

LIGHTS AND SHADOWS OF THE EUROPEAN CONVENTION ON AN INTEGRATED SAFETY,

Security and service Approach at football matches and other sports events

Anna Di Giandomenico

PhD and Assistant Professor at University of Teramo, Italy

Abstract: *The Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS no. 218/2016), opened for signature on 3 July 2016, entered into force on 1 November 2017. It is too well known how this Convention is an evolution of the previous European Convention on Spectator Violence (ETS no. 120) entered into force in November 1985, whose aims are to prevent and control violence and misbehaviour by spectators, as well as to ensure spectator safety during sports events.*

The need to update such a Convention arises from the detection of the incapacity of such a regulatory instrument to face the challenges of changes, which occurred in the world in recent decades (among these it is enough to consider the threats of terrorism, as well as the risks of infiltration by organized crime). These changes have strongly affected the organization of sporting events, highlighting the need to go from an approach, focused on the fight against violence, towards an integrated approach, based on the pillars of safety, security and service.

Considering the almost total lack of comments by scholars in the Convention, the paper will focus on the key points of the Convention, trying to identify legal issues, which could emerge from an in-depth analysis of the regulatory texts.

Keywords: CoE Convention n° 218/2016; Sports Events' Organization; Legal Theory

Introduction

It is too well known how the European Convention on *Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches* (ETS no. 120), entered into force in November 1985, was a first response to face hooliganism at a supranational level. However, the phenomenon developed, highlighting some weaknesses of this regulatory text after 30 years from its enactment. Thus, there emerged the need to update such a Convention: this awareness led the Standing Committee of the Convention on *Spectator Violence* to draft a new text, the Council of Europe Convention on *an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events* (CETS no. 218/2016). This Convention has opened for signature on 3 July 2016 and entered into force on 1 November 2017.

After an examination of key points of the new Convention, there will be the

outlining of its lights and shadows. They revealed the need to update such a Convention, because of the incapacity of the previous regulatory instrument to face the challenges, occurred in the world in recent decades (among these it is enough to consider the threats of terrorism, as well as the risks of infiltration by organized crime).

Considering the almost total lack of comments by scholars in the Convention, the paper will focus on the key points of the Convention, trying to identify legal issues, which could emerge from an in-depth analysis of the regulatory texts.

Key points of the European Convention on *Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches*.

Without claim to be exhaustive, because it is not the focus of this paper, it seems important to retrace how Council of Europe came to the drafting of the Convention on *Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches*,¹ and highlights its key points.

Facts occurred on 29 May 1985, before the European Cup Final, when 39 supporters died because of the assault of English supporters against Italian ones, gave the decisive impetus to the drafting and subsequent adoption of a Convention on the matter by the Council of Europe. In fact, this was the latest in a series of violence, which involved mostly British supporters, the s. c. hooligans.²

Thus, after a first recommendation on *Cultural and educational means of reducing violence*,³ and the Recommendation on *The reduction of spectators violence at sporting events and in particular at football matches*,⁴ there was the adoption of the Convention on *Spectator Violence*.

1. European Convention on *Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches* (ETS n° 120), opened to signature on 19 August 1985, and entered into force on 1 November 1985.

2. In this regard, it seems important to underline how English supporters and those ones of opposing teams give rise to several riots all over Europe. Listing some of them, just remember riots occurred in Turin during the England-Belgium match of European Championship; those one occurred in Basel, after a World Cup match on 1981; as well as riots occurred on 1982 in Copenhagen occasion of a World Cup qualifying match; or riots caused by English supporters in Luxembourg after a European Championship match; or damages caused by English fans in Paris, after a friendly match on February 1984; and finally, riots caused by English supports in Brussels on 8 May 1984.

3. Recommendation of Parliamentary Assembly on *Cultural and educational means of reducing violence*, Rec 963(1983), adopted on 28 January 1983.

4. Recommendation of the Committee of Ministers to Member States on *The reduction of spectators violence at sporting events and in particular at football matches*, Rec. no. R (84) 8, adopted on 19 March 1984 at the 368th meeting of the Ministers' Deputies.

