

# Around the World

## Switzerland

### SWITZERLAND: PREVENTIVE MEASURES AGAINST VIOLENCE AT SPORTS EVENTS /CONSTITUTIONAL RIGHTS

*Discussion of Decision 1C  
\_370/2013 dated October  
14, 2013 by the Swiss  
Federal Supreme Court*

☞ Constitutional rights; Crime prevention; Football matches; Football spectators; Hooliganism; Police powers and duties; Switzerland; Violent crime

#### Facts

In March 2010, at the occasion of attending a football game between two teams of the Swiss National League A, X (23 years) tried to bring a pyrotechnical object into the stadium. This was discovered, and X subsequently was found guilty for attempted breach of the Federal Act on Explosive Material. Moreover, a one-year ban to access certain areas before, during and after football games was imposed on him in May 2010.

In December 2010, based on a request of the local police of X's place of residence, the Federal Office of Police imposed a temporary travel restriction upon X. X was banned from travelling into any neighbouring country of Switzerland between December 6 and 9, 2010. The background of this travel restriction was the fact that the football club which X favours played a Champions League game in Munich on December 8, 2010, and that the local police thought it likely that X might commit acts of violence if he attended said football game.

X appealed this temporary travel restriction to the Federal Administrative Court and, after having lost said appeal, to the Federal Supreme Court.

#### Held

The Federal Supreme Court (FSC) confirmed that the temporary travel restriction imposed on X did not breach any of X's constitutional or other rights.

X had argued that the local police's allegation according to which he was likely to commit acts of violence if he attended the football game in Munich was unfounded. He disputed that the police reports on his affiliation with a violent fan group and on former incidents of violence were true. However, the FSC did not find his denial of the content of the police reports convincing and based its decision on the facts as presented in said reports.

Further, X had argued that the prerequisites for a temporary travel restriction were not given. The FSC analysed whether this was the case. There are two such prerequisites which are to be fulfilled cumulatively. First, the relevant person needs to be imposed with a valid ban to access certain areas before, during and after certain sports events due to violent acts committed. The FSC confirmed that this was the case with regard to X; his attempt to bring a pyrotechnical object into a football stadium has to be qualified as a danger to public security which in turn is, by Federal Ordinance, qualified as an act of violence. Secondly, the relevant person needs to be likely to commit acts of violence if he/she attended a certain sports event. This likeliness may be assumed, again based on a Federal Ordinance, if the relevant person has either previously committed acts of violence in Switzerland or abroad or if he/she is affiliated with an organisation whose members have previously committed acts of violence in Switzerland or abroad. Again, the FSC confirmed that this was the case with regard to X; his criminal conviction regarding the March 2010 incident as well as the

police reports on his affiliation with a violent fan group and on former incidents of violence were sufficient reason for the assumption that he was likely to commit further acts of violence if travelling to Munich.

Moreover, X had argued that his constitutional freedom of movement was impaired in a disproportional and inadequate manner by the temporary travel restriction. The FSC confirmed that his freedom of movement was impaired. However, the impairment of a constitutional right is allowed by law if there is a legal basis for such impairment, if there is a public interest for such impairment, and, cumulatively, if the impairment is proportionate, i.e. if it is suitable and necessary in order to pursue the public interest at stake. The FSC analysed these three elements and confirmed that they were given in the case at hand. There is a legal basis for such a temporary travel restriction, and the purpose of said restriction, i.e. to prevent acts of violence, certainly is of a public interest. Further, the temporary travel restriction was limited to three days as well as to Switzerland's neighbouring countries. This was, according to the FSC, just and reasonable and, as no milder measure seemed promising, proportionate.

Lastly, X had argued that his constitutional right to a fair trial was breached considering that the appeal proceedings before the Federal Administrative Court had taken 26 months. With this argument, he prevailed. The FSC confirmed that the case at hand was not a difficult case and that there was no justifiable reason for such duration of appeal proceedings. This breach of rights is remedied if the FSC confirms the existence of such breach; however, this does not lead to the nullity or annulment of the temporary travel restriction.

## Discussion

In Switzerland, there was a fervent public discussion on preventive measures against violence at sports events in the past few years. While many political forces of the left and right wing tried to prevent any legal basis for such preventive measures, the political middle mostly argued that such protective measures were necessary in order to face and fight the growing tendency of violation which was emerging not only generally in society but increasingly amongst sports events spectators.

The Federal Act on Measures to Protect the Internal Security and the respective Federal Ordinance do not only provide a legal basis for a temporary travel restriction as discussed in the case at hand but also for an electronic database in which all persons which have been committing acts of violence at sports events are registered, if certain circumstances are given. It also offers other preventive measures which, however, are not specifically aimed at preventing violence at sports events but rather any danger to internal security at all.

Additional preventive measures which are applicable for the prevention of violence at sports events can be found in the so-called "Hooligan Concordat" of 2010, a multilateral treaty between all Swiss cantons, such measures being the aforementioned possibility to impose a temporary ban to access certain areas before, during and after sports events, or, as a stronger measure, the possibility to impose a duty to personally report to a police station before, during and after sports events or even, as a last resort, the possibility to arrest someone preventively for a maximum of 24 hours before, during and after sports events.

The "Hooligan Concordat" has been tightened recently; however, not all Swiss cantons have (yet?) joined this concordat. While e.g. a public referendum held in the Canton of Zurich found an 85 per cent majority in favour of this tightened concordat in the summer of 2013, the parliaments of both Cantons of Basle are expected not even to discuss this tightened concordat (which means that they will not join it). In other cantons, such as the Canton of Berne, a public referendum is still pending. It looks like the

new preventive measures which are contained in the tightened concordat, namely the much-criticized new mandatory requirement for authorisation of all top league football and ice hockey games by the authorities (which, inter alia, includes the authorities' possibility to impose a ban on alcohol in stadiums), might not be applicable all over Switzerland.

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