

# THE FIGHT AGAINST HOOLIGANISM IN ENGLAND: INSIGHTS FOR OTHER JURISDICTIONS?

ALEXANDRA VEUTHEY AND LLOYD FREEBURN\*

*Violence amongst spectators of sporting events has a long history. Beginning in the 1960s and originating in England, a new type of organised, group violence began to be experienced, particularly amongst football spectators. This ‘hooliganism’ led to such infamous incidents as the 1985 Heysel disaster in Belgium, in which 39 spectators died as a consequence of violence between fans of English and Italian football clubs. Hooliganism led to a series of regulatory responses in England, including various legislative initiatives. This article analyses those regulatory responses, which have collectively become known as the English model for tackling hooliganism. It notes the apparent overall domestic success of these regulatory initiatives, while observing some analytical gaps that make definitive conclusions difficult. The influence of the English system abroad and its use in other countries as a model of good practice — in particular France, Belgium, Italy, Germany and Switzerland — is then critically examined. This article concludes with a summary of the situation in a non-European nation, Australia.*

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## I INTRODUCTION

Sporting events have been marred by fights and clashes between spectators, if not since the inception of organised sport, then at least since the end of the 19<sup>th</sup> century. However, spectator misbehaviour escalated to a new dimension in Britain in the 1960s with the emergence of a new form of violence: ‘organised, premeditated and more often than not, group based’ violence.<sup>1</sup> This phenomenon became known as ‘hooliganism’ and gradually extended throughout continental Europe and, to a lesser degree, the rest of the world.<sup>2</sup> While hooliganism is a term used to describe, in a broader sense, violence or disorder that may occur amongst spectators at any sport, the term is primarily associated with football.<sup>3</sup>

England is the focus of this essay for several reasons. Hooliganism reached its zenith in 1985, when, during the European Cup final between Juventus (Turin) and Liverpool at Heysel Stadium in Brussels, 39 spectators died.<sup>4</sup> This tragedy led to a five-year blanket ban on English football teams at European competitions.<sup>5</sup>

<sup>1</sup> Dominique Bodin, *Le Hooliganisme* (Presses Universitaires de France, 2003). See also Anastassia Tsoukala, *Hooliganisme en Europe: Sécurité et libertés publiques* (Athéna, 2010) 11.

<sup>2</sup> Steve Frosdick and Peter Marsh, *Football Hooliganism* (Willan Publishing, 2005) 2.

<sup>3</sup> Note that the term ‘football’ will be used throughout this paper to refer to the ‘world sport’ that is sometimes called ‘soccer’ in Anglo-Saxon countries. For more details about this paragraph, see generally Steve Frosdick and Robert Newton, ‘The Nature and Extent of Football Hooliganism in England and Wales’ (2006) 7 *Soccer and Society* 403, 403–4; Clifford Stott and Geoff Pearson, *Football ‘Hooliganism’, Policing and the War on the ‘English Disease’* (Pennant Books, 2007) 55. See also Mike Morgan and Luca Egitto, ‘Crowd Disorder: European Anti-Hooliganism Measures: Developments’ (2007) 5(5) *World Sports Law Report* 5, 5.

<sup>4</sup> Bodin, *Le Hooliganisme*, above n 1, 13. More specifically, regarding the emergence of hooliganism in Europe: at 17–43. See also Geoff Beckham, ‘The Price of Passion: The Banishment of English Hooligans from Football Matches in Violation of Fundamental Freedoms’ (2001) 25 *Hastings International and Comparative Law Review* 41, 41–2. However, Beckham refers to 38 deaths. For additional background, see Frosdick and Marsh, *Football Hooliganism*, above n 2, 160; Stott and Pearson, *Football ‘Hooliganism’, Policing and the War on the ‘English Disease’*, above n 3, xix, 25; Ian Warren, *Football, Crowds and Cultures: Comparing English and Australian Law and Enforcement Trends* (Australian Society for Sports History, 2003) 46. Ian Warren reports 38 deaths. Wolfgang Wohlers, ‘Hooliganismus-Bekämpfung: kann die Schweiz von England lernen?’ (2011) 2 *Causa Sport* 176, 178. For a detailed analysis about this tragedy, see, eg, Françoise Tulkens, ‘La tragédie du Heysel: les responsabilités — Le débat sur le plan juridique’ [1988] *Revue interdisciplinaire d’études juridiques* 71. It should also be noted that many other incidents have marred modern sports competitions and football in particular. In the 20<sup>th</sup> century, for football alone, the magazine *L’Equipe* listed over 1300 deaths throughout the world following acts of hooliganism: Bodin, *Le Hooliganisme*, above n 1, 16. For a historical presentation of disorder in Europe, see also Frosdick and Marsh, *Football Hooliganism*, above n 2, 16–22.

<sup>5</sup> Beckham, above n 4, 42; Frosdick and Marsh, *Football Hooliganism*, above n 2, 43, 153; Stott and Pearson, *Football ‘Hooliganism’, Policing and the War on the ‘English Disease’*, above n 3, 26–7.

The effects of English hooliganism in the 1970s and 1980s also led to the introduction of widespread reforms by both the Government and the football authorities to combat the problem.<sup>6</sup> These reforms have often been referred to as a model framework for managing crowd violence.<sup>7</sup> While the problem has not been completely resolved and it is not possible to be absolutely definitive, it does appear that greater regulation and control from the relevant authorities and entities has contributed to a decline in the level of hooliganism.<sup>8</sup>

The topic of violence in football has also attracted frequent academic comment,<sup>9</sup> in particular contributions confined to specific aspects of the issue. Crowd violence (or more generally, crowd and safety management) is also the subject of numerous practice-oriented and generalist literature aimed at sports managers or the general public.<sup>10</sup> Yet few authors have examined the legal aspects of hooliganism comparatively across national jurisdictions.<sup>11</sup>

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<sup>6</sup> See below 17 and accompanying text. See also Frosdick and Marsh, *Football Hooliganism*, above n 2, 153; Morgan and Egitto, above n 3, 5. For more details about English rioting, see Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3; Warren, *Football, Crowds and Cultures*, above n 4, 7.

<sup>7</sup> See, eg, Stefano Blin, 'Football: England the Example Italy Should Follow in Hooliganism Fight', *Agence France-Presse* (Paris), 10 February 2007; Tony Fonteneau, 'Les limites du modèle anglais', *L'Express* (online), 5 March 2010 <[http://www.lexpress.fr/actualite/sport/les-limites-du-modele-anglais\\_853306.html](http://www.lexpress.fr/actualite/sport/les-limites-du-modele-anglais_853306.html)>. See also Conférence des directrices et directeurs de départements cantonaux de justice et police, 'Concept pour une politique de prévention de la violence dans le sport — Projet' (Report, 29 October 2009) 3 ('*Prevention of Violence in Sport Report*'). This document sums up the conclusions of a Swiss delegation which visited several European countries and studied the way they fight against hooliganism in order to find a model of 'good practice' for Switzerland.

<sup>8</sup> See, eg, Nick Coward, 'Tackling Hooliganism' (2003) 59 *Magistrate* 232, 232; Morgan and Egitto, above n 3, 5.

<sup>9</sup> Frosdick and Newton, 'Hooliganism in England and Wales', above n 3, 403; Frosdick and Marsh, *Football Hooliganism*, above n 2, 7–8; Megan O'Neill, *Policing Football: Social Interaction and Negotiated Disorder* (Palgrave MacMillan, 2005) 16; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 37; Warren, *Football, Crowds and Cultures*, above n 4, 5. See, for example, the many contributions dedicated to the study of specific gangs or, in the legal area, the operation and the legality of the banning orders system.

<sup>10</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 7–8. About the issue of safety and management in sport, see, eg, Steve Frosdick and Lynne Walley, *Sport & Safety Management* (Butterworth-Heinemann, 1997); Steve Greenfield and Guy Osborn, 'Sport and the Law: Considerations for Sport Managers' in Linda Trenberth and David Hassan (eds), *Managing Sport Business: An Introduction* (Routledge, 2012) 285, 285–98. About Australia, see, eg, Tracy Taylor and Kristine Toohey, 'Ensuring Safety at Australian Sport Event Precincts: Creating Securitised, Sanitised and Stifling Spaces?' (2011) 48 *Urban Studies* 3259, 3259–75.

<sup>11</sup> Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 37; Warren, *Football, Crowds and Cultures*, above n 4, 5; Roy Hay and Ian Warren, 'Order and Disorder at Sporting Venues' in Dennis Hemphill (ed), *All Part of the Game: Violence and Australian Sport* (Walla Walla Press, 1998) 63, 63.

This article examines the legal and policy measures introduced to respond to football hooliganism in England (and Wales).<sup>12</sup> These measures include an enhanced legal framework as well as policy-based initiatives such as the use of surveillance and monitoring technologies and other strict police enforcement (based mainly on segregation) and increased ticket prices.<sup>13</sup> Particular attention is devoted to the legal measures implemented by the Government to combat hooliganism. Some other measures, relating to the improvement of sports infrastructure, will also be briefly discussed as they have made stadiums safer and reduced crowd disorder.<sup>14</sup>

On the basis of the commentary and assumptions drawn from statistics which show a decline in hooliganism, the conclusion can reasonably be drawn that the reforms that have been introduced in England to combat hooliganism have been effective and good policy in the English (football) context.<sup>15</sup> The few shortcomings of these reforms are not sufficient to refute this. It is more problematic, however, to identify the particular effects of any specific measure in reducing hooliganism within the overall model, or indeed, the precise or cumulative effects of the overall model. Accordingly, the conception of the reforms as a 'model' should be used in a prudent manner by other jurisdictions faced with hooliganism problems. Careful consideration needs to be given to the potential benefits that could be expected from the adoption of some or all of the English reforms and how to implement those reforms in different circumstances.

Noting this gap in the analysis, the influence of the English model in some other countries will then be examined to illustrate the need to adapt reforms in light of the local circumstances and culture.

This paper proceeds in three main parts. Part II will critically describe the English system, including the measures employed by the state to manage supporters, organisers of sports events and third parties, together with the measures implemented by the clubs and the league. Part III will examine the

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<sup>12</sup> The other countries of the United Kingdom (Scotland and Northern Ireland) will not be examined because they have not experienced the same degree of hooliganism. About Scotland, see Richard Giulianotti, 'Sport Mega Events, Urban Football Carnivals and Securitised Commodification: The Case of the English Premier League' (2011) 48 *Urban Studies* 3293, 3300; Niall Hamilton-Smith et al, 'An Evaluation of Football Banning Orders in Scotland' (Research Report, Scottish Government Social Research, 2011); O'Neill, above n 9, 52–3; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 122–30. In Northern Ireland, supporters fall very much along Catholic Republican and Protestant Loyalist lines, which sometimes creates dangerous situations. For more details about the latter point, see Mike Cronin, 'Catholics and Sport in Northern Ireland: Exclusiveness or Inclusiveness?' (2000) 22(1) *International Sports Studies* 25.

<sup>13</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 153; Giulianotti, 'Sport Mega Events', above n 12, 3299; Ian Warren and Roy Hay, "'Fencing them in": The A-League, Policing and the Dilemma of Public Order' (2009) 10 *Soccer & Society* 124, 125. See also Fonteneau, above n 7; Julie Zaugg, 'Comment le Royaume-Uni a taclé les hooligans', *L'Hebdo* (online), 4 April 2012 <[http://www.hebdo.ch/comment\\_le\\_royaumeuni\\_a\\_tacle\\_les\\_hooligans\\_156559\\_.html](http://www.hebdo.ch/comment_le_royaumeuni_a_tacle_les_hooligans_156559_.html)>.

<sup>14</sup> On the contribution of stadium design and condition to spectator safety in relation to the Hillsborough disaster, see Lord Justice Taylor, *The Hillsborough Stadium Disaster*, Cm 765 (1989); The Hillsborough Independent Panel, 'The Report of the Hillsborough Independent Panel' (Report, 12 September 2012) ('*Hillsborough Panel Report*'). See also Frosdick and Marsh, *Football Hooliganism*, above n 2, 8, 172–3.

<sup>15</sup> See, eg, Morgan and Egitto, above n 3, 5. They note that '[t]he UK's anti-hooliganism measures now in place can quite justifiably be viewed as some of the most efficient on the planet'.

influence of the English system abroad and its use in other countries as a model of good practice — in particular France, Belgium, Italy, Germany and Switzerland. Part IV will conclude with a summary of the situation in a non-European nation, Australia. Finally, a number of concluding observations will be made.

## II THE SITUATION IN ENGLAND

This Part will be devoted to the description and the critical analysis of the legal and regulatory measures introduced by England and English clubs in order to combat hooliganism. In this context, the attempt will be made to demonstrate that even if the current system is not perfect, it has reached a satisfactory threshold as the result of a long process spanning several decades.<sup>16</sup> The anti-hooliganism regime introduced in England has also required many adjustments, often conditioned by the tragedies and other riots that have marred football matches. These are discussed in the context of the various reports produced by inquiries established by the Government in response to specific incidents.

### A *The Reports Established in Relation to the Safety and Security of Spectators and Violence in Stadiums*

Several United Kingdom government reports concerning the safety and security of spectators and violence in stadiums were written after various incidents which occurred during the 20<sup>th</sup> century.<sup>17</sup> While most of the fatalities that occurred in these incidents were the result of inadequate safety measures, the issues of spectator safety and hooliganism were often conflated.

The first report was the Shortt Report (1924), which ‘followed a near-disaster at Wembley in 1923, and included recommendations about responsibility, licensing, stewarding and fire safety’.<sup>18</sup> The Moelwyn Hughes Report (1946), commissioned to investigate the collapse of two barriers at Bolton Wanderers’ Burnden Park Ground which resulted in the death of 33 people,<sup>19</sup> dealt with licensing and crowd management. The Lang Report (1969) specifically concerned the behaviour of spectators<sup>20</sup> and the Wheatley Report (1971), written following the disaster at Ibrox Park (Glasgow) which involved the death of 66

<sup>16</sup> See Warren, *Football, Crowds and Cultures*, above n 4, 57–79. Warren notes the importance of historical developments in British soccer.

<sup>17</sup> Aude Bichovsky, *Prévention de la Violence Commise par les Spectateurs lors de Manifestations Sportives* (Thesis, Université de Lausanne, 2009) 119; Warren, *Football, Crowds and Cultures*, above n 4, 5.

<sup>18</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 174; Edward Shortt, *Report of the Departmental Committee on Crowds*, Cmd 2088 (1924). The evidence heard by the inquiry is held at the National Archives: HO 73/114 and 115. See also ‘Amazing Scenes at the Cup Final’, *The Guardian* (online), 30 April 1923 <<http://www.theguardian.com/the-guardian/from-the-archive-blog/2011/may/23/guardian190-fa-cup-1923>>.

<sup>19</sup> Ronw Moelwyn Hughes, *Enquiry into the Disaster at Bolton Wanderers’ Football Ground on the 9th March, 1946*, Cmd 6846 (1946) 12. See also Steve Greenfield and Guy Osborn, *Regulating Football: Commodification, Consumption and the Law* (Pluto, 2001) 8; Mark James, *Sports Law* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2013) 187–8.

<sup>20</sup> Bichovsky, above n 17, 119.

spectators in a stampede,<sup>21</sup> led to the *Safety of Sports Ground Act 1975* (UK) (which implemented the recommendations initially made in the Moelwyn Hughes Report, but which had not been acted upon).<sup>22</sup> Other reports also addressed, inter alia, the issue of alcohol in connection with matches.<sup>23</sup>

The Poplewell Report (1986) investigated the fire of the Bradford stadium, the Heysel events that occurred two weeks later and a hooligan-related death at Birmingham.<sup>24</sup> The Bradford tragedy, which claimed the lives of 58 people, was not due to the violent behaviour of spectators but to the poor infrastructure of the stadium. Illustrating connections between safety and hooliganism, the fire extinguishers were removed from the stadium for fear that they would be used by hooligans as missiles. In addition, the parliamentary debate on the disaster and the Poplewell Report was ‘dominated by a discussion of violence rather than safety’.<sup>25</sup>

Recommendations flowing from these reports included requiring clubs to have licences in order to host football matches at their stadiums and the introduction of video surveillance systems. Greater seating capacity in stadiums, the creation of a membership scheme for all spectators and penalties for clubs not complying with their obligations were also recommended.<sup>26</sup>

Until the Heysel disaster in 1985, the various reports struggled to produce substantial legislative reform, with matters of security in stadiums remaining in the purview of sporting clubs in accordance with a policy of self-regulation and the traditional exclusion of sport from legislative regulation.<sup>27</sup>

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<sup>21</sup> Simon Gardiner et al, *Sports Law* (Routledge, 4<sup>th</sup> ed, 2012) 30–1, 548; James, above n 19, 189–90; Warren, *Football, Crowds and Cultures*, above n 4, 46.

<sup>22</sup> For the whole paragraph, see Bichovsky, above n 17, 119; *Hillsborough Panel Report*, above n 14, 30 [1.28]–[1.31]; Gardiner et al, above n 21, 544–52; Greenfield and Osborn, *Regulating Football*, above n 19, 7–9; James, above n 19, 183–91; O’Neill, above n 9, 45–7.

<sup>23</sup> See J A Harrington, ‘Soccer Hooliganism: A Preliminary Report’ (Report, Birmingham Research Group, 1968); Frank McElhone, ‘Report of the Working Group on Football Crowd Behaviour’ (Report, Scottish Education Department, 1977). For some comments, see Bichovsky, above n 17, 119; Frosdick and Marsh, *Football Hooliganism*, above n 2, 39, 87–8, 125–37, 174; Gardiner et al, above n 21, 548; Greenfield and Osborn, *Regulating Football*, above n 19, 9–11; O’Neill, above n 9, 47–8.

<sup>24</sup> Bichovsky, above n 17, 119; Gardiner et al, above n 21, 548–9; Greenfield and Osborn, *Regulating Football*, above n 19, 11–12; O’Neill, above n 9, 48–9; Stott and Pearson, *Football ‘Hooliganism’, Policing and the War on the ‘English Disease’*, above n 3, 26–7.

<sup>25</sup> Martin Johnes, ‘“Heads in the Sand”: Football, Politics and Crowd Disasters in Twentieth-Century Britain’ in Paul Darby, Martin Johnes and Gavin Mellor (eds), *Soccer and Disaster: International Perspectives* (Routledge, 2005) 10, 13, 19. See also Justice Poplewell, *Committee of Inquiry into Crowd Safety and Control at Sports Grounds: Final Report*, Cmd 9710 (1986). The Bradford stadium fire occurred on 11 May 1985, when a flash fire consumed one side of the Bradford City stadium (England). As a result of the panicked crowds, the incident claimed the lives of 58 spectators and resulted in injuries to a further 200 people. It was established that the spectators were not able to escape from the stand in the event of fire because of the barriers and fences that were present in the stadium. For more details, see Bichovsky, above n 17, 119. Note that some authors report other figures. See, eg, Ian Blackshaw, ‘The “English Disease” — Tackling Football Hooliganism in England’ [2005] (1–2) *International Sports Law Journal* 90, 90. Ian Blackshaw reports 54 deaths. See also James, above n 19, 191–4; Warren, *Football, Crowds and Cultures*, above n 4, 1, 46; Gardiner et al, above n 21, 545. Mark James, Simon Warren and Gardiner et al all report 56 deaths. See O’Neill, above n 9, 48. Megan O’Neill mentions 57 deaths.

<sup>26</sup> See, eg, Bichovsky, above n 17, 120.

<sup>27</sup> *Ibid* 119–20; Johnes, above n 25, 4, 10, 16.

In 1989, at the Hillsborough stadium in Sheffield, England during an FA Cup semifinal match between Liverpool and Nottingham Forest football clubs, uncontrolled spectator movements resulted in spectators being crushed, causing the deaths of 96 people and nearly 800 injuries. In the Taylor Report (1990), made following the Hillsborough stadium incident,<sup>28</sup> the central issues were stadium infrastructure and crowd management improvement.<sup>29</sup> However, the prevalence of hooliganism at the time led to some attempts to direct blame towards the behaviour of spectators, in particular towards the Liverpool fans. Ultimately, in 2012, the Report of the Hillsborough Independent Panel conclusively established that fans were not responsible for the deaths and that, in fact, authorities had attempted to conceal what had happened. This report led to apologies from the UK Prime Minister and others.<sup>30</sup>

Following the Taylor Report in 1990, an important building and stadium improvement program was established in England, which led to the construction of more than 20 stadiums and over 200 new stands.<sup>31</sup> Fences within stadiums were removed and all-seated accommodation was introduced. The Hillsborough disaster is credited with bringing a radically different approach to safety in football. Reform was forced upon reluctant clubs

by a government which saw football as an embarrassment and irritant. ... [The then English Prime Minister Margaret] Thatcher's personal position, the Heysel tragedy and the continuing problem of hooliganism meant that the government was no longer content for football to govern its own affairs. The government's insistence on all-seater stadiums was as much due to their potential to reduce hooliganism as to the safety factor. Hooliganism, not safety, had brought football into the arena of high politics.<sup>32</sup>

The next section addresses the legal measures introduced by the Government in order to combat hooliganism.

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<sup>28</sup> For an incident that was not caused by hooliganism, see Lord Justice Taylor, *The Hillsborough Stadium Disaster*, Cm 765 (1989); *Hillsborough Panel Report*, above n 14.

<sup>29</sup> Lord Justice Taylor, *The Hillsborough Stadium Disaster*, Cm 765 (1989). See also *Hillsborough Panel Report*, above n 14. Again illustrating the connection between safety and hooliganism, the fences at Hillsborough that exacerbated the effects of the crowd crush were designed to cage in hooligans: Johnes, above n 25, 19. For more details, see, eg, Giulianotti, 'Sport Mega Events', above n 12, 3299.

