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## The Dark Heart of Eastern Europe: Applying the British Model to Football-Related Violence and Racism

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# **THE DARK HEART OF EASTERN EUROPE: APPLYING THE BRITISH MODEL TO FOOTBALL-RELATED VIOLENCE AND RACISM**

*Matthew R. Watson*<sup>\*</sup>

## ABSTRACT

*In the summer of 2012, Poland and Ukraine co-hosted the 2012 UEFA European Football Championship. A week before kickoff, BBC's investigative journalism program, Panorama, aired a documentary highlighting pervasive violence, racism and anti-Semitism in the football stadiums in both these nations. Violent and racist hooliganism is not a new phenomenon in Europe, but the images and interviews were shocking as hundreds of thousands fans from all over Europe prepared to travel to Eastern Europe for Euro 2012.*

*This Article explores the history of European football hooliganism and its proliferation in Eastern Europe. The rise of media coverage after Euro 2012, heightened by instances of racial abuse and violence during the 2012–2013 season, make the issues presented in this Article all the more applicable. Using Britain's response to hooliganism as a model, this Article proposes that Poland and Ukraine adopt similar measures to curb the growing problem of violent and racist football fans. Specifically this Article argues for the adoption of: (1) travel bans and banning orders for fans convicted of football-related criminal offenses; (2) strict speech restrictions to criminalize hate speech and speech that incites violence; and (3) modern policing tactics to lessen tensions between law enforcement and football supporters and better control large crowds. By implementing these three measures, the Polish and Ukrainian governments would be better equipped to handle crowd disturbances and punish individuals convicted of football-related violence and racism.*

*Part I presents: (1) A brief history of hooliganism in Britain and Eastern Europe; (2) European football's current governing structure responsible for*

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*policing and monitoring football-related violence; (3) the relevant penal code provisions applicable to football-related violence and racism in Poland and Ukraine; and (4) the British legal framework established in response to organized and violent hooligan groups. Part II explains travel bans and banning orders for individuals convicted of football-related violence and argues for implementing bans to prevent offenders from attending and causing disorder at football matches. Part III discusses regulation of hate speech and speech intended to incite violence at football matches and argues for implementation of statutes based on Scottish legislation to fight the increase of racism and anti-Semitism at football grounds. Finally, Part IV argues for developing modern policing tactics concentrated on relieving tensions and conflict between police and supporters.*

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## INTRODUCTION

*I lived in Łódź and I was shocked. I remember on the main street there was ah, a sign “Jews to the gas” and the people that wrote weren’t the people that really, it didn’t upset me so [sic] idea that people wrote it, the idea that 1000s of people walked past that every day and let that happen was very disturbing to me.*

—Jonathan Ornstein<sup>1</sup>

In June 2012, sixteen European national football teams met in Poland and Ukraine to contest that year’s UEFA European Football Championships (Euro 2012).<sup>2</sup> However, the most-discussed news story in the lead up to Euro 2012 had nothing to do with the on-field performance of teams or players; instead, the attention was on violent and racist fan behavior. A week prior to the opening match of the tournament, the British Broadcasting Corporation (BBC) aired a special episode of *Panorama*, *Euro 2012: Stadiums of Hate*,<sup>3</sup> exposing the epidemic problem of racist, anti-Semitic abuse by football hooligans in the two host nations, and the increase in football-related violence from this abuse. *Panorama*’s correspondent, Chris Rogers, experienced first-hand “the dark heart” of Eastern European football and captured it for the world to see.<sup>4</sup>

2007, Poland and Ukraine were selected as co-hosts of Euro 2012. This was a huge coup for Eastern European football and seen as a great opportunity for Ukraine to showcase itself to the rest of Europe as European Union membership spreads east.<sup>5</sup> Some within football’s hierarchy viewed Euro 2012 as a test of Eastern Europe’s ability to successfully host a major football

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<sup>1</sup> *Panorama*, *Euro 2012: Stadiums of Hate* (BBC television broadcast June 13, 2012) [hereinafter *Euro 2012: Stadiums of Hate*]. Ornstein is an American living in Poland and the director of the Jewish Cultural Centre in Kraków. *Id.*

<sup>2</sup> Rep. of the UEFA President and Exec. Comm. 2011/12, (XXXVII) Ordinary Cong., July 1, 2011–June 30, 2012, at 2, 4 (May 24, 2013); see *Euro 2012: Stadiums of Hate*, *supra* note 1.

<sup>3</sup> *Id.* *Panorama* is the BBC’s current affairs and documentary program famous for its investigative journalism. See, e.g., *50 Facts About Panorama*, BBC (Oct. 29, 2003, 5:07 PM), [http://news.bbc.co.uk/2/hi/programmes/panorama/50th\\_birthday/3198149.stm](http://news.bbc.co.uk/2/hi/programmes/panorama/50th_birthday/3198149.stm).

<sup>4</sup> *Euro 2012: Stadiums of Hate*, *supra* note 1. Rogers was told that to see “the dark heart of Polish football,” he had to visit the Łódź derby between ŁKS and Widzew. *Id.* The term “derby” is an intra-city rivalry match. See 4 THE OXFORD ENGLISH DICTIONARY 496 (2d ed. 1989) (“A match between two teams from the same district.”).

<sup>5</sup> *Poland and Ukraine Host Euro 2012*, BBC (Apr. 18, 2007, 9:41 AM), <http://news.bbc.co.uk/sport2/hi/football/europe/6562527.stm>. A policy at the time for the new UEFA President, Michel Platini, was to address the balance of power in European football. *Id.*

tournament,<sup>6</sup> which was especially made important after *Fédération Internationale de Football Association* (FIFA) awarded Russia with the hosting duties for the 2018 World Cup.<sup>7</sup>

From Roger's month spent in Poland and Ukraine, the footage reveals the extent of vile abuse directed at both players and fans.<sup>8</sup> The derogatory chants and songs are choreographed and sung *en masse* by whole sections of stadiums, but more detrimental to society are the physical acts of violence shown in the documentary.

In Łódź, Poland, a city where the Nazis killed almost its entire 230,000 Jewish residents during World War II,<sup>9</sup> football supporters use the word "Jew" and Jewish imagery as an insult to attack opposing teams.<sup>10</sup> Supporters of the club ŁKS greeted players from their crosstown rivals, Widzew, with a not-so-subtle anti-Semitic cheer: "Anyone not jumping is a Jew. Death to the Jewish whores!"<sup>11</sup> Outside the stadium, ŁKS fans clashed with riot police, forcing the BBC crew to take cover as supporters started to throw explosives in the direction of the cameras.<sup>12</sup>

In the Ukrainian capital of Kiev, during a Ukrainian Premier League match between Arsenal Kiev and Karpaty Lviv, Arsenal fans made monkey noises every time black players touched the ball and abused a black player's family as they left the stadium.<sup>13</sup> And, at a match in Kharkiv, Ukraine, nearly 2000 Metalist fans gave the Nazi salute while chanting "Seig Heil."<sup>14</sup> That alone is

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<sup>6</sup> See *Euro 2012: Stadium of Hate*, *supra* note 1. BBC News asked UEFA for an official response to the *Panorama* documentary, and UEFA issued a written response stating: "UEFA Euro 2012 brings the spotlight on the host countries and clearly creates an opportunity to address and confront such societal issues." *Id.*; see also *Sol Campbell Warns Fans to Stay Away From Euro 2012*, BBC (May 28, 2012), <http://www.bbc.co.uk/news/uk-18192375>.

