterre et en Italie, 1970-1995*, Athens/Brussels: Sakkoulas/Bruylant (1995); see also by the same author, « La gestion policière du hooliganisme: Angleterre, Italie, Pays-Bas », in J.-C. Basson (ed.), *Sport et ordre public*, Paris: IHESI/La Documentation française (2001), pp. 159-74, and « Le hooliganisme et la protection de la sécurité intérieure en Europe. Quels enjeux ? », *Revue internationale de criminologie et de police technique et scientifique*, 3 (2002), pp. 310-22, and « Les nouvelles politiques de contrôle du hooliganisme en Europe : de la fusion sécuritaire au multipositionnement de la menace », *Cultures & Conflits*, No. 51 (2003), pp. 83-96.

⁶ The national level covers all European countries that have been liberal democracies with a persistent football hooliganism problem for the major part of the last four decades.

⁷ The European institutions include the Council of Europe and the Union of European Football Associations (UEFA).

⁸ On the moral panics orchestrated by the British mass media since the 1966 Football World Cup, see G. Whannel, "Football, Crowd Behaviour and the Press", *Media, Culture and Society*, 1 (1979), pp. 327-42. See also P. Murphy, J. Williams and E. Dunning, *Football on Trial*, London: Routledge (1990), p. 73 f; and also I. Taylor, "Class, Violence and Sport: The case of soccer hooliganism in Britain", in H. Cantelon and R. Gruneau (eds), *Sport, Culture and the Modern State*, Toronto: University of Toronto Press (1982), pp. 39-96.

recommended the strengthening of the control of football spectators through the enhancement of cooperation between all competent state and sports agents.⁹

That greatly-expanded regulatory stance probably suggests the existence of a common conceptual basis that arguably echoes the influence of the crime control regime that had been predominant in Europe until then. Widespread since the 19th century, this regime was structured around the subjective aspects of the offence, i.e. the motive and the needs of the offender. What D. Garland qualifies as “penal welfarism”¹⁰ went beyond the punishment of the individual fault to project itself into the future, seeking rehabilitation at the individual level and prevention at the collective one. At the former level, it was widely admitted that it was possible to exercise an influence on incarcerated criminals to make them comply with the looked-for norms of behaviour, i.e. to turn them into those “docile bodies” described by Foucault.¹¹ At the collective level, the wish to control the social origins of delinquency led to the introduction of many long-term preventive programmes.

In any case, this belief in the capacity of society to control the sources of crime – through the change of the delinquent persons or of the crime-generating aspects of their environment (or both) – was built upon a series of clear-cut distinctions. First, there was a conceptual distinction between delinquency and deviance, according to which only the former could set into motion the criminal justice system. Far from implying the absence of any control of deviance, this distinction was actually limiting this control in terms of the exercise of executive power. Second, there was a temporal distinction, according to which the criminal justice system was usually activated after the perpetration of the offence. Social reaction to the offence was then ideally seen as a defence against the transgression of the norm, as protection from any future transgression perpetrated by the same person, and as dissuasion towards any person wishing to commit a similar transgression. Lastly, distinctions were made among the objects of crime control policies, according to which social control was mainly targeting criminals who were thought to pose a threat to the rest of the community precisely because of behaviour that was negating one or more social values put under the protection of the law.

Although this crime control policy had been called into question since the 1970s, its rationale went on determining the regulation of football hooliganism at the national and EU levels until 1985. Yet at the European level its influence could be seen to wane as shown by the provisions of the Council of Europe Recommendation No. R (84) 8 on the reduction of spectator violence at sporting events and in particular at football matches, adopted in 1984. While recommending the enhancement of national coercive policies, the authors of that Recommendation attached priority to the strengthening of cooperation between the competent state and civil agents and proposed the introduction of a situational preventive policy, structured around the segregation and the surveillance of football spectators.¹²

Recommendation No. R (84) 8 has no binding effect. It nevertheless marks a turning point in the regulation of football hooliganism in that its aforementioned provisions prefigure the emergence of a new era of social control, based on risk management. Yet it should also be noted that situational prevention was already prevalent in UEFA’s binding instructions in 1983,¹³ which

⁹ Refer to European Council, Resolution on Sport in the Community, OJ C 127, 14.5.1984, F§3.

¹⁰ See D. Garland, *Punishment and Welfare: A History of Penal Strategies*, Aldershot: Gower (1985).

¹¹ See M. Foucault, *Surveiller et punir*, Paris: Gallimard (1975), p. 135 f.

¹² Refer to Council of Europe, Recommendation No. R (84) 8, Recommendations to Member States, Strasbourg (1985), B§4.

¹³ See UEFA, *Order and security in the stadia*, Binding instructions and recommendations to avoid crowd disturbances, Bern (1983).

had been set up in cooperation with the English Football Association and the Deutscher Fussball-Bund. It thus seems that, in the case of football hooliganism, the change in crime control policy had initially occurred in the private sphere, as the outcome of concerted action by sports organisations and public security agencies, to be further specified at the international level, following an intergovernmental rather than parliamentary route of action. In this respect, the Heysel stadium disaster,¹⁴ which is often seen as the tragic event that led to a new era in the control of football hooliganism in Europe, merely accelerated a change that was already underway.

2. Normative specificity

Undoubtedly, the Heysel disaster has had a deep impact on the perception of football hooliganism in Europe. The images of the dying victims made so obvious the danger of the phenomenon that henceforth it has been taken for granted that its control should rely on an appropriate legal framework. It was to signify the beginning of a new period, from 1985 to the late 1990s, in the course of which football hooliganism acquired, to some extent, a normative specificity.

2.1 The framing of football hooliganism

Given the prior trends, it is not surprising that this normative specificity first appeared at the European level, in the adoption in 1985 of the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches.¹⁵ Set up in the aftershock of the Heysel disaster, the European Convention did not promote any genuinely new policy as it essentially reproduced the main provisions of the aforementioned Recommendation.¹⁶ Consequently, the European Convention attaches priority to the enhancement of domestic and international cooperation among all competent public agencies and sports authorities,¹⁷ and calls for the implementation of a situational preventive policy, always structured around the segregation and the surveillance of football spectators. From that point onwards, however, this preventive policy has been expanding in time, to cover periods running before the start and after the end of the fixture, expanding in space, to cover places outside of football stadia, and expanding in relation to its target populations, to cover potential troublemakers and persons who are under the influence of alcohol or drugs.¹⁸

On this last point, the European Convention differs significantly from the aforementioned Recommendation, the provisions of which solely refer to known troublemakers. In so doing, it allowed the institutionalisation of the control of deviance for the first time. This highly unexpected position, in that it came from an institution that aims at protecting human rights in Europe, was reinforced and enlarged by UEFA, which, in its 1985 guidelines made in conjunction with an expert group set up by the Council of Europe,¹⁹ also provided for security measures to be implemented against potential troublemakers. Since then, social control has gone

¹⁴ In May 1985, a riot in Heysel stadium during the European Cup finals resulted in 39 deaths and more than 400 injuries.

¹⁵ See the Council of Europe, European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches, CETS No. 120, signed in Strasbourg on 19.08.95 and which entered into force on 1.11.95.

¹⁶ For an analysis of these provisions, see A. Tsoukala (1995), *op. cit.*, p. 213 f.

¹⁷ International cooperation is now thoroughly regulated.

¹⁸ Refer to the European Convention on Spectator Violence, *op. cit.*, Art. 3.

¹⁹ See J. Taylor, "The War on Soccer Hooliganism: The European Convention on Spectator Violence and 'Misbehaviour' at Sports Events", *Virginia Journal of International Law*, 27 (1987), p. 644.

beyond the response to the effective prejudice provoked by a delinquent act in additionally covering the potential threat posed by deviant behaviours.