<sup>30</sup> *Hillsborough Panel Report*, above n 14, 1, 22–6; Owen Gibson, David Conn and Haroon Siddique, 'Hillsborough Disaster: David Cameron Apologises for "Double Injustice"', *The Guardian* (London), 13 September 2012. See also Phil Scraton, *Hillsborough: The Truth* (Mainstream, 1999); Hazel J Hartley, *Exploring Sport and Leisure Disasters: A Socio-Legal Perspective* (Cavendish, 2001).

<sup>31</sup> Coward, above n 8, 232. See also Giulianotti, 'Sport Mega Events', above n 12, 3302–3; Frosdick and Marsh, *Football Hooliganism*, above n 2, 8, 172–3. A significant proportion of the cost of the stadium redevelopment program was financed by the Football Trust (now the Football Stadia Improvement Fund). See The Football Stadia Improvement Fund, *About the Football Stadia Improvement Fund* <<http://www.fsif.co.uk/about-fsif>>. Part of the proceeds of the government levy on football pools was made available by the government for distribution by the Football Trust. The Football Trust distributed £150 million (of a total £500 million cost) to clubs in England, Scotland and Wales between 1990–97: Football Trust, 'Annual Report' (Annual Report, 1997) 1.

<sup>32</sup> Johnes, above n 25, 20. See also Coward, above n 8, 232.

## B The Legal Framework

Spectators are subject to a general body of law. Offences aimed at protecting against violence or damage to property apply in the normal way.<sup>33</sup> In addition, a whole raft of legislation is solely sport- or, more specifically, football-related.<sup>34</sup>

The current principal legislation relevant in this context in England (and Wales) can be found in a number of different Acts:

- *Criminal Justice and Public Order Act 1994* (UK);
- *Football (Disorder) Act 2000* (UK);
- *Football (Disorder) (Amendment) Act 2002* (UK);
- *Football (Offences and Disorder) Act 1999* (UK);
- *Football Spectators Act 1989* (UK);
- *Public Order Act 1986* (UK);
- *Safety of Sports Grounds Act 1975* (UK);
- *Sporting Events (Control of Alcohol etc) Act 1985* (UK);
- *Sports Ground Safety Authority Act 2011* (UK); and
- *Violent Crime Reduction Act 2006* (UK)<sup>35</sup>

As will be seen, certain provisions concern supporters while others are aimed at the organisers of sporting events.<sup>36</sup> In addition, there are specific provisions concerning third parties.<sup>37</sup>

In addition to the above Acts there are international laws, most notably the *European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches*.<sup>38</sup>

### 1 State Measures Relating to Supporters

The state measures aimed at supporters include the creation and use of a database, specific (sports- and football-related) offences, banning orders, the obligation to report to a police station, the prohibition to leave the territory and detention in police custody.

<sup>33</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 169.

<sup>34</sup> *Ibid.*

<sup>35</sup> See, eg, Bichovsky, above n 17, 121; Giulianotti, 'Sport Mega Events', above n 12, 3300; Greenfield and Osborn, *Regulating Football*, above n 19, 18–38; O'Neill, above n 9, 51–2. Some other general Acts might be relevant such as: *Crime and Disorder Act 1998* (UK) c 37; *Antisocial Behaviour Act 2003* (UK) c 38. Though they are not directly relevant to football banning orders, some of the arguments about the legality of these measures were revisited in several antisocial behaviour order cases. See, eg, *R v Manchester Crown Court; Ex parte McCann* [2001] EWCA Civ 281 (1 March 2001).

<sup>36</sup> Bichovsky, above n 17, 121.

<sup>37</sup> *Ibid.* 188.

<sup>38</sup> *European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches*, opened for signature 19 August 1985, 1496 UNTS 125 (entered into force 1 November 1985) ('*European Convention on Spectator Violence*'). It is to be noted that the *European Convention on Spectator Violence* includes provision for measures found in the 'English model', such as the following: domestic governmental/agency cooperation: at arts 2, 3.1(b); legislative offences for violence or misbehaviour by spectators: at art 3.1(c); coordination/supervision of travel arrangements: at arts 3.1(a), 3.3; stadia design: at arts 3.4(a), 3.4(e); spectator management (segregation): at art 3.4(b); banning orders: at art 3.4(d); and alcohol restrictions: at art 3.4(f). This legislation is beyond the scope of this essay and will not be discussed further. For more details, see Bichovsky, above n 17, 87–113.



*(a) The Use of a Database*

A database has been set up to counter hooliganism in England. This database, which has undergone various organisational changes, has now been in existence for several decades. It is now managed by the United Kingdom Football Policing Unit,<sup>39</sup> which houses the Football Banning Orders Authority.<sup>40</sup>

This database contains the details of people involved (or suspected of being involved) in football-related disorders.<sup>41</sup> These individuals are divided into three categories (A, B and C), according to their degree of dangerousness.<sup>42</sup> The information stored in the database is considered to be very useful for English authorities and the Football Association's ('FA') official member clubs.<sup>43</sup> Furthermore, information can be passed onto foreign police forces on the basis of European Union agreements.<sup>44</sup> This exchange of information is particularly important in preventing violence during international matches.<sup>45</sup> There are also a number of bilateral agreements, signed on the basis of the *Football Spectators Act 1989* (UK), which allow banning from English and Welsh stadiums anyone who has participated in violent behaviour abroad.<sup>46</sup>

Next, the specific offences introduced by the British Government in order to fight hooliganism are considered.

*(b) Creation of Specific Offences*

The Government has introduced several sports- or football-related legislative measures to combat hooliganism.<sup>47</sup> This includes the creation of offences such as entering a stadium when drunk or in possession of alcohol, throwing any objects

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<sup>39</sup> Some other entities have effectively preceded the United Kingdom Football Policing Unit ('UKFPU') in the monitoring of hooligans. In 1989, an independent body known as the Football Intelligence Unit was created and became a part of the National Crime Intelligence Service ('NCIS') when it was formed in 1992. It is only in 2006 that the Football Intelligence Unit was replaced by the UKFPU, which was removed from the ambit of the NCIS to be overseen by the Home Office and the Association of Chief Police Officers. This organisational arrangement is seemingly constructive, as it allows the UKFPU to take on a wider role in the effective management of hooliganism amongst English fans abroad. The UKFPU is in charge of the planning and intelligence coordination at major sporting events. It provides intelligence on hooligans to agencies at home and abroad. It can also apply directly to courts for an imposition of domestic or international banning orders. For more details, see Frosdick and Newton, 'Hooliganism in England and Wales', above n 3, 405–6; Frosdick and Marsh, *Football Hooliganism*, above n 2, 166; Giulianotti, 'Sport Mega Events', above n 12, 3300–1; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, xxi; Anastassia Tsoukala, 'La gestion policière du hooliganisme en Angleterre, en Italie et aux Pays-Bas' in Jean-Charles Basson (ed), *Sport et ordre public* (La documentation Française, 2001) 159, 164.

<sup>40</sup> For more details, see Home Office, *Football-Related Arrests and Banning Orders* (9 October 2013) Gov.UK <<https://www.gov.uk/government/collections/football-banning-orders>>.

<sup>41</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 166.

<sup>42</sup> Ibid.

<sup>43</sup> James Rowlands, *Policing European Football Hooliganism — Conclusion* (2001) Policing European Football Hooliganism <<http://people.exeter.ac.uk/watupman/undergrad/rowlands/conclusions.htm>>.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> See, eg, Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 173.

<sup>47</sup> Bichovsky, above n 17, 131; Coward, above n 8, 232.

at or towards the pitch, possessing fireworks, indecent or racist chanting and entering the pitch without lawful excuse.<sup>48</sup>

(c) *Alcohol*

Under the *Sporting Events (Control of Alcohol etc) Act 1985* (UK), any person who is drunk at a sporting venue, brings alcohol inside or possesses alcohol during a match is guilty of an offence.<sup>49</sup> Furthermore, the Act grants uniformed police constables the authority to search (and even arrest) individuals suspected of infringing these rules.<sup>50</sup>

The term ‘drunk’ is not defined in the Act. Therefore, some legal commentators consider that these provisions may catch not only highly intoxicated supporters, but also those who may be less intoxicated.<sup>51</sup>

Further to these restrictions, the intoxication of supporters on public transport is also forbidden, as is the possession of alcohol in public transport vehicles.<sup>52</sup> Here, police constables can legally undertake a search of public transportation for the purposes of targeting drunkenness at sporting events.<sup>53</sup> One consequence of these restrictions is that tour operators may be found guilty of the offence of permitting alcoholic beverages in vehicles used by them to transport patrons to and from football matches.<sup>54</sup>

Finally, a constable in uniform may require the closure of a bar if it appears to him or her that the sale or supply of intoxicating liquor ‘is detrimental to the orderly conduct or safety of spectators’.<sup>55</sup>

(d) *Pyrotechnics in Stadiums*

Under the *Sporting Events (Control of Alcohol etc) Act 1985* (UK),<sup>56</sup> any person who enters (or tries to enter) a football ground with fireworks, or possesses fireworks during a sports event, is guilty of an offence.<sup>57</sup>

This Act defines the term ‘firework’ as ‘any article or substance whose main purpose is the emission of a flare for purposes of illuminating or signalling (as opposed to igniting or heating) or the emission of smoke or a visible gas’.<sup>58</sup>

<sup>48</sup> Bichovsky, above n 17, 131–8; Frosdick and Marsh, *Football Hooliganism*, above n 2, 170.

<sup>49</sup> *Sporting Events (Control of Alcohol etc) Act 1985* (UK) c 57, s 2; Bichovsky, above n 17, 131. See also Frosdick and Marsh, *Football Hooliganism*, above n 2, 170; Stott and Pearson, *Football ‘Hooliganism’, Policing and the War on the ‘English Disease’*, above n 3, 27.

<sup>50</sup> *Sporting Events (Control of Alcohol etc) Act 1985* (UK) c 57, ss 1(2), 7(2); Bichovsky, above n 17, 131. Note that the *Violent Crime Reduction Act 2006* (UK) also empowers the police to ‘move on’ anybody (including football fans) if an alcohol-related offence might occur: Giulianotti, ‘Sport Mega Events’, above n 12, 3300.

<sup>51</sup> Bichovsky, above n 17, 131.

<sup>52</sup> *Sporting Events (Control of Alcohol etc) Act 1985* (UK) c 57, s 1. See also *ibid*, 132; Gardiner et al, above n 21, 546; Warren, *Football, Crowds and Cultures*, above n 4, 58.

<sup>53</sup> *Sporting Events (Control of Alcohol etc) Act 1985* (UK) c 57, s 7(3).

<sup>54</sup> Bichovsky, above n 17, 132.

<sup>55</sup> *Sporting Events (Control of Alcohol etc) Act 1985* (UK) c 57, s 6(1). See also *ibid*; Warren, *Football, Crowds and Cultures*, above n 4, 69–70.

<sup>56</sup> *Sporting Events (Control of Alcohol etc) Act 1985* (UK) c 57, s 2A, as amended by *Public Order Act 1986* (UK) c 64, sch 1 para 3.

<sup>57</sup> Bichovsky, above n 17, 133.

<sup>58</sup> *Sporting Events (Control of Alcohol etc) Act 1985* (UK) c 57, s 2A(3).

Included in this definition are ‘distress flares, fog signals, and pellets and capsules intended to be used as fumigators or for testing pipes’. In contrast, matches, cigarette lighters or heaters are permitted.<sup>59</sup>

(e) *Throwing Missiles onto the Pitch*

The *Football Offences Act 1991* (UK) prohibits spectators throwing missiles onto the pitch or to any areas where spectators or any other people are or may be present.<sup>60</sup>

(f) *Indecent or Racist Chanting*

By the late 1970s and ’80s, football hooligans started to consist of racist and right-wing groups,<sup>61</sup> who abused black players who were then beginning to appear in national English teams.<sup>62</sup> Some black players were also victims of monkey noises, showers of bananas or verbal insults.<sup>63</sup> But this kind of provocation was not always linked to skin colour.<sup>64</sup> For example, the actions of the French football player Eric Cantona in 1995 in launching a ‘kung-fu’ style kick into a supporter, is explained by many as being a response to a racial slur directed at the player.<sup>65</sup>

In reaction to these incidents, campaigns against racism were launched by private entities.<sup>66</sup> For its part, the Government, after other general legislative changes, finally opted for the creation of a specific football offence to fight against this curse, though this was not the end of the issue in terms of general legislation.<sup>67</sup> This response is embodied in s 3 of the *Football Offences Act 1991*

<sup>59</sup> Ibid.

<sup>60</sup> *Football Offences Act 1991* (UK) c 19, s 2. See also Bichovsky, above n 17, 134; Steve Greenfield and Guy Osborn, ‘When the Whites Go Marching In? Racism and Resistance in English Football’ (1996) 6 *Marquette Sports Law Review* 315, 326; Warren, *Football, Crowds and Cultures*, above n 4, 60.

<sup>61</sup> Warren, *Football, Crowds and Cultures*, above n 4, 45.

<sup>62</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 139; Greenfield and Osborn, *Regulating Football*, above n 19, 143.

<sup>63</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 139; Greenfield and Osborn, *Regulating Football*, above n 19, 138.

<sup>64</sup> Gardiner et al, above n 21, 581–2; Greenfield and Osborn, ‘Racism and Resistance in English Football’, above n 60, 320.

<sup>65</sup> Gardiner et al, above n 21, 582; Greenfield and Osborn, *Regulating Football*, above n 19, 148–50; Greenfield and Osborn, ‘Racism and Resistance in English Football’, above n 60, 318.

<sup>66</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 142–6; Greenfield and Osborn, *Regulating Football*, above n 19, 150–4. See also Gardiner et al, above n 21, 585; Greenfield and Osborn, ‘Racism and Resistance in English Football’, above n 60, 329–32.

<sup>67</sup> Greenfield and Osborn, *Regulating Football*, above n 19, 154–8. When the *Criminal Justice and Public Order Bill 1994* (UK) was passing through Parliament, an amendment was introduced. This resulted in a new s 4A of the *Public Order Act 1986* (UK), which established a new offence of intentional harassment, alarm or distress:

(1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he ... (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

(UK), which currently punishes those who ‘engage<sup>68</sup> or take part in chanting of an indecent or racist nature’.<sup>69</sup>

According to the section, ‘of a racist nature’ means ‘consisting of or including matter which is threatening, abusive or insulting to a person by reason of his colour, race, nationality (including citizenship) or ethnic or national origins’.<sup>70</sup> Surprisingly, religion is not included in this list.<sup>71</sup>

Subsequent to its introduction, this legislation had to be amended to ensure that it covered solitary actions.<sup>72</sup> The original law defined chanting as ‘repeated uttering of any words or sounds in concert with one or more others’.<sup>73</sup> This gap allowed ‘several offenders to escape conviction’ at football matches.<sup>74</sup> Now, the law states that the offence is committed ‘whether alone or in concert with one [or] more others’.<sup>75</sup>

(g) *Encroachment onto the Playing Area*

According to s 4 of the *Football Offences Act 1991* (UK):

It is an offence for a person at a designated football match to go onto the playing area, or any area adjacent to the playing area to which spectators are not generally

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The element of racial motivation that was part of the original amendment was excluded from the final section of the *Public Order Act 1986* (UK). Similarly, the offence requires not only intent but also proof that the victim suffered harassment, alarm or distress. This is a more serious offence, by virtue of the potential penalties, than s 5 of the *Public Order Act 1986* (UK). Given the exclusion of the racial motivation element, it adds little to the existing public order legislation: Greenfield and Osborn, ‘Racism and Resistance in English Football’, above n 60, 326–7. Finally, the *Crime and Disorder Act 1998* (UK) was adopted in 1998. Section 33 provides for an aggravation of public order offence in cases relating to racial or religious abuse.

<sup>68</sup> Term added by s 8 of the *Football (Offences and Disorder) Act 1999* (UK).

<sup>69</sup> Bichovsky, above n 17, 135; Frostdick and Marsh, *Football Hooliganism*, above n 2, 139; Greenfield and Osborn, *Regulating Football*, above n 19, 158; Greenfield and Osborn, ‘Racism and Resistance in English Football’, above n 60, 326. See also Warren, *Football, Crowds and Cultures*, above n 4, 60. Note in this regard that the Crown Prosecution Service and the Football Association (‘FA’) have recently declared that the singing of ‘yid’ (apparently perpetrated mainly by Spurs fans) was to be deemed racial, but subsequent convictions have collapsed. For more details, see, eg, James Lyons, ‘Spurs “Yid” Row: David Cameron Says Tottenham Fans Should Not Face Criminal Charges over Chants’, *The Daily Mirror* (online), 17 September 2013, <<http://www.mirror.co.uk/sport/football/news/spurs-yid-row-david-cameron-2279807#ixzz3D75QYBAu>>. For a detailed and general overview about racism issues in the English Premier League, see Alexandra Veuthey, ‘Racism in English Premier League: Is Football Operating in a Cocoon?’ [2013] *International Sports Law Review* 76.

<sup>70</sup> Bichovsky, above n 17, 135; Frostdick and Marsh, *Football Hooliganism*, above n 2, 140; Greenfield and Osborn, *Regulating Football*, above n 19, 158–9; Greenfield and Osborn, ‘Racism and Resistance in English Football’, above n 60, 326.

<sup>71</sup> Bichovsky, above n 17, 135. Nevertheless, religious discriminations are punished, for other matters. See *Crime and Disorder Act 1998* (UK) c 37, s 29.

<sup>72</sup> Frostdick and Marsh, *Football Hooliganism*, above n 2, 139–40.

<sup>73</sup> *Ibid* 139; Gardiner et al, above n 21, 583.

<sup>74</sup> Frostdick and Marsh, *Football Hooliganism*, above n 2, 140. See also Gardiner et al, above n 21, 583. Gardiner et al refer to the *Cantona* case.

<sup>75</sup> See *Football Offences Act 1991* (UK) c 19, s 3(2)(a). For more details about this reform, see, eg, Frostdick and Marsh, *Football Hooliganism*, above n 2, 139–40.

admitted, without lawful authority or lawful excuse (which shall be for him to prove).<sup>76</sup>

In addition to these specific measures, legislation provides for the banning of individuals who are regarded as dangerous from stadiums.

(h) *Removal Orders from Stadiums*

Removal orders from stadiums that exist in public law under state legislation coexist alongside the private law stadium bans imposed by the clubs.<sup>77</sup> These measures are primarily intended to reduce violence at matches by preventing troublemakers from entering or approaching football grounds.<sup>78</sup>

The exclusion measures are dealt with in four principal acts: the *Public Order Act 1986* (UK), the *Football Spectators Act 1989* (UK), the *Football (Offences and Disorder) Act 1999* (UK) and the *Football (Disorder) Act 2000* (UK).

(i) *Public Order Act 1986* (UK)

The first of the legislative orders designed to regulate entry to football stadiums was introduced by the *Public Order Act 1986* (UK).<sup>79</sup> This legislation introduced ‘exclusion orders’, preventing convicted fans from attending specific matches in England and Wales.<sup>80</sup>

In spite of its potential to be a powerful tool in regulating misbehaviour at football matches, it appeared quickly that the exclusion orders were inefficient with regards to disorder occurring abroad.<sup>81</sup> This deficiency led to the adoption of additional measures.<sup>82</sup>

(ii) *Football Spectators Act 1989* (UK)

The *Football Spectators Act 1989* (UK) was adopted in order to govern disciplinary and criminal proceedings brought against hooligans.<sup>83</sup> Its purpose was to prevent violence and disorder related to football matches.<sup>84</sup>

This Act sought to control ‘the admission of spectators at designated football matches in England and Wales through a national membership scheme’.<sup>85</sup> It also

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<sup>76</sup> Bichovsky, above n 17, 136; Greenfield and Osborn, ‘Racism and Resistance in English Football’, above n 60, 326. See also Warren, *Football, Crowds and Cultures*, above n 4, 60.

<sup>77</sup> Bichovsky, above n 17, 121, 138–9. Note in this regard that when a state order is refused, it is increasingly common practice that the police will forward their evidence to the club in question and encourage them to impose a stadium ban of their own.

<sup>78</sup> *Ibid* 138–9.

<sup>79</sup> Geoff Pearson and Mark James, ‘The Legality and Effectiveness of Using Football Banning Orders in the Fight against Racism and Violence at Sports Events’ in Simon Gardiner, Richard Parrish and Robert C R Siekmann (eds), *EU, Sport, Law and Policy — Regulation, Re-Regulation and Representation* (TMC Asser, 2009) 535, 536–7.

<sup>80</sup> *Public Order Act 1986* (UK) c 64, pt IV, as repealed by *Football Spectators Act 1989* (UK) c 37, s 27(5). See Giulianotti, ‘Sport Mega Events’, above n 12, 3300; Hamilton-Smith et al, above n 12, 5; Pearson and James, ‘The Legality and Effectiveness of Using Football Banning Orders’, above n 79, 536–7; Warren, *Football, Crowds and Cultures*, above n 4, 59.

<sup>81</sup> Pearson and James, ‘The Legality and Effectiveness of Using Football Banning Orders’, above n 79, 537.

<sup>82</sup> *Ibid*.

<sup>83</sup> Beckham, above n 4, 43.