<sup>7</sup> *England Miss Out to Russia in 2018 World Cup Vote*, BBC SPORT-FOOTBALL (Dec. 2, 2010), <http://news.bbc.co.uk/sport2/hi/football/9250585.stm>. Russia was selected to host in 2018, beating out England, a joint bid from Belgium and the Netherlands, and another joint bid from Portugal and Spain. See *Russia and Qatar to Host 2018 and 2022 FIFA World Cups, Respectively*, FIFA (Dec. 2, 2010), <http://www.fifa.com/worldcup/russia2018/organisation/media/newsid=1344971/index.html>.

<sup>8</sup> *Euro 2012: Stadium of Hate*, *supra* note 1.

<sup>9</sup> Rebecca Weiner, *The Virtual Jewish History Tour: Łódź*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/jsourc/vjw/Lodz.html> (last visited Oct. 5, 2013).

<sup>10</sup> *Euro 2012: Stadiums of Hate*, *supra* note 1. The meaning of the word "Jew" to some Polish football fans now means "someone who deserves to be defeated or even killed." *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

shocking, but what really shocked former England defender Sol Campbell was the lack of any response by police or stadium stewards to the behavior of the supporters.<sup>15</sup> Rogers interviewed Kharkiv's police colonel, Volodymyr Kovrygin, who claimed that Kharkiv and Ukraine had not had any incidences of racism at football matches and explained that the BBC cameras merely captured Metalist supporters pointing to their opponents.<sup>16</sup>

The documentary received criticism by some who thought it was sensationalist journalism and biased,<sup>17</sup> but the footage nonetheless captures behavior that paints an ugly picture of some factions within Polish and Ukrainian football. Empirical evidence supports what the documentary showed. For instance, a 2011 study found there were 133 instances of serious hate crimes in Polish stadiums from September 2009 to March 2011.<sup>18</sup>

In the defining moment of the documentary, Rogers asked Sol Campbell whether he recommends English families travel to Poland and Ukraine for Euro 2012.<sup>19</sup> Campbell sent a stern warning to those watching, responding: "No chance. Stay at home[;] watch it on TV. Don't even risk it, because you could end up and come back in a coffin."<sup>20</sup>

The problem of racist and anti-Semitic speech leading to violence is a growing societal problem in Eastern Europe and one not merely confined to football. From September 2009 to March 2011, Ukraine had fifty-one reported incidents of race related attacks.<sup>21</sup> Nevertheless, racism leading to instances of

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* ("No, it's not a Nazi salute, they are sort of pointing at their rivals, other fans, so it looked like they were pointing right arms at other fans, sort of to get their attention. It's not the Nazi salute." (quoting Col. Volodymyr Kovrygin, Police Chief)).

<sup>17</sup> K.T., *An Ugly Spectre: Euro 2012 is Overshadowed by Accusations of Racism and Anti-Semitism*, THE ECONOMIST: EASTERN APPROACHES (June 6, 2012, 11:24 PM), <http://www.economist.com/blogs/easternapproaches/2012/06/ugly-spectre>.

<sup>18</sup> E. EUR. MONITORING CTR., HATEFUL: MONITORING RACISM, DISCRIMINATION AND HATE CRIME IN POLISH AND UKRAINIAN FOOTBALL 2009–2011, at 9 (Rafał Pankowski ed., 2011) ("[D]ocument[ing] incidents of a racist and xenophobic nature, and those characterised by the involvement of far-right and neo-nazi activists, within football environments."); see also *Euro 2012: Stadiums of Hate*, *supra* note 1.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* During his playing career, Campbell was a victim of racial abuse from fans. *Id.*

<sup>21</sup> E. EUR. MONITORING CTR., *supra* note 18, at 8; see also HUMAN RIGHTS FIRST, COMBATING XENOPHOBIC VIOLENCE: A FRAMEWORK FOR ACTION 24 (2011), [http://www.humanrightsfirst.org/wp-content/uploads/pdf/UNHCR\\_Blueprint.pdf/](http://www.humanrightsfirst.org/wp-content/uploads/pdf/UNHCR_Blueprint.pdf/).

violence seems to disproportionately take hold within the fanatical supporter groups of football clubs.<sup>22</sup>

Historically, there has been a symbiotic relationship between football hooligans and right-wing groups in Europe.<sup>23</sup> These groups go to football stadiums to find and enlist aggressive and violent young men because football hooliganism emerged as a means for fans to defend the honor and symbolic meaning of their club's name.<sup>24</sup> Linking up with extremist groups gives football hooligans another outlet for their violent tendencies and a chance to blow off steam.<sup>25</sup> Most teams in Eastern Europe already have a hardcore set of supporters, called "ultras," who create noise and an intimidating atmosphere inside the stadiums.<sup>26</sup> Some "ultra" groups adopt radical ideologies, like ultra-nationalism, neo-Nazism, and fascism, which further blurs the lines between football hooligans and extremist groups.<sup>27</sup>

This Article proposes that the Polish and Ukrainian governments, struggling to control football hooliganism, adopt the methods pioneered in the United Kingdom. Specifically, three measures are necessary to rid football of these issues: (1) instituting banning orders and travel bans for individuals convicted of football-related crimes to prevent them from attending matches and from traveling with their club or national team; (2) further criminalization of hate speech and inciting violence by establishing severe penalties for offenders; and (3) modernizing policing tactics, to no longer rely on deploying paramilitary-style police at matches, and create better coordination among clubs, law enforcement, and the judiciary to monitor and track known or suspected hooligans.

Eastern European countries cannot rely on football's governing structure to clean up fan behavior. In the past, the *Union des Associations Européennes de Football* (UEFA) talked tough about standing up to racism but did little else.<sup>28</sup>

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<sup>22</sup> See RICHARD HAYNES, *THE FOOTBALL IMAGINATION: THE RISE OF FOOTBALL FANZINE CULTURE* 131–42 (1995).

<sup>23</sup> Ann-Cathrine Jungar, *Right Wing Extremism. Conceived Football Hooliganism*, BALTIC WORLD.S (June 27, 2012), <http://balticworlds.com/conceived-football-hooliganism/>.

<sup>24</sup> Ronnie Michael Booker, Jr., *Orange Alba: The Civil Religion of Loyalism in the Southwestern Lowlands of Scotland Since 1798*, at 151 (Aug. 2010) (unpublished Ph.D. dissertation, University of Tennessee), [http://trace.tennessee.edu/cgi/viewcontent.cgi?article=1823&context=utk\\_graddiss](http://trace.tennessee.edu/cgi/viewcontent.cgi?article=1823&context=utk_graddiss).

<sup>25</sup> *Id.*

<sup>26</sup> *Euro 2012: Stadium of Hate*, *supra* note 1.

