

POLICE DETENTION OF FOOTBAL FANS AS MEASURE OF PREVENTING VIOLENCE IN CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Miloš Stanić, PhD¹

Institute of Comparative Law, Belgrade, Serbia

Stefan Andonović, PhD²

Institute of Comparative Law, Belgrade, Serbia

Abstract: Violence among supporters at football matches has become a part of everyday life. Legal systems are trying to provide appropriate answers to this negative phenomenon. Regarding the fact that Serbia is a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is of the utmost importance to secure that actions of state authorities are in line with the case law of the European Court of Human Rights. At the same time, it provides useful guidelines and boundaries for both the legislator and state bodies dealing with this specific problem. Consequently, the paper analyzes two decisions of the European Court of Human Rights, concerning the police detention of fans for the purpose of preventing violence at football matches. The authors pay special attention to the standards and conditions that the respective state is obliged to fulfil in a specific case. Authors also offer, where that seems necessary, an appropriate critical opinion. The scientific justification for studying this topic lays in the fact that there is the social need to clearly define the limits of preventive actions of state authorities, which have to be in line with the principle of protection of guaranteed human rights and freedoms, as an imperative in any democratic legal order, if Serbia one day decides to implement this measure in our legal system.

Keywords: police detention, prevention of violence at football matches, human rights, case law of the European Court of Human Rights.



INTRODUCTION

Sport represents an unavoidable part of human life, whether it is a form of entertainment, recreation or professional activity. Although it has its positive sides, it also carries with it high risks, such as violence (Tošić & Novaković, 2018: 517). Violence at sporting events is an old phenomenon. It was noted even in the texts from the period of ancient Greece and the Roman Empire (Simonović, Đurđević, & Otašević, 2011: 81; Hajsok, 2018: 11). It was pretty similar throughout history: crowd behavior greatly resembled modern hooliganism (Kasalo-Banić, 2016: 15). In the recent history of human civilization, violence, especially at football matches, has been especially pronounced. It is interesting as a fun fact, that the first serious incident connected with football happened in Buenos Aires (Argentina) on 16 July 1916, when supporters and police came into conflict because the match had been postponed because the stadium did not have sufficient capacity (Simonović et al., 2011: 81).

Semantically, the term known as “hooliganism” derives from the name of a certain Patrick Hooligan, an Irish bouncer from London (Nikač & Milošević, 2010: 235). Hooliganism emerged in England in the 1960s. The first phase of the emergence of hooliganism covers the period from the late 50’s and early 60’s of the 20th century, when both inside and outside the stadium organized violence was recorded (Kasalo-Banić, 2016: 16). As a matter of fact law did not devote as much attention to football hooliganism as academia did and throughout the decades, it was seen as an ordinary public order problem, the control of which did not require the introduction of specific legislation (Tsoukala, 2009a: 22; Guilianotti, 2013: 9).

Regardless of increasing violence, until the mid-1980s this problem was not an issue of concern for the European institutions. Apart from the European Parliament that mentioned it in 1984 in a sport related Resolution (European Parliament, 1984), only the Council of Europe sought to address the question on a more systematic basis. The Council of Europe’s main goal is, ‘to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law’ (Council of Europe, The Council of Europe in Brief, Our Objectives, according to Coenen, Pearson & Tsoukala, 2016). In that particular Recommendation, “the prevention of violence in the sport is placed within the broader frame of educational and cultural measures, in order to reduce violence in society” (Simonović, et al., 2011: 90). One must not forget that right to sport represents a human right (Andonović, 2017: 143), so violence on sport events could be viewed as a violation of human right.