<sup>84</sup> *Ibid*.

created a Football Licensing Authority ('FLA'), in charge of issuing licenses to stadiums that accommodated spectators during football matches.<sup>86</sup>

However, above all, this statute introduced 'restriction orders', which prevented attendance at games abroad for persons convicted of relevant (ie football-related) offences, including reporting duties to police stations.<sup>87</sup> A court could only impose such an order if it was satisfied that the restriction was necessary to prevent football disorder or violence at football matches.<sup>88</sup> The length of these orders was between two to five years, with the possibility for the person subject to an order to seek earlier termination, depending upon whether a prison sentence had been imposed.<sup>89</sup> The relevant period of time in which an offence could be considered as football-related ran from two hours before the match to one hour after the match was complete.<sup>90</sup>

If the individual served with the order failed to report as required to a police station without reasonable excuse, they could be imprisoned for one month.<sup>91</sup>

Subsequently, amendments introduced by more general legislation, such as the *Violent Crime Reduction Act 2006* (UK), modified the *Football Spectators Act 1989* (UK) to increase the length of time an individual could be banned after

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<sup>85</sup> See the introductory text to the *Football Spectators Act 1989* (UK). Section 1(5) provides for the restriction of spectators. As Geoff Beckham explains:

The national membership scheme licensed spectators, creating a database that allowed the police to regulate attendance at sporting events. Full implementation of the membership scheme stalled as a result of the staggering expense required to maintain the extensive network.

The notion of a national membership scheme survived, in part, through the discretionary power of the courts to photograph the recipients of exclusion orders. However, the reactive nature of the membership scheme proved futile in combating the increasingly violent activity of football supporters both inside and outside stadiums.

*Ibid* 43–4. See also Giulianotti, 'Sport Mega Events', above n 12, 3300; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 170; Warren, *Football, Crowds and Cultures*, above n 4, 59.

<sup>86</sup> *Football Spectators Act 1989* (UK) c 37, ss 3, 8. For more details, see Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 170. See also Sports Grounds Safety Authority, *Our History* (18 December 2012) <<http://www.safetyatsportsgrounds.org.uk/about-us/our-history>>.

<sup>87</sup> *Football Spectators Act 1989* (UK) c 37, ss 15–16, as amended by *Football (Disorder) Act 2000* (UK) c 25, sch 2 para 2; Michael J Beloff, 'Editorial' [2006] *International Sports Law Review* 55, 55; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 537; Christopher Stoner, 'Controlling the Hooligans' (1998) 5(4) *Sports Law Administration and Practice* 11, 11; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 171; Giulianotti, 'Sport Mega Events', above n 12, 3300.

<sup>88</sup> *Football Spectators Act 1989* (UK) c 37, s 15, as amended by *Football (Disorder) Act 2000* (UK) c 25, s 1(1), sch 2 item 2; Beloff, above n 87, 55; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 171; Stoner, above n 87, 12.

<sup>89</sup> *Football Spectators Act 1989* (UK) c 37, ss 16–17, as amended by *Football (Disorder) Act 2000* (UK) c 25, sch 2 para 2; Beloff, above n 87, 55; Stoner, above n 87, 12; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 171.

<sup>90</sup> Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 172.

<sup>91</sup> *Ibid* 171.

receiving a banning order.<sup>92</sup> The two principal football-related amendments which revised and reinforced the legislation were the *Football (Offences and Disorder) Act 1999* (UK) and the *Football (Disorder) Act 2000* (UK).<sup>93</sup>

(iii) *Football (Offences and Disorder) Act 1999* (UK)

The *Football (Offences and Disorder) Act 1999* (UK) led to significant legislative changes and was an important step taken by the Government to 'get tough' on hooliganism. First, restriction orders were renamed 'international football banning orders'.<sup>94</sup> Secondly, the people served with international banning orders were liable to have their passports confiscated for a 'control period' (starting five days before an international match).<sup>95</sup> Thirdly, the Act extended the maximum duration of banning orders (10 years in case of a custodial sentence and five years in other cases) and introduced a minimum duration for these orders (respectively six and three years).<sup>96</sup> Fourthly, it extended both the definition of the 'relevant period' to determine whether an offence should be considered football-related (from two hours before a match to 24 hours before or after) and the period for which an international banning order must have been in place prior to the fan being able to apply for termination.<sup>97</sup> Finally, magistrates who did not want to impose an order were obliged to explain in open court why they did not think this would help reduce disorder in the future.<sup>98</sup>

(iv) *Football (Disorder) Act 2000* (UK)

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<sup>92</sup> See *Football Spectators Act 1989* (UK) c 37, s 14F. About the *Violent Crime Reduction Act 2006* (UK) in particular, see Giulianotti, 'Sport Mega Events', above n 12, 3300.

<sup>93</sup> Beckham, above n 4, 44.

<sup>94</sup> *Football (Offences and Disorder) Act 1999* (UK) c 21, s 1, as repealed by *Football (Disorder) Act 2000* (UK) c 25, s 1; *ibid*; Beloff, above n 87, 55; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 177. These authors also indicate that the 'international' aspect was removed by the *Football (Disorder) Act 2000* (UK), which merged international and domestic orders.

<sup>95</sup> Beckham, above n 4, 44; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 177.

<sup>96</sup> *Football (Offences and Disorder) Act 1999* (UK) c 21, s 4(1); Andrew Mimmack, 'The Magistrates' Court and the Football Hooligan' (2003) 59 *Magistrate* 251, 251; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 177.

<sup>97</sup> Beloff, above n 87, 55; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 177.

<sup>98</sup> Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 177.

The entry into force of the *Football (Disorder) Act 2000* (UK) followed the famous incidents involving English fans in Belgium during the 2000 UEFA European Football Championship.<sup>99</sup>

This Act repealed (with minor exceptions) the *Football (Offences and Disorder) Act 1999* (UK) and replaced pt II of the *Football Spectators Act 1989* (UK). The distinction between matches in England/Wales and abroad was abolished.<sup>100</sup> Consequently, the more global *Football Spectators Act 1989* (UK) became more repressive. A banning order is now automatically in effect for both domestic and international matches,<sup>101</sup> meaning that a person subject to a banning order cannot go to any stadium in England or abroad.<sup>102</sup>

The *Football (Disorder) Act 2000* (UK) also broadened the scope for the making of banning orders.<sup>103</sup> Orders now can be made not only in relation to the individuals convicted of an offence in relation to a football game,<sup>104</sup> but can also be imposed on a troublemaker without a prior criminal conviction at the request of a chief officer of police ('banning orders made on a complaint').<sup>105</sup>

In the first case, the court must be 'satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches'.<sup>106</sup> In the second case, the same test is applied, with the additional requirement that the respondent must also have 'at any time caused or contributed to any violence or

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<sup>99</sup> For the record, several thousand English supporters arrived in Charleroi and Brussels without tickets and provoked significant riots. This event served as a reminder to all concerned that the issue of hooliganism had not completely disappeared: Beloff, above n 87, 55; Bichovsky, above n 17, 139; Hamilton-Smith et al, above n 12, 5; Warren, *Football, Crowds and Cultures*, above n 4, 46. For more details about these events and the Dutch approach to policing English fans at the 2000 UEFA European Football Championship, see Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 146–67. The English team was even threatened by the Union of European Football Associations ('UEFA') to be banned from the competition. See, eg, 'Hooliganism Could Result in England's Elimination', *Los Angeles Times* (online), 19 June 2000 <<http://articles.latimes.com/2000/jun/19/sports/sp-42523>>; 'England Faces Expulsion if Hooliganism Continues', *Sun-Sentinel* (Fort Lauderdale), 19 June 2000.

<sup>100</sup> *Football (Disorder) Act 2000* (UK) c 25, s 1(a). See Beloff, above n 87, 55; Bichovsky, above n 17, 139; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 178–9.

<sup>101</sup> *Football Spectators Act 1989* (UK) c 37, s 14(4); Beckham, above n 4, 45; Bichovsky, above n 17, 139; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 178–9.

<sup>102</sup> Bichovsky, above n 17, 141.

<sup>103</sup> *Ibid* 139.

<sup>104</sup> *Football Spectators Act 1989* (UK) c 37, s 14A. See also Beloff, above n 87, 55; Bichovsky, above n 17, 139–40; Coward, above n 8, 232. For the full list of the relevant offences, see *Football Spectators Act 1989* (UK) c 37, sch 1, as amended by *Football (Disorder) Act 2000* (UK) c 25, sch 1 para 5.

<sup>105</sup> *Football Spectators Act 1989* (UK) c 37, s 14B. See also Beckham, above n 4, 46; Beloff, above n 87, 55–6; Bichovsky, above n 17, 139–40; Hamilton-Smith et al, above n 12, 4–5; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 538; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 178–9.

<sup>106</sup> *Football Spectators Act 1989* (UK) c 37, s 14A(2). Beloff, above n 87, 55; Bichovsky, above n 17, 140; Coward, above n 8, 232. See also Hamilton-Smith et al, above n 12, 4–5; Mimmack, above n 96, 251; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 180.



disorder in the United Kingdom or elsewhere'.<sup>107</sup> In the latter case, the new statute gave the court the 'additional power to impose a banning order of between two and three years' (the maximum duration is currently five years, according to the *Violent Crime Reduction Act 2006* (UK)).<sup>108</sup>

Similarly, the *Football (Disorder) Act 2000* (UK) increased the array of 'relevant offences' for which exclusion applies. This includes conduct not immediately related to football, such as transit to and from the game.<sup>109</sup> In addition, under amendments introduced by the *Football (Disorder) Act* (UK), the courts are now required, unless 'exceptional circumstances' are present, to order the confiscation of an individual's passport if subject to a banning order.<sup>110</sup> Under the former legislation this was merely discretionary.<sup>111</sup> Furthermore, a person who does not respect the current legislation is now 'liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 [£5000] on the standard scale, or both'.<sup>112</sup>

Finally, the *Football (Disorder) Act 2000* (UK) was itself amended slightly by the *Football (Disorder) (Amendment) Act 2002* (UK).<sup>113</sup> In addition to the banning orders described above, the complementary or supporting measures of the obligation to report to a police station and the prohibition on leaving the territory should be noted.<sup>114</sup> To conclude this description of the legal measures aimed at supporters, provisions relating to detention in the police custody are described. The role of the police will also be briefly examined.

(i) *Obligation to Report at a Police Station*

The obligation to report to a police station requires potential troublemakers to go to the police station specified in the order: 'a banning order must require the person subject to the order to report initially at a police station in England and

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<sup>107</sup> *Football Spectators Act 1989* (UK) c 37, s 14B(2). See Bichovsky, above n 17, 140; Hamilton-Smith et al, above n 12, 4–5; Mimmack, above n 96, 251; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 179–80.

<sup>108</sup> *Football Spectators Act 1989* (UK) c 37, s 14F(5); Beloff, above n 87, 56; Bichovsky, above n 17, 140; Mimmack, above n 96, 251. See also Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 180. About the *Violent Crime Reduction Act 2006* (UK) in particular, see Giulianotti, 'Sport Mega Events', above n 12, 3300.

<sup>109</sup> Beckham, above n 4, 45–6; Hamilton-Smith et al, above n 12, 4.

<sup>110</sup> *Football Spectators Act 1989* (UK) c 37, s 14E(3).

<sup>111</sup> Bichovsky, above n 17, 160.

<sup>112</sup> *Football Spectators Act 1989* (UK) c 37, s 14J. While failure to comply with the terms of a banning order can give rise to criminal sanctions under this section, a banning order is essentially a civil order that has the effect of prohibiting certain conduct and requiring a person to report to a police station: at s 14(4). See also Beloff, above n 87, 55; Bichovsky, above n 17, 141; Mimmack, above n 96, 251; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 539.

<sup>113</sup> In particular, s 1 of the the *Football (Disorder) (Amendment) Act 2002* (UK) (now repealed by ss 52(1) and 66(2) of the *Violent Crime Reduction Act 2006* (UK)) amended s 5 of the *Football (Disorder) Act 2000* (UK). Section 1 of the the *Football (Disorder) (Amendment) Act 2002* (UK) pertained to the commencement and duration of the legislation and its effect. It changed the 'initial period' from one year to five years (the initial period being the duration in which an application could be made in relation to a banning order or a power exercised by a constable). The new legislation also scrapped the 'sunset' clause in the *Football Disorder Act 2000* (UK), meaning that banning orders will remain law until they are repealed by parliament.

<sup>114</sup> *Football Spectators Act 1989* (UK) c 37, ss 14 E(2)–(3).

Wales specified in the order within the period of five days beginning with the day on which the order is made'.<sup>115</sup> Additional reporting requirements can be made when the person reports to the police station.<sup>116</sup> The main objective is to prevent individuals from attending stadiums during a match to engage in acts of violence in and around them, or in other places.<sup>117</sup>

(j) *Prohibition on Leaving the Territory*

As mentioned above, the banned individual cannot attend a match in the United Kingdom or abroad.<sup>118</sup> To enable enforcement of this prohibition, the *Football Spectators Act 1989* (UK) originally gave authority to the courts to order, if necessary, the confiscation of passports of the people identified.<sup>119</sup> The amendments introduced by the *Football (Disorder) Act 2000* (UK) required stadium banning orders to also impose a requirement for passports to be surrendered, unless 'extraordinary circumstances' are present. If it appears to the court that there are such circumstances, the court is required to state those reasons in open court.<sup>120</sup>

(k) *Police Custody*

Police custody constitutes the '*ultima ratio*' in order to deal with particularly recalcitrant troublemakers. This measure consists of holding an individual in police premises in order to prevent him or her from participating in violence during sports events.<sup>121</sup>

Detention in custody for periods up to six hours is provided for in s 21A of the *Football Spectators Act 1989* (UK), which allows a constable in uniform to detain a British citizen if he or she has reasonable grounds for suspecting that the person will cause violence or that they have engaged in violent acts.<sup>122</sup> In addition, the constable must believe that this measure 'would help to prevent violence or disorder at or in connection with any regulated football matches'.<sup>123</sup>

Thus, the implementation of these measures aimed at supporters falls to the police forces.

(l) *Role of the Police*

The success of the fight against hooliganism in the United Kingdom is largely attributed to the smooth operation of its police forces. In the 1990s, the British police did not hesitate to take extreme measures — such as telephone tapping,

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<sup>115</sup> Ibid s 14E(2); Bichovsky, above n 17, 154.

<sup>116</sup> *Football Spectators Act 1989* (UK) c 37, s 19(2B).

<sup>117</sup> Bichovsky, above n 17, 154; *Football Spectators Act 1989* (UK) c 37, s 16(2)(b).

<sup>118</sup> *Football Spectators Act 1989* (UK), s 14(4); Bichovsky, above n 17, 139, 160.

<sup>119</sup> Bichovsky, above n 17, 160.

<sup>120</sup> *Football Spectators Act 1989* (UK) c 37, ss 14E(3)–(4). See also *ibid*.

<sup>121</sup> Bichovsky, above n 17, 163.

<sup>122</sup> Section 20A(3) of the *Football Spectators Act 1989* (UK) limits the custodial period to four hours but allows custody to extend to six hours where authorised by a senior police officer (rank of inspector or above).

<sup>123</sup> *Football Spectators Act 1989* (UK) c 37, s 21A(1)(b); Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 181–2.

shadowing and infiltration — to conduct criminal investigations against some groups of suspected hooligans.<sup>124</sup>

Various police groups interact between and/or during football matches.<sup>125</sup> In particular, uniformed police constables generally take a proactive approach and concentrate on troublesome supporters.<sup>126</sup>

Mobile officers<sup>127</sup> patrol the streets around the stadium and the city where football matches are being held.<sup>128</sup> They also transport people who have been arrested to a police station.<sup>129</sup> Frequently, they help police constables escort spectators and separate them according to the teams they support.<sup>130</sup> This segregation practice occurs both inside and outside British football grounds, and extends to the train stations in the vicinity of football stadiums.<sup>131</sup> In the stadiums, each football team's set of fans is separated from the other by a physical barrier or a large cloth tarpaulin that runs down a column of empty seats, next to which is a column of stewards and police officers.<sup>132</sup>

British Transport Police officers regularly escort trains carrying groups of football fans across the country and on the London Underground system.<sup>133</sup>

In addition, plain-clothes detectives indirectly contribute to the maintenance of order.<sup>134</sup> They intervene during match day, but also during the preceding week, by collating and processing the intelligence.<sup>135</sup> They then pass the relevant information to the football spotters (ie officers engaged in surveilling the crowd) to help them in their actions on game days. If necessary, they also radio the information to the mobile officers.<sup>136</sup>

Moreover, senior officers (including sergeants) set out procedures to be followed on match day and supervise the football policing efforts.<sup>137</sup>

Furthermore, CCTV (closed-circuit television) operators monitor the supporters via cameras in the city centre and the stadium.<sup>138</sup> They constantly work in conjunction with police officers by mutually sharing information.<sup>139</sup> New technologies, such as facial recognition systems, could also potentially be

<sup>124</sup> Fonteneau, above n 7.

<sup>125</sup> O'Neill, above n 9, 59.

<sup>126</sup> Ibid 63.

<sup>127</sup> For more details, see *ibid* 96–131.

<sup>128</sup> Ibid 96.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid 75–6, 85.

<sup>131</sup> For more details, see *ibid*; Ian Woolsey, 'Train Stations and Trainers: Observations of Simulated Football Hooliganism in England' (2010) 11 *Soccer & Society* 588, 589–92.

<sup>132</sup> For more details, see O'Neill, above n 9, 75–6, 85.

<sup>133</sup> British Transport Police, *Football Policing* <[http://www.btp.police.uk/advice\\_and\\_info/how\\_we\\_tackle\\_crime/football\\_policing.aspx](http://www.btp.police.uk/advice_and_info/how_we_tackle_crime/football_policing.aspx)>.

<sup>134</sup> O'Neill, above n 9, 97.

<sup>135</sup> The intelligence is the information about the hooligans and their planned activities. For more details, see O'Neill, above n 9, 97.

<sup>136</sup> Ibid 96–131.

<sup>137</sup> Ibid 133. For more details, see at 132–53.

<sup>138</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 159–60; O'Neill, above n 9, 169.

<sup>139</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 159–60. Frosdick and Marsh mention notably the use of the 'photophone' system, which allows police to exchange pictures of hooligans from CCTV via telephone and computer links and the 'hooligan', which enables radio contacts between police forces: at 160. See also Giulianotti, 'Sport Mega Events', above n 12, 3301; O'Neill, above n 9, 169–86.

deployed to monitor football spectators, though cost and potential privacy issues constitute an obstacle to their widespread use in England and elsewhere.<sup>140</sup>

Finally, more stewards are being employed at football matches to ensure the efficient running of games, as per a recommendation from the Taylor Report.<sup>141</sup>

In addition to these measures directed at spectators, there are a range of state measures aimed at the organisers of sports events and third parties.

## 2 State Measures Aimed at Organisers of Sports Events

In parallel to the spectator-related measures outlined above, specific provisions also exist which relate to the organisers of sports events.<sup>142</sup>

It should be noted that in England, clubs usually own stadiums, unlike Australia, France, Italy and Switzerland, where the sports clubs are generally tenants.<sup>143</sup> Therefore, as stadium owners, it is the clubs' responsibility to take the necessary measures relating to the construction and security of stadiums.<sup>144</sup>

### (a) Acquisition of a Licence Allowing Spectators

The *Football Spectators Act 1989* (UK) created the FLA, which was responsible for issuing licences to stadiums that accommodate spectators during matches.<sup>145</sup> This entity was founded by the British Department of Culture, Media and Sports but was independent from the Government.<sup>146</sup> It had an important role to play in the management or regulation of crowds.<sup>147</sup>

In October 2010, the Government announced proposals to reform 481 public bodies through the *Public Bodies Bill 2011* (UK). In this context, it identified the FLA as one of the organisations to be abolished. Its expertise and functions were then transferred to another body, the Sports Ground Safety Authority.<sup>148</sup>

<sup>140</sup> Alexandra Veuthey, 'Mettre un terme au hooliganisme endémique', *Le Temps* (online), 30 September 2011 <[http://www.letemps.ch/Page/Uuid/c568b42c-eabf-11e0-ae81-260a19b1d518/Mettre\\_un\\_terme\\_au\\_hooliganisme\\_endémique](http://www.letemps.ch/Page/Uuid/c568b42c-eabf-11e0-ae81-260a19b1d518/Mettre_un_terme_au_hooliganisme_endémique)>.

<sup>141</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 159, 164–5; O'Neill, above n 9, 169–86. Note that this description is intended as general. The exact policing methods may vary according to which part of England or the United Kingdom it applies to: at 97. O'Neill presents the situation from a general perspective, but also with a special focus on Scottish football.

<sup>142</sup> Bichovsky, above n 17, 121, 172.

<sup>143</sup> For European countries, see Bichovsky, above n 17, 172–3; Luca Ferrari, 'Stadiums: Italian Measures to Combat Stadium Violence & Disorder' (2012) 10(6) *World Sports Law Report*. About Australia, see, eg, Melbourne Cricket Club, *Tenant Clubs* <<http://www.mcg.org.au/About-Us/Tenant-Clubs>>; Etihad Stadium, *Tenant Clubs* <<http://www.etihadstadium.com.au/about/tenant-clubs>>.

<sup>144</sup> Bichovsky, above n 17, 172–3.

<sup>145</sup> *Football Spectators Act 1989* (UK) c 37, s 8; *ibid* 173; Gardiner et al, above n 21, 555.

<sup>146</sup> Bichovsky, above n 17, 173.

<sup>147</sup> *Ibid*.

<sup>148</sup> The change to the name of the Football Licensing Authority ('FLA') was effected by the *Sports Ground Safety Authority Act 2011* (UK). That Act also provided the FLA with additional powers to provide advice to government ministers, local authorities and others in relation to safety at sports grounds. For more details, see Sports Ground Safety Authority, *About Us* (1 February 2013) <<http://www.safetyatsportsgrounds.org.uk/about/aboutus.php>>; Sports Ground Safety Authority, *Our History* (18 December 2012) <<http://www.safetyatsportsgrounds.org.uk/about-us/our-history>>.