The aim of this Convention is to prevent and control violence and misbehaviour of spectators, as well as to ensure their safety during sports events.⁵

It seems important to underline how the Convention was a truly innovative regulation, acting at least on three levels. The first one was the prevention, obtained by the improvement of infrastructures and organization (art. 3, para 4); the second acts improving police cooperation (art. 2 and art. 3, para 1); and finally the third one provided for repression, implemented through the activation of judicial cooperation on processes and the specification of appropriate sanctions for the offenders (art. 5).

The Standing Committee, established by the art.8, was the heart of the Convention, being the body responsible for the monitoring of its application. This Committee included delegates (national experts) and observers (delegates of some non-governmental associations like FIFA, UEFA, FSE, SD and EPFL).

The Committee developed its work on three pillars: standard setting, monitoring and technical assistance. Thus, the Committee carried out its function, making recommendations to the Parties on the measures to adopt⁶ and, if necessary, responding to new concerns. More specifically, the Committee concerned with challenges like the fight against racism, xenophobia and other forms of discrimination and/or intolerance;⁷ and established an *ad hoc* working group for each of the major international sports tournaments.

In carrying out its function, the Committee has therefore drawn up many recommendations, which, from time to time, have better specified measures and policies aimed at contrasting the phenomenon of spectator violence.⁸

In 2012, the Council of Europe Conference of Ministers responsible for sport proposed that the Committee should study the appropriateness of the Convention in order to counter the phenomenon of spectators' violence. The outcomes of the study highlighted the weakness of an approach focused only on spectators' violence, because it does not consider key factors (as safety and security), which have a considerable impact of spectators' behaviour; as well as does not

5. For a more detailed analysis of the Convention, among several see Taylor Jefferson C. (1987).

6. The full list of the Reports, following the evaluation visit of the Committee, is available at the link <https://www.coe.int/en/web/sport/monitoring-of-the-convention>.

7. In this regard, it cooperated closely with EPAS and European Commission against Racism and Intolerance (ECRI), giving rise to some Recommendations. Among them recall the Recommendation Rec(2001)6 of the Committee of Ministers to member states on the *Prevention of Racism, Xenophobia and Racial Intolerance in Sport*, adopted by the Committee of Ministers on 18 July 2000, during the 761st meeting of the Ministers' Deputies.

8. The full list is available at the end of the Recommendation Rec (2015) 1 of the Standing Committee on *Safety, Security and Service at Football Matches and other Sports Events*, adopted on 18 June 2015, during its 40th meeting held in Brussels.

consider the impact of social changes (i.e. migratory phenomenon, technological innovation).

From here the proposal of the Recommendation on *Safety, Security and Service at Football Matches and other Sports Events*, the last one adopted by the Committee: it replaced all previous resolution and statements adopted and was the last related to the Convention on *Spectators Violence*. As usual, such a Recommendation was the prelude for the drafting of a new Convention on the matter.⁹

The European Convention on an *Integrated Safety, Security and Service approach at Football Matches and other Sports Events*.

The adoption of the Recommendation was the last step of a process, started as early as 2012, following some stages. In fact, firstly there was the involvement of all states parties in order to draft a new Convention on the matter. Then, once achieved an agreement on a final draft of such a Convention, as well as its Explanatory Report, there was a consultation with the Parliamentary Assembly of the Council of Europe, which made some minor amendments to the text. A rapporteur group on sport of the Committee of Ministers examined this amended text, and adopted the final version on May 2016.

Finally, the Committee of Ministers opened for signature Convention on *an Integrated Safety, Security and Service Approach at Football Matches and other Sports Events*, on 3 July 2016 in St. Denis and entered into force on 1 November 2017, after the ratification of 3 member states.¹⁰

Key points of the Convention.

According with what proposed by the preliminary Recommendation, an integrated approach characterizes the Convention, which moves from a violence focused approach to an integrated one, grounding on three distinct and independent pillars (safety, security and service). In this way, the Convention promotes the cooperation among public and private stakeholders, being conscious how a single agency cannot implement safety, security and service.