The rising concern of the Council of Europe led to the adoption of the Recommendation number R(84)8 in 1984 (Council of Europe, 1984). The authors of this Recommendation, which was actually the first counter-hooliganism text adopted at the European level, rested for the first time upon the idea that football crowd disorder was a serious public order problem the control of which required the introduction of specific measures. Though non-binding, “the provisions of the Recommendation number R (84) 8 played an important role in the shaping of future counter-hooliganism policies because they were to a great extent reproduced in the 1985 European Convention on Spectator Violence and Misbehavior at Sports Events and in particular at Football Matches” (European Convention on Spectator Violence and Misbehavior at Sports Events and in particular at Football Matches (Council of Europe, 1985; Tsoukala, 2009b).

Undoubtedly, the Heysel disaster has had a deep impact on the perception of football hooliganism in Europe (Šuput, 2010: 236; Marković, 2016: 135). As a result, football crowds have been the subject of increased regulation across Europe, and even though in many states the problem of football-crowd violence and disorder appears to be on the wane, restrictions of both a criminal and civil nature are



becoming tighter (Coenen et al., 2016: 2; Simonović et al., 2011: 90). The images of the dying victims made the danger from the phenomenon so obvious that it was universally accepted that its control should rely on an appropriate legal framework. It was to signify the beginning of a new period, from 1985 to late 1990s, in the course of which football hooliganism acquired, to some extent, a normative specificity. It is not surprising that this normative specificity first appeared at the European level, in the adoption of the 1985 European Convention on Spectator Violence and Misbehavior at Sports Events and in particular at Football Matches. Set up in the aftermath of the Heysel disaster, the European Convention did not promote any genuinely new policy as it essentially reproduced the main provisions of the aforementioned Recommendation (Tsoukala, 2007: 4).

This “broad compliance with the provisions of the aforementioned Recommendation should not however shift our attention away from the fact that, from then onwards, this situational prevention policy was conceived in radically new terms. First, in seeking to respond to the ways football hooliganism manifested itself, the temporal and spatial limits of this policy were extended to cover, on the one hand, the periods before and after fixtures and, on the other, places outside of football stadia. Second, and most importantly, in defining its target population, this policy went well beyond the ‘known troublemakers’, which were the sole target of the Recommendation number R (84) 8, to cover ‘potential troublemakers and people under the influence of alcohol or drugs’” (Tsoukala, 2009b). The Convention concerns sporting events in general and is not limited to football matches. The Convention focuses on three core areas, prevention, international cooperation and the identification and treatment of those who misbehave at sporting events. Since 1998, the compliance of the member states with the Convention is actively monitored (Coenen et al., 2016: 8).

At present, 41 of Council of Europe member states have signed and ratified the Convention (Coenen et al., 2016: 8). The goal of the Convention is the prevention and control of spectator violence and to ensure the safety of spectators at sporting events (Council of Europe: 2014). The drafters of this Convention emphasized the importance of domestic and international cooperation among all competent state and civilian actors and proposed the introduction of a situational prevention policy, centering on the segregation and surveillance of football spectators (Tsoukala, 2009b). When assessed about twenty-five years later, the impact of the European Convention on the shaping of European counter-hooliganism policies is undoubtedly distinguishable beneath the many different domestic penalizations of football-related violent behavior, and most obvious in the development of domestic and international police cooperation” (Tsoukala, 2009b).

The circumstances of the cases

Within the Council of Europe, the European Court of Human Rights also contributes to the fight against hooliganism, making a clear distinction between permissible and impermissible state intervention in the fight against hooliganism. This is especially the case with the so-called preventive police detention ordered by the police against potential rioters. Regardless of the fact that this institute does not exist in Serbia, it is interesting to look at two examples, the Case of Ostendorf v. Germany and the Case of S., V. and A. v. Denmark, and see how far the state intervention could go. At the same time, it provides useful guidelines and boundaries for both the legislator and state bodies who are dealing and who will deal with this specific problem.