This expansion of social control has coincided with claims to toughen the punishment of football hooligans. The member state signatories to the European Convention thus have the task of ensuring that those found guilty of offences related to football violence receive appropriate penalties or administrative measures.²⁰ Actually, it is this call for the hardening of the coercive measures that has given rise to all subsequent counter-hooliganism laws, which usually seek to warrant the application of the European Convention at the national level. Varying significantly from one country to another as to their number, content and dates of enactment, these counter-hooliganism laws, which are further reinforced by many specific measures provided by laws with a general scope, end up endowing football hooliganism with a certain normative specificity. A summing-up of the key definitional elements put forward by European legislators shows that the incriminating behaviour consists of

- a) abusive acts or words, involving the use or threat of violence, which cause harm to a person or damage to property or breach of the peace, if they are committed or pronounced by one or more persons at or in connection with sports events; and
- b) ordinary acts that are reprehensible if committed at or in connection with sports events.²¹

The creation of this specific counter-hooliganism legal framework has had a significant effect on the control of football spectators in that it implies the introduction of dispensatory measures and new sanctions. Among the former, the most important ones are the alcohol ban inside and around football stadia in the case of high-risk football matches, the use of various surveillance devices inside and outside of football stadia, and the preventive detention of potential troublemakers. Among the new sanctions, the most important ones are the domestic and international football bans.

Yet, this normative specificity of football hooliganism remains paradoxical because it has been developed in the absence of any legal definition of the phenomenon. Actually, football hooliganism is decomposed into a series of reprehensible behaviours, adopted at or in connection with sports events. Therefore, the spatial criterion is both the key definitional element of football hooliganism and the ground of a new aggravating circumstance as persons committing offences in connection with sports events are punished more severely than are persons committing similar offences in other circumstances.

The adoption of such an analytical approach, which brings to mind the definitional difficulties met by jurists during their multiple attempts to frame the notion of organised crime,²² suggests that football hooliganism is a commonsensical notion that can only be used as a generic term.²³ The problems raised by this impossibility to transcribe in legal terms an empirical notion are related to the drawing of a clear line between legality and illegality and to the ensuing positioning of persons in the ongoing renegotiation of the power given to the social control

²⁰ Refer to the European Convention on Spectator Violence, op. cit., Art. 3c.

²¹ Such acts include consumption of alcohol in and around football stadia or, in some countries, possession of intoxicating liquor while travelling to or from a designated sporting event.

²² See C. Blakesley, « Les systèmes de justice criminelle face au défi du crime organisé », *Revue Internationale de Droit Pénal*, 1/2 quarters (1998), pp. 35-68; see also R. Ottenhof, « Le crime organisé : de la notion criminologique à la notion juridique », in Institut de Sciences Pénales et de Criminologie, *Criminalité organisée et ordre dans la société*, Marseille: Presses Universitaires d'Aix (1997), pp. 45-48.

²³ A comment made by C. Blakesley (1998, op. cit., p. 41) on defining organised crime is paraphrased here.

apparatus. In other words, while some behaviours undeniably fall under the law,²⁴ the legal definition of some other behaviours, situated on the borderline of (il)legality, in a grey zone made of deviant rather than delinquent acts,²⁵ is closely related to the discretionary power of the state or civil security agents (or both). Therefore, it can vary significantly from one context to another, according to the service, the grade or even the mood of the security agents in charge,²⁶ or according to the alleged degree of danger associated with the fixture or to the dominant crowd control patterns in a given area, thus creating a zone of legal uncertainty. The vague definition of public order and thus what may breach it jeopardises not only the ideally equal implementation of the law in a given territory but also the protection of civil rights and liberties in that the consequent weakening of the principle of legality entails that of the principle of proportionality and in some cases the principle of accountability. As the phenomenon to be put under control is not clearly defined by the legislator, the state and civil security agents can include in their field of action a potentially infinite series of behaviours. Control and surveillance devices can be developed beyond any possible assessment of their correspondence with the key elements of the incriminated behaviour or of their proportionality to the football hooliganism threat. This potentially unlimited extension of the social control realm renders targeted populations very vulnerable, as the blurring of the frontiers between legality and illegality makes it practically impossible to call into question the intrusive power of security agents. Contrary then to appearances, which rest upon the quantitatively important national legislative outputs, the legal framework related to football hooliganism is in fact delimited by the executive rather than the legislative power, thus leaving football spectators exposed to the arbitrariness of the social control apparatus.

2.2 Values to be protected

This prevalence of the executive in the regulation of football hooliganism has further produced an implicit prioritisation of the values to be protected, according to which protection of people and property rank first. By contrast, the protection of democratic order, breached by the increasingly frequent adoption of racist behaviour inside football stadia, did not emerge as an important value until the 1990s, at the national level, and it would take more than a decade for it to impose itself at the European level as well.²⁷

Actually, this turning of security into a prime value to protect has not been specific to the counter-hooliganism fight. It is one of the key features of the evolution of the European political agenda during that period.²⁸ Indeed, concerns have been raised since the mid-1980s about what

²⁴ Such behaviours include bodily harm and damage to property.

²⁵ These types of acts would include standing up often and/or vociferating (inside stadia), drinking alcohol or being part of a boisterous group (outside of stadia).

²⁶ See D.H. Bayley, *Patterns of Policing: A comparative international analysis*, New Brunswick: Rutgers University Press (1985); see also D. Monjardet, *Ce que fait la police. Sociologie de la force publique*, Paris: La Découverte (1996); and also C. Mouhanna, « La police de proximité ou les contradictions d'une police au service du public », *Panoramiques*, No. 33 (1998), pp. 27-32. On the football hooliganism case, see M. O'Neill, "Policing football in Scotland", *International Review for the Sociology of Sport*, Vol. 39, No. 1 (2004), pp. 95-104 and also C. Stott, "Police expectations and the control of English soccer fans at Euro 2000", *Policing: An International Journal of Police Strategies and Management*, Vol. 26, No. 4 (2003), pp. 640-55.

²⁷ Following the Political Declaration and the General Conclusions adopted by the European Conference against Racism and Intolerance (held in Bratislava on 13 October 2000), the Council of Europe adopted in July 2001 the Recommendation Rec(2001)6 on the prevention of racism, xenophobia and racial intolerance in sport.

²⁸ For an analysis of the key aspects of this process, see O. Waeber, "Securitization and Desecuritization", in R. Lipshutz (ed.), *On Security*, New York: Columbia University Press (1995), pp. 46-86; see also M.

is perceived as a globally rising disorder – mainly owing to the acceleration of the Europeanisation process, the end of bipolarity, the growth of transnational migratory movements, globalisation, the rise in environmental and alimentary insecurity, and the tremendous technological and scientific progress. Against this background the politicisation of security has relied on the redefinition of both the security threats and the object of social control, according to two distinct but interconnected patterns, related respectively to the end of bipolarity and to the emergence of the risk society. In the former case, the vacuum produced by the vanishing of the Soviet enemy was filled by a new perception of security threats, focused on delinquent persons. This substitution of the political threat for the criminal one had already been underway in the mid-1980s, when numerous official reports and public discourses on internal security issues sought to define threats by establishing a close association between various deviant and criminal behaviours, ranging from terrorism and organised crime to illegal immigration, juvenile delinquency, petty crime, urban violence and football hooliganism. The end of bipolarity accelerated and, above all, amplified this process, thus leading to the construction of a European-wide security continuum²⁹ that focused on the very existence of any threat posed to the internal security of European countries, regardless of its effective danger and legal nature. Henceforth, threats have been thought to be interconnected and deterritorialised as, owing to their alleged transnational nature, they are not exclusively external or internal anymore. Consequently, they are subject to a dual definitional process. On the one hand, their contour is not clear-cut, enabling them to become part of a broader set of disparate threats. On the other hand, their hard core has become increasingly specific, justifying without any possible doubt their inscription in the security threats realm. In other words, each of the phenomena included or to be included in the security threats continuum has become a specific threat, following the criminalisation or harsher punishment of some of its aspects or even control of its deviant characteristics, while simultaneously becoming a general threat, owing to the absence of any delimitation of the threat itself. The parallel development of these two definitions has granted the social control apparatus potentially infinite possibilities of expansion in the name of the efficient protection of internal security in Europe.