(b) *The Acquisition of a Safety Certificate*

Under the *Safety of Sports Grounds Act 1975* (UK), each football club that owns a stadium of a significant capacity must possess a safety certificate indicating that the stadium is safe.<sup>149</sup> Local authorities are responsible for issuing this certificate.<sup>150</sup> In order to obtain a certificate, clubs must appoint a safety officer and establish a system of stewards, electronic tickets, video surveillance and a checkpoint in the stadium connected directly to the police forces and leader stewards.<sup>151</sup>

The Act also provides an emergency procedure to prohibit or restrict the admission of spectators to the whole or a specific part of the ground, if they may be exposed to serious risk.<sup>152</sup> This measure can remain until steps have been taken to reduce the risk to a 'reasonable level'.<sup>153</sup>

(c) *Provision of Seating*

In accordance with s 11 of the *Football Spectators Act 1989* (UK), the clubs belonging to the first two divisions of the championship must ensure all spectators are seated.<sup>154</sup>

This measure, introduced in 1994 to primarily deal with the risk of crowd crushing, also helped to reduce crowd disorder in grounds by breaking up groups which might have congregated together.<sup>155</sup>

Similarly, internal fences around spectator areas were removed. This initiative has not led to an increase of disturbance at matches, but seems, on the contrary, to have 'calmed spirits' by making individuals aware of their responsibilities rather than 'caging' them.<sup>156</sup>

### 3 *State Measures Aimed at Third Parties*

A prohibition on the unauthorised sale of tickets ensures that rival supporters are not in the same bleachers in a stadium.<sup>157</sup> It also prevents the tickets being sold on the black market to any group of supporters.<sup>158</sup>

The prohibition is effected by the *Criminal Justice and Public Order Act 1994* (UK),<sup>159</sup> which provides for the imposition of a fine for the sale of tickets by unauthorised people.<sup>160</sup>

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<sup>149</sup> *Safety of Sports Grounds Act 1975* (UK) c 52, s 1. See also Bichovsky, above n 17, 173; Gardiner et al, above n 21, 554.

<sup>150</sup> Bichovsky, above n 17, 173.

<sup>151</sup> Ibid; Coward, above n 8, 232. About the video surveillance in particular, see Tsoukala, 'La gestion policière du hooliganisme en Angleterre, en Italie et aux Pays-Bas', above n 39, 159, 161–4.

<sup>152</sup> *Safety of Sports Grounds Act 1975* (UK) c 52, s 10. See also Bichovsky, above n 17, 173; Gardiner et al, above n 21, 554.

<sup>153</sup> Bichovsky, above n 17, 173.

<sup>154</sup> Ibid. See also Frosdick and Marsh, *Football Hooliganism*, above n 2, 172.

<sup>155</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 172.

<sup>156</sup> Ibid 172. See also Basile Barbey, 'Hooliganisme, territoire et sécurité: analyse spatiale d'un risque complexe' in Thomas Busset et al (eds), *Le football à l'épreuve de la violence et de l'extrémisme* (Antipodes, 2008) 253, 259.

<sup>157</sup> Bichovsky, above n 17, 188.

<sup>158</sup> Ibid.

<sup>159</sup> *Criminal Justice and Public Order Act 1994* (UK) c 33, s 166, as amended by *Football (Offences and Disorder) Act 1999* (UK) c 21.

This concludes the description of the principal state measures introduced to fight against hooliganism. These reforms have been the subject of some criticisms and have received some judicial consideration, which are described below.

#### 4 Main Criticisms

According to some commentators, some of the measures outlined above pursue hooligans to a degree that violates civil liberties and human rights.<sup>161</sup> Most of this criticism focuses on banning orders.<sup>162</sup> Banning orders, it is argued, may infringe provisions of the *European Convention on Human Rights* ('ECHR') and various European Union treaties.<sup>163</sup> This argument is particularly focused on banning orders on complaint, which do not require any previous criminal conviction.<sup>164</sup> The principle of proportionality is also often raised in opposition to the measures,<sup>165</sup> and, when balanced with the effectiveness of the measures, is questioned by some commentators.<sup>166</sup>

These arguments have not found favour with the Court of Appeal<sup>167</sup> of England and Wales, which has completely rejected these criticisms in a

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<sup>160</sup> Ibid.

<sup>161</sup> See, eg, Beckham, above n 4, 43; Giulianotti, 'Sport Mega Events', above n 12, 3300; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 28, 174–6, 182–201, 339. See also Frosdick and Marsh, *Football Hooliganism*, above n 2, 170–2; 'Hooligans and the Law', *The Economist* (London), 8 July 2000, 22.

<sup>162</sup> Note that some other aspects of the system (eg database, video surveillance, criminal investigations etc) might also, to a lesser degree, be discussed in relation to the right to privacy.

<sup>163</sup> For more details, see, eg, Beckham, above n 4, 43–54; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 539–48; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 174–6, 182–201, 339. See also 'Hooligans and the Law', above n 161. *Contra* Ricky Cannon, 'Sensible Soccer: The Creation of the Unconvicted Football Hooligan Order' (2000) 6 *European Public Law* 573. Ricky Cannon considers that these measures (in particular the banning orders on complaint) are lawful. According to him, they fall out of the scope of the *European Convention on Human Rights* ('ECHR') and within the parameters of the European Union law: at 574.

<sup>164</sup> For more details, see, eg, Beckham, above n 4, 46–7; Blackshaw, above n 25, 90; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 540–1; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 174–6, 182–201, 339. See also Giulianotti, 'Sport Mega Events', above n 12, 3300; 'Hooligans and the Law', above n 161.

<sup>165</sup> Some authors think that these measures go far beyond what is necessary to prevent disorder. See, eg, Beckham, above n 4, 46–7; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 174–6, 182–201, 339. See also Cannon, above n 163, 583–4; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 548; 'Hooligans and the Law', above n 161.

<sup>166</sup> Indeed, Christopher Stoner, Clifford Stott and Geoff Pearson, and Steve Frosdick and Peter Marsh note that it is not typically the 'known' hooligans that are involved in the rioting: Stoner, above n 87, 12; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 339; Frosdick and Marsh, *Football Hooliganism*, above n 2, 172. For their part, Niall Hamilton-Smith et al consider that banning orders (without conditions) are not effective against individuals who have no interest in attending the match, but only want to use match days as a way of accessing opportunities for recreational violence well away from the stadiums: Hamilton-Smith et al, above n 12, 18. See also Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 548–54.

<sup>167</sup> The Court of Appeal is the second highest court of England and Wales.

well-known 2002 judgment.<sup>168</sup> Similarly, some commentators argue that this system relies overwhelmingly upon the use of force and that over-repressive policing may be counterproductive and lead hooligans to behave more aggressively.<sup>169</sup>

Another example of potentially counterproductive effects raised by critics of the reforms relates to the use of video surveillance. This, it is argued, has led to incidents being effectively moved out of stadiums where video surveillance is particularly effective. Incidents now take place around the stadiums, and occur before or after matches. This has meant that hooligans' actions are better planned.<sup>170</sup> Some problems with the identification of suspected wrong-doers using video technology have also been reported, with the 'axe' sometimes falling on innocent parties.<sup>171</sup>

Similarly, some commentators criticise the power and effectiveness of the police's ability to close bars, leading some supporters to go to duty-free shops to purchase alcohol and, therefore, to drink spirits instead of beer.<sup>172</sup>

Other critics argue that hooliganism has not been completely defeated because it is not properly understood. They argue that the Government focuses too much on gangs travelling to cause trouble, to the detriment of general risks associated with crowd management.<sup>173</sup>

Yet others note that hooligans are now significantly in the minority and less apparent, which makes them more dangerous and committed than before.<sup>174</sup>

Finally, the legislation is sometimes described as being implemented to answer populist will rather than to answer a real need.<sup>175</sup> It has also been criticised as being too rigid, and therefore an unwarranted interference with judicial discretion,<sup>176</sup> or inversely, incomplete. Thus, banning orders do not, for

<sup>168</sup> *Gough v Chief Constable of Derbyshire* [2002] EWCA Civ 351 (20 March 2002) ('*Gough*').

<sup>169</sup> Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 54, 333; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 552. See also Giulianotti, 'Sport Mega Events', above n 12, 3306; Frosdick and Marsh, *Football Hooliganism*, above n 2, 153, 156, 158, 174. Frosdick and Marsh also criticise other aspects of the police management, such as the lack of respect of the police towards hooligans and its inconsistent organisation: at 156, 158. See also Warren, *Football, Crowds and Cultures*, above n 4, 172.

<sup>170</sup> Tsoukala, 'La gestion policière du hooliganisme en Angleterre, en Italie et aux Pays-Bas', above n 39, 163–4. From a more general perspective, see also Barbey, above n 156, 263. See also Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 125.

<sup>171</sup> See, eg, Zaugg, above n 13. About the particular issue of racism, see also Gardiner et al, above n 21, 583; Greenfield and Osborn, *Regulating Football*, above n 19, 164–5; Greenfield and Osborn, 'Racism and Resistance in English Football', above n 60, 328–9.

<sup>172</sup> Warren, *Football, Crowds and Cultures*, above n 4, 69–70.

<sup>173</sup> Barbey, above n 156, 263; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 328.

<sup>174</sup> See, eg, Martin King and Martin Knight, *The Naughty Nineties — Football's Coming Home?* (Mainstream Publishing, 1999).

<sup>175</sup> See, eg, Frosdick and Marsh, *Football Hooliganism*, above n 2, 125–37, 170–2. Frosdick and Marsh mention in support the prohibition of alcohol in stadiums (whose negative effect is exaggerated), the creation of specific football offences (already covered by the general legislation) and the banning orders (most of the disorder being due to 'unknown' hooligans). See Gardiner et al, above n 21, 576; Warren, *Football, Crowds and Cultures*, above n 4, 73; Wohlers, above n 4, 199. See also Stoner, above n 87, 12; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 339.

<sup>176</sup> Hamilton-Smith et al, above n 12, 51–2.

instance, control what happens in pubs and clubs when matches are shown on televisions.<sup>177</sup> Moreover, the current legislation is silent regarding the power of referees in relation to calling a halt to a match in case of misbehaviour by supporters.<sup>178</sup>

### 5 Legal Framework Tested in the Courts

The anti-hooligan legal framework has been tested in the courts on several occasions. The most famous case, *Gough v Chief Constable of Derbyshire* ('*Gough*'),<sup>179</sup> concerned the imposition of banning orders in relation to hooligan behaviour. Carl Gough and Gary Smith, two British hooligans, were sentenced on appeal<sup>180</sup> and banned from stadiums for two years in 2002 under s 14B of the *Football Spectators Act 1989* (UK).<sup>181</sup> Gough and Smith had been convicted of violence offences (common assault and assault with intent to resist arrest) in 1990 and 1998.<sup>182</sup> Each was also the subject of a 'profile' prepared by the police, which indicated repeated involvement in incidents of violence at or around football stadiums.<sup>183</sup> They challenged the legislation that authorised their bans on attending stadiums as being incompatible with their fundamental rights under European Union treaties and the *ECHR*.<sup>184</sup>

The appellants argued, in particular, that the banning orders derogated from their positive rights on freedom of movement and freedom to leave their home country.<sup>185</sup> In addition, it was asserted that the *Football Spectators Act 1989* (UK) infringed the principle of proportionality by banning an individual from travelling anywhere within the community even if the relevant match was not taking place there.<sup>186</sup>

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<sup>177</sup> Mimmack, above n 96, 251.

<sup>178</sup> Darren Bailey, 'Crowd Control' (2004) 11(6) *Sports Law Administration and Practice* 5, 6–7. Note that according to some commentators, the legislation should also be strengthened at the European Union level. For more details, see Cannon, above n 163, 590–4; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 553–4. See also Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 338–9.

<sup>179</sup> *Gough* [2002] EWCA Civ 351.

<sup>180</sup> Their arguments were rejected at first instance: *Gough v Chief Constable of Derbyshire* [2001] EWHC Admin 554 (13 July 2001).

<sup>181</sup> *Gough* [2002] EWCA Civ 351, 1008 [103] (Lord Phillips MR). See also Bichovsky, above n 17, 141; Gardiner et al, above n 21, 578; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 183.

<sup>182</sup> *Gough* [2002] EWCA Civ 351, 991–2 [28] (Lord Phillips MR). See also Gardiner et al, above n 21, 578.

<sup>183</sup> *Gough* [2002] EWCA Civ 351, 992–3 [30]–[33] (Lord Phillips MR). See also Elspeth Deards, 'Human Rights for Football Hooligans?' (2002) 27 *European Law Review* 765, 765; Gardiner et al, above n 21, 578.

<sup>184</sup> *Gough* [2002] EWCA Civ 351, 994 [38] et seq (Lord Phillips MR). See also Beloff, above n 87, 56; Bichovsky, above n 17, 141; Gardiner et al, above n 21, 578.

<sup>185</sup> *Council Directive 73/148/EEC of 21 May 1973 on the Abolition of Restrictions on Movement and Residence within the Community for Nationals of Member States with Regard to Establishment and Provision of Services* [1993] OJ L 172/14, arts 1–2. *Gough* [2002] EWCA Civ 351, 998 [57] et seq (Lord Phillips MR). See also Bichovsky, above n 17, 141; Deards, above n 183, 765–6; Gardiner et al, above n 21, 578.

<sup>186</sup> *Gough* [2002] EWCA Civ 351, 998 [56], 1000 [63] et seq (Lord Phillips MR). See also Gardiner et al, above n 21, 578.



The appellants further invoked the argument that this legislation infringed arts 6 and 8 of the *ECHR* (a right to a fair trial and freedom of movement, respectively).<sup>187</sup> They also made claims under the *Human Rights Act 1998* (UK), which is responsible for embodying and ensuring the respect of the *ECHR* in England.<sup>188</sup> They contended, in particular, that ‘banning orders should only be imposed following a criminal procedure’.<sup>189</sup> In this context, they argued that the principle of the presumption of innocence and their right to a defence were not respected. Furthermore, the evidence gathered against them was said to be insufficient to justify the bans, since no criminal conviction was required.<sup>190</sup> Finally, on the basis of the *ECHR*, they raised issues about the restrictions imposed on their freedom of movement.<sup>191</sup>

The Court of Appeal (‘the Court’) rejected all of these arguments.<sup>192</sup> The Court noted that there was no absolute right to leave one’s country under the *ECHR*. Restrictions on the right could be imposed in some circumstances, such as to protect order and public safety.<sup>193</sup> The Court found that these measures respected the principle of proportionality as long as there were strong grounds for concluding that the individual had a propensity for taking part in football hooliganism.<sup>194</sup> It was also proportionate to require these persons to obtain authorisation to travel abroad during periods when international matches are held, since they would then have the opportunity to prove that the purpose of

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<sup>187</sup> *Gough* [2002] EWCA Civ 351, 1007 [98] et seq (Lord Phillips MR). Note that the respondents did not invoke the right to respect for their private and family life, which is associated with art 8 of the *ECHR*.

<sup>188</sup> *Gough* [2002] EWCA Civ 351, 994–5 [41] (Lord Phillips MR). See also Bichovsky, above n 17, 141; Gardiner et al, above n 21, 578; Stott and Pearson, *Football ‘Hooliganism’, Policing and the War on the ‘English Disease’*, above n 3, 182–3. About the *Human Rights Act 1998* (UK) (‘HRA’), see David Pannick and Jane Mulcahy, ‘The *Human Rights Act 1998* and Sport’ in Adam Lewis and Jonathan Taylor (eds), *Sport: Law and Practice* (Tottel Publishing, 2<sup>nd</sup> ed, 2008) 511, 511–36.

<sup>189</sup> *Gough* [2002] EWCA Civ 351, 1001 [69] (Lord Phillips MR). See also Gardiner et al, above n 21, 578; Stott and Pearson, *Football ‘Hooliganism’, Policing and the War on the ‘English Disease’*, above n 3, 183.

<sup>190</sup> *Gough* [2002] EWCA Civ 351, 994–5 [41] (Lord Phillips MR). See also Bichovsky, above n 17, 141–2.

<sup>191</sup> Note that this claim should have been made under art 2 of Protocol 4 instead had it been ratified by the United Kingdom. For more details, see Pearson and James, ‘The Legality and Effectiveness of Using Football Banning Orders’, above n 79, 541.

<sup>192</sup> *Gough* [2002] EWCA Civ 351, 1003 [78], 1007–8 [100]–[103] (Lord Phillips MR). See also Bichovsky, above n 17, 142.

<sup>193</sup> *Gough* [2002] EWCA Civ 351, 998 [52] (Lord Phillips MR). See also Beloff, above n 87, 56; Bichovsky, above n 17, 142; Deards, above n 183, 766; Gardiner et al, above n 21, 578; Stott and Pearson, *Football ‘Hooliganism’, Policing and the War on the ‘English Disease’*, above n 3, 184.

<sup>194</sup> *Gough* [2002] EWCA Civ 351, 1002 [73] et seq (Lord Phillips MR). See also Beloff, above n 87, 56–7; Bichovsky, above n 17, 142; Deards, above n 183, 768; Gardiner et al, above n 21, 578.

their trip was not related to such matches.<sup>195</sup> The Court found that it would not be possible to achieve the same result with less restrictive measures.<sup>196</sup>

Examining the issue from the perspective of art 6 of the *ECHR*, the Court considered that banning orders were not criminal but civil, since their purpose was preventative and not punitive.<sup>197</sup> Although the civil standard of proof had to be applied, the Court noted that, given the serious restrictions on freedom of movement, it was appropriate to apply an exacting standard of proof, being in practice 'hard to distinguish from the criminal'.<sup>198</sup>

The Court also determined that if a banning order was properly made (and no defects in the making of the orders were made out), any interference with an individual's rights under art 8(1) of the *ECHR* would be justified under art 8(2), since the interference was necessary for the prevention of disorder.<sup>199</sup>

On a broader level, the Court noted that the legislation fulfilled the requirements of European states. The European member states requested that the British Government take measures to prevent acts of violence of its citizens abroad,<sup>200</sup> as any new violent acts would likely lead to further exclusion of English clubs from European competitions, producing significant financial consequences.<sup>201</sup> Finally, hooliganism tarnished the reputation of the United Kingdom abroad.<sup>202</sup>

While the test applied by the Court, in conducting a balancing of relevant interests, may not always have been applied strictly correctly in subsequent cases,<sup>203</sup> and despite later criticism by commentators,<sup>204</sup> this judgment must be credited with providing a number of significant clarifications in the operation of the laws.

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<sup>195</sup> *Gough* [2002] EWCA Civ 351, 1002 [75] et seq (Lord Phillips MR). Beloff, above n 87, 57; Bichovsky, above n 17, 142; Deards, above n 183, 768–9.

<sup>196</sup> *Gough* [2002] EWCA Civ 351, 1003 [78] et seq (Lord Phillips MR). See also Beloff, above n 87, 57; Bichovsky, above n 17, 142; Deards, above n 183, 768–9. About the issue of proportionality, see also Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 547–8, 551–3; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 183–8.

<sup>197</sup> *Gough* [2002] EWCA Civ 351, 1005 [89] (Lord Phillips MR). See also Bichovsky, above n 17, 142; Deards, above n 183, 769; Gardiner et al, above n 21, 578. For a critical comment about this conclusion, see Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 183–4.

<sup>198</sup> *Gough* [2002] EWCA Civ 351, 1005 [91] (Lord Phillips MR). See also Bichovsky, above n 17, 143; Deards, above n 183, 769; Gardiner et al, above n 21, 578; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 190.

<sup>199</sup> Beloff, above n 87, 57; Bichovsky, above n 17, 142–3; Deards, above n 183, 770.

<sup>200</sup> *Gough* [2002] EWCA Civ 351, 1000 [62] (Lord Phillips MR). See also Bichovsky, above n 17, 143; Deards, above n 183, 767.

<sup>201</sup> Deards, above n 183, 767.

<sup>202</sup> *Ibid.* For a legal analysis of subsequent case laws, see Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 188–201.

<sup>203</sup> For more details, see Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 182–201.

<sup>204</sup> See, eg, Blackshaw, above n 25, 91; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 547–8, 551–3; Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 183–8, 339. See also, Deards, above n 183, 770.

It established that, if applied correctly,<sup>205</sup> banning orders<sup>206</sup> are lawful as a matter of community law and the *ECHR*.<sup>207</sup> The public order benefits of the legislation, in contributing to the reduction of hooliganism in recent years, arguably provides reciprocal support for the banning orders regime.<sup>208</sup>

The decision in *Gough* also confirmed that public policy restrictions on a member states' own citizens may only be justified by reference to its own interests.<sup>209</sup>

It is now appropriate to describe the main measures implemented by the clubs and the League in the fight against hooliganism.

### C Measures Managed by the Clubs/the League

#### 1 General

To the extent that it can be assumed that the legislation passed by the British Government was effective in reducing hooliganism,<sup>210</sup> measures implemented by the clubs may similarly be assumed to have contributed (either in combination or in isolation) to this decrease.<sup>211</sup> One important measure that clubs have

<sup>205</sup> The legislation is open to interpretation and might lead to disproportionate results. However, the Court of Appeal concluded that the question 'was not whether the statutory provisions could give rise to a disproportionate effect but whether they could give rise to a proportionate effect': *Deards*, above n 183, 768.

<sup>206</sup> Made under: *Football Spectators Act 1989* (UK) c 37 s 14B, as amended by the *Football (Disorder) Act 2000* (UK) c 25, sch 1 para 2.