<sup>27</sup> See Alberto Testa & Gary Armstrong, *World and Actions: Italian Ultras and Neo-Fascism*, 14 SOC. IDENTITIES 473, 483 (2008).

<sup>28</sup> See *Euro 2012: Stadium of Hate*, *supra* note 1; *infra* Part I.A.

In response to BBC's request for a comment regarding the *Panorama* program, UEFA said it was making funds available for set up "inclusivity zones" in the Euro 2012 host cities open to all fans as safe spaces to watch the matches.<sup>29</sup> This response does nothing to rid stadiums of racism; instead it appeases individuals engaged in anti-social behavior—telling fans that to be safe from abuse, they should not watch the match from the stadium.

Therefore, it falls to national governments to proactively confront these pervasive societal issues: one of the most fundamental roles of government is to protect the safety of its citizens. The United Kingdom's case law is especially "instructive because the U.K. Courts have created more common law dealing with sport," especially fan behavior, "[than] other European" countries dealing with this issue.<sup>30</sup>

The Football Spectator Act of 1989 (1989 Act) exemplified Parliament's commitment to ridding the national game of "the English disease."<sup>31</sup> The 1989 Act established judicially-imposed travel bans and banning orders for any individual convicted of a football-related crime, and subsequent amendments and statutes have extended and strengthened the 1989 Act.<sup>32</sup>

Another example of strict regulation of hate speech is the Offensive Behaviour at Football and Threatening Communications (Scotland) Act of 2012 (Threatening Communications Act), which criminalizes hate speech and inciting religious violence with respect to football.<sup>33</sup>

Further, implementing less-threatening policing tactics and better-organized means of crowd control serves to reduce tensions between groups of supporters and the police, and to keep likely agitators apart.<sup>34</sup> Increasingly, European nations are coordinating and sharing information on hooligan

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<sup>29</sup> *Euro 2012: Stadium of Hate*, *supra* note 1. The documentarians asked UEFA president, Michel Platini, for an interview; however, he declined because he was too busy. *Id.*

<sup>30</sup> Alexander Wynn, *Red Card Racism: Using the Court of Arbitration for Sport (CAS) to Prevent and Punish Racist Conduct Perpetrated By Fans Attending European Soccer Games*, 13 CARDOZO J. CONFLICT RESOL. 313, 334, 341 (2011) (contextualizing UEFA's governing authority within statutory and case law from the E.U. and the United Kingdom).

<sup>31</sup> Football Spectators Act, 1989, c. 37, *amended by* Football (Offences and Disorder) Act, 1999, c.21, and Football (Disorder) Act, 2000, c. 25 (U.K.); Ian Blackshaw, 'The English Disease'—Taking Football Hooliganism in England, INT'L SPORTS L.J., 2005, at 90.

<sup>32</sup> Football Spectators Act, 1989, §§ 14–15; *see also* Blackshaw, *supra* note 31.

<sup>33</sup> Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 2012, (A.S.P. 1).

<sup>34</sup> Micahel Rosander & Gunilla Guva, *Keeping the Peace—Police Behaviour at a Mass Event*, 9 J. INVESTIGATIVE PSYCHOL. & OFFENDER PROFILING 52, 53 (2012).



activity, especially with respect to big international matches and tournaments.<sup>35</sup> Developing strong communication links between law enforcement agencies, both within and across national borders, is crucial for enforcing travel bans and banning orders. The three measures proposed in this Article are necessary steps for nations facing serious problems with anti-social behavior at football stadiums.

It is incorrect to assert that Poland and Ukraine do not have any laws applicable to football-related disorder.<sup>36</sup> Acts of violence, disorder, hooliganism, and hate crimes are already criminalized in Poland and Ukraine,<sup>37</sup> but this Article argues that without developing a legal framework to more specifically deal with football-related crime and enforcing these laws to the fullest extent, Poland and Ukraine may never stop the growth of football-related violence, disorder, and racism overtaking their stadiums.

Part I examines the history of football-related violence in the United Kingdom and Eastern Europe, the current structure in place to police football in Europe, and the legal frameworks currently in place in the United Kingdom, Poland, and Ukraine. Part II argues for the implementation of travel bans and banning orders, analyzing British parliamentary material with respect to football-related disorder, and applying these statutes to the penal codes in Poland and Ukraine. Part III argues that Poland and Ukraine should enact stricter speech restrictions on football supporters committing acts of hate speech and inciting racial and religious violence at football matches, and sentence offenders with severe penalties. Finally, Part IV details more effective tactics for controlling fans and large crowds and explains why the policing tactics currently used in Eastern Europe only serve to create more violence.

## I. FOOTBALL HOOLIGANISM: THE “ENGLISH DISEASE”

*Football policing is a real British success story. Where hooliganism was once described as ‘the English disease,’ we now set an example for others to follow. This year’s record low arrest figures follow on*

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<sup>35</sup> Ramon Spaaij, *Football Hooliganism as a Transnational Phenomenon: Past and Present Analysis: A Critique-More Specificity and Less Generality*, 24 INT’L J. HIST. SPORT 411 (2007).

<sup>36</sup> See *infra* Part 1.D.

<sup>37</sup> *Id.* at 103.

*from last year's successful World Cup in South Africa, where nobody from this country was arrested.*

—Lord Henley, U.K. Crime Prevention Minister<sup>38</sup>

This Part provides the necessary background for this discussion of football-related violence by analyzing five important topics that will set up the proposals presented later in the article. Subpart A examines the governing structure of European football, breaking it into two main categories of organizations responsible for enforcing the laws, rules, and regulations in football; sports governing bodies and governmental entities. Each category is made up of different levels, from the local up to the transnational level. Subpart B looks at the history of British hooliganism and some of the major events that led to the sweeping reforms initiated by the British government to rid football of the blight of hooliganism. Subpart C focuses on how hooliganism spread to continental Europe and has come to be entrenched in the Polish and Ukrainian football cultures. Subpart D introduces relevant statutory provisions from the Polish and Ukrainian criminal codes and points to aspects where these laws currently lack strength and effectiveness. Finally, Subpart E introduces the methods developed in the United Kingdom to address hooliganism and introduces the three measures this article argues Poland and Ukraine should adopt to combat their football-related crime problems.

#### *A. Governing Structure in European Football*

A major hurdle in the fight against racism and violence in European football is the governing structure in place to create rules and police the sport. The governing bodies for football are organized in a top-down pyramid with each level delegating certain duties to the level below it.<sup>39</sup> Additionally, many different entities have the ability to assert their authority to control certain aspects of the sport.<sup>40</sup>

The two categories responsible for ensuring that fans, players, coaches and officials are safe and punishing offenders are the various football governing bodies and governmental agencies.<sup>41</sup> This Subpart examines the roles each group assumes in the fight against racism and violence in football, ultimately

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<sup>38</sup> Press Release, Home Office, Football Disorder at Record Low (Dec. 23, 2011), <https://www.gov.uk/government/news/football-disorder-at-record-low>.

<sup>39</sup> JOSÉ LUIS ARNAUT, INDEPENDENT EUROPEAN SPORTS REVIEW 57–58 (2006).