The establishment of this dual definition of security threats has been greatly facilitated by the rise of post-modern risk societies.³⁰ As is widely acknowledged today, this concern with risk and the ensuing introduction of strategies for coping with it have had a deep impact on the conception and implementation of crime control policies. As a result, the defenders of the risk-focused mentality³¹ call into question the principle of rehabilitation to promote the introduction of a realist social-control policy. In so doing, they deny the pertinence of any causal link between crime and social environment to limit themselves to the mere control of the social effects of crime through a constant assessment of benefits and costs. It should be specified here that this focus on risk has not led to the abandonment of the rehabilitation-oriented crime

Anderson, *Frontiers: Territory and State Formation in the Modern World*, Cambridge: Polity Press (1996); and also B. Buzan, O. Waever and J. de Wilde, *Security: A New Framework for Analysis*, Boulder, CO: Lynne Rienner (1998); and S. Palidda, « Polizia e immigrati: un'analisi etnografica », *Rassegna Italiana di Sociologia*, 1 (1999), pp. 77-114; and P. Mary and T. Papatheodorou (eds), *Crime et insécurité en Europe*, Bruxelles: Bruylant (2001); and D. Bigo, "Security and Immigration: Toward a Critique of the Governmentality of Unease", *Alternatives*, Vol. 27, No. 5 (2002), pp. 63-92; and H. Lagrange, *Demandes de sécurité*, Paris: Seuil (2003), p. 53 f.

²⁹ See D. Bigo, *Polices en réseaux*, Paris: Presses de Sciences Po (1996), ch. V.

³⁰ See U. Beck, *Risk Society: Towards a New Modernity*, London: Sage (1992).

³¹ Actually, the process of redefining the object of social control had been initiated in the 1970s in the US. For a brief, concise history of the emergence of this trend, see M. Feeley, "Crime, social order and the rise of neo-Conservative politics", *Theoretical Criminology*, Vol. 7, No. 1 (2003), p. 118 f.

control policy. It has rather provided prior mentalities and practices with a new meaning, so they can fit into the context of a risk-based way of thinking.³² Therefore, while formally speaking, certain measures continue to be inspired by the previous crime control model and others follow the risk-focused one, the risk-based mindset has in fact been gradually taking over.³³

The rationale of this risk-focused crime control policy disrupts the prior one in many respects. First, its main objective, i.e. the protection of the community from all risks posed to its security, wipes away the distinction between deviance and delinquency. The social control apparatus no longer seeks to defend the community against a danger stemming from an offence, but to protect it from the potential risk included in a given behaviour. Its field of action can thus cover both deviant and criminal behaviours. Subsequently, the control of deviance ceases to be an exceptional, dispensatory expression of social control and becomes a key element of the norm, which cannot be dissociated from the very functioning of the crime control system. Actually, that shift calls into question the whole conception of the criminal justice system in democracy. The institutionalisation of the control of deviance is so wide that it is no longer possible to reason in terms of specific swings from a liberal social-control apparatus to one that is more authoritarian in orientation. We are no longer in front of the isolated drifts of a criminal justice system otherwise conforming to the rule of law, which was analysed at length in the 1980s.³⁴ Presently, the growing grip of the social control apparatus over the private sphere is formally established and legitimised. Indeed, while the defenders of human rights see in this shift the symptom of an ongoing redefinition of the power relations between the executive and the people or the (re)positioning of the state and civil agents in the political and security fields (or both), the executive branch refuses to see in it any jeopardising of civil rights and liberties. Assuming that the law, as rule related to what is owed to the community rather than to persons, aims at protecting the common good,³⁵ it legitimises the expansion of the social control apparatus as a necessary adaptation to a new context in the name of protecting the security of democratic regimes from all present and future risks.³⁶ At the same time, the mere expansion of the social control apparatus beyond the limits posed by democratic regimes does not suffice to announce the emergence of an authoritarian state in the strict sense of the term. However important they may be, the infringements of civil rights and liberties that result from this reconfiguration of the citizens–law relationship do not radically alter the basis of political order in European countries. What they do reveal is a deep change in the grounding of the legal order in democracy, which has been enlarged to include in a permanent way normative propositions stemming from an extra-legal normative order. That ends up alienating one of the key elements of the rule of law, i.e. the protection offered to people against the arbitrariness of the state apparatus.

The risk-focused crime control policy also rests upon a deep change of its object. It no longer targets delinquent persons but members of allegedly risk-producing groups. Therefore, it goes beyond effectively perpetrated offences to cover the potential behaviours of members of deviant

³² See C. Shearing, “Punishment and the changing face of the governance”, *Punishment & Society*, Vol. 3, No. 2 (2002), p. 212.

³³ See M. Hörnqvist, “The birth of public order policy”, *Race & Class*, Vol. 46, No. 1 (2004), p. 39.

³⁴ See M. Delmas-Marty, *Modèles et Mouvements de Politique Criminelle*, Paris: Economica (1983), p. 102 f.

³⁵ See M. Bastit, *Naissance de la loi moderne*, Paris: PUF (1990), p. 370.

³⁶ On the legitimising of new security policies, see A. Tsoukala, “Democracy Against Security: The Debates about Counter-terrorism in the European Parliament, September 2001–June 2003”, *Alternatives*, Vol. 29, No. 4 (2004), pp. 417-39; see also by the same author “Democracy in the Light of Security. British and French Political Discourses on Domestic Counterterrorism Policies”, *Political Studies*, Vol. 54, No. 3 (2006), pp. 607-27.

groups. Yet, this shift from the individual to the collective level jeopardises the grounds of democratic legal frameworks that rely, on the one hand, on the principles of legality and personal liability and, on the other hand, on the relation between the offender and the individual or collective victim.³⁷ More explicitly, the pretension of social control agents to possess a kind of global knowledge of future behaviours denies a person the freedom to decide whether, and under what circumstances, s/he will commit a given act; it goes on to deny the moral assessment of that act as the basis of a liability that entails punishment and, finally, to deny the role of the victim in the justification of punishment. Hereafter, the hazardous nature of the elements of the triangular relation of offender–offence–punishment is put aside for the benefit of a determinist vision of the world that, in search of certainties, ends up blurring the frontiers between ordinary and reprehensible behaviour. Since danger is an individual concept, while risk cannot but be a collective one, the social control apparatus does not seek to punish delinquent persons in the name of the dangerousness of their acts, but to control social groups according to the seriousness of the alleged risks they pose to the community.³⁸ The control of these groups follows the proactive principle of actuarial risk-assessment, while the selection of its target populations mirrors at any given moment the temporary result of the struggles over the definition of security threats occurring within the political and security realms, which in turn echo the values and interests of each group of actors involved in this process. Once prevailing, the implementation of the proactive principle of actuarial risk-assessment implies the introduction or the development of various security devices that create a continuum of control³⁹ covering delinquent persons, potentially delinquent persons and even persons *a priori* irrelevant to the behaviour put under control. In the case of football hooliganism, CCTV cameras installed in football stadia, for instance, cover the behaviour of troublemakers, boisterous football supporters and ordinary football spectators, while the collection and exchange of intelligence goes well beyond the limits of the known and potential troublemakers to cover even ordinary spectators wishing to attend an international tournament.⁴⁰

Nevertheless, the ensuing infringements of civil rights and liberties are not the mere effects of this continuum. They are, above all, the outcome of the very logic lying beneath the risk-focused crime control policy. Indeed, since the legal protection of civil rights and liberties is, by definition, individual,⁴¹ the shift from a person to a group as the key object of social control cannot but weaken the scope of this protection, which in a certain way henceforth becomes objectless. In other words, the framework for the legal protection of freedom still rests upon an individual logic, linked to the principles of the prior rehabilitation-oriented policy, while the framework for risk-based social control has moved on to a collective logic that, in the absence

³⁷ On the vanishing of the victim–offender dichotomy, see the comments of C. Shearing (2001), *op. cit.*, p. 208.