In the Ostendorf v. Germany Case (for more detail see Herz, 2017) the detainee was a supporter of FC Werder Bremen (Case Ostendorf v. Germany, 2013), who had been registered by the Bremen police in a database on persons prepared to use violence in the context of sports events. Furthermore, he was considered to have been involved in eight different incidents in the context of football games during



the period of 7 years (Case Ostendorf v. Germany, 2013). The applicant had further been identified by the Bremen police as a “gang leader” of hooligans from Bremen. The police searched the members of the group and seized a mouth protection device and several pairs of gloves filled with quartz sand were found on members of the group other than the applicant (Case Ostendorf v. Germany, 2013). In order to prevent the violence, on that specific day, the group of fans from Bremen, already placed under police surveillance, went to a pub (Case Ostendorf v. Germany, 2013).

It is important to notice that all the members of the group were ordered by the police to stay with their group of football supporters with whom they had travelled from Bremen and who were to be escorted by the police to the football stadium. They were further warned in a clear manner of the consequences of their failure to comply with that order, as the police had announced that any person leaving the group would be arrested (Case Ostendorf v. Germany, 2013). Under section 32 of the Hessian Public Security and Order Act, regulating custody, the police may take a person into custody if this is indispensable in order to prevent the imminent commission or continuation of a criminal or regulatory offence of considerable importance to the general public (Case Ostendorf v. Germany, 2013). Section 35 of the Hessian Public Security and Order Act, on the duration of deprivation of liberty, provides that a detained person shall be released as soon as the grounds for the police measure cease to exist or twenty-four hours at the latest after his or her arrest if he or she has not been brought before a judge before that lapse of time (Case Ostendorf v. Germany, 2013). Notwithstanding, when the group left the pub, the police noted that the applicant was no longer with them. He was then found by the police in a locked cubicle in the ladies’ bathroom of the pub. He was arrested by the police there at approximately 2.30 p.m. and brought to the police station close to the football stadium and his mobile phone was seized. The applicant was released at approximately 6.30 p.m. on the same day, one hour after the football match had ended. His mobile phone was returned to him on 15 April 2004 (Case Ostendorf v. Germany, 2013).

In the *S., V. and A. v. Denmark* Case, on Saturday, 10 October 2009 there was a football match between Denmark and Sweden in Copenhagen. Before the match, the police had received intelligence reports of intentions among various club factions from Denmark and Sweden to instigate hooligan brawls. The applicants were detained under section 5(3) of the Police Act, by virtue of which the police may detain a person in order to avert any risk of disturbance of public order or any danger to the safety of individuals or public security, where the less intrusive measures set out in the Act are found to be inadequate to avert a risk or danger. Such detention must be as short and moderate as possible and should not extend beyond six hours where possible (Case *S., V. and A v. Denmark*, 2018). As a matter of fact, the applicants were never charged, no criminal investigation or proceedings were initiated against them, and their detention was not effected for the purpose of bringing them before a judge. On the contrary, they were detained purely for preventive purposes. Under domestic law, such a detention could as a general rule last no longer than six hours and would only be justified for as long as it was necessary to avert the risk or danger in question (Case *S., V. and A v. Denmark*, 2018).

Lawfulness

Where the “lawfulness” of detention is an issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Namely, it is clear that, in general, the right to liberty and security of a person is of the utmost importance in a democratic society in terms of Article 5 of the Convention (Case *S., V. and A v. Denmark*, 2018). The mentioned article is very important, because it is related to the basic principle of modern criminal law - the presumption



of innocence (Radosavljević, 2010: 319). In particular, this means that the person to be remanded in custody must be treated with particular caution, bearing in mind the presumption of innocence. Otherwise, the state on whose behalf the public authorities took the detainee in custody may be obliged to compensate the person who was unjustifiably detained for the damage caused.