More specifically, safety refers to all measures aimed at protecting people from being injured or facing a risk in order to ensure their health and wellbeing during sports events. The measures falling within this field concern on the one hand measures related to all that happens in the sports infrastructures, like the

9. We can interpret in this sense the exhortation, contained in the preamble, to take into consideration the need to develop and refine an integrated approach to football safety security and service (see the penultimate paragraph of the preamble).

10. The first three member states, which ratified the Convention, were France, Monaco and Poland. At the time, we detect 15 ratifying member states.

regulation of sports infrastructures' certifications, emergency plans as well as rules about alcohol consumption. On the other hand, there are measures related to all that happens outside sports infrastructures, as the protection of people on their journey towards the event site, or the safeguard of those ones who live all around the event site.

Security refers to all measures aimed at ensuring the protection of individuals from danger as well as maintaining public order. The measures falling within this field are rules aimed at tackling violence inside and outside sports infrastructures; rules disposed in order to deter, prevent and sanction violence and/or other misbehaviour in connection with football matches or other sports events. Finally, specifically related to football matches, there is the establishment of NFIP (National Football Information Point). As dictated by art 11, NFIP has the function of being the direct contact point in order to exchange general information in connection with football matches, having an international relevance; as well as of exchanging personal data, according to applicable domestic and international rules; and of facilitating and coordinating the implementation of international police cooperation.

The last pillar, service, refers to the conditions and circumstance experienced by supporters, when they attend at a sports event. Thus, rules falling within this field are measures aiming at making sports events enjoyable and welcoming for all spectators, regarding specifically the ensuring of good catering and toilet facilities; and all rules related to the manner in which organiser greet and treat them.

This distinctive feature highlights the awareness of how it is unconceivable to pursue safety and security without involving all key stakeholders. In this sense, we can interpret art.8, ruling the engagement with supporters and local communities. An integrated approach must necessarily involve spectators, being them without doubt the major stakeholders: from here the need to open a frank dialogue with spectators (better, with their associations), considering that a good information as well as a good care of supporters make them more relaxed. On the other hand, the article focuses on the engagement of local communities in projects aimed at influencing the behaviours of young people, promoting mutual respect and understanding, following experiences, which demonstrate how such projects are truly effective.

In the same way go all that stated by art.9, ruling police strategies and operations, suggesting the need to take account of good practices. More specifically, on one hand, this implies a continuous risk assessment, which leads to a proportionate intervention, in order to prevent the escalation of risk or disorder. On the other hand, this implies a dialogue with supporters and the wider community, as well as a sharing of evidence of criminal activity with the competent authorities.

Finally, it is emblematic all that established by art.11, ruling the need of international cooperation. The mandatory establishment of the NFIP for each state

party is a specific tool, which can contribute to reach this purpose. In the same way goes the need to exchange information about good practices, related to safety measures, projects and all actions aimed at involving supporters, going in this way beyond the mere exchange of information among policies.

The Committee on Safety and Security at Sports Events.

As in the Convention on *Spectators Violence*, the Standing Committee, established ex art.13, is the heart of the Convention, being the body responsible for the monitoring its application (art.14). According to art. 13, para 2-4, it includes national delegates (more specifically governments deputies and NFIP delegates) and observers (deputies of not party states, which are members of the Council of Europe; of not member Council of Europe states, which are party of Convention n. 120; any organisation interested in being represented as an observer). It seems important to underline how the composition of this Committee reflects the integrated and multi-agency approach, providing for the presence of NFIP representatives as delegates with voting rights.

On the mould of all that disposed for the Standing Committee of previous Convention, in order to achieve its scope, the Committee have to keep under review the provisions of the Convention, in view of suggesting possible modifications, if deemed necessary (art. 14, para 1-a). In this view, it makes any proposal for improving effectiveness of Convention (art. 14, para 1-c and 1-f), suggesting for example measures, which parties may take, measures aimed at keeping public informed about the activities undertaken within the framework of the Convention (art. 14, para 1-d). Further, the Committee have to hold consultations and, if appropriate, exchange information with relevant organisation (art. 14, para 1-b): in this perspective, it facilitates the collections, analysis and exchange of information, experience and good practices among states (art.14, para 1-g). Moreover, the Committee organises visits to states parties, aimed at monitoring their compliance with the Convention provisions, and transmits relevant data to all states parties (art. 14, para 2).