<sup>40</sup> Michael Ryan, *The European Union and Fan Racism in European Soccer Stadiums: The Time Has Come for Action*, 20 FLA. J. INT'L L. 245, 248 (2008).

<sup>41</sup> *Id.* at 249, 251.

concluding that criminalizing behavior at the national level is the best way to fix the problem.<sup>42</sup>

### 1. *Football Governing Bodies*

FIFA serves as the top level of football's internal governance structure that regulates the sport globally.<sup>43</sup> FIFA delegates much of its enforcement authority to regional "confederations."<sup>44</sup> UEFA is the European confederation recognized by FIFA.<sup>45</sup> UEFA membership is "open to national football associations situated in the continent of Europe, based in a country which is recognised by the United Nations as an independent state, and which are responsible for the organisation and implementation of football-related matters" in their country.<sup>46</sup> UEFA is empowered to "promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason."<sup>47</sup> UEFA's Disciplinary Regulations hold member associations responsible for the conduct of its "members, players, officials or supporters . . . even if the Member Association concerned can prove the absence of any fault or negligence."<sup>48</sup> Regarding conduct that "insults the human dignity of a person or group of persons by whatever means, including on the grounds of skin colour, race, religion or ethnic origin," the regulations allow UEFA to impose suspensions, fines, stadium closures, forfeiture of matches, deduction of points, and disqualification from competitions.<sup>49</sup> Additionally, UEFA has

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<sup>42</sup> See *id.* at 248, 249, 251–52 (providing an overview of the governing structure of European Football and their efforts to combat "spectator racism"); Wynn, *supra* note 30, at 314–24 (arguing that UEFA should divest its authority and vest jurisdiction over such complaints to the Court of Arbitration for Sport).

<sup>43</sup> FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES, art. 2(d), at 6 (2013); see also Wynn, *supra* note 30, at 318. Under Article 58 of the FIFA Disciplinary Code, anyone who "offends the dignity of a person or group of persons through contemptuous, discriminatory or denigratory words or actions concerning race, colour, language, religion or origin shall be suspended for at least five matches. . . . [A] stadium ban and a fine of at least CHF 20,000 shall be imposed." FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, FIFA DISCIPLINARY CODE, art. 58, at 33 (2011).

<sup>44</sup> FIFA STATUTES, *supra* note 43, arts. 17–18, at 15, art. 20, at 17–19.

<sup>45</sup> *Id.* art. 20(1)(c), at 17.

<sup>46</sup> UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL, UEFA STATUTES, art. 5(1), at 3 (2012).

<sup>47</sup> *Id.* art. 2(b), at 1; see also Ryan, *supra* note 40, at 249.

<sup>48</sup> UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL, UEFA DISCIPLINARY REGULATIONS, art. 8, at 4 (2013).

<sup>49</sup> *Id.* art. 14, at 7–8.

the “sole jurisdiction to organise or abolish international competitions in Europe.”<sup>50</sup>

Each individual UEFA member association oversees footballing matters within their own national borders.<sup>51</sup> Each national association is responsible for organizing league and cup competitions, registering its clubs, players and referees, establishing national rules, and promoting the sport’s growth by training coaches and young players.<sup>52</sup> Each member association also has a structure of professional and amateur leagues where clubs compete and, if they finish atop the standings in the country’s highest division, can qualify to compete in lucrative continental tournaments sponsored by UEFA.<sup>53</sup>

Qualifying for these European-wide club tournaments is crucial for the financial well-being of clubs, especially as the American appetite for viewing top-level football competitions grows. The Champions League Final in recent years has surpassed the Super Bowl as the most watched annual sporting event: 167 million viewers tuned in for the 2012 final, while 108 million watched that year’s Super Bowl.<sup>54</sup> UEFA distributed a total of €904.6 million to clubs

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<sup>50</sup> UEFA STATUTES, *supra* note 40, art. 49, at 21–22. Some of these include annual club competitions, like the lucrative Champions League and the slightly less prestigious Europa League. *Id.* 49(a)–(b), at 22.

<sup>51</sup> UEFA STATUTES, *supra* note 40, art. 5(1), at 3; Trevor Brice, *Labor Pains on the Playing Field: Why Taking a Page from Europe’s Playbook Could Help the United States*, 20 UCLA ENT. L. REV. 49, 64–65 (2013). Despite the United Kingdom being a single sovereign nation for government purposes, each of the four “home nations” in the United Kingdom maintains its own national football association. THE FOOTBALL ASS’N, RULES AND REGULATIONS OF THE ASSOCIATION: SEASON 2013–2014, at 5 (2013) (“The FA has the privilege and the responsibility of overseeing football in England as a whole.”); THE SCOTTISH FOOTBALL ASS’N LTD., ARTICLES OF ASSOCIATION OF THE SCOTTISH FOOTBALL ASSOCIATION LIMITED arts. 3–5 (2013) (outlining The Scottish FA and its Membership); THE FOOTBALL ASS’N OF WALES, FAW RULES 2012/2013, §§ A(1)–(10) (2012) (outlining the Football Association of Wales (“FAW”) composition); IRISH FOOTBALL ASS’N LTD., ARTICLES OF ASSOCIATION art. 3, at 6 (2013) (defining membership in and the rules and regulations of football governance in Northern Ireland). These “four national associations” established the International Football Association Board (“IFAB”) in June 1886, which is the body that determines the Laws of the Game of association football. Int’l Football Assoc. Bd., *Rules of the International Football Association Board*, London, Eng., (June 2, 1886); *see also* James A.H. Catton, *Football Association*, in 2 THE ENCYCLOPÆDIA BRITANNICA: A DICTIONARY OF ARTS, SCIENCES, LITERATURE & GENERAL INFORMATION 65, 65–67 (13th. ed. 1926).

<sup>52</sup> UEFA STATUTES, *supra* note 40, art. 5(1), at 3. Member associations “are responsible for the organisation and implementation of football-related matters in the territory of their country.” ARNAUT, *supra* note 39, at 57

<sup>53</sup> UEFA STATUTES, *supra* note 40, art. 7(e), at 4.

<sup>54</sup> DeMarco Williams, *Inside the UEFA Champions League Final in London*, FORBES: TRAVEL GUIDE (May 23, 2013, 9:13 AM), <http://www.forbes.com/sites/forbestravelguide/2013/05/23/inside-the-uefa-champions-league-final-in-london/>; *accord* Brice, *supra* note 51, 65–69 (analyzing the impact of professional sport on the economy using European football and the American football).

participating in the 2012–13 Champions League competition.<sup>55</sup> Clubs looking to recruit new players and grow to or maintain high levels of play must qualify and advance in these European competitions to fund their ambitions, and there is a growing list of clubs who have attempted to overachieve and have failed, causing financial ruin.<sup>56</sup> English clubs Leeds United and Portsmouth are prime examples of clubs failing to reach the ambitious goal to grow its European profile, causing the club to free-fall within its own country's football hierarchy.<sup>57</sup>

The lowest rung of football's governing pyramid is the individual club level.<sup>58</sup> UEFA's Disciplinary Regulations hold the member associations and each club responsible for the actions of fans and players.<sup>59</sup> Clubs are the primary entity responsible for ensuring safety at matches.<sup>60</sup> However, it is common for zealous supporter groups to exert such an influence on their club that they effectively control club policy. In December 2012, the largest fan group of the Russian club Zenit St. Petersburg issued a public letter demanding that black and gay players not be allowed to play for the club.<sup>61</sup> Until the summer of 2012, when Zenit signed Brazilian international striker Hulk and Belgian international midfielder Axel Witsel, Zenit was the only Russian Premier League club to not have a black player on its roster.<sup>62</sup> The lack of ability to control powerful supporter groups is a major reason why policing football-related violence and racism must come from above the club level.