³⁸ See A. De Giorgi, *Zero tolleranza. Strategie e pratiche della società di controllo*, Rome: Derive Approdi (2000); see also C. Shearing (2001), *op. cit.*, pp. 203-20; and E. Silver and L. Miller, “A Cautionary Note on the Use of Actuarial Risk Assessment Tools for Social Control”, *Crime & Delinquency*, Vol. 48, No. 1 (2002), pp. 138-61.

³⁹ See M. Feeley and J. Simon, “The new penology: Notes on the emerging strategy of corrections and its implications”, *Criminology*, 30 (1992), p. 459.

⁴⁰ On the expansion of the surveillance and control *dispositif* in risk-focused societies, see R. Jones, “Digital rule: Punishment, control and technology”, *Punishment & Society*, Vol. 2, No. 1 (2000), pp. 5-22; see also S. Graham and D. Wood, “Digitizing surveillance: Categorization, space, inequality”, *Critical Social Policy*, Vol. 23, No. 2 (2003), pp. 227-48; and D. Lyon, “Globalizing Surveillance: Comparative and Sociological Perspectives”, *International Sociology*, Vol. 19, No. 2 (2004), pp. 135-49; and P. Bonditti, “From Territorial Space to Networks: A Foucauldian Approach to the Implementation of Biometry”, *Alternatives*, Vol. 25, No. 4 (2004), pp. 465-82.

⁴¹ See L. Weinreb, *Natural Law and Justice*, Cambridge, MA: Harvard University Press (1987), p. 129 f.

of equivalent provisions in the human rights realm, significantly weakens the position of those facing the social control apparatus.

This vulnerability is further reinforced by the vanishing of previous temporal and spatial limits. Risk-based social control is potentially boundless in that it can vary from a definite post-offence time to a vague *ante* risk-behaviour period and from a clear-cut space of illegality to a field of action liable to cover an undetermined part of private life. Eventually, its changing relation with time and space alters its relation with reality insofar as it focuses on potential rather than real behaviours. Thus its effects are produced not only because of its links with reality but also through its projection onto a virtual reality. Far from limiting themselves to the containment of offenders, social control agents seek to control undisciplined persons by managing in advance risk-producing groups, the behaviour of whom is monitored thanks to a series of speculations on their future manifestation.⁴² The agents abandon their previous reactive patterns, circumscribed by the spatial-temporal choices and other specificities of the offenders, and adopt a proactive approach, i.e. active and free from earlier constraints, allowing them to become the quasi-absolute definers of both the spatial-temporal parameters and the modes of their intervention, regardless of the acts effectively perpetrated by the persons in question. In so doing, they escape from the restrictions posed by the unending changeability of the present reality and are able to base their decisions on a more easy-to-mould future, following numerous scenarios that end up colonising the future.⁴³ Instead of being mere suppositions, hazardously inscribed in reality, these scenarios embody a part of reality⁴⁴ insofar as they effectively transform the future, which is thereafter seen as the cause rather than the effect of present acts.

2.3 Coping with the threat at the EU level

In the case of football hooliganism, this rise of the risk-focused crime control policy remains essentially limited at the national and European levels. That is shown by both the late adoption of the risk-based principles of action by the EU institutions and the attachment of European deputies to the rehabilitation-oriented crime control policy. In the former case, it should be specified that, in the absence of any legal grounds empowering them to directly regulate sports issues,⁴⁵ EU institutions have long opted for indirect ways of action that do not allow us to discern their conceptual background.⁴⁶ The influence of the risk-based mentality first became obvious in the Council Recommendation of 22 April 1996 on guidelines for preventing and restraining disorder connected with football matches. It recommends the establishment of an overall assessment of the potential for disorder and the standardisation of the exchange of intelligence about known or suspected groups of troublemakers.⁴⁷ One year later, the Council Resolution of 9 June 1997 on preventing and restraining football hooliganism through the

⁴² See D. Bigo, “Globalized (in)security: The Field and the Ban-opticon”, in D. Bigo and A. Tsoukala (eds), *Illiberal Practices of Liberal Regimes: The (in)security games*, Paris: L’Harmattan (2006), pp. 5-49.

⁴³ See U. Beck, *World Risk Society*, Cambridge: Polity Press (1999), p. 52; see also by the same author, “The Terrorist Threat: World Risk Society Revisited”, *Theory, Culture & Society*, Vol. 19, No. 4 (2002), p. 40.

⁴⁴ See U. Beck (1999), op. cit., p. 139.

⁴⁵ Apart from a declaration on sport annexed to the Treaty of Amsterdam, without binding effect, there is no specific reference to sport in the Treaties.

⁴⁶ See, for instance the Adonnino Report, adopted by the Milan European Council in June 1985, which recommended the reinforcement of preventive and coercive counter-hooliganism measures (Resolution of 13 November 1985, Europe of the citizens, OJ C 345, 31.12.1985).

⁴⁷ Refer to European Council, Recommendation of 22 April 1996 on guidelines for preventing and restraining disorder connected with football matches, OJ C 131, 3.5.1996, II.1.

exchange of experience, exclusion from stadiums and media policy confirmed this position by recommending that football bans imposed upon known and suspected troublemakers should also apply to football matches in a European context.⁴⁸ This Council Resolution also offers a good illustration of the increasing influence of the risk-based mentality, which has moved beyond the institutionalisation of the control of deviance to alter the very reasoning of the decision-makers. Indeed, in spite of the absence of any evidence on the existence of an international network of hooligans, the European-wide diffusion of the belief in deterritorialised threats, rising from internationally connected criminal networks, pushed its authors to ask for the annual compilation of national reports on the activities of international networks of football supporters' groups.⁴⁹

Yet, this position of the European Council is not shared by the European Parliament, which remains attached to the principles of the rehabilitation-oriented crime control policy. This priority is clearly shown in the Resolution of 11 July 1985,⁵⁰ adopted right after the Heysel stadium disaster. While they complied with some of the policies provided by the 1985 European Convention, in also recommending the reinforcement of the coercive and situational preventive measures,⁵¹ European deputies diverged significantly when they specified that security measures should only be applied to known troublemakers.⁵² The former also differed with the Convention when they aspired to the elaboration of a long-term preventive policy able to combat the social and political causes of the phenomenon.⁵³ In other words, while they shared the view that the efficient tackling of football hooliganism requires the strengthening of relevant security policies, they rejected any institutionalisation of the control of deviance and refused to dissociate the phenomenon from its social context. This position was further confirmed in the Resolution of 22 January 1988. On the one hand, in this Resolution the recommended enhancement of international police cooperation and the establishment of a European-wide network for collecting and exchanging intelligence are not meant to cover suspected troublemakers. On the other hand, football hooliganism is associated with numerous economic, political and social factors, such as the fuelling of nationalism and xenophobia by the mass media and the influence of far-right political organisations.⁵⁴ This strikingly broad definition of football hooliganism⁵⁵ is also interesting for the prioritisation of the social values that it implies. Being thus opposed to the Council of Europe and to the European Council, the European Parliament has stood as the sole European institution showing concern and proposing appropriate measures for the

⁴⁸ Refer to European Council, Resolution of 9 June 1997 of 9 June 1997 on preventing and restraining football hooliganism through the exchange of experience, exclusion from stadiums and media policy, OJ C 193, 24.6.1997, §1.