Firstly, the project Pros4, and then the Pros4+ project, helped and still helps the Standing Committee in carrying out its function.¹¹ In more detail, the project *Promoting the Council of Europe Standards to safety, security and services at football matches and other sports events* (Pros4) is co-financed by the European Union and Council of Europe. Its aim is to evaluate the situation, in order to assist the process of implementation of procedures, according to the European best practices and standard for ensuring safety and security of spectators. Pros4+ (*Promoting and Strengthening the Council of Europe Standards on Safety, Security and Service at Football Matches and Other Sports Events*)

11. More information about these projects are available at the link: <https://pjp-eu.coe.int/en/web/security-safety-sport/about-us>.

aims at offering tailor-made responses to challenges highlighted by Pros4, of which is a follow up.

Emerging legal issues.

The brief examination of the Convention, without claiming to be exhaustive, highlights unequivocally the option for an integrated approach, assumed as the more appropriate way to face troubles emerging in occasion of football tournaments as well as other sports events.

Better analysing the provision, we see how this approach is applied at management of sports infrastructures as a whole (art.5), focusing on the need to provide for an appropriate regulatory framework as regard the safety of spectators (i.e. requirements of sports facilities – para 2; management of crowd – para 3). Not only infrastructures, but also an attention given to people, aimed at ensuring an inclusive and welcoming environment for all, with a specific focus on elders, children and people with disabilities (para 4); an approach applied to the management of public places, too (art.6). States parties can achieve all that mentioned above, only promoting an effective cooperation among police, emergency services and partners agencies (para 5-6-7). Finally, this is an approach developed at an international level, because of its involving all parties (states and relevant stakeholders), especially in order to exchange data and information (art.11).

In a word, there emerges the awareness that the maintenance of public order issue can be resolved only through an intense work of coordination and cooperation between states, organizers and agencies involved at various levels in the organization of sporting events.¹² In this regard, we can say that it is a real step forward, compared to the violence oriented approach, characterizing instead Convention no.120: a step forward, which will undoubtedly have positive effects in terms of the effectiveness of the management and prevention of disorders related to major sporting events.

Notwithstanding the strength of such an innovative approach, at least two weak points emerge. The first one arises from the definition of some offence, and the second from the integrated and multi-agency approach.

The focus on such an integrated approach seems, in fact, to darken the specific attention on violence, characterizing the Convention no. 120: we detect no definition of which behaviour we can consider violent. Each state legal system, therefore, can define it in the way deemed most appropriate, with the very prob-

12. A first test will be the organization of EURO 2020, the European *championship*, which will take place in 12 hosting cities of 11 countries. Without doubt, this feature needs a strong cooperation and cooperation among all involved stakeholders. In order to better support this difficult organization, the Standing Committee established an ad hoc working group, whose aim is to facilitate cooperation and share best practices among host countries and relevant stakeholders.

able consequence of having an unequal treatment for the same behaviour, depending on the state where it occurs. For example, just think how anyone, who introduces and/or uses pyrotechnic artefacts inside a stadium, in Italy can incur a penalty from six months up to one year in prison and a fine from 1000 up to 15.000 euros (art.6ter of law 401/89, as modified by art.3 of law 4 April 2007, n. 41). In France, for the same offence, art. L332-8 of the Code du Sport provides a penalty of three years of imprisonment and a fine of 15.000 euros. In Spain, the same behaviour is a very serious infringement and entails a fine from 60.000 up to 650.000 euros (art. 22, para 1b, and art. 24, para 1c, Ley 19/2007).

One could argue that the lack of definition of violence and / or acts, which may fall within the case, is an obvious consequence of the purpose of the Convention, aimed at ensuring security and safety for those who attend at football matches and other sports events. This is a fallacious argument, as soon as we consider that acts of violence undermine safety and security and, therefore, if we do not give a shared and shareable definition, states and all agencies and stakeholders involved would continue to go in a completely scattered way, to the complete detriment of an effective contrasting action.