However, before there is any talk of a well-founded or unfounded detention order, it is necessary in one country to fulfil one general precondition, and that is the quality of the law, on the basis of which detention is ordered. What exactly does that mean? It is necessary for domestic law to meet the standards of the so-called “True laws” established by the Convention. More precisely, it is a standard that requires the precision of the law, which allows a person to predict the consequences of his actions or inactions. It is also understandable that, in addition to precision, which in any case enables predictability of the law, the existence of clear procedural provisions is required. These are, first of all, those norms concerning the conditions for ordering detention, its extension, and the deadlines concerning the duration of detention, with the existence of an effective legal remedy by which the applicant can challenge the “legality” and “length” of his detention. We can notice that these preconditions which are in the competence of the legislator and which the legislator, above all, should take into account. However, when a valid law is adopted, it is up to the persons ordering detention to take a sensitive approach to ensure that detention is applied in accordance with its purpose (Stanić, 2019: 273).

Absence of arbitrariness

Of course, the lawfulness is only the first step, but at this specific point, we have to underline the fact that lawfulness *per se* is not enough. There are a few more important things to pay attention to. In other words, compliance with the law is not enough and we need something more than that. In addition, any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (Case S., V. and A v. Denmark, 2018). Yet the question that arises here is: what does arbitrariness mean?

First of all, the European Court of Human Right has developed, in its case-law, a general principle that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (Case S., V. and A v. Denmark, 2018). Therefore, it is necessary that the regulations should be applied, having in mind the purposes for which they were adopted, avoiding any abuse during their application. Secondly, in the Court’s view, the “obligation” which somebody failed to satisfy, must be very closely elaborated on. As a consequence, it is necessary, prior to concluding that a person has failed to satisfy his obligation, to make sure that the person concerned was made aware of the specific act which he or she was to refrain from committing and that the person showed himself or herself not to be willing to refrain from so doing (Case Ostendorf v. Germany, 2013; Guide on Article 5 of the Convention – Right to liberty and security, 2020: 19). Thirdly, detention must also be aimed at or directly contribute to securing the fulfilment of that obligation and not be punitive in character (Case Ostendorf v. Germany, 2013; Guide on Article 5 of the Convention – Right to liberty and security, 2020: 19; Case S., V. and A v. Denmark, 2018).

In the Ostendorf case, the applicant was ordered by the police, prior to his arrest, to stay with the group of football supporters with whom he had travelled from Bremen and who were to be escorted by the police to the football stadium. He was further warned in a clear manner of the consequences of his failure to comply with that order as the police had announced that any person leaving the group would be arrested (Case Ostendorf v. Germany, 2013; Guide on Article 5 of the Convention – Right to liberty and security, 2020: 19). Based on his behavior, the domestic authorities could reasonably



conclude that the applicant, by trying to evade police surveillance and by entering into contact with a hooligan from Frankfurt am Main, was attempting to arrange a hooligan brawl. By taking these clear and positive steps or preparatory acts, the applicant had shown that he was not willing to comply with his obligation to keep the peace by refraining from arranging and/or participating in the altercation at issue (Case Ostendorf v. Germany, 2013).

In the *S., V. and A v. Denmark* Case the Court noted that section 5(1) and (3) of the Police Act did not specify any criminal acts which the applicants should refrain from committing. As a matter of fact, it appears to be like that only at the very first sight. If we look a little bit deeper, we can draw another conclusion. However, in the context of hooligan brawls and the related risk of disturbance of public order and danger to the safety of individuals and public security, there are a number of provisions on punishable acts in the Danish law specifying which criminal acts the applicant should refrain from committing. These included the obligation not to instigate fights or (Case *S., V. and A v. Denmark*, 2018) exhibit any other form of violent behavior likely to disturb public order, as provided in section 3 of the Executive Order on Police Measures to Maintain Law and Order as well as in Article 134a of the Penal Code (Case *S., V. and A v. Denmark*, 2018).