⁴⁹ *Idem*, §2.

⁵⁰ Refer to European Parliament, Resolution of 11 July 1985 on the measures needed to combat vandalism and violence in sport, OJ C 229, 9.9.1985.

⁵¹ *Idem*, §1-3.

⁵² *Ibid.*, §3e.

⁵³ *Ibid.*, C, §7, 10, 11.

⁵⁴ Refer to European Parliament, Resolution of 22 January 1988 on vandalism and violence in sport, OJ C49, 22.2.1988, Preamble (E, G).

⁵⁵ While the authors of the 1985 European Convention admitted that the origins of football spectator violence were mainly outside sport, the only long-term preventive policy they proposed was sports-focused, i.e. relying primarily on the promotion of the sporting ideal and of the notion of fair play. Moreover, in its first annual report, the Standing Committee considered that research into the social origins of football hooliganism could not be directly helpful in implementing the European Convention (First meeting of the Standing Committee, Meeting Report 4, 8-9 July 1986, mentioned by J. Taylor (1987), *op. cit.*, p. 638).

protection of both public and democratic order in the EU countries.⁵⁶ Expressed also in 1990 in the report of the Committee of Inquiry into racism and xenophobia,⁵⁷ in 1994, in the Resolution on the EU and sport,⁵⁸ and in 1996, in the report on football hooliganism and on the freedom of movement of football supporters,⁵⁹ this stance favouring the protection of democratic principles and the rule of law has led to the constant denouncing of racism in football stadia. This position has also led to growing concerns about the arrests and deportations of football supporters on the basis of mere presumptions, and to confirmation of the principle that the security *dispositif* should not cover suspected troublemakers.

3. Normative vagueness

European deputies have continually sought to strike a balance between the principles of the risk-focused crime control policy and the protection of fundamental rights throughout the subsequent period, ranging from the late 1990s to today. Expressed in 2000,⁶⁰ this position was thoroughly developed during the debates held in the course of the sitting of 8 April 2002 on the draft Council decision on security in connection with football matches with an international dimension, which mainly provided for the creation of an EU-wide network of collection and exchange of intelligence on football hooliganism. Actually, while some European deputies have supported the introduction of proactive policing measures and have not called into question the creation of such a broad surveillance *dispositif*, others have denounced the ensuing establishment of the control of deviant behaviour, if that *dispositif* covers suspected troublemakers as well. The latter have called for the implementation of a long-term preventive policy able to combat both social and sports-related causes of the phenomenon.⁶¹

Nevertheless, this position of the European Parliament remains quite marginal at the EU level. The European Council has diverged significantly from it. More specifically, while the European Council fully shares the principles of the risk-focused crime control policy they have also moved on to a new stage of defining football hooliganism, which is characterised by a growing normative vagueness. The turning point was arguably the Joint Action with regard to cooperation on law and order and security, adopted in 26 May 1997.⁶² That Joint Action, which passed through without prior consultation of the European Parliament,⁶³ extends the provisions of the aforementioned Council Recommendation of 22 April 1996 to cover public order issues in general including sports events. It mainly provides for the collection, analysis and exchange of information on all sizeable groups that may pose a threat to law, order and security when

⁵⁶ Refer to the European Parliament's Resolution on vandalism and violence in sport (1988), op. cit., §6, 15.

⁵⁷ See European Parliament, OJ C 284, 12.11.1990.

⁵⁸ See the Report on football hooliganism and on the freedom of movement of football supporters, cited in European Parliament, OJ C 205, 25.7.1994.

⁵⁹ See also the Report on football hooliganism and on the freedom of movement of football supporters, Doc. A4-0124/96 as cited in European Parliament, OJ C 166, 10.06.1996. For an analysis of the European Parliament's debates on this issue, see A. Tsoukala, « Les organes communautaires et la violence dans le sport », 1st Congress of the French Association of Sociology, Villetaneuse, 24-27 February 2004.

⁶⁰ Refer to European Parliament, Resolution on Euro 2000, OJ C 121, 24.4.2001.

⁶¹ See A. Tsoukala (2004b), op. cit.

⁶² Refer to European Council, Joint Action of 26 May 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union with regard to cooperation on law and order and security, OJ L 147, 5.6.1997.

⁶³ See Statewatch, "The 'enemy within': EU plans the surveillance of protestors and the criminalisation of protests", Statewatch, London (2001), footnote 2 (<http://www.statewatch.org>).

travelling to another member state to participate in a meeting attended by large numbers of persons from more than one member state.⁶⁴ For this purpose, it stipulates that the cooperation between law enforcement agencies should be further reinforced by the creation of an EU-wide pool of liaison officers.⁶⁵

The major change induced by the Joint Action lies in the introduction of the term “meeting”, which refers to a whole array of events, ranging from sporting events to rock concerts, demonstrations and road-blocking protest campaigns. Thereafter, while football hooliganism has remained part of the broader set of threats posed to the internal security of EU countries, in line with the previously established global perception of security threats, it has simultaneously been included in a sub-group of threats where, in line with the principles of the risk-focused mentality, it is linked to ordinary but potentially threatening collective behaviours. This dual inscription of the phenomenon in different conceptual registers reveals a deep change in its definitional process. The hard core of the behaviour remains clearly circumscribed in the criminal justice field but its contour has become increasingly vague, precisely because of its simultaneous inscription in two distinct frames of reference. The effects of this definitional vagueness have moved beyond those observed in the previous period: now, the potentially interconnected behaviours are no longer situated on the borderline between delinquency and deviance but on that between deviance and ordinary behaviour. Their common point is no longer the potential or effective transgression of the norms but their mere propensity to create disorder, even if, formally speaking, they are norm-abiding. The definition of the behaviours to be put under control is thus enlarged, once again, to include ordinary behaviours, situated beyond the limits posed by both legal and social norms.

The specificity of the definitional contour of football hooliganism was further weakened following the JHA Council meeting of 13 July 2001, concerning security at meetings of the European Council and other comparable events. The conclusions of that meeting⁶⁶ provide mainly for the creation of an EU-wide network of national databases, for the establishment of a pool of liaison officers and for the broader implementation of a measure until then reserved for football hooligans, i.e. the systematic use of spotters.⁶⁷ Bringing together football hooliganism and demonstrations was one of the key features of the aforementioned Joint Action. Yet, within the Council’s conclusions it had acquired a new dimension through the decoupling of these events from the other high-risk behaviours mentioned by that Joint Action. The association thus established between political and sports events gives rise to the issue of whether individuals

⁶⁴ Refer to the European Council’s Joint Action (1997), op. cit., Preamble and Art. 1§1. In the European Council Resolution of 29 April 2004 on security at European meetings and other comparable events (OJ C 116, 30.4.2004), the definition of the target population was changed to cover individuals or groups in respect of whom there are substantial grounds for believing that they intend to enter the member state with the aim of disrupting public order and security at the event or committing offences relating to the event (Art. 1).