A critical issue in football's governing organizations fight against racism is determining which level of the structure is responsible for levying punishment against clubs and their fans, players, coaches or officials who violate anti-

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<sup>55</sup> *Clubs Benefit from Champions League Revenue*, UEFA (Jun. 23, 2013, 4:14 PM), <http://www.uefa.com/uefa/management/finance/news/newsid=1975196.html> (distributing revenue for performance bonuses, television revenue and participation).

<sup>56</sup> See David Ornstein, *Pompey pays for Chasing the Dream*, BBC SPORT (Feb. 11, 2009), <http://news.bbc.co.uk/sport2/hi/football/teams/p/portsmouth/7879229.stm>.

<sup>57</sup> Neil Moxley, *FA Cup Winners to League Two in Just Five Years . . . Pompey's Shocking Fall From Grace, Pompey's Shocking Fall From Grace*, DAILY MAIL ONLINE (Apr. 17, 2013, 8:42 AM), <http://www.dailymail.co.uk/sport/football/article-2310464/From-FA-Cup-winners-League-Two-The-decline-Portsmouth.html>.

<sup>58</sup> See ARNAUT, *supra* note 39, at 57.

<sup>59</sup> UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL, REGULATIONS OF THE UEFA CHAMPIONS LEAGUE 2012–15 CYCLE, arts. 6.02–.03, at 8 (2012).

<sup>60</sup> See *id.*

<sup>61</sup> *Fan Group Calls on Russian Club Zenit Not to Sign Black Players*, CNN (Dec. 17, 2012), <http://edition.cnn.com/2012/12/17/sport/football/football-racism-zenit-russia/index.html>.

<sup>62</sup> *Zenit St. Petersburg Fans Want Black and Gay Players Excluded*, BBC (Dec. 18, 2012), <http://www.bbc.co.uk/sport/0/football/20770678>.

racism rules. There is a division between the rhetoric of UEFA and FIFA and their actual willingness to hand down meaningful punishments.<sup>63</sup> These groups claim to maintain a “zero tolerance” stance on racism<sup>64</sup> but are often criticized for merely threatening punishment, as well as the overall weakness of its sanctions, leading to speculation from players that the organization is not serious about ridding the sport of racism.<sup>65</sup>

UEFA has the power to fine clubs, force team to play matches “behind closed doors,” forfeit matches, disqualify and or dock points from offending teams.<sup>66</sup> Despite the broad authority UEFA has to enforce its anti-racism regulations, it rarely acts strongly enough to alter the behavior of offending supporters permanently.<sup>67</sup>

In the first three months of 2013, the UEFA Control and Disciplinary Body fined the Italian club S.S. Lazio (“Lazio”) €90,000 and ordered the club to play three UEFA competition matches “behind closed doors” for igniting and throwing fireworks, racist behavior, blocked evacuation routes and

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<sup>63</sup> Ryan, *supra* note 40, at 253 (“[M]uch like UEFA and national associations, clubs’ efforts to eliminate spectator racism have been largely ineffective.”).

<sup>64</sup> UEFA, European Football United Against Racism, UEFA Cong. Res. 2013 (IX), 37th Ord. Cong., Annex (May 24, 2013); FIFA, Resolution on the Fight Against Racism and Discrimination, FIFA Cong. Res. 11.2, 63d Cong., at 2–3 (May 30–31, 2013); *see also* Press Release, UEFA Exec. Comm., UEFA Executive Committee Declaration Against Racism (Dec. 15, 2005), *available at* <http://www.uefa.org/newsfiles/379953.pdf>.

<sup>65</sup> On Oct. 16, 2012, Danny Rose, a black player on England’s U-21 team, was the main victim of Serbian fans monkey chants, but stones, coins and chairs were also thrown onto the playing surface. Adam Shergold & Dominic King, *Ban These Racists! Cameron Joins Rose to Call for Serbian Thugs to be Kicked Out (But UEFA Don’t Even Mention It on Their Website . . .)*, DAILY MAIL ONLINE (Oct. 17, 2012, 4:16 AM), <http://www.dailymail.co.uk/sport/football/article-2218953/Serbia-v-England-Under-21s-Danny-Rose-called-Serbia-ban-mass-brawl-racist-abuse-ruins-night.html>. Clarke Carlisle, currently playing for York City, noted that the Serbian FA was fined a mere £16,000 when Serbian supporters abused England U-21’s black players in 2007, yet UEFA fined Danish international Nicklas Bendtner £80,000 for exposing an unsanctioned advertisement under his shorts after scoring a goal at Euro 2012. *Id.*

<sup>66</sup> UEFA DISCIPLINARY REGULATIONS, *supra* note 48, art. 6, at 3.

<sup>67</sup> Wynn, *supra* note 30, at 322.

[We] have to wake up. We have to open our eyes. . . . [W]e live in this time . . . It’s 2013 . . . we still have to like live with these things. And I’m sad and angry . . . I have to be the one who walks off the field. There are like so many people, the FIFA or whatever they can do something against it. So they should—they should wake up and do it.

*Connect the World: Kevin-Prince Boateng, AC Milan Walk Off Field After Racial Abuse* (CNN television broadcast Jan. 4, 2013), *available at* LEXIS, News Transcripts (interviewing Kevin-Prince Boateng on the time he and his AC Milan teammates walked off the field during a friendly with Pro Patria after opposing fans made monkey chants.).

passageways, and lack of stewarding.<sup>68</sup> But UEFA's punishment for this incident would only affect Lazio in European competition and would have no bearing on any of Lazio's domestic competitions.<sup>69</sup> Because punishment handed down by UEFA has no bearing on matches played within the member associations' control, and vice versa, punishments do not attain the maximum possible effect on clubs by banning fans from domestic league matches if clubs do not reach European cup competitions.

Individual league associations have the ability to punish offending clubs and players, but, not all levy fines and punishment strong enough to correct racist and violent behavior.<sup>70</sup> Clubs can ban specific fans who commit anti-social behavior from their stadium, but such punishments only apply to that club or stadium.