<sup>207</sup> *Deards*, above n 183, 770; *Gardiner et al*, above n 21, 578. Note that other arguments based on the *ECHR* (such as art 7, which establishes the principle of non-retroactivity) were also rejected in the first instance. For more details, see Sylvia Elwes, 'Football Hooliganism' (2002) 23 *Business Law Review* 37, 37–41. See also Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 540–54. They describe all the potential challenges that could be made towards banning orders. Pearson and James mention, for instance, art 8 of the *ECHR* (private and family life aspects): at 541. These aspects were not raised in this procedure. They also note that art 7 of the *ECHR* 'was only argued before the High Court, although the Court of Appeal specifically approved Laws LJ's judgment on the issue': at 542.

<sup>208</sup> The efficiency of the English system is discussed further. See below Parts II(D), II(E).

<sup>209</sup> *Deards*, above n 183, 770. Note that while the *Gough* precedent is presently still relevant in England, it seems that banning orders applications are increasingly being successfully challenged. Judges appear to be less accepting of the police version of events, and instead are examining more closely whether or not the respondent is a genuine risk to public order. For a recent analysis of this case (in light of the evolution previously mentioned), see Geoff Pearson, 'Football and Crowds: *Gough and Smith v Chief Constable of Derbyshire* [2002] QB 1213' in Jack Anderson (ed), *Leading Cases in Sports Law* (TMC Asser, 2013) 307.

<sup>210</sup> *Contra* Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 133.

<sup>211</sup> See below Bodin et al, 'Le hooliganisme entre genèse et modernité', below n 242. See also Bichovsky, above n 17, 121.

implemented is a significant increase in ticket prices.<sup>212</sup> This changed the demographic of spectators at football matches by excluding from stadiums certain categories of spectators whilst attracting others.<sup>213</sup> Currently, spectators include more middle class people and fewer young, white men from the lower income social groups.<sup>214</sup> A recent survey of the Premier League has also shown that 23 per cent of fans are now women and 11 per cent belong to ethnic minorities.<sup>215</sup>

This phenomenon, combined with a large number of regular season ticket holders who have allocated seats (and who can therefore be more easily identified if they misbehave), contributed to make the environment in stadiums more predictable and orderly.<sup>216</sup> Similarly, as already mentioned, clubs have power to impose stadium bans, sometimes for life.<sup>217</sup> However, most English clubs seem reluctant to introduce schemes that require greater contact between fans and club officials, or to develop socio-preventive projects (known as ‘fan coaching’ in mainland Europe).<sup>218</sup>

For its part, the FA imposes certain obligations on clubs and organisers of sporting events, some of which are modelled on state laws.<sup>219</sup> The FA has also

<sup>212</sup> Thus, to see a match in England, one must now pay ten times more than twenty years ago. See Bichovsky, above n 17, 121. See also Fonteneau, above n 7; Zaugg, above n 13. While it is the most expensive club to watch, tickets to see an Arsenal match in the Premier League in 2012–13 ranged from £25.50 for the cheapest tickets to £126 for the most expensive tickets: ‘Arsenal’s Most Expensive Premier League Ticket for 2012–13 to Cost £126’, *The Guardian* (online), 14 July 2012 <<http://www.theguardian.com/football/2012/jul/14/arsenal-premier-league-ticket-126>>. Ticket prices have led to protests from fans. See Sam Weaver and Ami Sedghi, ‘Premier League Ticket Prices: Which Clubs Charge the Most’, *The Guardian* (online), 20 June 2013 <<http://www.theguardian.com/news/datablog/2013/jun/19/premier-league-ticket-prices-club-charge-the-most>>. Ticket prices have increased at three times the rate of inflation: Adam Shergold, ‘Premier League and Football League Ticket Prices Rise at Three Times the Rate of Inflation as the Staggering Cost of Following Your Team is Revealed’, *The Daily Mail* (online), 15 October 2014 <<http://www.dailymail.co.uk/sport/football/article-2792703/the-staggering-cost-following-team-premier-league-football-league-ticket-prices-rise-three-times-rate-inflation.html#ixzz3RUW6ekPk>>.

<sup>213</sup> Bichovsky, above n 17, 121. See also Giulianotti, ‘Sport Mega Events’, above n 12, 3302; Zaugg, above n 13.

<sup>214</sup> Zaugg, above n 13. See also Giulianotti, ‘Sport Mega Events’, above n 12, 3302.

<sup>215</sup> Zaugg, above n 13.

<sup>216</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 173; Hamilton-Smith et al, above n 12, 7.

<sup>217</sup> Bichovsky, above n 17, 121, 138. See also Coward, above n 8, 233.

<sup>218</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 182–7.

<sup>219</sup> For instance, according to the FA, each affiliated association, competition and club is responsible for ensuring:

(a) that its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability) whilst attending at or taking part in a Match in which it is involved, whether on its own ground or elsewhere; and

(b) that no spectators or unauthorised persons are permitted to encroach onto the pitch area, save for reasons of crowd safety, or to throw missiles, bottles or other potentially harmful or dangerous objects at or on to the pitch.

introduced an official supporters' club, where applicants give permission for background checks for criminal records and other football-related misbehaviour in exchange for being given priority when buying tickets for England matches overseas.<sup>220</sup> Furthermore, the FA sometimes accommodates ad hoc measures, such as campaigns for good behaviour and fair play and appeals for the public and media to identify troublemakers.<sup>221</sup>

As with the State's reforms, the measures taken by the clubs and the League to fight hooliganism have not been spared from criticism.

## 2 *Main Criticisms*

The increase in ticket prices, which had the effect of excluding certain categories of people and, according to some observers, tarnishing the atmosphere in the stadiums, is often seen negatively.<sup>222</sup>

It is also argued that, using the example of Germany, alternatives exist to measures such as higher ticket prices and all-seated stadiums. Germany, although less affected by hooliganism, has managed (through large standing areas and controlled seat prices) to attract on average 7000 more supporters per game, including a higher proportion of women and young fans, than the English Premier League games.<sup>223</sup>

The English clubs' poor investment in fan coaching measures is also criticised.<sup>224</sup>

Finally, it is noted that the criticisms about the state banning orders based on civil liberties and human rights grounds are not relevant in relation to the bans implemented by the clubs. These bans are strictly a matter of contract (paying to watch a football match) and property law. Bans imposed by a club do not compromise the individual's liberty to move about in public or to leave the country. It is therefore not a human rights issue.<sup>225</sup>

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The Football Association, *Rules of the Association 2014–15*, pt E s 20 <<http://www.thefa.com/football-rules-governance/more/rules-of-the-association>>.

<sup>220</sup> Coward, above n 8, 232–3.

<sup>221</sup> Ibid 233.

<sup>222</sup> Barbey, above n 156, 262–3; Richard Giulianotti, 'Supporters, Followers, Fans, and Flâneurs: A Taxonomy of Spectator Identities in Football' (2002) 26 *Journal of Sport and Social Issues* 25, 25. See also Fonteneau, above n 7.

<sup>223</sup> Giulianotti, 'Sport Mega Events', above n 12, 3306.

<sup>224</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 182–7.

<sup>225</sup> Furthermore, assuming that a court accepts one day the fact that it is a human rights matter (which appears unlikely), the application of the *ECHR* and the *HRA* to private entities is controversial. For more details about the *HRA*, see Pannick and Mulcahy, above n 188, 511–36. These authors note that:

So far, no sporting body has been found to be a public authority for the purposes of the *HRA 1998*, and several have been found not to be. But that has not stopped courts taking [occasionally] human rights points into account, since the courts themselves are public authorities, and hence are obliged to consider the human rights of the parties, whether public or private.

It is now necessary to examine the efficiency of the current anti-hooligan tools.

#### D *Efficiency of the Current Tools*

Regardless of the outcomes that have followed the measures described above, it is clear that English hooliganism has not completely disappeared.<sup>226</sup> During the last 10 years, various major incidents concerning English fans have occurred in England<sup>227</sup> and abroad.<sup>228</sup>

Nevertheless, the total number of people arrested in connection with all international and domestic football matches involving teams from, or representing, England and Wales has steadily been declining since the early

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At 511. The majority of the commentators now also seem to be of this opinion. About the issue of human rights in the context of doping, see, eg, Gabrielle Kaufmann-Kohler, Giorgio Malinverni and Antonio Rigozzi, 'Legal Opinion on the Conformity of Certain Provisions of the Draft World Anti-Doping Code with Commonly Accepted Principles of International Law' (Legal Opinion, World Anti-Doping Agency, 26 February 2003) [1], [73] <<https://wada-main-prod.s3.amazonaws.com/resources/files/kaufmann-kohler-full.pdf>>.

About the *ECHR*, see Béatrice Moutel, *L'effet horizontal de la Convention européenne des droits de l'homme en droit privé français: Essai sur la diffusion de la CEDH dans les rapports entre personnes privées* (PhD Thesis, Université de Limoges, 2006) <<http://epublications.unilim.fr/theses/2006/moutel-beatrice/moutel-beatrice.pdf>>. *Contra* Raheel Saleem, 'The Olympic Meddle: The International Olympic Committee's Intrusion of Athletes' Privacy through the Discriminatory Practice of Gender Verification Testing' (2010) 28 *John Marshall Journal of Computer & Information Law* 49, 77. However, according to the prevailing contemporary judicial practice, human rights are not applicable in sports matters: Kaufmann-Kohler, Malinverni and Rigozzi, above n 225, [66]–[72]. Note that the European Court of Human Rights has never determined this issue: at [66].

<sup>226</sup> Fonteneau, above n 7.

<sup>227</sup> In the fifth round of the FA Cup in 2005, angry supporters threw coins, a mobile phone and a bottle to protest against Wayne Rooney's return to Everton in Manchester United colours. This resulted in an injury to the Mancunian goalkeeper and 33 arrests outside the ground. Another example is the pitch invasion that occurred during the match between Burnley and Blackburn Rovers during the same competition: Frosdick and Marsh, *Football Hooliganism*, above n 2, 6. The English Premier League is not spared. Notable examples are the East London derby West Ham-Millwall (August 2009) and Aston Villa-Birmingham (December 2010), to name only the most famous and recent cases of hooligan behaviour. For more details about these incidents, see, eg, Fonteneau, above n 7; 'London Calling Hooliganism: Soccer Fans in Flare-up', *The Advertiser* (Adelaide), 3 December 2010, 4. Note that apart from these reported instances of serious disorder, there have also been many others that were not widely publicised, namely the matches between Manchester United and AS Roma (home match in 2007), Birmingham and Manchester United (2010) and Barnsley and United (2009). See also the disorder that occurred during the match between Chelsea and Cardiff (2010). About older incidents, see also Warren, *Football, Crowds and Cultures*, above n 4, 47. See also Emma Clark, 'Pictured Drinking on the Night He Launched Sickening Attack on Goalkeeper: Shameless Yob Who Is Meant to Be Banned from Football Grounds for Hooliganism', *The Daily Mail* (online), 21 October 2012 <<http://www.dailymail.co.uk/news/article-2220902/Chris-Kirkland-attacked-Leeds-United-yob-attacked-goalkeeper-pitch-banned-football-grounds-previous-acts-hooliganism.html#ixzz3BSnjCtRQ>>.

<sup>228</sup> Examples include the riots that occurred during the 2004 UEFA European Football Championship and the 2006 FIFA World Cup. The unruly behaviour of Manchester United fans in Rome for the quarterfinals of the 2007 Champions League and the incidents involving Liverpool fans in Athens for the final of the same competition are also noted. See Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, xi, 1–10.

1990s, from 6378 cases for the 1991–92 season, to 4400 in 1996–97, 3089 in 2010–11 and to 2456 in 2012–13.<sup>229</sup>

For the 2012–13 season, the Home Office statistics show that the total attendance is in excess of 39 million at football matches.<sup>230</sup> The total number of arrests represents therefore less than 0.01 per cent of all spectators or one arrest for every 14 000 spectators.<sup>231</sup>

Furthermore, the average number of arrests (inside and outside of stadiums) is less than one per match, and 58 per cent of all matches had no police presence.<sup>232</sup>

In addition, '[m]ore than 100 000 English and Welsh club fans travelled to Champions League and Europa League matches outside of England and Wales'<sup>233</sup> and '[t]hese 44 matches resulted in only 20 arrests of away fans'.<sup>234</sup>

The number of football banning orders has also decreased (by 11 per cent from 2750 on 9 November 2012 to 2451 on 20 September 2013 and down 22.9 per cent from 3180 for the 2008–09 season to 10 November 2009).<sup>235</sup> This represents 471 new banning orders imposed during the period.<sup>236</sup>

Finally, 92 per cent of the individuals whose orders have expired since 2000 are considered to be no longer a risk to football disorder.<sup>237</sup>

Even if '[s]tatistics ... tell only part of the story and need to be placed in context',<sup>238</sup> this data has been referred to by several experts to show that British stadiums are now among the safest in the world.<sup>239</sup>

<sup>229</sup> This covers all arrests designated in law under sch 1 of the *Football Spectators Act 1989* (UK) reported by police to the Football Banning Orders Authority. This includes soccer specific offences and a wide range of generic criminal offences committed in connection with a soccer match. This covers such arrests at any place within a period of 24 hours either side of a match. For more details, see Home Office, *Statistics on Football-Related Arrests and Banning Orders, Season 2012 to 2013* (9 October 2013) Gov.UK, 2 <<https://www.gov.uk/government/statistics/football-related-arrests-and-banning-orders-season-2012-to-2013>>. For the previous years, see Home Office, *Statistics on Football-Related Arrests and Banning Orders, Season 2011 to 2012* (14 November 2012) Gov.UK <<https://www.gov.uk/government/collections/football-banning-orders>>. The lowest recorded total of arrests occurred in the 2011–12 season (2363 arrests). The 2012–13 season therefore recorded a four per cent increase of 93 arrests on the previous season.

<sup>230</sup> Home Office, *Statistics on Football-Related Arrests and Banning Orders, Season 2012 to 2013*, above n 229, 2.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid. The average number of arrests per match declines proportionately from the Premier League (1.90 arrests per match) to League Two (0.29 arrests per match).

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid. See also Home Office, *Football Banning Orders 2008 to 2009* (1 September 2010) Gov.UK <<https://www.gov.uk/government/statistics/football-banning-orders-2008-to-2009>>. Note, however, that the number of banning orders have generally increased if compared to earlier statistics (looking at the figures for 2003–04, they have increased from 1794 on 14 August 2003 to 2596 on 18 October 2004). This increase can however be explained, at least partially, by the more restrictive policing approach being applied. See Frosdick and Newton, 'Hooliganism in England and Wales', above n 3, 406–7; Frosdick and Marsh, *Football Hooliganism*, above n 2, 36.

<sup>236</sup> Home Office, *Statistics on Football-Related Arrests and Banning Orders, Season 2012 to 2013*, above n 229, 2.

<sup>237</sup> Home Office, *Statistics on Football-Related Arrests & Banning Orders, Season 2010 to 2011* (21 December 2011) Gov.UK <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118119/fbo-2010-11.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118119/fbo-2010-11.pdf)>.

<sup>238</sup> Frosdick and Newton, 'Hooliganism in England and Wales', above n 3, 406.

E *Final Remarks on the English System*

In light of the above analysis, the argument can be advanced that the English reforms have had an extremely positive impact in the fight against hooliganism and were good policy in the English (football) context. However, a few points need to be made regarding such an argument.

First, the reforms remain open to some criticism. At the state level, the issue of human rights appears to be the most problematic. Even if this system has survived judicial challenge, both the courts and the police must ensure that their actions remain fair and proportionate in each case. Otherwise this may lead to unfair situations and result in a counterproductive effect.<sup>240</sup> Similarly, the clubs could intensify their efforts in the matter of fan coaching; a measure that, while having some limitations, can have positive effects.

Secondly, some caution may be required before being too definitive about the effects of the reforms themselves. At a high level, the results appear to be demonstrable. English football stadiums — which were the scenes of bloody catastrophes a few years ago as noted above — are now considered to be among the safest stadiums in the world.<sup>241</sup> The conclusion that appears to naturally follow is that the reforms that England has imposed in response to hooliganism have been very effective.

Nevertheless, it should be noted that other factors, including socio-economic factors, might have contributed to the decline of hooliganism in England. For example, many sociologists argue that the implementation of violence and hooliganism in England was favoured by the socio-economic collapse that occurred in the 1970s to 1980s.<sup>242</sup> It would therefore not be surprising that the improvement of the economic climate that gradually followed fostered, in turn, a decline in general criminality and hooliganism.

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<sup>239</sup> Zaugg, above n 13. See Coward, above n 8, 232; Morgan and Egitto, above n 3, 5. Morgan and Egitto note that '[t]he UK's anti-hooliganism measures now in place can quite justifiably be viewed as some of the most efficient on the planet'. For a more critical opinion, see Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 125, 133.

<sup>240</sup> As we have seen, some authors argue that the English system relies overwhelmingly upon the use of force, in that over-repressive policing may even play a counterproductive role and result in hooligans behaving more aggressively. For more details, see Stott and Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'*, above n 3, 54, 333; Pearson and James, 'The Legality and Effectiveness of Using Football Banning Orders', above n 79, 552. See also Giulianotti, 'Sport Mega Events', above n 12, 3306–7; Frosdick and Marsh, *Football Hooliganism*, above n 2, 153, 156, 158, 174, 187. Frosdick and Marsh also criticise other aspects of the police management, such as the lack of respect of the police towards supporters and its inconsistent organisation: at 156, 158. See also Warren, *Football, Crowds and Cultures*, above n 4, 172. Besides, the legislation is open to interpretation, and might lead to disproportionate results. However, the Court of Appeal concluded that the question 'was not whether the statutory provisions could give rise to a disproportionate effect but whether they could give rise to a proportionate effect': Deards, above n 183, 768.

<sup>241</sup> Zaugg, above n 13. See Coward, above n 8, 232; Morgan and Egitto, above n 3, 5. Morgan and Egitto note that '[t]he UK's anti-hooliganism measures now in place can quite justifiably be viewed as some of the most efficient on the planet'. For a more critical opinion, see Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 125, 133.

<sup>242</sup> See, eg, Dominique Bodin et al, 'Le hooliganisme entre genèse et modernité' [2005] (1) *Vingtième Siècle: Revue d'histoire* 61, 72.



To illustrate this point, it is noted that general crime rates in England and Wales have declined to their current historically low levels,<sup>243</sup> and that this decline has coincided with a decline in levels of hooliganism. However, an assumption that these declines are related does not necessarily follow. In any case, it would be simplistic to minimise unduly the positive influence of the measures to fight against hooliganism that were set up for this reason alone.

This statement is also corroborated by the fact that the curve of hooliganism in England has not significantly been modified despite the European economic crisis of 2008, or even the domestic violent riots that occurred in 2011 after the death of a 29 year old man in a shootout with police in the district of Tottenham.

In addition, an absence of automatic correlation between general criminality and hooliganism seems to be confirmed by international experience. For instance, various countries that have experienced similar declines in general criminality have at the same time been exposed to increased levels of hooliganism.<sup>244</sup> While one should be cautious when making inter-jurisdictional comparisons, this would appear to support the hypothesis that the English reforms have been effective.

However, it remains true that the English system includes a large range of measures which cannot completely be taken out of their context. Some of the components of the system are the responsibility of, and implemented by, the State, and include both legislative and non-legislative (eg policing practices) initiatives. The clubs and the League have implemented other components of the system. All of the system's components have been developed and modified over time in an unsettled and changing socio-economic environment.

This means that the effect, or otherwise, that any specific measure involved in the 'English response' to hooliganism has had on reducing hooliganism, either in isolation or in combination, is not clear. Questions arise as to what has been the contribution of particular measures such as banning orders. How effective have measures such as ticket price increases and stadium infrastructure improvements been? What has exactly been the relative contribution of social and economic changes in English society over time to reductions in the incidence of hooliganism? To what extent have factors such as unemployment rates influenced the prevalence of hooliganism incidents? Has the rate of decline in hooliganism in England been uniform and consistent or have there been statistically discernible impacts that can be associated with the introduction of a particular initiative?

Further research, including, for example, cross-jurisdictional comparisons of trends over time, would be required to posit an informed response to any of these queries. Answers to such questions are likely to be relevant in the consideration

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<sup>243</sup> For crime statistics in England and Wales, see Office for National Statistics, 'Crime in England and Wales, Year Ending June 2014' (Statistical Bulletin, 16 October 2014) <[http://www.ons.gov.uk/ons/dcp171778\\_380538.pdf](http://www.ons.gov.uk/ons/dcp171778_380538.pdf)>. These estimates are the lowest since the survey began in 1981.

<sup>244</sup> One example is the case of Switzerland, which has experienced a decline in general criminality but a converse increase in hooliganism related crime. See Office fédéral de la statistique, 'Statistique policière de la criminalité 2013: Baisse des infractions au Code pénal' (Press Release, No 0353-1402-50, 24 March 2014) <<http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/22/press.html?pressID=9349>>.

of the transposition of initiatives derived from the English model to new jurisdictions.

Finally, even if some commentators<sup>245</sup> argue that it is not typically the 'known' hooligans that are involved in the rioting, and that hooliganism is now more hidden (and thereby potentially not being counted in official statistics), the number of individuals who can potentially be associated with football disorder is not unlimited. Furthermore, these commentators do not clearly show which other factors might have led to the decline in hooliganism in the past decades. Similarly, the dissuasive role of the reforms should not be underestimated.

It is timely then, to now turn to a consideration of the influence that the English system has already had elsewhere. The situation in a number of European countries and in Australia are examined.