⁶⁵ Refer to the European Council’s Joint Action (1997), op. cit., Art. 2§1. The operational details of this cooperation were specified in the European Council Resolution of 21 June 1999 concerning a handbook for international police cooperation and measures to prevent and control violence and disturbances in connection with international football matches, OJ C 196, 13.7.1999. Later on, that Council Resolution was updated and expanded by the Council Resolution of 6 December 2001 concerning a handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one member state is involved, OJ C 22, 24.1.2002.

⁶⁶ Although these conclusions have no binding effect, member states are expected to abide by them.

⁶⁷ Refer to European Council, Conclusions adopted by the Council and the representatives of the Governments of the Member States on 13 July 2001 on security at meetings of the European Council and other comparable events, Justice and Home Affairs, 10916/01, 16.7.2001, 1a, b, c.

wishing to go to another member state to protest should be prevented from leaving their country,⁶⁸ following *mutatis mutandis* the football bans principle. At the same time, the establishment of such an association did not prevent the further connection of football hooliganism with other high-risk behaviours. Indeed, during the aforementioned JHA Council meeting, the issue was raised as to whether it was appropriate to extend the powers of Europol to cover violent disturbances, offences and groups.⁶⁹

It is now clear that while football hooliganism is part of a broad set of security threats and a sub-group of threats related to potentially dangerous collective behaviours, it is also part of another sub-group of threats, related to urban security, which places it next to urban riots, petty crime, juvenile delinquency and demonstrations. This inscription of the phenomenon in another conceptual register intensifies the fragmentation of its contour, henceforth multi-positioned in various categories of threats, but also significantly enlarges the origin of the mobilisation of the social control apparatus. Being turned into a floating concept moving around a hard core of reprehensible behaviours, subject to *de facto* circumscriptions but not to any legal definition, football hooliganism borrows some of the features of the behaviours it is associated with according to the prevailing classification in any given context. Each one of these classifications justifies, in turn, the implementation of (dis)similar security measures, believed to be able to cope with one or more specific aspects of the phenomenon.

These multiple classifications are presently grouped under the term ‘conflict’. In a preliminary note for an experts’ JHA Council meeting in 1998,⁷⁰ conflict is defined as any act contrary to the public’s perception of normality or which adversely affects their quality of life.⁷¹ Consequently, it includes both crime and disorder.⁷² The ensuing blurring of the frontiers between delinquency, deviance and ordinary behaviour does not rest upon a legal concept whatsoever but upon an essentially political one, as it is specified that conflict has the potential to have an adverse effect on the status quo.⁷³ This restrictive definition of conflict, which focuses on its potential for disorder and destruction but disregards its contribution to the renewal of social life, congregates a broad set of behaviours to be put under control following the implementation of anticipatory patterns of action that aim at identifying and controlling tensions in society.⁷⁴ The gradual substitution of the legal term *offence* for the political one *conflict*, as a source of the mobilisation of the social control apparatus, was further confirmed by the Council Decision of 28 May 2001 on setting up a European crime-prevention network.⁷⁵ Actually, the authors of the Decision did not adopt the definition advanced by the European Commission in its proposal for a Council decision. More specifically, according to the Commission the concept of crime could also cover anti-social conduct, which, without necessarily being a criminal

⁶⁸ *Idem*, 3a.

⁶⁹ *Ibid.*, 1e.

⁷⁰ The note (7386/98 ENFOPOL 45) was sent from the Presidency of the Council to a Cooperation Group of experts on public order to prepare an experts meeting on public order and conflict management to be held in Brussels on 15 April 1998 (see Statewatch: “Public order: Conflict management: Experts meeting in Brussels on 15 April 1998”, Statewatch, London (1998) (<http://www.statewatch.org>)).

⁷¹ Refer to European Council, Note from the Presidency to the Cooperation Group (experts on public order), 7386/98 ENFOPOL 45, 3.4.1998, 3.1.

⁷² *Idem*.

⁷³ *Ibid.*, 3.2.

⁷⁴ *Ibid.*, 3.3.

⁷⁵ Refer to European Council, Decision 2001/427/JHA of 28 May 2001 on setting up a European crime prevention network, OJ L 153, 8.6.2001.

offence, by its cumulative effect could generate a climate of tension and insecurity.⁷⁶ Yet, the European Council's Decision did not put aside the political element in its definition of the behaviours to be put under control since it considers that crime prevention should intend to reduce or otherwise contribute to reducing crime and citizens' feelings of insecurity.⁷⁷

It follows that the framing of behaviour such as football hooliganism is recomposed around a hard core of legal and political concepts, which justify its control in the name of the protection of both public and political order. Since the feeling of insecurity is closely related to a series of social, political and economic factors, which cannot be dissociated from numerous political stakes, the reasons that can mobilise the social control apparatus are henceforth potentially infinite. Yet, however practical it may seem to law enforcement agents, this framing makes football hooliganism simultaneously totally controllable and uncontrollable. Actually, while the conceptual multi-positioning of the phenomenon exponentially enhances the possibilities and modes of intervention of the social control apparatus, it also amplifies the dimensions of football hooliganism in that it turns it into a boundless problem, a multiform security threat eventually escaping from all control.

If the establishment of football information points in every member state for exchanging information and facilitating international police cooperation in connection with football matches (provided by the Council Decision of 25 April 2002)⁷⁸ thus seems a necessary measure to cope with such a threat, simultaneously it falls short of the scope of football hooliganism. Such a measure represents a temporary stage of a future control *dispositif*, always thought to be better suited to fit in with the specificities of the threat. It should be noted that this continual strengthening of the counter-hooliganism security *dispositif* does not always imply the reinforcement of the control of deviance. While the Council Resolution of 17 November 2003 on member states' use of bans on access to football match venues with an international dimension⁷⁹ invites member states to examine the possibility of introducing domestic/international football bans, it specifies that this provision should only apply to persons previously guilty of violent conduct at football matches.⁸⁰ By contrast, Council Decision 2006/.../JHA amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension⁸¹ empowers national football information points to collect and exchange personal data not only on high-risk supporters, as provided by Decision 2002/348/JHA, but also on those associated with lower risk.⁸² The subsequent expansion of the control of deviance is further confirmed by the call to national football information points to produce and diffuse regular generic or thematic national assessments of football.⁸³

⁷⁶ See European Commission, Communication, The prevention of crime in the European Union: Reflection on common guidelines and proposals for Community financial support, Proposal for a Council Decision establishing a programme of incentives and exchanges, training and cooperation for the prevention of crime, COM(2000) 786 final, 2000/0304 (CNS), 29.11.2000, Brussels, Art. 2.2.1.

⁷⁷ Refer to the European Council's Decision 2001/427/JHA (2001), op. cit., Art. 1.3.

⁷⁸ Refer to European Council, Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension, OJ L 121, 8/5/2002.

⁷⁹ Refer to European Council, Resolution of 17 November 2003 on the use by Member States of bans on access to venues of football matches with an international dimension, OJ C 281, 22.11.2003.

⁸⁰ *Ibid.*, Art. 1, 3.

⁸¹ Refer to European Council, Decision 2006/.../JHA amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension, OJ C 164/30, 15.7.2006.

⁸² *Ibid.*, Art. 1.1a.

⁸³ *Idem.*, Art. 1.1b.