In response to criticisms and growing media attention to racism in football, UEFA has approved stricter sanctions in the most recent edition of the UEFA Disciplinary Regulation, which is in line with UEFA's "zero-tolerance" policy against racism.<sup>71</sup> Also, at the 2013 UEFA Congress, the member associations unanimously approved an 11-point resolution calling on all members to take strict measures to rid European football of racism.<sup>72</sup> In February 2013, FIFA's Strategic Committee created a FIFA Task Force Against Racism and Discrimination, headed by Jeffrey Webb, Vice President of FIFA and President of CONCACAF.<sup>73</sup> In 2013, FIFA member associations approved stricter

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<sup>68</sup> S.S. Lazio, Dec. of 11 Mar. 2013, 2 Case L. CDB & App. Body. 60, 61, 70 (UEFA App. Body 2013), [http://www.uefa.org/MultimediaFiles/Download/uefaorg/UEFACompDisCases/01/99/00/41/1990041\\_DOWNLOAD.pdf](http://www.uefa.org/MultimediaFiles/Download/uefaorg/UEFACompDisCases/01/99/00/41/1990041_DOWNLOAD.pdf). During the 2012/2013 UEFA Europa League season Lazio: (1) was fined €50,000 on January 24 and ordered to play one match "behind closed doors" by the Control and Disciplinary Body (CDB); and (2) fined €40,000 and ordered to play its next two "UEFA competition matches behind closed doors" on February 27 by the CDB, which was upheld on appeal. *Id.* at 60–63, 71.

<sup>69</sup> See, e.g., Fenerbahçe SK, Dec. of 11 Mar. 2013, 2 Case L. CDB & App. Body 72, 77 (UEFA App. Body, 2013), [http://www.uefa.org/MultimediaFiles/Download/uefaorg/UEFACompDisCases/01/99/00/41/1990041\\_DOWNLOAD.pdf](http://www.uefa.org/MultimediaFiles/Download/uefaorg/UEFACompDisCases/01/99/00/41/1990041_DOWNLOAD.pdf) (banning fans from Fenerbahçe's next home game in UEFA competitions but not domestic league competition for actions during both European and Turkish league matches).

<sup>70</sup> See, e.g., Jame Coomasmy & Adrian Goldberg, *Racism in Russian Football: Zenit Fans Let Side Down: Japanese Striker Quits Slovakian Club Over Racism*, FOXSPORTS.COM (Jan. 30 2013, 10:15 AM), <http://msn.foxsports.com/foxsoccer/world/story/japanese-striker-yuki-nakamura-quits-slovakian-club-over-racism-013013>. But see *Liverpool Fan Banned for Racist Abuse of Patrice Evra*, GUARDIAN (June 22, 2012, 11:36 PM); *Lazio Hit by Terrace Ban for Serie A Opener*, CNN (Aug. 19, 2013), <http://edition.cnn.com/2013/08/19/sport/football/football-lazio-fans-banned-racist/index.html>.

<sup>71</sup> UEFA DISCIPLINARY REGULATIONS, *supra* note 48.

<sup>72</sup> European Football United Against Racism, UEFA Cong. Res. 2013, *supra* note 64.

<sup>73</sup> Media Release, Fédération Internationale de Football Association, Executive Committee Strongly Backs Further Governance Reforms and Strengthens Fight Against Racism and Discrimination (Mar. 21, 2013), available at <http://www.fifa.com/aboutfifa/organisation/bodies/news/newsid=2039605/index.html>; see

punishments for racism in football, including the possible relegation of a club for serious offences.<sup>74</sup>

The individual member associations of UEFA also have authority to punish clubs registered in their nation, and each league and club can also punish supporters and players who engage in the prohibited activities.<sup>75</sup> But as of the present time, football's governing bodies have not backed up their "zero-tolerance" talk and taken the necessary action to make a stand against racism in football.

## 2. *Governmental Entities*

In addition to football's internal governing structure, three levels of governments possess the requisite authority to govern issues related to discrimination in sports: supranational, national and local.<sup>76</sup> The EU and the Council of Europe have legislation and treaties concerning human rights and discrimination with a small subset of football-centric laws.<sup>77</sup> The EU is the most influential supranational body in Europe, with the competency to enact binding legislation that can have "direct effect" on all 28 member states and their citizens.<sup>78</sup> The EU only recently became involved in footballing matters, but since the 1990s, it has shown a willingness to use its legislative and judicial power to address problems in sports.<sup>79</sup>

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*also Strategic Committee Submits Anti-racism Proposals*, FIFA (Feb. 15, 2013), <http://www.fifa.com/aboutfifa/organisation/news/newsid=2013288/index.html>. CONCACAF is the Confederation of North, Central American and Caribbean Association Football. See FIFA STATUTES, *supra* note 43, art. 20, at 17.

<sup>74</sup> FIFA Resolution on the Fight Against Racism and Discrimination, FIFA Cong. Res. 11.2, *supra* note 64, 2–3.

<sup>75</sup> Wynn, *supra* note 30, at 322.

<sup>76</sup> ARNAUT, *supra* note 40, at 35–37.

<sup>77</sup> European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches, Aug. 19, 1985, E.T.S. No. 120, 1496 U.N.T.S. 125; Ryan, *supra* note 39, at 255.

<sup>78</sup> Consolidated Version of the Treaty on European Union, Oct. 26, 2012, 2012 O.J. (C 326) 1 [hereinafter TEU]; Case 26/62, N.V. Algemene Transport-en Expeditie Onderneming van Gend en Loos v. Nederlandse Administratie der Belastingen, 1963 E.C.R. 1, 12 (noting that the EU is a "new legal order" and establishing the principle of direct effect).

<sup>79</sup> See Ryan, *supra* note 39, at 253–59 (providing an overview of the EU's increasing involvement in sports issues, and noting that EU legislation related to racism in sports has become more formal over the last decade); see, e.g., Case C-415/93, Union Royale Belge des Societes de Football Ass'n ASBL v. Bosman, 1995 E.C.R. I-5040. Jean-Marc Bosman sued the Belgian football association, UEFA, and RFC Liege for the right to transfer freely after the expiration of his contract with Liege, challenging the transfer fee and quota systems in football at the time. *Id.*



The Treaty on the Functioning of the European Union (TFEU) gives the EU three types of “competences” in creating legislation applicable to its member states: exclusive, shared, and support competence.<sup>80</sup> Article 4 gives the EU shared competence in the areas of social policy and economic, social, and territorial cohesion.<sup>81</sup> Article 6 gives the EU “competence to carry out actions to support, coordinate or supplement the actions of the Member States” in “education, vocational training, youth and sport.”<sup>82</sup> Furthermore, an argument can be made that the Treaty gives the EU exclusive competence to “combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”<sup>83</sup>

These new provisions, established in the Treaty of Lisbon<sup>84</sup>, came into force in 2009. The European Commission declared: “sport has now become a field in which the EU can contribute . . . and encourage cooperation between the Member States.”<sup>85</sup> This gave the EU “‘soft-law’ competence” to encourage cooperation, support, and supplement actions of member states with respect to sport, education, and youth.<sup>86</sup>

However, because the EU lacked the authority to pass binding legislation in relation to sports until recently, it was up to each national government to enact legislation necessary to stop football-related disorder. This is at the heart of the issue of racism and violence in Eastern Europe: Many governments either do not have legislation to address the problem or fail to sufficiently enforce the laws in place.