In this context, a related conceptual issue needs to be borne in mind in considering the potential for cross-jurisdictional application of the English reforms: while the reforms are collectively described as a 'model', this term is apt to mislead. They are not a model in the sense of being a single, coherent, integrated system. Instead, as has been described, the reforms are a collection of different measures implemented by different parties, at different times, over an extended number of years. This factor, when combined with the impossibility of exactly determining the positive impact of the measures that have been implemented in England, either in isolation or in combination, means that it is not an easy task to determine how to usefully deploy the 'model' in other jurisdictions.

### III THE APPLICATION OF THE ENGLISH SYSTEM ABROAD

#### A *The Situation in Europe*

Whilst football-related violence continues its decline in England, it has sadly played a high profile role on Europe's mainland.<sup>246</sup> Legal commentators suggest '[t]he irony is that the UK model for crowd control offers something of a blueprint for those member states which now find themselves in a position with which English lawmakers became all too familiar in past decades'.<sup>247</sup>

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<sup>245</sup> See above nn 166, 175.

<sup>246</sup> Morgan and Egitto, above n 3, 5; Warren, *Football, Crowds and Cultures*, above n 4, 17.

<sup>247</sup> Morgan and Egitto, above n 3, 5.

The situations in France, Belgium, Italy and Germany, which are the countries traditionally most affected by hooliganism, will be examined.<sup>248</sup> The case of Switzerland will also be discussed; where, while historically less severely impacted, hooliganism is increasingly becoming an issue.<sup>249</sup> Influenced by the hooliganism and the legislation of its neighbours, but with a time delay, the Swiss situation assists to illustrate certain limits to the application of the English model abroad.

## 1 *The Legislative Framework*

The following section briefly describes the legal measures introduced by governments to combat hooliganism that parallel the changes in England. The measures managed by the clubs and the leagues will then be considered.

### (a) *France*

In France, serious incidents occurred in 2006, including one in which a policeman killed a Paris Saint-Germain supporter.<sup>250</sup> The situation was gradually regulated by various special laws, then introduced in arts L332–1 et seq of the *Code du sport*.<sup>251</sup> This legal system is supplemented by various decrees, as well

<sup>248</sup> See *ibid*; Frostdick and Marsh, *Football Hooliganism*, above n 2, 3, 26, 48. These authors also report the case of the Netherlands and, to a lesser extent, of a few other countries. For more details about the Netherlands, see Peter T M Coenen, 'At Last, a Football Law in the Netherlands?' [2009] (3–4) *International Sports Law Journal* 59; Ramón Spaaij, 'Football Hooliganism in the Netherlands: Patterns of Continuity and Change' (2007) 8 *Soccer & Society* 316. It is to be noted that the countries mentioned in this chapter are not the only countries affected by hooliganism in Europe. For example, the Balkan region (in particular Serbia) has been fighting against hooliganism for more than 20 years. For more details, see Loïc Trégourès, 'Le supportérisme serbe et l'Europe: entre indifférence et rejet' [2012] (1) *Politique Européenne* 126. See also Loïc Trégourès, 'Aspects politiques et identitaires du football en ex-Yougoslavie' (Thesis) (forthcoming); Loïc Trégourès, *Le hooliganisme comme étalon-mesure de l'Etat de droit en Serbie* (17 February 2014) *Regard sur l'est* <[http://www.regard-est.com/home/breve\\_contenu.php?id=1480&PHPSESSID=af586d26b055457cf4215ff94b0ef17c](http://www.regard-est.com/home/breve_contenu.php?id=1480&PHPSESSID=af586d26b055457cf4215ff94b0ef17c)>; Robert C R Siekmann, 'Legal Aspects of Combating Transnational Football Hooliganism in Europe' in Robert C R Siekmann (ed), *Introduction to International and European Sports Law: Capita Selecta* (TMC Asser, 2012) 335; Anastassia Tsoukala, Geoff Pearson and Peter Coenen, *Legal Responses to Football Hooliganism in Europe* (TMC Asser, 2015) (forthcoming).

<sup>249</sup> For statistics, see Denis Oswald and Alexandra Veuthey, 'Les mesures juridiques de lutte contre le hooliganisme en Suisse' in Pascal Mahon and Minh Son Nguyen (eds), *L'activité et l'espace: Droit du sport et aménagement du territoire* (Helbing Lichtenhahn, 2011) 85, 100–2. See also Federal Office of Police, 'Measures against Violence at Sporting Events' (Press Release, 8 February 2012) <<http://www.fedpol.admin.ch/fedpol/en/home/sicherheit/hooliganismus.html>>.

<sup>250</sup> For the record, the policeman, who maintained that he was trying to protect a young Israeli Hapoël Tel-Aviv supporter who was a victim of a racist assault, was discharged after four years of investigation. For more details, see Charles Amson, 'Sport et sécurité. Une approche juridique' (2010) 11 *Cahiers de la sécurité intérieure* 43, 44. See also 'Jeune supporter du PSG tué en 2006: non-lieu pour le policier', *Le Huffington Post* (online), 16 February 2011 <[http://archives-lepost.huffingtonpost.fr/article/2011/02/16/2407565\\_jeune-supporteur-du-psg-tue-en-2006-non-lieu-pour-le-policier.html](http://archives-lepost.huffingtonpost.fr/article/2011/02/16/2407565_jeune-supporteur-du-psg-tue-en-2006-non-lieu-pour-le-policier.html)>.

<sup>251</sup> *Code du sport* (version consolidée au 1 avril 2015) [The Sports Code (version last revised 1 April 2015)] (France).

as the general legislative framework.<sup>252</sup> The effects of these laws appear limited, given that violent riots and other incidents continue to occur.<sup>253</sup>

French law provides many sport specific offences.<sup>254</sup> In addition, two types of stadium bans exist: stadium bans as a criminal sanction<sup>255</sup> and as an administrative ban.<sup>256</sup> An obligation to report to a police station can be made only if a stadium ban has been imposed previously.<sup>257</sup> However, there are no specific measures regarding police custody or a ban on travel abroad.<sup>258</sup>

Banned individuals are likely to feature in two different databases: *Le fichier des personnes recherchées* [the file of wanted persons] and *Le fichier national des interdits de stade* [the national register of banned people].<sup>259</sup> One of the peculiarities of the French legislation is the possibility for associations of supporters to be dissolved for acts of violence or incitement of hatred or discrimination.<sup>260</sup> Finally, measures aimed at organisers are also well-developed, both in terms of infrastructure and operation.<sup>261</sup>

#### (b) Belgium

Belgium, which experienced the Heysel tragedy, has very well-developed legislation.<sup>262</sup> The basic text is the *Loi sur le football*<sup>263</sup> of 1998.<sup>264</sup> This strict

<sup>252</sup> See *Code pénal* [The Criminal Code] (France).

<sup>253</sup> Fonteneau, above n 7. For an example of a recent event, see ‘Nice-Bastia: “débordements inadmissibles”’, *Le Figaro* (online), 20 October 2014 <<http://www.lefigaro.fr>>.

<sup>254</sup> These offences are related to the introduction of alcohol and pyrotechnics in stadiums, throwing missiles on the pitch and the incitement to hatred or violence. The encroachment onto the playing area, or the display of symbols of racism and xenophobia, are also punishable. For more details, see Bichovsky, above n 17, 132–7; Amson, above n 250, 45.

<sup>255</sup> This ban requires the commission of an offence described in arts L332–3 to L332–10 and L332–19 of the *Code du Sport* [The Sports Code]. For more details, see Bichovsky, above n 17, 148–50.

<sup>256</sup> This prohibition presupposes a threat to the public order. For more details, see Bichovsky, above n 17, 150–3; Amson, above n 250, 45.

<sup>257</sup> Bichovsky, above n 17, 157.

<sup>258</sup> *Ibid* 159–65. Note that custody is generally governed by the particular provisions of arts 63, 77, 154, 706–88 and 803 et seq of the *Code de procédure pénale* [Code of Criminal Procedure]. For a report of a recent incident regarding the arrest of 80, mainly French fans, in Holland on 17 September 2014. See ‘Plus de 80 hooligans ont été interpellés aux Pays-Bas’, *Le Matin* (online), 18 September 2014 <<http://www.lematin.ch/sports/football/80-hooligans-interpelles-paysbas/story/14332181>>.

<sup>259</sup> For more details about these files, see Bichovsky, above n 17, 170–1.

<sup>260</sup> For more details, see Amson, above n 250, 45; Bichovsky, above n 17, 189–93. See also Colin Miège, ‘La décision de dissoudre une association de supporters violents est conforme à la Convention européenne des droits de l’homme et des libertés fondamentales’ (2011) 24 *Les Cahiers de droit du sport* 46.

<sup>261</sup> These measures include the establishment of a security and surveillance service and the requirement to obtain approval for stadiums. This obligation applies to the few clubs that are stadium owners. In most cases stadiums are the responsibility of municipal authorities which are the bodies then affected by this requirement. For more details, see Bichovsky, above n 17, 183–8.

<sup>262</sup> Bichovsky, above n 17, 194–5.

<sup>263</sup> *Loi relative à la sécurité lors des matches de football* [Author’s trans, Act Related to Security at Football Matches] (Belgium) 1998-12-21/40.

<sup>264</sup> Bichovsky, above n 17, 123; Marc Cools, Nico De Pauw and André Lemaître, ‘Une interprétation de la sécurité privée et des événements footballistiques en Belgique’ (2010) 11 *Cahiers de la sécurité intérieure* 140, 141; Bertrand Fincoeur, ‘Football et sécurité en Belgique: formes et transformations’ in Thomas Busset et al (eds), *Le football à l’épreuve de la violence et de l’extrémisme* (Antipodes, 2008) 127, 129.

framework is supplemented by the *Code pénal*<sup>265</sup> and various decrees and circulars.<sup>266</sup>

The Belgian legislation lists various specific offences.<sup>267</sup> It also provides for three types of stadium bans (judicial, administrative and as an immediate security measure).<sup>268</sup> A prohibited perimeter can be ordered.<sup>269</sup> An obligation to report to the police is also provided in various cases.<sup>270</sup>

In addition, a prohibition on leaving the country after a judicial or administrative stadium ban was introduced in 2005.<sup>271</sup> Similarly, an individual who is violent during a sporting event may be subject to an administrative or judicial arrest.<sup>272</sup>

Relevant databases are first, *Le fichier relatif aux interdictions de stade* [the file relating to stadium bans], and secondly, *Le fichier relatif aux sanctions administratives* [the file relating to administrative sanctions].<sup>273</sup> Numerous and detailed obligations are imposed on match organisers.<sup>274</sup>

(c) *Italy*

Italy significantly reinforced its legislative framework following the death of a police officer in February 2007 by implementing *Legge 41/2007*.<sup>275</sup> The

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<sup>265</sup> *Code pénal* [Penal Code] (Belgium).

<sup>266</sup> Bichovsky, above n 17, 123.

<sup>267</sup> The introduction of pyrotechnics in a stadium, throwing a projectile on the pitch, the incitement to hatred or violence, the encroachment into a field or not to comply with the directions given in a stadium are to be noted. For more details, see Bichovsky, above n 17, 133–7; Fincoeur, ‘Football et sécurité en Belgique: formes et transformations’, above n 264, 129.

<sup>268</sup> For more details, see Bichovsky, above n 17, 144–7.

<sup>269</sup> *Ibid* 147–8.

<sup>270</sup> For more details, see *ibid* 156–7.

<sup>271</sup> *Ibid* 162.

<sup>272</sup> *Ibid* 164.

<sup>273</sup> For more details about these files, see Bichovsky, above n 17, 167–9.

<sup>274</sup> These include, for example, the obligations directly related to infrastructure and security in stadiums, the operational aspects and the conclusion of conventions. For more details, see Bichovsky, above n 17, 174–83; Cools, De Pauw and Lemaître, above n 264, 142.

<sup>275</sup> *Recante misure urgenti per la prevenzione e la repressione di fenomeni di violenza connessi a competizioni calcistiche* [Urgent Measures for the Prevention and Repression of Phenomena of Violence Connected with Football Matches] (Italy) Law No 41, 4 April 2007 (‘*Prevention and Repression of Violence Law*’). For more details, see Ferrari, above n 143.

adoption of this new law has been considered to have had a positive effect.<sup>276</sup> However, hooliganism continues to be a problem in Italy.<sup>277</sup>

Higher punishments were introduced for violent crimes committed in and around stadiums or in connection with a sports event.<sup>278</sup> Provisions related to stadium bans, which have existed since 1989,<sup>279</sup> were expanded by several subsequent reforms (including those of 2007).<sup>280</sup> The judicial procedures and rules of execution were also overhauled.<sup>281</sup> Stadium bans, which may be applied to events held in Italy or abroad,<sup>282</sup> can be complemented by a summons to appear at a police station.<sup>283</sup> This applies automatically in case of non-compliance with a previous ban.<sup>284</sup>

Some 'stadium safety' measures were also introduced, as Italy is perhaps the country — among the leading football nations — with the worst infrastructure.<sup>285</sup> *Legge 41/2007* obliged clubs and the municipalities to upgrade

<sup>276</sup> See, eg, Ferrari, above n 143. See, however, the criticism of Alberto Testa: Alberto Testa, 'Normalization of the Exception: Issues and Controversies of the Italian Counter-Hooliganism Legislation' (2013) 16 *Sports in Society: Culture, Commerce, Media, Politics* 151.

<sup>277</sup> See, for example, the reports on the shooting of three Napoli fans in Rome: 'Napoli Supporters Shot in Rome ahead of Italian Cup Final at Olympic Stadium with Serie A Rivals Fiorentina', *The Telegraph* (online), 3 May 2014 <<http://www.telegraph.co.uk/sport/football/european/10806888/Napoli-supporters-shot-in-Rome-ahead-of-Italian-Cup-final-at-Olympic-Stadium-with-Serie-A-rivals-Fiorentina.html>>; John Hooper, 'Napoli Fan Fights for Life in Hospital after Rome Football Violence', *The Guardian* (online), 4 May 2014 <<http://www.theguardian.com/world/2014/may/04/napoli-fan-hospital-rome-football-violence-coppa-italia>>. These incidents cost the life of one supporter: Terry Daley, 'Napoli Fan Shot in Cup Final Violence Dies', *Reuters* (Online), 25 June 2014 <<http://uk.reuters.com/article/2014/06/25/uk-soccer-italy-death-idUKKBN0F00QF20140625>>. See also 'Le Stade olympique a encore été le théâtre d'émeutes', *Le Matin* (online), 18 September 2014 <<http://www.lematin.ch/sports/football/stade-olympique-encore-theatre-emeutes/story/20065979>>.

<sup>278</sup> For instance, punishment for bodily harm would range between four and 10 years of imprisonment (and up to eight and 16 in cases of grievous bodily harm). Furthermore, verbal or physical aggression from a distance towards police forces are now falling within the notion of 'injury or violence against a public officer': Ferrari, above n 143. In addition, many other sports-related offences are listed in the legislation and may lead to the ban of a supporter. Examples include: the illegal carrying of weapons: *Norme integrative della disciplina vigente per il controllo delle armi, delle munizioni e degli esplosivi* [Supplementary Rules of Law for the Control of Arms, Ammunition and Explosives] (Italy) Law No 110, 18 April 1975, art 4; the illegal use of helmets: *Disposizioni a tutela dell'ordine pubblico* [Provisions for the Protection of Public Order] (Italy) Law No 152, 22 May 1975, art 5; entering stadiums with racist or discriminatory emblems/symbols: *Recante misure urgenti in materia di discriminazione razziale, etnica e religiosa* [Urgent Measures Concerning Racial, Ethnic and Religious Discrimination] (Italy) Law No 205, 25 June 1993, art 2(2); throwing dangerous items and invasion of the pitch: *Interventi nel settore del giuoco e delle scommesse clandestini e tutela della correttezza nello svolgimento di (manifestazioni sportive)* [Interventions in the Field of Illegal Betting and Gaming and Ensuring the Proper Conduct of Sporting Events] (Italy) Law No 401, 13 December 1989, art 6-bis ('*Proper Conduct of Sporting Events Law*'); the use or possession of fireworks: at art 6-ter; and the participation/incitation to acts of violence/devastation: at art 6. Note that these Acts have been amended several times.

<sup>279</sup> See *Proper Conduct of Sporting Events Law*.

<sup>280</sup> Ferrari, above n 143.

<sup>281</sup> *Ibid.*

<sup>282</sup> See *Proper Conduct of Sporting Events Law* art 6(1).

<sup>283</sup> Ferrari, above n 143.

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

facilities in order to increase safety.<sup>286</sup> Money was therefore spent on improvement to access, creation of fences separating the visiting supporters' area and emergency escapes.<sup>287</sup> Furthermore, additional admittance restrictions were implemented. Thus, entrance tickets are now issued under the holder's name.<sup>288</sup> A 'fan card' is issued by clubs after the police authority have checked the criminal history of the individual.<sup>289</sup> Furthermore, ticket touting is forbidden.<sup>290</sup>

In addition, the new legislation increased the responsibilities of the hosting club and, more specifically, introduced a mandatory standing official<sup>291</sup> for each stadium with more than 10 000 seats, who is competent in deciding all matters concerning spectator security.<sup>292</sup> Finally, the consequences of an arrest made upon the detection of the commission of an alleged offence are also described in the legislation.<sup>293</sup>

(d) *Germany*

In Germany, several major incidents occurred during the 2012 *Bundesliga*, the peak German league competition, notably clashes after a promotion/relegation match between *Karlsruhe* (second division) and *Regensburg* (third division).<sup>294</sup>

In this federal state, there is no specific legislation on violence committed by spectators at sporting events.<sup>295</sup> The standards in this area are therefore, in principle, in various pieces of the general German law.<sup>296</sup> Consequently, the types of prohibited conduct and responsibilities of supporters are far less detailed than in the other countries discussed above.<sup>297</sup> Recent developments in Germany

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<sup>286</sup> Ibid.

<sup>287</sup> Ibid.

<sup>288</sup> Ibid. Note, however, that Italy does not have a specific database for hooligans.

<sup>289</sup> The police authority will check if a banning order is in progress and/or if the supporter was previously convicted of a sports-related infraction in the past five years.

<sup>290</sup> Ferrari, above n 143.

<sup>291</sup> *Gruppo Operativo Sicurezza* [Operational Group Security]. Another important institution concerned with stadium security is the *Osservatorio Nazionale sulle Manifestazioni Sportive* [National Centre for the Monitoring of Sports Events]. This entity includes the *Comitato di Analisi sulle Manifestazioni Sportive* [the Committee for the Analysis of Sports Events]. It can, for instance, prohibit admission to visiting supporters. One of its most significant initiatives was 'the introduction of a mandatory registration for supporters willing to buy a season ticket or a ticket to their team's away matches': Ferrari, above n 143.

<sup>292</sup> Note that under the 2007 regulations, if a stadium lacks safety configurations, the match must be played without spectators: Ferrari, above n 143. For more details about the obligations of the event organiser, see also *Recante disposizioni urgenti per contrastare i fenomeni di violenza in occasione di competizioni sportive* [Urgent Measures to Combat the Phenomena of Violence at Sports Competitions] (Italy) Law No 88, 24 April 2003.

<sup>293</sup> See especially *Proper Conduct of Sporting Events Law* art 8(1); *Prevention and Repression of Violence Law* art 4. In addition to this, the general criminal law (in particular the *Codice Penale* [Criminal Code]) applies to police custody.

<sup>294</sup> This led the clubs and the German federation to strengthen the penalties towards violent individuals. For more details, see 'Les hooligans interdits de stade pendant dix ans', *Le Matin* (online), 17 July 2012 <<http://www.lematin.ch/sports/football/hooligans-interdits-stade-dix-ans/story/29775415>>.

<sup>295</sup> Bichovsky, above n 17, 122.

<sup>296</sup> Ibid. See especially *Bürgerliches Gesetzbuch* [Civil Code] (Germany); *Strafgesetzbuch* [Criminal Code] (Germany); *Paßgesetz* [Passport Act] (Germany) 19 April 1986, BGB1 I, 537 ('*PassG*'); *Personalausweisgesetz* [Law on Identity Cards] (Germany) 18 June 2009, BGB1 I, 1346 ('*PersAusw*').

<sup>297</sup> Bichovsky, above n 17, 195.

involving the politicisation and organisation of hooligan groups by far right groups introduce new challenges and complications for the development of an appropriate legal response.<sup>298</sup>

The German legal framework in the matter of hooliganism is thus based on a few measures, such as *Aufenthaltsverbot* [the prohibition on residence]<sup>299</sup> and the checking of identity documents.<sup>300</sup> The obligation to report to a police station can, for its part, only be imposed in case of emergency.<sup>301</sup> If concrete evidence suggests that the person concerned, despite an obligation to report to the police or a prohibition on residence, will go to the match venue, the police may also detain them in custody.<sup>302</sup>

German law also provides for a form of ‘yellow card’ to be issued to supporters considered to be potentially dangerous.<sup>303</sup> The police will issue a form of warning to the spectator informing them about the consequences of misbehaviour.<sup>304</sup> The *Zentrale Informationsstelle Sporteinsätze* [‘information office’ for sporting events] is responsible for administering a national database.<sup>305</sup> Finally, Germany does not have specific provisions requiring safety measures to be taken by the organiser.<sup>306</sup>

(e) *Switzerland*

Switzerland has recently adopted anti-hooliganism legislation.<sup>307</sup> In combination with a proliferation of violent outbursts over the past 20 years, the trigger for legislation was provided by the organisation of the 2008 UEFA European Football Championship and of the Ice Hockey World Championships 2009.<sup>308</sup>

<sup>298</sup> See Sabrina Pabst, ‘United against Salafism, Right-Wing Scene Surges in Germany’, *Deutsche Welle* (online), 18 October 2014 <<http://www.dw.de/united-against-salafism-right-wing-scene-surges-in-germany/a-18005284>>.