Even assuming resolved issue related to the definition of violence, there emerges, however how the same risk seems to occur for all that regard racist or discriminatory behaviour. They are behaviours, which Parties have to counter, but we do not retrace any definition, able to better circumscribe the threshold beyond which a behaviour will become a crime. Therefore, as all that detected for acts of violence, we do not have a shared definition and we do not detect the same hypotheses of punishment. For example, in Italy there is the provision for the ban on access to stadia and/or sports facilities and a penalty from three months to one year (art. 2, para 2, Law 25 June 1993, no. 122). In France, for the same offence, art. L332-7 of the Code du Sport provides a penalty of three years of imprisonment and a fine of 15.000 euros. In contrast to France and Italy, in Spain there is a very detailed description of what may fall into the case of racist, xenophobic or intolerant acts in sport (art. 2, para 2, Ley 19/2007). These behaviours are very serious infringements, but whoever commits such acts can incur a sanction consisting of a fine from 60.000 up to 650.000 euros (art. 24, para 1c, Ley 19/2007).

Thus, on one hand, we go from a very detailed description of what we consider racist, xenophobic or intolerant acts, like in Spain, to a much more generic one (as in France and Italy); on the other hand, we have provisions, stating penalties truly different (up to one or three years of imprisonment), or mere fines (as in Spain). I wonder what I can deduce from this different regulation: surely, the first impression is that to commit racist, xenophobic or intolerant acts is not as serious as stated.

The second weak point is a more general issue and concerns the involvement of private organizations and bodies in the process of implementation of the Con-

vention. Private organizations and bodies will play a key role in the implementation of the Convention: without their support, efforts to achieve the aims of the Convention would be in vain. In this regard, just think to the different composition of the Standing Committee of this Convention, where NFIPs are members and not observers.

However, the private nature of organizations and bodies would constitute a serious obstacle in pursuing such purposes. The integrated and multi-agency approach is the distinctive feature of all that provided by the Convention: we can affirm that the assumption of such an approach is the rationale itself of the drafting this Convention. This very close cooperation among private bodies and/or organizations on one hand and states on the other is the truly ace in the hole of the Convention, whose provisions would lose effectiveness if a part of this alliance will fail.

Given the importance of such framework in order to achieve the purposes of the Convention, I wonder, however, what degree of enforceability could have directives issued by those organizations. This question is significant, as soon as we consider the different nature of states and private organizations and bodies: directives of the formers act *erga omnes*,¹³ while those ones of the latter bind only those who recognize themselves as part of the same. Moreover, in some countries like Italy, this question is more significant because, for example, almost all sports facilities are publicly owned (municipalities and provinces), so private organizations and bodies act in public spaces.

Another legal issue arises from the involvement of such organizations and bodies in the exchange of information and data with public authorities and police, in order to put in place more effective security measures. Just remember the regime of rules regulating such matter, is substantially dictated by the EU GDPR.¹⁴ We remember how the GDPR rules act not only on EU states, but also upon other not EU states, at least for all that falls within its sphere of competence in their relationship with the former. In this perspective, we can affirm how the GDPR ended up regulating the management of personal data well beyond the borders of the European Union.

Considering that, although the GDPR constitutes an exception for the process-

13. Without claim to be exhaustive, here it suffices remember how the the relationship between Law and force is a true *topos* of legal theory. In this regard, it seems important to recall Rudolph von Jhering, clearly affirming the existence of a strict link between Law and force (R. von Jhering, especially p. 2). In the same sense, see Hans Kelsen, who affirmed that a distinctive feature of legal order is their nature of *coercive orders*. (H. Kelsen, especially pp. 33-50).

14. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, entered into force on 25 May 2018.

ing of personal data, in order to prosecute crimes (art.10 GDPR), I wonder if we can consider an organization and / or a private body as an official authority and, therefore, we can authorize them to implement this exchange. This is a fundamental knot, as soon as we consider how the admission of such an exception could open an important flaw in structure of the GDPR. On the other hand, the strict application of the GDPR rules undermines the structure of the Convention, based on the need for a multi-agency approach, according to which all cooperate on an almost equal level in order to ensure safety and security in occasion of football matches and sports events.