Many European nations that previously faced hooliganism responded to violence and disorder by enacting tough legislation with enough teeth to stamp out these acts in stadiums, bars, the Internet, and other public spaces.<sup>87</sup>

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<sup>80</sup> Consolidated Version of the Treaty on the Functioning of the European Union art. 2, Oct. 26, 2012, 2012 O.J. (C 326) [hereinafter TFEU].

<sup>81</sup> *Id.* arts. 3–4.

<sup>82</sup> *Id.* art. 6.

<sup>83</sup> *Id.* art. 19.

<sup>84</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 6(2), Dec. 13, 2007, 2007 O.J. (C 306) 1, 13 [hereinafter Treaty of Lisbon].

<sup>85</sup> *Commission Staff Working Document, Sport and Free Movement, Accompanying Document to the Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Developing the European Dimension in Sport*, at 2, SEC (2011) 66 final (Jan. 18, 2011).

<sup>86</sup> TFEU, *supra* note 80, art. 165.

<sup>87</sup> Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 2012, (A.S.P. 1); Football Spectators Act, 1989, c. 37, *amended by* Football (Offences and Disorder) Act, 1999, c.21, *and* Football (Disorder) Act, 2000, c. 25 (U.K.); BUNDESGESETZ ÜBER MASSNAHMEN ZUR WAHRUNG DER INNEREN

National governments are in the best position to enact tough legislation, initiate criminal prosecutions against offenders, enforce civil penalties on clubs and supporters, police stadiums and other areas where racism and violence takes place, and monitor individuals or groups who commit acts of violence or racism by establishing national databases.<sup>88</sup>

In this regard, the United Kingdom best exemplifies the positive effects of passing legislation to comprehensively deal with acts of violence and racism committed by football supporters. In England, even star players are not immune from prosecution for engaging in racist behavior.<sup>89</sup> During the 2011–12 English Premier League season, John Terry, the captain of Chelsea FC and the English national team, was charged with racially-aggravated public disorder.<sup>90</sup> This criminal charge stemmed from his alleged on-field racial abuse of Queen’s Park Rangers player Anton Ferdinand.<sup>91</sup> This incident was a black eye for the sport, especially in England, but it illustrates how far football and public opinion has come in terms of the response to racism if one of the world’s biggest stars can be prosecuted for actions during a match.

Legislation passed at the national level is most effectively enforced at the regional and local level by law enforcement, private stadium security, and the individual football clubs.<sup>92</sup> The legislation provides a systematic framework applying uniformly to all spectators, whether they support an amateur team or top-division professional team. Local police work closely with private security firms and football clubs to set up procedures for implementing and enforcing the laws and maintaining crowd control and public safety.

Proper policing and crowd-control tactics are crucial in maintaining safety at matches. A study of crowd dynamics and psychology conducted at Euro 2004 in Portugal found that the non-paramilitary policing tactics implemented by Portuguese police in host cities contributed to a “relative absence of

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SICHERHEIT, LOI FÉDÉRALE INSTITUANT DES MESURES VISANT AU MAINTIEN DE LA SÛRETÉ INTÉRIEURE, LEGGE FEDERALE SULLE MISURE PER LA SALVAGUARDIA DELLA SICUREZZA INTERNA [BWIS, LMSI, LMSI] [FEDERAL ACT ON MEASURES TO SAFEGUARD INTERNAL SECURITY] Mar. 21, 1997, AS 1546, RO 1546, RU 1546 (1998) (Switz.).

<sup>88</sup> TEU, *supra* note 78, arts. 4–5.

<sup>89</sup> See, e.g., Daniel Taylor, *Football: Terry Quits With Broken Heart But He is No Victim: Defender Ends England Career Over FA Case*, OBSERVER (LONDON), Sept. 24, 2012, at S1.

<sup>90</sup> See *R v. Terry*, [2012] EWMC 12 (Magis. Ct.) 1 (Eng.).

<sup>91</sup> *Id.* at 2.

<sup>92</sup> See generally Rosander, *supra* note 34.

‘hooliganism.’”<sup>93</sup> Despite an estimated 150,000 England supporters travelling to Portugal for the tournament, and the prevailing view that when the English travel for football “it is inevitable there will be trouble,” only one England fan was arrested in a host city for a violent offense.<sup>94</sup>

Managing and policing crowds at matches is supported by developing networks for sharing information on known or suspected hooligans. This is traditionally carried out between local or regional law enforcement within a single nation; however, the EU has developed a continental network of police cooperation with respect to hooliganism.<sup>95</sup> Additionally, the Treaty of Lisbon has significantly expanded EU competences, which also expands the ability to facilitate policing of continent-wide events like international football matches.<sup>96</sup>

The growing involvement of the EU has led to great improvements in the exchange of information and law-enforcement coordination between EU members.<sup>97</sup> Member states now have the ability to quickly share information needed to implement policing strategies for large sporting events, which is especially important for events attended by large amounts of people traveling from abroad.<sup>98</sup>

### *B. The History of British Hooliganism*

The term “hooligan” likely originated from the Irish surname “Houlihan” in the 1890s,<sup>99</sup> but came into modern vernacular through media portrayals of football-related violence in the 1960s.<sup>100</sup> During the 1960s, British stadiums became public battleground for football supporters to prove their club’s

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<sup>93</sup> Clifford Stott et al, *Tackling Football Hooliganism: A Quantitative Study of Public Order, Policing and Crowd Psychology*, 14 PSYCHOL. PUB. POL’Y & L. 115, 115 (2008) (explaining that Euro 2004 is seen as one of the most successful tournaments held in Europe, in terms of security and safety).

<sup>94</sup> *Id.* at 117–18 (contrasting Euro 2004 with other recent international competitions where England participated, such as the 1998 World Cup in France, Euro 2000 in Belgium and at the 2006 World Cup in Germany).

<sup>95</sup> Council Resolution of 3 June 2010 Concerning a Handbook with Recommendations for International Police Cooperation and Measures to Prevent and Control Violence and Disturbances in Connection with Football Matches with an International Dimension, in Which at Least One Member State is Involved, 2010 O.J. (C 165) 1 (amending Council Resolution of 4 December 2006, 2006 O.J. (C 322) 1).

<sup>96</sup> Treaty of Lisbon, *supra* note 84, arts. 2–6.

<sup>97</sup> Council Resolution of 3 June 2010, Annex, 2010 O.J. (C 165) 1.

<sup>98</sup> *Id.*

<sup>99</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED 1089 (3d ed. 1971).