<sup>299</sup> This measure seeks to prohibit certain people’s access to risky places at certain times. It is usually based on the laws of the different *Länder* [cantons].

<sup>300</sup> For more details, see Bichovsky, above n 17, 143–4, 160–1. See also *PassG* § 13; *PersAusw* § 2(2).

<sup>301</sup> This measure — *Meldeauflage* — based on the laws of the different *Länder*, is, however, not considered as a priority. For more details, see Bichovsky, above n 17, 155–6.

<sup>302</sup> This measure — *Präventivgewahrsam* — based on the laws of the different *Länder*, requires in principle a court order. For more details, see Bichovsky, above n 17, 163–4.

<sup>303</sup> Bichovsky, above n 17, 193–4.

<sup>304</sup> *Ibid* 193.

<sup>305</sup> The database is known as *Datei Gewalttäter Sport* [Violent Hooligan Database] which was created in 1994. For more details, see North Rhine-Westphalia Police, *Häufig gestellte Fragen zur Datei Gewalttäter Sport* <[http://www.polizei-nrw.de/artikel\\_\\_4596.html](http://www.polizei-nrw.de/artikel__4596.html)>; Bichovsky, above n 17, 165–7.

<sup>306</sup> Bichovsky, above n 17, 172.

<sup>307</sup> Oswald and Veuthey, ‘Les mesures juridiques de lutte contre le hooliganisme en Suisse’, above n 249, 86–7. See also Veuthey, ‘Mettre un terme au hooliganisme endémique’, above n 140.

<sup>308</sup> See also Veuthey, ‘Mettre un terme au hooliganisme endémique’, above n 140.



Rather than adopting a hooliganism-specific law, the Parliament chose to amend the pre-existing legislation aimed at maintaining internal security.<sup>309</sup> These amendments, which came into force on 1 January 2007, consisted primarily of the creation of a database on hooligans, provided for bans on entering a defined perimeter and from travelling in a given country, imposed an obligation to report to a police station and provided for detention in police custody.<sup>310</sup> In 2010, an inter-cantonal convention, the *Concordat instituant des mesures contre la violence lors des manifestations sportives* ('CVMS')<sup>311</sup> substantially reproduced these measures with a few adjustments.<sup>312</sup> The law on internal security, meanwhile, kept a few basic provisions.<sup>313</sup> This legislation is supplemented by the general criminal framework, in particular the *Code pénal*.<sup>314</sup> While Swiss hooliganism-related criminal offences do not exist, their introduction is, however, encouraged by some academic commentators.<sup>315</sup>

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<sup>309</sup> *Loi fédérale instituant des mesures visant au maintien de la sûreté intérieure (LMSI) du 21 mars 1997* [Federal Act on Measures to Safeguard Internal Security of 21 March 1997] (Switzerland). For more details, see Oswald and Veuthey, 'Les mesures juridiques de lutte contre le hooliganisme en Suisse', above n 249, 86–7. See also Veuthey, 'Mettre un terme au hooliganisme endémique', above n 140.

<sup>310</sup> For more details, see Oswald and Veuthey, 'Les mesures juridiques de lutte contre le hooliganisme en Suisse', above n 249, 91–5. See also Veuthey, 'Mettre un terme au hooliganisme endémique', above n 140.

<sup>311</sup> *Concordat instituant des mesures contre la violence lors des manifestations sportives (CVMS)* [Convention on Measures to Prevent Violence at Sports Events] (Geneva) ('CVMS').

<sup>312</sup> For more details, see Oswald and Veuthey, 'Les mesures juridiques de lutte contre le hooliganisme en Suisse', above n 249, 91–5. See also Veuthey, 'Mettre un terme au hooliganisme endémique', above n 140.

<sup>313</sup> For more details, see Oswald and Veuthey, 'Les mesures juridiques de lutte contre le hooliganisme en Suisse', above n 249, 90–5. See also Veuthey, 'Mettre un terme au hooliganisme endémique', above n 140.

<sup>314</sup> *Code pénal* [Criminal Code] (Switzerland).

<sup>315</sup> Veuthey, 'Mettre un terme au hooliganisme endémique', above n 140.

Despite the adoption of this legislation, incidents of hooliganism have continued to grow in Switzerland.<sup>316</sup> In response to the growth in these incidents, the cantons have decided to react. A review process of the *CVMS* is currently in progress,<sup>317</sup> accompanied by various cantonal initiatives.<sup>318</sup> Similarly, proposals are increasing at the political level.<sup>319</sup>

## 2 *The Measures Managed by the Clubs/the League*

From a general point of view, the football associations of all the countries discussed above are familiar with stadium bans and the practice of the segregation of fans.<sup>320</sup> Similarly, they all provide rules regarding the construction of stadiums and impose (to varying degrees) the establishment of a security presence.<sup>321</sup> As in England, these measures are not within the sole responsibility of the football associations but also require action from state agencies.

However, one point of distinction between the anti-hooliganism activities of the football associations in continental Europe is that, unlike England, ‘fan

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<sup>316</sup> For recent instances of hooliganism in football, see, eg, ‘Les débordements des hooligans jugés “intolérables” à Berne’, *Le Matin* (online), 28 April 2014 <<http://www.lematin.ch/suisse/Les-debordements-des-hooligans-juges-intolerables-a-Berne/story/10408960>>; Christiane Imsand, ‘Les CFF ne feront pas payer les clubs’, *L’Express* (online), 19 September 2014 <<http://www.arcinfo.ch/fr/en-continu/articles/index.php?idContent=1348341>>; ‘Enquête ouverte après les incidents lors du match Baden — Xamax FCS’, *Arcinfo* (online), 11 May 2014 <<http://www.arcinfo.ch/fr/sports/football/enquete-ouverte-apres-les-incident-lors-du-match-baden-xamax-fcs-568-1293104>>; ‘FC Bâle champion: des hooligans perturbent la fête’, *Arcinfo* (online), 16 May 2014 <<http://www.arcinfo.ch/fr/sports/football/fc-bale-champion-des-hooligans-perturbent-la-fete-568-1295461>>; ‘Des hooligans blessent cinq policiers’, *20 Minutes* (online), 18 August 2014 <<http://www.20min.ch/ro/news/suisse/story/Des-hooligans-blessent-cinq-policiers-14238982>>. See also Veuthey, ‘Mettre un terme au hooliganisme endémique’, above n 140. For statistics, see Oswald and Veuthey, ‘Les mesures juridiques de lutte contre le hooliganisme en Suisse’, above n 249, 100–2; Office fédérale de la police, ‘Chiffres actuels du système d’information HOOGAN’ (30 January 2015) <<https://www.fedpol.admin.ch/fedpol/fr/home/aktuell/news/2015/2015-01-30.html>>. Apart from a rise in violence, these reports show that recent hooliganism instances occur at both the amateur and professional level, going from small clubs from the *Première Ligue Promotion* (third-tier of the Swiss Championship) up to prestigious clubs like Basel, which has won the latest Swiss Super League Championship. The Swiss Cup is not spared. As a consequence, the canton of Bern, where the Swiss Cup was traditionally held each year, has recently announced that it did not want to host this event anymore (and the same thing for the national team matches), due to high costs related to hooligans and security. Similarly, the *Chemins de Fer Fédéraux* [the Swiss Federal Railways] are currently questioning their obligation to accept all passengers without exception.

<sup>317</sup> The key measure of this review is the introduction of the obligation for the clubs to ask the police for an authorisation in order to organise sports events (in particular, football and hockey matches in the upper leagues). For more details, see Thorsten Siegel, ‘Hooligans im Verwaltungsrecht: Stadionverbote und andere polizeirechtliche Maßnahmen zur Eindämmung von Gewalt in Fußballstadien’ (2013) 66 *Neue Juristische Wochenschrift* 1035. It is anticipated that the *CVMS* will be accepted by all cantons (with the exception of Basel) by mid-2015.

<sup>318</sup> The canton of Neuchâtel is a good example of this.

<sup>319</sup> For more details, see Veuthey, ‘Mettre un terme au hooliganisme endémique’, above n 140. See also ‘Deux motions pour serrer la vis aux hooligans’, *Le Matin* (online), 21 February 2012 <<http://www.lematin.ch/suisse/Deux-motions-pour-serrer-la-vis-aux-hooligans-/story/10494397>>.

<sup>320</sup> Bichovsky, above n 17, 117 n 292.

<sup>321</sup> *Ibid.*

coaching' is also well established. This is particularly the case in Germany — the first country to have introduced such measures<sup>322</sup> — but also in Belgium<sup>323</sup> and Switzerland.<sup>324</sup>

### 3 *Analysis*

In light of the comparative discussion, at least some elements of the English model appear to have been influential in relation to measures adopted in continental Europe.<sup>325</sup>

Measures modelled on aspects of the English approach have recently been introduced in Italy. These measures are considered to have had a positive effect. And this is so notwithstanding the care that needs to be taken when comparing the statistics of different countries, and despite the legislative and regulatory differences specific to each country — which may influence the effectiveness of each system. However, results are more qualified in other countries, like France and Switzerland.

It is probably an obvious conclusion that the English model cannot be reproduced automatically abroad, but must adapt to local circumstances. From the legal point of view, four main types of limitations to the universal implementation of the English model can be identified.

First, hooligans are not the same everywhere. For example, where some countries are distinguished by racial and/or political incidents, others are devoid

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<sup>322</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 183.

<sup>323</sup> For more details about fan coaching in Belgium, see Bertrand Fincoeur, 'Le fan coaching belge: défis et avatars d'une alternative régulatrice avant-gardiste' in Thomas Busset, Roger Besson and Christophe Jaccoud (eds) *L'autre visage du supportérisme — Autorégulations, mobilisations collectives et mouvements sociaux* (Peter Lang, 2014) 59, 59–73.

<sup>324</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 185.

<sup>325</sup> The influence of the 'English system' on other countries is sometimes assumed from the circumstances by certain commentators. However, it is not uncommon that some governments expressly refer to the 'English system' as a model to follow in their explanatory memoranda and other relevant documents before adopting new measures. This was, for instance, the case in Switzerland. For more details, see *Prevention of VIOlence in Sport Report*, above n 7. The same is true for France, where several explanatory memoranda of the French General Assembly and the Senate expressly refer to the 'English system'. See, eg, Assemblée nationale, *Compte rendu intégral, Première séance du mardi 11 avril 2006*, 195<sup>e</sup> séance de la session ordinaire 2005–2006 [National Assembly, First Session Tuesday 11 April 2006, 195<sup>th</sup> Sitting of the 2005–6 Ordinary Session] <<http://www.assemblee-nationale.fr/12/cr/2005-2006/20060195.asp>>; Sénat, *Proposition de loi relative à la prévention des violences lors des manifestations sportives* [Senate, Proposed Law on the Prevention of Violence at Sporting Events] (4 June 2015) <<http://www.senat.fr/rap/105-338/105-3385.html>>; Assemblée nationale, *Rapport n°3011* [General Assembly, Report No 3011] <<http://www.assemblee-nationale.fr/12/rapports/r3011.asp>>. For Belgium, see, eg, Sénat, *Projet de loi relative à la sécurité lors des matches de football, Rapport No 1-1060/3*, Session du 24 novembre 1998 [Senate, Draft Law on Security at Football Matches, Report No 1-1060/3, Session of 24 November 1998] [2]–[3] <<http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=16780628>>; Chambre des représentants, *Rapport No 1572/5-97/98*, Session ordinaire du 3 juillet 1998 [House of Representatives, Report No 1572/5-97/98, Ordinary Session of 3 July 1998] 6 <<http://www.lachambre.be/FLWB/PDF/49/1572/49K1572005.pdf>>.

of them.<sup>326</sup> Various political and social factors, such as ethnic conflicts or financial poverty, also influence the behaviour of fans.<sup>327</sup>

Secondly, the extent and severity of hooliganism is not the same everywhere. For instance, in continental Europe, football-related violence is known to be mainly, though not only, domestic.<sup>328</sup> Similarly, the degree of hooliganism is not the same in France or Switzerland as it was in England 20 or 30 years earlier. Solutions can thus appear proportionate in a given country, but inappropriate in

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<sup>326</sup> For more details about European fan profiles and behaviour, see Frosdick and Marsh, *Football Hooliganism*, above n 2, 57–70, 102–12. About the issue of racism, see *ibid* 146–51. About Belgium in particular, see Fincoeur, ‘Football et sécurité en Belgique: formes et transformations’, above n 264, 130–44. About the Balkans, see Trégourès, ‘Le supportérisme serbe et l’Europe: entre indifférence et rejet’, above n 248, 126–48. See also CBS Sports, *Serbia Fans Chant Mladic Slogans at France Match* (31 May 2012) <<http://www.cbssports.com/general/story/19217360/serbia-fans-chant-mladic-slogans-at-france-match>>; Telegraph Sport, ‘Serbia v Albania Abandoned Following Mass Brawl after Drone Flies over Stadium Carrying Albanian Flag’, *The Telegraph* (online), 15 October 2014 <<http://www.telegraph.co.uk/sport/football/euro-2016/11163216/Serbia-v-Albania-abandoned-following-mass-brawl-after-drone-flies-over-stadium-carrying-Albanian-flag.html>>. About Italy, see, eg, ‘Two New Arrests in Italy in Neo-Fascist Beating Death: Agency’, *Agence France-Presse* (Paris), 6 May 2008.

<sup>327</sup> For more details about European fan profiles and behaviour, see Frosdick and Marsh, *Football Hooliganism*, above n 2, 57–70, 102–12. About the issue of political and social factors, see, in particular, the situation in Germany: David M Keithly, ‘Shadows of Germany’s Authoritarian Past’ (1994) 38 *Orbis* 207; Gunter A Pilz, ‘Social Factors Influencing Sport and Violence: On the “Problem” of Football Hooliganism in Germany’ (1996) 31 *International Review for the Sociology of Sport* 49. See also the case of the Balkans: Trégourès, ‘Le supportérisme serbe et l’Europe: entre indifférence et rejet’, above n 248; ‘Serbia Fans Chant Mladic Slogans at France Match’, above n 326; ‘Serbia v Albania Abandoned Following Mass Brawl after Drone Flies over Stadium Carrying Albanian Flag’, above n 326. About Belgium, see Fincoeur, ‘Football et sécurité en Belgique: formes et transformations’, above n 264, 132–4. About France, see Nicolas Hourcade and Antoine Lech, ‘Les supportérismes français: entre modèles européens et spécificités nationales’ in Guillaume Robin (ed), *Football, Europe et régulations* (Septentrion, 2011) 23. For an analysis about England, see Warren, *Football, Crowds and Cultures*, above n 4, 23–6.

<sup>328</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 70. UEFA international matches have also experienced racism/hooliganism-related incidents. See, eg, above Part I; above n 326 and accompanying text.

another one (with a risk, as noted, of perverse effects),<sup>329</sup> notably with regard to human rights.<sup>330</sup>

Thirdly, the structure of government may also have an influence over the adoption of initiatives inspired by the English experience. For instance, the federal structure of Switzerland and Germany has sometimes indirectly

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<sup>329</sup> Along the same strand (with a special focus on security measures), see Taylor and Toohey, above n 10. Tracy Taylor and Kristine Toohey indicate that:

It is a matter of judgement whether the security is excessive or the control measures are out of proportion to the risk. The verdict on such questions is certainly influenced by the geo-political environment within which each event is located. Put simply, the level and type of security practices are likely to be mediated by local circumstances and traditions.

At 3263. More specifically about Italy, see Ferrari, above n 143. About Switzerland, see Oswald and Veuthey, 'Les mesures juridiques de lutte contre le hooliganisme en Suisse', above n 249, 96–100.

<sup>330</sup> Note that like in England, the legislative frameworks of mainland Europe aimed at fighting against hooliganism have been tested in the courts. In France, several judgments about banning orders have been issued by administrative courts. See Anastassia Tsoukala, 'Controlling Football-Related Violence in France: Law and Order vs the Rule of Law' (2013) 16 *Sport in Society: Cultures, Commerce, Media, Politics* 140. See also the judgments made by the French State Council and Constitutional Council concerning banning orders and decrees prohibiting movements of supporters: see, eg, Conseil constitutionnel [French Constitutional Court], decision n° 2011–625 DC, 10 March 2011; Conseil d'État [French Administrative Court], decision n° 373129, 8 November 2013; Conseil d'État [French Administrative Court], decision n° 367274, 29 March 2013; Conseil d'État [French Administrative Court], decision n° 347359, 9 November 2011; Conseil d'État [French Administrative Court], decision n° 340849, 1 June 2011; Conseil d'État [French Administrative Court], decision n° 340849, 8 October 2010 reported in [2010] Rec Lebon; Conseil d'État [French Administrative Court], decision n° 339257, 13 July 2010 reported in [2010] Rec Lebon; Conseil d'État [French Administrative Court], decision n° 339293, 13 July 2010; Conseil d'État [French Administrative Court], decision n° 315723, 25 July 2008. For judgments concerning the lawfulness of the dissolution of an association of supporters, see *Association Nouvelle des Boulogne Boys v France* (European Court of Human Rights, Application No 6468/09, 22 February 2011). Finally, note that the *Commission nationale de l'informatique et des libertés* [National Commission on IT and Liberties] has recently sanctioned the Paris Saint-Germain FC for the illegal filing of information on 2000 of its supporters: Adrien Pécout, 'La CNIL interdit au PSG le "fichage illégal" de ses supporters', *Le Monde* (online), 5 August 2014 <[http://www.lemonde.fr/societe/article/2014/08/05/la-cnil-interdit-au-psg-le-fichage-illegal-de-ses-supporteurs\\_4466907\\_3224.html](http://www.lemonde.fr/societe/article/2014/08/05/la-cnil-interdit-au-psg-le-fichage-illegal-de-ses-supporteurs_4466907_3224.html)>. For Belgium, in relation to banning orders, see, eg, Cour d'arbitrage [Belgium Court of Arbitration], decision n° 175/2002, 5 December 2002. In Italy, many aspects of the legislation to fight against hooliganism have come under the scrutiny of the Constitutional Court. See Ferrari, above n 143. Regarding Germany and the operation of art 5 of the *ECHR* on the lawfulness of the arrest of a supporter, see *Ostendorf v Germany (Judgment)* (European Court of Human Rights, Application No 15598/08, 7 March 2013). Finally, in Switzerland, several appeals have been filed against the legislation itself, giving rise to various abstract constitutionality reviews. See Bundesgericht [Federal Supreme Court of Switzerland], 1C\_158/2007, 31 March 2008; Bundesgericht [Federal Supreme Court of Switzerland], 1C\_428/2009, 13 October 2010; Bundesgericht [Federal Supreme Court of Switzerland], 1C\_16/2010, 16 November 2010; Bundesgericht [Federal Supreme Court of Switzerland], 1C\_94/2009, 16 November 2010; Bundesgericht [Federal Supreme Court of Switzerland], 1C\_50/2010, 16 November 2010; Bundesgericht [Federal Supreme Court of Switzerland], 1C\_176/2013 and 1C\_684/2013, 7 January 2014. About the whole topic, see Anastassia Tsoukala, 'Security Policies & Human Rights in European Football Stadia' (Research Paper No 5, Centre for European Policy Studies, March 2007). It is observed that while the relevant legislation in mainland Europe has raised substantial controversy, constitutional challenges have rarely resulted in the abrogation of the substantive legislative provisions.

hampered the progress of the fight against hooliganism.<sup>331</sup> Another example is the difficulties experienced in Switzerland in the implementation of the legislative framework. It is unable, for cultural, political and economic reasons, to implement its new legislation.<sup>332</sup> These reasons include the lack of political will (namely the withdrawal of the State in recent years as it no longer wishes to support security or legal costs).<sup>333</sup> Another factor in Switzerland is its strong commitment to the protection of privacy, which is likely to weaken the fight against hooliganism.<sup>334</sup>

Fourthly, initiatives from the English model, such as increases in ticket prices, also lack universal application. In small countries like Switzerland, the measure would risk decreasing crowd attendance numbers and gate receipts, which are crucial in the absence of substantial sponsorship revenues.<sup>335</sup>

Next, it is of interest to examine a country outside Europe. The majority of non-European countries have a much lower degree of hooliganism.<sup>336</sup> Australia is one country that perfectly illustrates this tendency.

### B *The Situation in Australia*

Australia has experienced relatively little hooliganism<sup>337</sup> and the term ‘hooliganism’ is not widely used. Most published works focus on broader issues, such as ‘crowd management’ or ‘security at sports events’ (including terrorist risks).<sup>338</sup>

In football, the establishment of an elite national league in 2005 was accompanied by an unprecedented growth in popularity for the game in several Australian cities.<sup>339</sup> This growth presents challenges for maintaining public order.<sup>340</sup> Most incidents that have taken place have been linked to externally sourced ethnic conflicts,<sup>341</sup> even though the recent doctrine tends to relativise the

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<sup>331</sup> About Switzerland, some commentators have, in particular noticed, that the State and the cantons keep passing the buck with regards to their responsibility: Veuthey, ‘Mettre un terme au hooliganisme endémique’, above n 140. About Germany, the long delay to adhere to the *European Convention on Spectator Violence* can be explained by the fact that all the *Länder* [cantons] had to accept it: Bichovsky, above n 17, 121.

<sup>332</sup> Veuthey, ‘Mettre un terme au hooliganisme endémique’, above n 140. Not to mention, for some other countries, like Bosnia, corruption problems are likely to weaken the effectiveness of the fight against hooliganism: Trégourès, ‘Le supportérisme serbe et l’Europe: entre indifférence et rejet’, above n 248, 132.

<sup>333</sup> Veuthey, ‘Mettre un terme au hooliganisme endémique’, above n 140.