One of the most important effects of the diffusion of this expanding risk-focused mentality at the national level is the transformation of football bans into ordinary tools of risk management. Football bans that during the previous period were usually imposed by a court on conviction are now increasingly applied to suspected troublemakers as well. The limited scope of this paper does not allow an in-depth analysis of the legal questions raised by this trend. Therefore, the subsequent confusion between the executive and judiciary powers and the issues associated with the violation of the presumption of innocence, the principle of proportionality and the freedom of movement within the EU are not discussed here. Nevertheless, this shortcoming should not draw our attention away from the fact that the present systematic use of international football bans has led to a *de facto* institutionalisation of the re-establishment of border controls in the Schengen area. Actually, the re-introduction of border controls on the basis of Art. 2.2 of the Schengen Convention⁸⁴ has been a common practice of member states since the late 1990s.⁸⁵ In 2001, the European Parliament was already drawing attention to the infringement of fundamental rights through the transformation of an exceptional provision into a general rule at the disposal of governments whenever they feared crowd disorder, even for international events of minor importance.⁸⁶ Still, formally speaking, member states that host international events in which crowd disorder is deemed likely may always take other steps to protect security and public order without applying border controls. This flexible decision-making process has totally vanished in the case of football hooliganism, however, as the efficient application of international football bans requires, by definition, the re-establishment of border controls during international tournaments.

Concluding remarks

This brief analysis of the regulation of football hooliganism in Europe and its evolution since the late 1960s has enabled us to see how the politicisation of security and the growing influence of a risk-based mentality on the conception and implementation of crime control policies have led to the infringement of football supporters' civil rights and liberties. The cause of this infringement is the institutionalisation of the control of deviance and the blurring of the frontiers between the executive and legislative powers.

In this respect, counter-hooliganism policies can be seen as a fine illustration of the prevailing changes and trends in crime control patterns. Nevertheless, that should not prevent us from noting a major difference between the social reactions to security policies in general and to counter-hooliganism ones in particular. While in the former case infringement of the civil rights and liberties of members of certain social groups has always provoked vivid criticism by many politicians and numerous human rights groups, the infringement of football supporters' civil rights and liberties has usually been met with indifference.⁸⁷ The reasons underlying this selective defence of human rights may arguably be linked to one or a combination of factors

⁸⁴ Art. 2.2 of the Schengen Convention provides that where public policy or national security so require, a Contracting Party may decide that for a limited period national border checks appropriate to the situation shall be carried out at internal borders.

⁸⁵ For an analysis of this issue, see J. Apap and S. Carrera, *Maintaining Security within Borders: Towards a Permanent State of Emergency in the EU?*, Policy Brief No. 41, CEPS, Brussels (2003).

⁸⁶ Refer to European Parliament, Recommendation to the Council on an area of freedom, security and justice: Security at meetings of the European Council and other comparable events, 5.1, Doc. A5-0396/2001, 12 December (2001).

⁸⁷ An exception is found in British civil society, which has occasionally criticised the violation of football fans' fundamental rights. See, for instance, Liberty, *Briefing on the draft Football (Disorder) Bill*, Liberty, London, July (2000); see also Statewatch, "Public order policing in Europe – Policy backlash expected", Statewatch, London June (2001) (<http://www.statewatch.org>).

including the low opinion of many intellectuals on football and football supporters, the longstanding and eventually successful process of constructing the threatening ‘football hooligan’ figure and a lack of organisation among the ranks of football supporters. In any case, this silence remains deeply worrying in that its effects go well beyond the reinforcement of the football supporters’ vulnerability in front of the social control apparatus to highlight the very limits of the actions undertaken by human rights groups in EU countries.

Yet, however difficult it may be to overcome both the present trends in crime control policies and the broad lack of civil reaction to the infringement of football supporters’ civil rights and liberties, the return to a rule-of-law-abiding counter-hooliganism policy is always possible. For this purpose, the security *dispositif* should rely on an EU-wide legal definition of the phenomenon to target only known football hooligans and to prevent any *de facto* extension of their punishment beyond the formal limits of their initial sanction.⁸⁸ To enhance their efficiency, counter-hooliganism policies should further rest upon an array of measures other than the coercive and proactive ones. That should imply, for instance, the strengthening of ticket controls, the introduction of the principle of negotiation between law enforcement agents and the leaders of the football supporters’ groups in accordance with the predominant patterns of policing mass demonstrations and the ensuing development of self-regulatory modes within the football supporters’ ranks.

⁸⁸ Presently, data on persons subject to football bans are usually retained for five years. Hence, during that period, both known and suspected troublemakers may be prevented from travelling abroad to attend an international tournament, even if they had been subject to a significantly shorter ban.

References

- Anderson, M. (1996), *Frontiers: Territory and State Formation in the Modern World*, Cambridge: Polity Press.
- Apap, J. and S. Carrera (2003), *Maintaining Security within Borders: Towards a Permanent State of Emergency in the EU?*, CEPS Policy Brief No. 41, CEPS, Brussels.
- Bastit, M. (1990), *Naissance de la loi moderne*, Paris: PUF.
- Bayley, D.H. (1985), *Patterns of Policing: A comparative international analysis*, New Brunswick: Rutgers University Press.
- Beck, U. (1992), *Risk Society: Towards a New Modernity*, London: Sage.
- (1999), *World Risk Society*, Cambridge: Polity Press.
- (2002), “The Terrorist Threat: World Risk Society Revisited”, *Theory, Culture & Society*, Vol. 19, No. 4, pp. 39-55.
- Bigo, D. (1996), *Polices en réseaux*, Paris: Presses de Sciences Po.
- (2002), “Security and Immigration: Toward a Critique of the Governmentality of Unease”, *Alternatives*, Vol. 27, No. 5, pp. 63-92.
- (2006), “Globalized (in)security: The Field and the Ban-opticon”, in D. Bigo and A. Tsoukala (eds), *Illiberal Practices of Liberal Regimes: The (in)security games*, Paris: L’Harmattan, pp. 5-49.
- Blakesley, C. (1998), « Les systèmes de justice criminelle face au défi du crime organisé », *Revue Internationale de Droit Pénal*, 1/2 quarters, pp. 35-68.
- Bonditti, P. (2004), “From Territorial Space to Networks: A Foucauldian Approach to the Implementation of Biometry”, *Alternatives*, Vol. 29, No. 4, pp. 465-82.
- Buzan, B., O. Waever and J. de Wilde (1998), *Security: A New Framework for Analysis*, Boulder, CO: Lynne Rienner.
- De Giorgi, A. (2000), *Zero tolleranza. Strategie e pratiche della società di controllo*, Rome: Derive Approdi.
- Delmas-Marty, M. (1983), *Modèles et Mouvements de Politique Criminelle*, Paris: Economica.
- European Commission (2000), Communication, The prevention of crime in the European Union: Reflection on common guidelines and proposals for Community financial support, Proposal for a Council Decision establishing a programme of incentives and exchanges, training and cooperation for the prevention of crime, COM(2000) 786 final, 2000/0304 (CNS), 29.11.2000, Brussels.
- Feeley, M. (2003), “Crime, social order and the rise of neo-Conservative politics”, *Theoretical Criminology*, Vol. 7, No. 1, pp. 111-30.
- Feeley, M. and J. Simon (1992), “The new penology: Notes on the emerging strategy of corrections and its implications”, *Criminology*, 30, pp. 449-74.
- Foucault, M. (1975), *Surveiller et punir*, Paris: Gallimard.
- Garland, D. (1985), *Punishment and Welfare: A History of Penal Strategies*, Aldershot: Gower.
- Graham, S. and D. Wood (2003), “Digitizing surveillance: Categorization, space, inequality”, *Critical Social Policy*, Vol. 23, No. 2, pp. 227-48.

