Sports and safety inside and outside the stadium

**Strict Liability of Football Clubs for their Supporters?**

AIJA Annual Congress
Prague 2014
Strict Liability of Football Clubs for their Supporters?

Heysel Stadium Disaster

- English clubs were banned from UEFA competitions for 5 years (Liverpool: 6 years)
- It was not Liverpool’s fault (“only“ the fault of their supporters)
- And: It was definitely not the fault of the other English clubs
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Questions:

- Are sports associations allowed to punish clubs in the absence of any fault or negligence?

- What do you think, Manchester United would say nowadays if they were banned nowadays from UEFA competitions for several years?
UEFA Disciplinary Regulations:

Article 8 - Responsibility
A member association or club that is bound by a rule of conduct laid down in UEFA’s Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence.
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DFB Rechts- und Verfahrensordnung:

§ 9a:
Clubs … are responsible … for the conduct of their players, officials, …, supporters, spectators, …

But: Are these provisions valid?
Duties of the clubs

- Home Teams as the organizers of the event
  - Security measures
  - Support of the police (who pays?)
  - Germany: no pyrotechnics allowed in the stadium

- Away teams (and of course home teams, too):
  - Try to control their supporters
  - Awareness campaigns
  - Contact to supporter groups
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Supporters nowadays (I)

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Supporters nowadays (II)

Frankfurt Ultras vs. UEFA - forbidden choreo in last Euro League game
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CAS, 20.04.2007, Feyenoord Rotterdam ./ UEFA

- EuroLeague game in Nancy
  - Riot of supporters without tickets outside the stadium
  - Police decided to let them in
  - After the first goal riot inside the stadium

- Disqualification of Feyenoord and 100.000 CHF fine confirmed:
  - Strict Liability for supporters according to UEFA rules
  - Validity of clause not even discussed
  - Wise decision of UEFA, not to define „supporter“
  - Anyone who can be deemed as a supporter is a supporter
German decisions (I)

- 1959: Federal Court of Justice
  - Associations may impose „small“ sanctions in the absence of any fault or negligence

- 1972: Federal Court of Justice
  - Associations may impose sanctions on their members for conduct of third persons if there is a provision in the articles of the associations
  - Principle of self-government of associations
German decisions (II)

- 1967: Federal Constitutional Court
  - Constitutional right not to be sanctioned in the absence of any fault or negligence

- 2000: Court of Appeals Frankfurt – Dieter Baumann
  - If occupational freedom is involved, associations may not punish their members in the absence of any fault or negligence
  - But: burden of proof may be shifted partly
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German decisions (III)

- DFB Ständiges Schiedsgericht, 14.05.2013 – Dynamo Dresden
  - Repeated riots of Dresden supporters in the DFB cup competition games
  - Ban from DFB cup competition for next season confirmed
  - § 9a DFB Rechts- und Verfahrensordnung is valid
  - Occupational freedom is involved
  - but: the ban is not a sanction but a reasonable security measure

- Court of Appeals Frankfurt dismissed action for an injunction on procedural grounds
Conclusions

- If clubs are punished for the conduct of their supporters, they should
  - avoid the CAS
  - try to argue that it was not their fault and that they are not responsible for their supporters.
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Game over! Thank you for your attention!

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