In accordance with the aforementioned, the Court considers “that the findings of fact reached by the domestic courts in the present case should be able to satisfy an objective observer that, at the time when the applicants were detained, the police had every reason to believe that they were organizing a brawl between football hooligans in the center of Copenhagen in the hours before, during or after the football match on 10 October 2009, which could have caused considerable danger to the safety of the many peaceful football supporters and uninvolved third parties present at the relevant time. Indeed, as it was considered that the second and third applicants and the first applicant respectively had been prevented from instigating or continuing to instigate a brawl between football hooligans at Amager-torv Square at 3.50 p.m. and in front of Tivoli Gardens at 4.45 p.m. on the relevant day, the place and time could be very precisely described. Likewise, the victims could be identified as the public present at those places at the times mentioned” (Case *S., V. and A v. Denmark*, 2018).

Necessity

Preventive detention cannot reasonably be considered necessary unless a proper balance is struck between the importance of preventing an imminent risk of an offence being committed and the importance of the right to liberty in a democratic society (Case *Ostendorf v. Germany*, 2013; Guide on Article 5 of the Convention – Right to liberty and security, 2020: 19; Case *S., V. and A v. Denmark*, 2018). The nature of the obligation arising from the relevant legislation including its underlying object and purpose, the person being detained and the particular (Case *Ostendorf v. Germany*, 2013) circumstances leading to the detention as well as its duration are relevant factors in drawing such a balance (Case *Ostendorf v. Germany*, 2013; Guide on Article 5 of the Convention – Right to liberty and security, 2020: 19). Another said, the offence in question has to be of a serious nature, entailing danger to life and limb or significant material damage (Case *Ostendorf v. Germany*, 2013; Guide on Article 5 of the Convention – Right to liberty and security, 2020: 21; Case *S., V. and A v. Denmark*, 2018). Given the degree of interference with the right to liberty, it is quite logical that it is necessary in each case to explain the reasons for which detention is ordered. Precisely because of the mentioned importance, it is one of the elements that the European Court of Human Rights takes into account when assessing whether detention is determined in accordance with the provisions of the Convention. Thus, it is considered that it is not enough to order detention only on the basis of some usual formulations, which



are repeated, which are “laconic”, but a meticulous explanation of every reason for ordering detention is required, in order to fully embody the idea of human rights (Stanić, 2019: 274).

When we sum it up, first of all, we should emphasize that the authorities must show convincingly that the person concerned would in all likelihood have been involved in the concrete and specific offence, had its commission not been prevented by the detention (Guide on Article 5 of the Convention – Right to liberty and security, 2020: 21). Therefore, it is necessary to establish beyond doubt that the person in question will be in breach of a specific obligation and that this can only be barred by preventive detention. Secondly, the necessity test requires that measures less severe than detention have to be considered and found to be insufficient to safeguard the individual or public interest. Thirdly, the duration of the detention is also a very important factor and in accordance with the law, detention should cease as soon as the risk passes (Mikić, 12-13; Case Ostendorf v. Germany, 2013; Guide on Article 5 of the Convention – Right to liberty and security, 2020: 21; Case S., V. and A v. Denmark, 2018).

In the Ostendorf case, the question arises whether the applicant’s detention was “reasonably considered necessary” and only served the (preventive) purpose of ensuring that he would not commit offences in an imminent hooligan altercation. The Court “observes that according to the police’s experience hooligan brawls are usually arranged in advance, but do not take place inside or close to the football stadium. The Court is therefore satisfied that seizing the applicant’s telephone alone and possibly separating him from his group, would not have been sufficient in itself to prevent him from arranging a brawl since he could have had access to another telephone.” (Case Ostendorf v. Germany, 2013) As for the duration of his detention of some four hours, the Court considers that the applicant had not been detained for longer than was necessary in order to prevent him from taking further steps towards organising a hooligan brawl in or in the vicinity of Frankfurt am Main on 10 April 2004 (Case Ostendorf v. Germany, 2013). Moreover, the detention lasted some four hours, and only until approximately one hour after the end of the football match, when the football supporters had left the stadium and its surroundings and a brawl had thus become unlikely. The police could reasonably consider in these circumstances that the applicant’s detention for a relatively short duration was necessary to prevent him from committing an offence (Case Ostendorf v. Germany, 2013). He was to be released once the risk of such an altercation had ceased to exist and his detention was thus not aimed at bringing him before a judge in the context of a pre-trial detention and at committing him to a criminal trial (Case Ostendorf v. Germany, 2013).