In a word, opting for one or the other choice means placing yourself clearly in front of the more general dilemma “liberty vs. security”: what degree of freedom is it conceivable to lose in favour of greater security? This is an ancient dilemma,¹⁵ not at all solved; a dilemma, become dramatically topical in the last decade.

Conclusion.

Without doubts, the Convention on *an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events* is an important step toward a management of sports events (especially football), aimed at ensuring a safe and secure enjoyment of such events by people, being them spectators or individuals interested because of various reasons).

In the brief analysis, above proposed, there emerged strengths and weaknesses of this regulatory text. The strength of the Convention is its specific integrated and multi-agency approach, as appropriate way to manage sports events: a truly innovative approach, which seems to be the only one able to counter in an effective way threats, which can cause a bad enjoyment by people. This approach will have an important test in occasion of the next European Football Championship (EURO 2020), for whose management an *ad hoc* Work Group, established by the Standing Committee of the Convention, acted and still acts.

The Convention, however, show some weak points. A first order of these weaknesses is due to the lack of a detailed definition of some offence (violence,

15. Without claim to be exhaustive, just remember how Thomas Hobbes affirmed the absolute preponderance of security over freedom, arguing the lack of security (caused by the original condition of *bellum omnium contra omnes*) led men to renounce their natural rights – except that one of life. They made making a pact each other by which they transfer their rights to a single person or an assembly of men, a Leviathan, who, in exchange for his of absolute power, ensures safe living conditions for his subjects. (T. Hobbes, *Leviathan* (1651), Barnes & Nobel Books, New York, 2004, especially Part Two, Chapter XVII). On the other hand, there is John Locke, who affirmed the supremacy of liberty over security: no absolute and arbitrary power can subject the liberty of men. (J. Locke, *Second Treatise of Government* (1690), Enhanced Media, Los Angeles, 2016).

and racist, discriminatory behaviours). Their solution appears hard to achieve, also because of the limits dictated by its nature of international Convention, which, therefore, meets the substantial limit of national sovereignty. We detected a second order of weaknesses, given precisely by the peculiar feature of the approach proposed by the Convention. In fact, it is unconceivable the success of the measures disposed by the Convention without the support of private organizations and bodies, involved in the management of sports events in various capacities. This involvement highlights at least two order of legal issues, which seems at the time difficult to solve. Firstly, there emerges the issue related to the degree of enforceability of directives, issued by such organization and bodies. Secondly, there are all doubts arising from the implementation of that information and data exchange regime, which characterizes the close cooperation among police and various involved organizations and bodies.

However, I do not think that these above recalled are the true issues. Remembering the failed terrorist attack, occurred at St. Denis (France) on 18 November 2015, I think that this Convention, notwithstanding its truly innovative feature, born already obsolete, considering the lack of specific reference to the threat of terrorism. A more dangerous lack, due to the aforementioned problematic implementation of the provisions of the Convention. When a proposal of revising the text in light of these new perspectives?

Reference text

Hobbes Thomas (2004), *Leviathan* (1651), Barnes & Nobel Books, New York

Locke John (2016), *Second Treatise of Government* (1690), Enhanced Media, Los Angeles

von Jhering Rudolf (2006), *The Struggle for Law* (1872), The Lawbook Exchange Ltd, Clark NJ

Kelsen Hans (2008), *Pure Theory of Law* (1967), The Lawbook Exchange Ltd, Clark NJ

Siekman Robert et al. (2004), *Football Hooliganism with an EU Dimension: Towards an International Legal Framework*, T.M.C. Asser Instituut, The Hague

Taylor Jefferson C. (1987), "The war on soccer hooliganism: The European convention on spectator violence and misbehaviour at sports events", in: *Virginia Journal of International Law*, 27(3), pp. 603-654.

Tsoukala Anastassia (2010), "Combating Football Crowd Disorder at the European Level: An Ongoing Institutionalisation of the Control of Deviance", in: *Entertainment and Sports Law Journal*, 7, 2

Zalcmane Karina (2018), "Criminogenic Manifestations of Football Fans", in *Rassegna di diritto ed economia dello sport*, XII, 2, pp. 228-240