<sup>334</sup> Ibid.

<sup>335</sup> For more details about the financial health of the Swiss football clubs, see Ignace Jeannerat, ‘Tous ces clubs de football dans le rouge’, *Le Temps* (online), 5 March 2012 <[http://www.letemps.ch/Page/Uuid/218c80ac-6640-11e1-a3b9-3de4c710e72f/Tous\\_ces\\_clubs\\_de\\_football\\_dans\\_le\\_rouge](http://www.letemps.ch/Page/Uuid/218c80ac-6640-11e1-a3b9-3de4c710e72f/Tous_ces_clubs_de_football_dans_le_rouge)>.

<sup>336</sup> Morgan and Egitto, above n 3, 5.

<sup>337</sup> Warren, *Football, Crowds and Cultures*, above n 4, 37, 79. For specific details about Australian rules football, see at 6, 79. See also Warren and Hay, ‘The A-League, Policing and the Dilemma of Public Order’, above n 13, 125, 132.

<sup>338</sup> Taylor and Toohey, above n 10, 3260, 3264, 3266; Warren, *Football, Crowds and Cultures*, above n 4, 158.

<sup>339</sup> Warren and Hay, ‘The A-League, Policing and the Dilemma of Public Order’, above n 13, 124.

<sup>340</sup> Ibid.

<sup>341</sup> Warren, *Football, Crowds and Cultures*, above n 4, 130–3, 140–1; *ibid* 125–6.

concrete influence of this factor.<sup>342</sup> One of the clubs most affected by hooliganism is Melbourne Victory, which has recently entered into a supporters' charter in order to combat crowd disorder.<sup>343</sup>

Similarly, lower leagues are not spared by this scourge. Violent events have occurred recently in the New South Wales Premier League<sup>344</sup> between fans of Sydney United and the Bonnyrigg White Eagles football clubs.<sup>345</sup>

Another feature of Australia is that the problem of hooliganism is not, as in most other countries examined, entirely confined to football. It has been experienced in sports as diverse as tennis,<sup>346</sup> cricket and the domestic game, Australian rules football.<sup>347</sup> Arguably, however, football has a disproportionate history of hooliganism in Australia.<sup>348</sup> Association football (soccer) is only one of four codes of football played in Australia; the others being rugby league, rugby union and Australian rules football. These other codes are more popular than football — Australian rules football and rugby league substantially so. Yet none of these codes have any tradition of, or requirement for, measures such as the segregation of groups of supporters,<sup>349</sup> a practice that has been required in relation to a number of football clubs in Australia.

## 1 *The Legislative Framework*

Unlike the legislation of many countries in Europe, which is directly modelled on the English framework, the Australian system is more minimalist. The areas of criminal law and the regulation of the staging of sporting events are typically the responsibility of state legislatures under the Australian federal model. The

<sup>342</sup> Warren, *Football, Crowds and Cultures*, above n 4, 131–2, 140; Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 125–6, 128.

<sup>343</sup> Melbourne Victory Football Club, *Charter for Football Supporter Management* (Charter, September 2011) <[https://www.gomvfc.com.au/site/wp-content/uploads/2012/10/v2-Charter\\_Football-Supporter-Management\\_Sept12\\_FINAL.pdf](https://www.gomvfc.com.au/site/wp-content/uploads/2012/10/v2-Charter_Football-Supporter-Management_Sept12_FINAL.pdf)>.

<sup>344</sup> The New South Wales Premier League is a state-based league, one level below the elite national A-League competition.

<sup>345</sup> For more details, see Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 126–7. For a description of other incidents of spectator disorder in soccer, see at 128; Warren, *Football, Crowds and Cultures*, above n 4, 132; Warren and Hay, 'Order and Disorder at Sporting Venues', above n 11, 64.

<sup>346</sup> Taylor and Toohey, above n 10, 3270. See also 'Tennis Fans Ejected from Australian Open', *The Sydney Morning Herald* (online), 18 January 2010 <<http://www.smh.com.au/sport/tennis/tennis-fans-ejected-from-australian-open-20100118-mfwo.html>>.

<sup>347</sup> Warren, *Football, Crowds and Cultures*, above n 4, 78. For specific details about spectator disorder at Australian rules football, see at 79–103. See also Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 124–5.

<sup>348</sup> For recent examples of hooliganism afflicting football in Australia, see Caroline Zielinski, 'Two Charged over Soccer Riots', *The Sydney Morning Herald* (online), 29 December 2013 <<http://www.smh.com.au/sport/soccer/two-charged-over-soccer-riots-20131229-301hf.html>>; Madame H, 'A-League Violence Slammed', *Triple M* (online), 26 March 2013 <<http://www.triplem.com.au/melbourne/sport/other-sports/news/football-federation-australia-condemns-soccer-violence-after-hooligans-terrorise-patrons-at-sydney-fc-western-wanderers-a-league-derby>>; Rachel Olding, 'Football Crowd Violence Draws Advice from League Expert', *The Sydney Morning Herald* (Sydney), 24 August 2012, 7.

<sup>349</sup> Warren, *Football, Crowds and Cultures*, above n 4, Preface, 7, 116. The reasons for the relative differences in spectator behaviours at football as compared with other forms of football and other sports, both in Australia and in other jurisdictions, are not obvious and this is an area that would benefit from further research.

existence of relevant laws, therefore, is also dependent on each state's legislative agenda. The states of Victoria and New South Wales have the most developed event legislation.

Part 4 of the *Major Sporting Events Act 2009* (Vic), which concerns crowd management issues, contains some specific offences known in English law.<sup>350</sup> An authorised officer is entitled to inspect bags, baskets or other receptacles if deemed necessary.<sup>351</sup> In this context, inappropriate behaviour can lead to the direction to leave the event venue or area,<sup>352</sup> or even to a banning order for a period of up to five years.<sup>353</sup> Nevertheless, there is no real ticketing policy (ie identification card or database with supporter profiles) in this, or in any other, state.<sup>354</sup>

Division 5 of the *Major Events Act 2009* (NSW) — which, as its name suggests, is not limited to sports events — follows the same model.<sup>355</sup> The prohibited conduct is described more generally as more specific provisions can

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<sup>350</sup> The following offences are to be noted: to possess prohibited items: *Major Sporting Events Act 2009* (Vic) s 62; to possess or throw fireworks: at ss 63–5; to throw or kick projectiles: at s 68; and to climb on a fence: at s 72. For dealing with prohibited items, see at ss 79–82. Furthermore, unless expressly authorised by the manager or the coming event organiser, ‘a person in an event venue or an event area must not have in his or her possession any alcohol that has not been purchased at the event venue or event area in accordance with the *Liquor Control Reform Act 1998*’: *Major Sporting Events Act 2009* (Vic) s 66(1).

<sup>351</sup> See *Major Sporting Events Act 2009* (Vic) s 90.

<sup>352</sup> *Ibid* ss 83–4.

<sup>353</sup> *Ibid* s 87. For more details about the *Major Sporting Events Act 2009* (Vic), in particular regarding the issue of human rights. See *Charter of Human Rights and Responsibilities 2006* (Vic) s 28 (*‘Charter’*); Victoria, *Parliamentary Debates*, Legislative Assembly, 26 February 2009, 488–502 (James Merino, Minister for Sport, Recreation and Youth Affairs); Scrutiny of Acts and Regulations Committee, *Alert Digest*, No 3 of 2009, 10 March 2009, 1–6; Victorian Equal Opportunity and Human Rights Commission, ‘Register of Compatibility Statements 2009’ (Register of Statements) 27–8; John So and Charlotte Beeny, ‘Victorian Charter of Rights Developments’ (2009) 37 *Human Rights Law Resource Centre Bulletin* 5, 5–6. See also the discussions in relation to the application of ss 25(2)(k) and s 24(1) of the *Charter* in respect of ss 144 and 172 of the *Major Sporting Events Act 2009* (Vic) and the abrogation of the common law privilege against self-discrimination following the decision of Warren CJ in *Re an Application under the Major Crime (Investigative Powers) Act 2004*. On the notion of ‘public authority’ for the purposes of the *Charter*, see *Metro West v Sudi (Residential Tenancies)* [2009] VCAT 2025; Jennifer Ring and Malcolm Cooke, ‘Application of the Victorian Charter of Human Rights: New Obligations for Private Companies when Carrying out Public Functions’ (Media Release, 24 December 2009) <<http://web.archive.org/web/20110227015726/http://www.freehills.com.au/5680.aspx>>.

<sup>354</sup> Thomas Cieslak, *Game Day Security and Football Hooliganism: A Discussion of New Methods to Solve this Long-Standing and Deep-Rooted Problem*, European Association for Sport Management <<http://easm.net/download/2007/ac74d0b6a6950bd25689c8bd41f7ed7f.pdf>>.

<sup>355</sup> See also *Major Events Act 2009* (NSW) s 3.



be found in other laws.<sup>356</sup> The obligations of event organisers are not described in detail in Australian legislation.<sup>357</sup>

Legislation in other states, such as the *Major Events Act 2014* (ACT), is more concise.<sup>358</sup> Some specific laws exist in other states, though with limited application in relation to the regulation of violent conduct at sporting events, which is largely left to the general criminal law.<sup>359</sup> For example, in Queensland, the *Major Sports Facilities Act 2000* (Qld) regulates major sports facilities<sup>360</sup> applying to events held at those facilities. This Act provides, inter alia, restrictions on the purchase and resale of tickets to a major sports facility.<sup>361</sup>

In addition, some laws may be adopted for a limited time in connection with specific events.<sup>362</sup>

## 2 *The Measures Managed by the Clubs/the League*

In addition to the legislation described above, some sports venue management organisations have the power to pass venue regulations under the authority of an Act of Parliament.<sup>363</sup> Similarly, private actors can establish an arrangement together, or with the police, in order to provide event security.<sup>364</sup>

Finally, sports federations, with a tendency to self-regulate, have their own regulations in this matter. This is the case of Football Federation Australia,

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<sup>356</sup> See especially *Sporting Venues (Invasions) Act 2003* (NSW); *Sporting Venues (Offenders Banning Orders) Act 2005* (NSW).

<sup>357</sup> Note that even though this is not expressed explicitly as a legal obligation for the organiser (like in England or other countries in Europe), surveillance technology is commonly used in Australian stadiums. For more details, see Taylor and Toohey, above n 10, 3260, 3267–9, 3271–3. These authors, however, mention the *Occupational Health and Safety Act Guidelines 2004* (Vic) and associated documents such as WorkSafe Victoria's Crowd Control Guide 2006, which indicates that 'consideration should be given to providing crowd controllers with wearable, personal video and recording services': WorkSafe Victoria, 'Crowd Control at Venues and Events — A Practical Occupational Health and Safety Guide' (Information Guide, WorkSafe Victoria, January 2007) 16 <[https://www.worksafe.vic.gov.au/\\_data/assets/pdf\\_file/0013/10354/crowd\\_control.pdf](https://www.worksafe.vic.gov.au/_data/assets/pdf_file/0013/10354/crowd_control.pdf)>. See also Warren, *Football, Crowds and Cultures*, above n 4, 2, 137. See also the provisions related to occupiers' liability such as the ones contained in pt IIA of the *Wrongs Act 1958* (Vic). Besides, other more general differences exist between the *Major Sporting Events Act 2009* (Vic) and the *Major Events Act 2009* (NSW), notably in relation to the declaration of major events and the constitution of advisory committees and major events authorities.

<sup>358</sup> For specific powers and offences relating to crowd management, see *Major Events Act 2014* (ACT) pt 3.

<sup>359</sup> For example, see *Major Events Act 2014* (Qld); *Major Events Act 2013* (SA). For examples of general criminal laws, see *Crimes Act 1958* (Vic) pt III. See also *Police Act 1990* (NSW) s 208; *Police Powers and Responsibilities Act 2000* (Qld). See also Warren, *Football, Crowds and Cultures*, above n 4, 107–9. Warren mentions, in addition, the *Summary Offences Act 1953* (SA) and the *Summary Offences Act 1966* (Vic).

<sup>360</sup> See *Major Sports Facilities Act 2001* (Qld) s 4.

<sup>361</sup> *Ibid* ss 30C(1)–(2).

<sup>362</sup> See *Commonwealth Games Arrangements Act 2001* (Vic). In the matter of broadcasting and the challenges posed by new media technologies, which were adopted for the Olympic Games in Sydney, see also *Olympic Arrangements Act 2000* (NSW). For more details about the legislation in Australia, see, eg, Taylor and Toohey, above n 10, 3264, 3266, 3268, 3270; Warren, *Football, Crowds and Cultures*, above n 4, 107–9.

<sup>363</sup> See *Melbourne Cricket Ground Act 2009* (Vic) s 33. See also Warren, *Football, Crowds and Cultures*, above n 4, 110.

<sup>364</sup> See, eg, Melbourne Victory Football Club, *Charter for Football Supporter Management* (September 2011) <[https://www.gomvfc.com.au/site/wp-content/uploads/2012/10/v2-Charter\\_Football-Supporter-Management\\_Sept12\\_FINAL.pdf](https://www.gomvfc.com.au/site/wp-content/uploads/2012/10/v2-Charter_Football-Supporter-Management_Sept12_FINAL.pdf)>.

which has adopted a *Spectator Code of Behaviour*.<sup>365</sup> This Code indicates the conduct that spectators should adopt at football matches.<sup>366</sup> Any person who does not comply with it may be evicted from a venue and banned from attending future matches.<sup>367</sup>

In relation to the issue of racial, and other types of vilification, many Australian sports have now adopted anti-vilification policies to address problems such as racial and homophobic vilification.<sup>368</sup> Notwithstanding the difficulties in extending the scope of these policies to spectators who are not members of sports clubs, spectators who have engaged in racial vilification have been ejected from stadiums; where the spectators responsible have been members of clubs, their club memberships have been revoked.<sup>369</sup>

### 3 Analysis

The influence of the English model on Australian legislation does not appear as significant as in some European countries. This is not surprising, given that the problems of hooliganism in Australia are not commensurate with those experienced by England and Europe's mainland.<sup>370</sup> The relevance of the English system in Australia, as a model of good practice, is therefore not as prominent.

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<sup>365</sup> Football Federation of Australia, *Spectator Code of Behaviour* (1 January 2007) <<http://www.footballaustralia.com.au>>.

<sup>366</sup> Ibid.

<sup>367</sup> Ibid. See also Dominic Bossi, 'A-League: Clubs to Pay for Fans' Bad Behaviour under FFA Plan', *The Sydney Morning Herald* (online), 31 December 2013 <<http://www.smh.com.au/sport/soccer/aleague-clubs-to-pay-for-fans-bad-behaviour-under-ffa-plan-20131230-3032o.html>>.

<sup>368</sup> See Australian Football League, *National Vilification and Discrimination Policy* (June 2013) <<http://www.afl.com.au/staticfile/AFL%20Tenant/AFL/Files/Respect%20and%20Responsibility/National-Vilification-Discrimination-Policy.pdf>>. This policy prohibits 'conduct which may reasonably be considered to incite hatred towards, contempt for, ridicule of or discrimination against a person or group of persons' on grounds that include race, religion, gender, colour, sexual orientation or disability: at art 4.1. It also proscribes 'harassment' which is defined as:

[C]onduct which may reasonably be considered to be offensive, abusive, belittling or threatening, or which is otherwise unwelcome and a reasonable person would recognise it as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated.

At art 4.2. A process to resolve disputes is established by the policy, with the possibility of disciplinary sanctions being issued: at art 10.4. See also National Rugby League, *Code of Conduct* (2003) cl 15(2)(c) <[http://www.rugbyleague.com.au/nrl/nrl\\_code\\_of\\_conduct.pdf](http://www.rugbyleague.com.au/nrl/nrl_code_of_conduct.pdf)>; Cricket Australia, *Cricket Australia: Anti-Racism Code for Players and Player Support Personnel* (2014) <<http://www.cricketaustralia.com.au>>; Tennis Australia, *Member Protection Policy* (2014) 11–14 <[http://www.tennis.com.au/wp-content/uploads/2014/06/TA\\_Member\\_Protection\\_Policy-LR.pdf](http://www.tennis.com.au/wp-content/uploads/2014/06/TA_Member_Protection_Policy-LR.pdf)>; Football Federation Australia, *Spectator Code of Behaviour* (1 January 2007) cls (c), (e) <<http://www.footballaustralia.com.au>>.

<sup>369</sup> See Adam Baldwin and Malcolm Conn, 'Adam Goodes Racially Abused by Essendon Fan in Friday Night Clash at Etihad Stadium, Western Bulldogs Apologise to Demon Neville Jetta', *The Herald Sun* (Melbourne), 21 May 2014. See also Mark Robinson and Tom Minear, 'Hawthorn Fan Kicked out of Aurora Stadium after Majak Daw Racist Slur', *The Herald Sun* (Melbourne), 22 February 2014.

<sup>370</sup> Warren, *Football, Crowds and Cultures*, above n 4, 37, 79. About Australian rules football in particular, see at 6, 79. See also Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 125, 132.

A recent report by an Independent Football Inquiry, following the incident in the NSW Premier League mentioned above, addressed this issue.<sup>371</sup> Effectively, several recommendations were made by the Panel, which recommended more sweeping legislative reforms based on the English legislation.<sup>372</sup> According to this report, the new laws should sit alongside tighter bans and enforcement procedures; they should target violence and the display of inflammatory national or political flags and be implemented by Football NSW.<sup>373</sup> Furthermore, the legislation should introduce enhanced police search and confiscation powers in and around sports venues, along with mandatory 12 month exclusion orders and potential lifetime bans for the most troublesome supporters.<sup>374</sup>

On this basis, the two clubs involved were instructed to help with the implementation of several initiatives in order to improve public order.<sup>375</sup> Despite these measures, the disorder leading to the inquiry continued.<sup>376</sup>

This example shows that while the English legal system may provide a source of inspiration for governments in Australia and for measures that are introduced, they will not necessarily amount to a panacea to totally cure the ills created by hooliganism. It also illustrates the difficulty of implementing initiatives derived from the English model in isolation from other aspects of that model.

Further, the restrictions discussed in the context of the application of the English system across jurisdictions to countries in Europe's mainland may be equally or more powerful in the Australian context. Some commentators emphasise the possible counterproductive effects that may be produced by the introduction of inappropriate regulation and the potential implementation problems.<sup>377</sup> They have even advocated that governments should favour internal good practices models in preference to adoption of the English model.<sup>378</sup>

### C *Final Remarks*

If the influence of the English system is relatively persuasive in continental Europe, its relevance is more limited in Australia.

Furthermore, several restrictions to the universal application of the English system can be identified. Critical analysis demonstrates that if the English model is to be an effective source of inspiration for other countries, it must be adapted to local circumstances.

In particular, its full application remains a problematic issue in countries that only experience a moderate degree of hooliganism, such as Switzerland or

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<sup>371</sup> Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 126.

<sup>372</sup> Ibid.

<sup>373</sup> Ibid 126–7.

<sup>374</sup> Ibid.

<sup>375</sup> Ibid 133.

<sup>376</sup> Ibid. See also Sebastian Hassett, 'A-League: Wanderers Hit Back at Victory as Blame Game Continues', *The Sydney Morning Herald* (online), 1 January 2014 <<http://www.smh.com.au/sport/soccer/aleague-wanderers-hit-back-at-victory-as-blame-game-continues-20131231-304nr.html>>.

<sup>377</sup> See, eg, Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 127, 132. For more details about the *Major Sporting Events Act 2009* (Vic) and the issue of human rights, see above n 353 and accompanying text.

<sup>378</sup> Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 124, 132–7.

Australia. The case of Australia, however, with its four codes of football, highlights the issue of differences in the extent of hooliganism between sports as an area of potentially fruitful, further research. Such an inter-sport comparison would also be of relevance in other jurisdictions.

#### IV CONCLUSION

The English system against hooliganism is the result of a long process and it is relatively comprehensive, both on public and private levels. It is, however, open to criticism in some respects, notably in the matter of human rights. Thus, both courts and the police must ensure that their actions remain fair and proportionate in each case to avoid unfair situations and producing counterproductive effects.<sup>379</sup> Similarly, the English clubs could productively intensify their efforts in the matter of fan coaching.<sup>380</sup>

Despite these shortcomings, this framework appears to have been an appropriate response in the context of the English (football) hooliganism. It appears, if not totally eradicated hooliganism, to have at least significantly contributed to its reduction.

It is therefore not surprising, as the comparative approach has shown, that this model, to differing degrees, has been appropriated by other countries in Europe and, to a lesser degree, in Australia. Nonetheless, the main cross-jurisdictional weakness of the model is its lack of universality. Even where it is possible to transpose the model, it cannot be transposed without adaptation to the specific nature of each country.

In this context, its application remains particularly problematic in countries with low levels of hooliganism, which benefit from more moderate solutions or even internal models developed from good practices.<sup>381</sup>

Finally, it is to be observed that there is no system that could be constructed to prevent every individual case of disorder. The solution to violence amongst sports spectators does not entirely lie in the law or in regulations.<sup>382</sup> Violence in the context of sport, as in other contexts, is reflective of wider societal issues,<sup>383</sup> and any solution also rests with a change of mentality of the people who attend sporting fixtures.<sup>384</sup>

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<sup>379</sup> See above nn 169, 240 and accompanying text.

<sup>380</sup> Frosdick and Marsh, *Football Hooliganism*, above n 2, 154, 182–8.

<sup>381</sup> About Australia, see Warren and Hay, 'The A-League, Policing and the Dilemma of Public Order', above n 13, 124, 132–7.

<sup>382</sup> Cannon, above n 163, 594.

<sup>383</sup> Stoner, above n 87, 12.

<sup>384</sup> Cannon, above n 163, 594.