- Hörnqvist, M. (2004), "The birth of public order policy", *Race & Class*, Vol. 46, No. 1, pp. 30-52.
- Jones, R. (2000), "Digital rule: Punishment, control and technology", *Punishment & Society*, Vol. 2, No. 1, pp. 5-22.
- Lagrange, H. (2003), *Demandes de sécurité*, Paris: Seuil.
- Liberty (2000), *Briefing on the draft Football (Disorder) Bill*, Liberty, London, July.
- Lyon, D. (2004), "Globalizing Surveillance: Comparative and Sociological Perspectives", *International Sociology*, Vol. 19, No. 2, pp. 135-49.
- Mary, P. and T. Papatheodorou (eds) (2001), *Crime et insécurité en Europe*, Brussels: Bruylant.
- Monjardet, D. (1996), *Ce que fait la police. Sociologie de la force publique*, Paris: La Découverte.
- Mouhanna, C. (1998), « La police de proximité ou les contradictions d'une police au service du public », *Panoramiques*, No. 33, pp. 27-32.
- Murphy, P, J. Williams and E. Dunning (1990), *Football on Trial*, London: Routledge.
- O'Neill, M. (2004), "Policing football in Scotland", *International Review for the Sociology of Sport*, Vol. 39, No. 1, pp. 95-104.
- Ottenhof, R. (1997), « Le crime organisé : de la notion criminologique à la notion juridique », in Institut de Sciences Pénales et de Criminologie, *Criminalité organisée et ordre dans la société*, Marseille: Presses Universitaires d'Aix, pp. 45-48.
- Palidda, S. (1999), « Polizia e immigrati: un'analisi etnografica », *Rassegna Italiana di Sociologia*, 1, pp. 77-114.
- Pearson, G. (2005), "Qualifying for Europe? The Legitimacy of Football Banning Orders 'On Complaint' under the Principle of Proportionality", *Entertainment & Sports Law Journal*, Vol. 3, No. 1 (<http://www.warwick.ac.uk/eslj>).
- Silver, E. and L. Miller (2002), "A Cautionary Note on the Use of Actuarial Risk Assessment Tools for Social Control", *Crime & Delinquency*, Vol. 48, No. 1, pp. 138-61.
- Shearing, C. (2001), "Punishment and the changing face of the governance", *Punishment & Society*, Vol. 3, No. 2, pp. 203-20.
- Statewatch (1998), "Public order: Conflict management: Experts meeting in Brussels on 15 April 1998", Statewatch, London (<http://www.statewatch.org>).
- (2001), "The 'enemy within': EU plans the surveillance of protestors and the criminalisation of protests", Statewatch, London (<http://www.statewatch.org>).
- (2001), "Public order policing in Europe – Policy backlash expected", Statewatch, London (<http://www.statewatch.org>).
- Stott, C. (2003), "Police expectations and the control of English soccer fans at Euro 2000", *Policing: An International Journal of Police Strategies and Management*, Vol. 26, No. 4, pp. 640-55.
- Stott, C. and G. Pearson (2006), "Football Banning Orders, Proportionality, and Public Order Policing", *The Howard Journal*, Vol. 45, No. 3, pp. 241-54.
- Taylor, I. (1982), "Class, Violence and Sport: The case of soccer hooliganism in Britain", in H. Cantelon and R. Gruneau (eds), *Sport, Culture and the Modern State*, Toronto: University of Toronto Press, pp. 39-96.

- Taylor, J. (1987), “The War on Soccer Hooliganism: The European Convention on Spectator Violence and ‘Misbehaviour’ at Sports Events”, *Virginia Journal of International Law*, 27, pp. 603-53.
- Tsoukala, A. (1995), *Sport et violence. L'évolution de la politique criminelle à l'égard du hooliganisme en Angleterre et en Italie, 1970-1995*, Athens/Brussels: Sakkoulas/Bruylant.
- (2001), « La gestion policière du hooliganisme : Angleterre, Italie, Pays-Bas », in J.-C. Basson (ed.), *Sport et ordre public*, Paris: IHESI/La Documentation française, pp. 159-74.
- (2002), « Le hooliganisme et la protection de la sécurité intérieure en Europe. Quels enjeux ? », *Revue internationale de criminologie et de police technique et scientifique*, 3, pp. 310-22.
- (2003), « Les nouvelles politiques de contrôle du hooliganisme en Europe : de la fusion sécuritaire au multipositionnement de la menace », *Cultures & Conflits*, No. 51, pp. 83-96.
- (2004a), “Democracy against Security: The Debates about Counter-terrorism in the European Parliament, September 2001–June 2003”, *Alternatives*, Vol. 29, No. 4, pp. 417-39.
- (2004b), « Les organes communautaires et la violence dans le sport », 1st Congress of the French Association of Sociology, Villetaneuse, 24-27 February.
- (2006), “Democracy in the Light of Security: British and French Political Discourses on Domestic Counterterrorism Policies”, *Political Studies*, Vol. 54, No. 3, pp. 607-27.
- UEFA (1983), *Order and security in the stadia*, Binding instructions and recommendations to avoid crowd disturbances, Nyon.
- Waeber, O. (1995), “Securitization and Desecuritization”, in R. Lipshutz (ed.), *On Security*, New York: Columbia University Press, pp. 46-86.
- Weinreb, L. (1987), *Natural Law and Justice*, Cambridge, MA: Harvard University Press.
- Whannel, G. (1979), “Football, Crowd Behaviour and the Press”, *Media, Culture and Society*, 1, pp. 327-42.

About CHALLENGE

The familiar world of secure communities living within well-defined territories and enjoying all the celebrated liberties of civil societies is now seriously in conflict with a profound restructuring of political identities and transnational practices of securitisation. **CHALLENGE** (Changing Landscape of European Liberty and Security) is a European Commission-funded project that seeks to facilitate a more responsive and responsible assessment of the rules and practices of security. It examines the implications of these practices for civil liberties, human rights and social cohesion in an enlarged EU. The project analyses the illiberal practices of liberal regimes and challenges their justification on the grounds of emergency and necessity.

The objectives of the **CHALLENGE** project are to:

- understand the convergence of internal and external security and evaluate the changing character of the relationship between liberty and security in Europe;
- analyse the role of different institutions in charge of security and their current transformations;
- facilitate and enhance a new interdisciplinary network of scholars who have been influential in the re-conceptualising and analysis of many of the theoretical, political, sociological, legal and policy implications of new forms of violence and political identity; and
- bring together a new interdisciplinary network of scholars in an integrated project, focusing on the state of exception as enacted through illiberal practices and forms of resistance to it.

The **CHALLENGE** network is composed of 21 universities and research institutes selected from across the EU. Their collective efforts are organised under four work headings:

- *Conceptual* – investigating the ways in which the contemporary re-articulation and disaggregation of borders imply a dispersal of practices of exceptionalism; analysing the changing relationship between new forms of war and defence, new procedures for policing and governance, and new threats to civil liberties and social cohesion.
- *Empirical* – mapping the convergence of internal and external security and transnational relations in these areas with regard to national life; assessing new vulnerabilities (e.g. the ‘others’ targeted and critical infrastructures) and lack of social cohesion (e.g. the perception of other religious groups).
- *Governance/polity/legality* – examining the dangers to liberty in conditions of violence, when the state no longer has the last word on the monopoly of the legitimate use of force.
- *Policy* – studying the implications of the dispersal of exceptionalism for the changing relationship among government departments concerned with security, justice and home affairs, along with the securing of state borders and the policing of foreign interventions.

The CHALLENGE Observatory

The purpose of the **CHALLENGE** Observatory is to track changes in the concept of security and monitor the tension between danger and freedom. Its authoritative website maps the different missions and activities of the main institutions charged with the role of protection. By following developments in the relations between these institutions, it explores the convergence of internal and external security as well as policing and military functions. The resulting database is fully accessible to all actors involved in the area of freedom, security and justice. For further information or an update on the network’s activities, please visit the **CHALLENGE** website (www.libertysecurity.org).

An Integrated Project Financed by
the Sixth EU Framework Programme

