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Paradoxical Legal Specificity

It is undeniable that the Heysel tragedy, which was broadcast live on several European television channels, left a deep impression on people’s minds and transformed the way in which football hooliganism had been perceived up to then by public authorities across Europe. The footage of the dying victims, which was replayed constantly on television just as, many years later, that of the terrorist attacks of 11 September 2001 would be, made the dangerousness of the phenomenon so clear that it left no room for doubt that an appropriate legal framework was required to control it. This gave way to a period in which football hooliganism acquired a certain degree of legal specificity.

Given earlier trends, it is not surprising that such legal specificity should have first appeared at the European level, with the adoption in 1985 of the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (Council of Europe 1985). Drawn up in the aftermath of the Heysel tragedy, the Convention did not provide any genuinely new policies since it essentially reproduced the main provisions of the Council of Europe Recommendation referred to in Part I (Tsoukala 1995: 213ff). Consequently, it attached priority to the enhancement of domestic and international cooperation among all competent public agencies and sports authorities1 and called for the implementation of a situational prevention policy, still centred on the segregation and surveillance of football spectators. From that point onwards, however, the policy in question was extended in terms of time – to cover the periods before and after fixtures – in terms of space – to cover places outside of football stadia – and in terms of its target population – to cover potential troublemakers and people under the influence of alcohol or drugs (Council of Europe 1985: art. 3).
As far as this last point was concerned, the European Convention differed significantly from the earlier Recommendation, the provisions of which applied solely to known troublemakers. In so doing, it allowed the control of deviance to become institutionalized for the first time. This highly unexpected stance on the part of an institution whose raison d’être is to protect human rights was further developed by UEFA in the 1985 guidelines drawn up in collaboration with an expert group from the Council of Europe (Taylor 1987: 644), which also permitted security measures to be taken against potential troublemakers. From then on, social control was not confined to dealing with the actual harm caused by criminal acts, but extended to address the potential threat posed by deviant behaviour. Law enforcers could thus profile suspects for being part of a disorderly rowdy group, drinking (or being drunk), using offensive/vulgar language, making obscene gestures, standing up too often in the football ground, and so on. Social control became increasingly anticipatory, with assessment of the potential dangerousness of football supporters left to the discretion of public and private security agents, who were free to set and amend the criteria used to subject individuals to an ever-growing control apparatus.

This expansion of social control coincided with demands for tougher punishment for football hooligans. The states that signed up to the European Convention were thus entrusted with the task of ensuring that appropriate penalties or administrative measures were applied to those found guilty of offences related to football violence (Council of Europe 1985: art. 3c). Actually, it was this call for more stringent coercive measures that gave rise to all subsequent counter-hooliganism laws, the main purpose of which was usually to ensure enforcement of the European Convention at the national level. Varying significantly from one country to another in terms of their number, content and date of enactment, these counter-hooliganism laws, which were further bolstered with numerous specific measures contained in legislation with broader scope, ended up giving football hooliganism a certain degree of legal specificity. Examination of the key definitional elements put forward by European legislators shows that incriminating behaviour consisted of a) the employment by one or more persons at, or in connection with, a sporting event of abusive acts or words that involved the use or threat of violence and caused harm to a person, damage to property or a breach of the peace; and b) ordinary acts that merited punishment if they were committed at, or in connection with, a sporting event.2

The creation of such a specific legal framework for dealing with football hooliganism had a significant effect on the control of football