In the S., V. and A v. Denmark Case the Court sees no reason to question the findings of fact reached by the Danish courts, because the European Court of human rights has consistently emphasized the fact that the national authorities are better placed than the international judge to evaluate the evidence in a particular case (Case S., V. and A v. Denmark, 2018). The applicants were detained because the police had sufficient reason to believe that they had incited others to start a fight with Swedish football fans in the center of Copenhagen, and thus caused a concrete and imminent risk of disturbance of public order or of danger to the safety of individuals or public security. It discerns no evidence of bad faith or neglect on the part of the national authorities. On the contrary, the police’s intention was, first, to talk to the various groups in an attempt to calm them down. After the first fights, it was planned that only the instigators should be detained. The assessment in this regard was to be made on the basis of the actual behavior of those concerned, and the premise was that no persons would be detained who did not act as instigators. However, all three applicants were considered instigators. Because the Court considers that the findings of fact reached by the domestic courts in the present case should be able to satisfy an objective observer that, at the time when the applicants were detained, the police had every reason to believe that they were organizing a brawl between football hooligans in the center of Copenhagen. These findings were neither arbitrary nor manifestly unreasonable, and the Court lacks any



objective reasons, let alone cogent evidence, to call into question the assessment made at the national level (Case S., V. and A v. Denmark, 2018). It appears that in their implementation of the plan the police continuously assessed the situation. It appears from an examination of the domestic proceedings that the police took due account of the six-hour limit in their strategy. The continuing violence made it necessary to exceed the six-hour limit. The police started releasing detainees after midnight, when the situation in central Copenhagen had calmed down and the resumption of any fighting was deemed unlikely (Case S., V. and A v. Denmark, 2018).

Suggestions for Serbia

The measure of preventive detention, for the purpose of preventing persons prone to violence to undertake violent acts, and to possibly commit a criminal offense, does not exist in the positive legal order of the Republic of Serbia. Most similar to this measure is the institute provided for in Article 88 of the Law on Police (Official Gazette of RS, no. 6/2016, 24/2018 and 87/2018), which concerns the possibility for a police officer to restrict, in accordance with the law, temporarily, and for a maximum of eight hours from the decision, the freedom of movement of a person in a certain area or facility in order to prevent committing crimes or misdemeanors. According to Art. 17 of the Law on Prevention of Violence and Misconduct at Sports Events (Official Gazette of RS, no. 67/2003, 101/2005, 90/2007, 72/2009, 111/2009, 104/2013 and 87/2018) the Ministry of Interior may order all necessary measures to prevent violence and misconduct of spectators during sports events, and in particular to prevent arrival at the venue of a sports event or prohibit entry to a sports event, i.e. remove from the sports facility a person from whose behavior it can be concluded that the person is prone to violent and inappropriate behavior.

Also, according to Art. 89b of the Criminal Code (Official Gazette of RS, no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019) the court may impose, as addition to judgment, a security measure prohibiting the perpetrator of a criminal offense from attending certain sports events, when this is necessary for the protection of public safety. The measure shall be executed in such a way that the perpetrator of the criminal offense is obliged to personally report to an official in the regional police administration, i.e. police station, in the area where the perpetrators also find themselves staying in their premises during a sports event. The similar measure can be found in Law on Misdemeanours (Official Gazette of RS, no. 65/2013, 13/2016, 98/2016 - Constitutional court decision, 91/2019 and 91/2019 - other. law.). Anyway, we have to keep in mind that these measures, when we talk about their legal nature, are not the same with the preventive police detention. These measures are only imposed as a result of concrete criminal law procedure in a concrete case, together with the judgment. The preventive police detention is something different, imposed by the police, after careful assessment, in order to prevent disturbances of public order and peace.

First, having in mind the existing regulatory framework and the fact that it seems that existing framework can be used to adequately respond to fan violence, it seems quite logical that it is expedient to wait and see if this approach can come true. If we conclude that it is not enough, then we should take some measures, for example, preventive detention. Secondly, in the case of the introduction of preventive police detention, which would be applied to registered rioters in football stadiums, it seems to us that the framework provided by the European Court of Human Rights would be of great benefit to the legislator. Particular care should be taken here, because through this institute, the preparatory actions of the persons in question are actually assessed, which could lead to a kind of abuse. Therefore, the police should first unequivocally determine that a disturbance of public order and peace is



being prepared, specifically, that is, that the person should not act on precisely determined orders of police officers, which are aimed at preventing violence. The actions of the police should be reasoned in writing, and based on a comprehensive and complete determination of the facts and assessment of the situation in order to apply this measure. Certainly, an appropriate remedy should be available to the persons to whom it applies. Last but by no means least, it is undoubtedly important that the duration of this measure be limited in time, either for a certain period of a couple of hours or for a couple of hours before or after the match.

CONCLUSION

The good practices highlighted in this paper indicate that the prevention of football hooliganism depends on the efforts of a variety of institutions and agents. The prevention of football hooliganism requires a concerted and continuous response (Spaaij, 2005: 8). Over the past decades a large number of international, national and local initiatives have been carried out to advance the prevention of football hooliganism (Spaaij, 2005: 4). Among others, the initiatives which have been taken within the Council of Europe are of the utmost importance. Within this, the institute of preventive police detention looks like very interesting and useful tool which helps in achieving proclaimed standards. Regardless of its importance, we should be aware that there is a thin border between lawfulness and unlawfulness when this measure is applied. Therefore, it was interesting to see how this problem is resolved by the European Court of Human Rights.

Fans can be detained for the duration of a football match on the basis of stringent preconditions. However, for such a measure to be imposed there needs to be an individual risk assessment (Coenen, et. al, 2016: 70). We have seen that in the practice of the European Court of Human Rights, certain conditions are required, in order for preventive police detention to be in accordance with the principles of the rule of law. Therefore, in addition to the existence of a legal basis, the presence of lawfulness and the absence of arbitrariness and the existence of the necessity for such a measure are required. In fact, the key word is the measure, i.e. the need for a balance between respect for the rights and freedoms of the person to whom the measure applies and the need to preserve public order and peace, i.e. lives, health, and property. In that intention, caution is necessary and it is essential to have a good assessment of the specific situation and to understand this measure as the last resort. Only in that case will the proclaimed goals be fully achieved in accordance with rule of law postulates.

REFERENCES

1. Andonović, S. (2017). Pravo na sport kao ljudsko pravo. *Strani pravni život*, 61(3), 131-144.
2. (Council of Europe (2014) For a Safe and Tolerant Sport, Downloaded July 12, 2020, <https://edoc.coe.int/en/violence-in-sport/5911-for-a-safe-and-tolerant-sport-the-european-convention-on-spectator-violence.html>)
3. (Council of Europe, European Court of Human Rights (2020) Guide on Article 5 of the Convention – Right to liberty and security, Downloaded July 12, 2020, https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf)
4. Guilianotti, R. (Ed.). (2013). *Football, violence and social identity*. Routledge.



5. Hajsok, D. (2018). *Pravni okvir preveniranja i sankcioniranja protupravnih ponašanja na sportskim natjecanjima* (Final thesis, Polytechnic of Međumurje in Čakovec.).
6. Herz, C. (2017). The impact of the European Convention on Human rights (ECHR) on preventive police detention as governed by German law. *Журнал Сибирского федерального университета. Гуманитарные науки*, 10(6).
7. Kasalo-Banić, F. (2016). *Nogometni huliganizam i reakcija društva: politika Margaret Thatcher iz suvremene perspektive* (Graduate thesis, University of Zagreb. Faculty of Kinesiology.).
8. Marković, S. (2016). Mera bezbednosti 'Zabrana prisustvovanja određenim sportskim priredbama u praksi policije i pravosuđa. *NBP: Journal of criminalistics and law= Žurnal za kriminalistiku i pravo*, 21(1), 133-160.
9. Mikić, V. Sudska kontrola dužine trajanja pritvora u Republici Srbiji u svetlosti primene člana 5 Evropske konvencije o zaštiti ljudskih prava i osnovnih sloboda, Fondacija centar za javno pravo, Downloaded July 12, 2020, http://www.fcjp.ba/templates/ja_avian_ii_d/images/green/Vladimir_Mikic4.pdf.
10. Nikač, Ž., Milošević, M. (2010). Borba protiv nasilja i nedoličnog ponašanja na sportskim manifestacijama, sa osvrtom na ulogu MUP RS, *Nasilnički kriminal: etiologija, fenomenologija, prevencija*, 233-255.
11. Radosavljević, T. (2010). Stav 3 člana 5 Evropske Konvencije za zaštitu ljudskih prava i osnovnih sloboda. *Strani pravni život*, (2), 317-334.
12. Simonović, B., Đurđević, Z., & Otašević, B. (2011). Violence at sporting events in the Republic of Serbia: National and international standards prevention and repression. *Nauka, bezbednost, policija*, 16(3), 81-98.
13. Spaaij, R. (2005). The prevention of football hooliganism: A transnational perspective. In *Actas del X Congreso Internacional de Historia del Deporte*. Seville: CESH (pp. 1-10).
14. Stanić, M. (2019). Neophodnost određivanja pritvora i naknada štete u praksi Evropskog suda za ljudska prava-smernice za Srbiju. *Prouzrokovanje štete, naknada štete i osiguranje*, 269-281.
15. Šuput, D. (2010). European countries laws regulating fight against spectator violence in sport events. *Strani pravni život*, 54(1), 233-263.
16. Tošić, I. Novaković, O. (2018). Vrste osiguranja u sportu (regulative u domaćem i uporednom pravu). *Prouzrokovanje štete, naknada štete i osiguranje*, 517-531.
17. Tsoukala, A. (2009b). Combating football crowd disorder at the European level: an ongoing institutionalisation of the control of deviance. *ESLJ*, 7, lv.
18. Tsoukala, A. (2009a). *Football hooliganism in Europe: Security and civil liberties in the balance*. Springer.
19. Tsoukala, A., Pearson, G., & Coenen, P. T. (Eds.). (2016). *Legal Responses to Football Hooliganism in Europe*. The Hague: TMC Asser Press.
20. Tsoukala, A. (2007). Security Policies and Human Rights in European Football Stadia. CEPS CHALLENGE Paper, No. 5, 7 March 2007.

LEGAL SOURCES

1. (Council of Europe (1950) European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf)
2. (Council of Europe (1985) European Convention on Spectator Violence and Misbehavior at Sports Events and in particular at Football Matches CETS No. 120, <https://rm.coe.int/168007a086>)
3. Criminal Code, Official Gazette of RS, no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.
4. European Court of Human Rights, Case Ostendorf v. Germany, Application no. 15598/08, 7 March 2013, Strasbourg
5. European Court of Human Rights, Case S., V. and A v. Denmark, Application nos. 35553/12, 36678/12 and 36711/12, 22 October 2018, Strasbourg
6. Law on Misdemeanours, Official Gazette of RS, no. 65/2013, 13/2016, 98/2016 - Constitutional court decision, 91/2019 and 91/2019 - other. law.
7. Law on Police, Official Gazette of RS, no. 6/2016, 24/2018 and 87/2018.
8. Law on Prevention of Violence and Misconduct at Sports Events, Official Gazette of RS, no. 67/2003, 101/2005 - another law, 90/2007, 72/2009 - another law, 111/2009, 104/2013 - another law and 87/2018.