<sup>100</sup> Geoff Pearson, *Fig Fact-sheet Four: Hooliganism*, U. LIVERPOOL’S FOOTBALL INDUSTRY GROUP, <http://www.liv.ac.uk/footballindustry/hooligan.html> (last updated Dec. 2007).

support and earn the respect of rival fans through fighting.<sup>101</sup> A wide variety of anti-social behaviors fall within the modern definition of “hooliganism,” ranging from relatively minor offenses, like individual drunkenness, to serious violent attacks.<sup>102</sup> Nevertheless, two specific forms of disorder are most commonly associated with football hooliganism:

- (a) Spontaneous and usually low level disorder caused by fans at or around football matches (the type that typically occurs at England away matches); and
- (b) Deliberate and intentional violence involving organised gangs (or “firms”) who attach themselves to football clubs and fight firms from other clubs, sometimes a long way in time and space from a match.<sup>103</sup>

In the 1970s gangs of hooligans, formed based on the territory they occupied in stadiums and the neighborhoods they lived in, became a noticeable part of football culture.<sup>104</sup> These gangs, called “firms,” combined support for their local club with tribal loyalties.<sup>105</sup> Uniformity of attitudes and prejudices, and the use of symbols and tradition, helped shape the ideology of these firms.<sup>106</sup>

The British hooligan firm’s tribal nature, combined with political, cultural, and racial ideologies, attracted attention from the far-right wing of the political spectrum. Right-wing, nationalist organizations, like the National Front and its successor, the British National Party, were successful in recruiting members from within England’s footballing culture.<sup>107</sup> Combat 18, a neo-Nazi group originally affiliated with the British National Party as its military branch, was especially adept at influencing hooligan firms.<sup>108</sup>

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<sup>101</sup> See *Football Hooliganism*, POLITICS.CO.UK, <http://www.politics.co.uk/reference/football-hooliganism> (last visited Nov. 14, 2012).

<sup>102</sup> Stott et al., *supra* note 93, at 117.

<sup>103</sup> Pearson, *supra* note 100.

<sup>104</sup> *Id.*

<sup>105</sup> *Football Hooliganism*, *supra* note 101.

<sup>106</sup> Josef Smolik, *Football Hooliganism From the Standpoint of Extremism*, CENT. EUR. POL. STUD. REV. (2004), <http://www.cepsr.com/clanek.php?ID=212>.

<sup>107</sup> BRETT BEBBER, VIOLENCE AND RACISM IN FOOTBALL: POLITICS AND CULTURAL CONFLICT IN BRITISH SOCIETY, 1968–1998, at 156–57 (2012); see also Smolik, *supra* note 106 (noting that the British National Party published a magazine, *The Bulldog*, which monitored English football hooligans actions, and described racist cheers).

<sup>108</sup> *Combat 18’s Hardline Racism*, BBC NEWS (Apr. 19, 1999, 5:50 PM), [http://news.bbc.co.uk/2/hi/uk\\_news/323366.stm](http://news.bbc.co.uk/2/hi/uk_news/323366.stm).

The British hooligan problem reached a tipping point in the 1980s when teams traveled to continental Europe for matches.<sup>109</sup> In 1985, Liverpool progressed to the final of the European Cup in Brussels, Belgium to face the Italian club Juventus.<sup>110</sup> The Heysel Stadium, Belgium's national stadium, hosted the match despite being in a state of disrepair and both clubs calling for a different stadium to host the match.<sup>111</sup> In the hours leading up to kick-off, Liverpool and Juventus supporters threw projectiles at each other over the fence separating the two groups.<sup>112</sup> When Liverpool fans rushed at the retreating Juventus fans, a human crush occurred against an aging concrete wall, which caused the wall to collapse—killing thirty-nine and injuring over 300.<sup>113</sup> The Heysel disaster cemented the bad reputation of English fans and the concept of the “English disease” in the minds of continental Europeans. UEFA responded by banning all English clubs from European competitions for five years.<sup>114</sup>

Then, in 1989, four years after the Heysel disaster, another catastrophe involving Liverpool fans occurred, causing a push for the reforms and legislation that continues to shape the sport.<sup>115</sup> Hillsborough, the home stadium of Sheffield Wednesday, hosted the FA Cup semi-final match between Liverpool and Nottingham Forest.<sup>116</sup> A dangerous crush developed outside the turnstiles where the Liverpool fans had to enter.<sup>117</sup> This forced the South Yorkshire Police to open a “number of side gates to allow the crowd into the

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<sup>109</sup> See generally BILL BUFORD, *AMONG THE THUGS* (1990) (providing an anecdotal account of the destructive, alcohol-fueled behavior of traveling football supporters across Europe).

<sup>110</sup> DAVID GOLDBLATT, *THE BALL IS ROUND: A GLOBAL HISTORY OF SOCCER* 543–45 (2006).

<sup>111</sup> *Id.* at 544.

<sup>112</sup> GOLDBLATT, *supra* note 110, at 544 (noting that unlike other stadium disasters, which could be blamed on poor stadium infrastructure, inadequate policing or crowd control, one of the major causes of the disaster at Heysel was the behavior of the Liverpool fans).

<sup>113</sup> *Id.* at 543–44. Despite the deadly events before kick-off, UEFA officials and the match referee decided not to abandon the match and Juventus went on to win the European Cup 1-0. *Id.* at 544–45.

<sup>114</sup> Stott et al., *supra* note 102, at 116. Although no official inquest was conducted into the events at Heysel, “it was understood . . . to have been caused by English hooligans.” *Id.*

<sup>115</sup> Goldblatt, *supra* note 110, at 546 (describing the Hillsborough disaster as the “low point” of English football). See PHIL SCRATON, *HILLSBOROUGH: THE TRUTH* (1997), for an in-depth look at the disaster and the subsequent (and still ongoing), proceedings for justice for the victims and their families. See generally *THE DAY OF THE HILLSBOROUGH DISASTER: A NARRATIVE ACCOUNT* (Rogan Taylor et al. eds., 1995) (narrating the personal accounts of people present at Hillsborough on the day of the disaster, rescue workers, and the families of the victims).

<sup>116</sup> Goldblatt, *supra* note 110, at 599.

<sup>117</sup> *Id.*

stadium.”<sup>118</sup> The police did this without informing the stadium stewards inside the West Stand (Leppings Lane End).<sup>119</sup> Without stewards to evenly disperse people among the terrace’s four standing-room-only pens, an even more severe crush formed inside the middle two pens.<sup>120</sup>

Liverpool fans tried to climb the fence, but the police, conditioned to respond to hooliganism, fought to keep the supporters off the field.<sup>121</sup> The Hillsborough disaster claimed the lives of ninety-six Liverpool supporters and injured 766 others, as the rest of England watched the events unfold live on television.<sup>122</sup>

The media and police quickly moved to blame hooligans for rioting, with *The Sun* notoriously proclaiming on its cover the next morning: “THE TRUTH: Some fans picked pockets on victims; Some fans urinated on the brave cops; Some fans beat up PC giving kiss of life.”<sup>123</sup> The reputation of the British hooligan held by police, and not actual hooliganism itself, was a direct cause of disaster.<sup>124</sup>

In the aftermath of the disaster, the British government appointed Lord Peter Taylor, a judge on the Court of Appeals of England and Wales, to head the Hillsborough Stadium Disaster Inquiry Report (“*Taylor Report*”) to investigate the causes and influencing factors in an attempt to prevent future tragedies.<sup>125</sup> The *Taylor Report* was presented to Parliament in January 1990

<sup>118</sup> See Goldblatt, *supra* note 110, at 599–601. Over 25,000 Liverpool supporters had tickets to enter through the Leppings Lane end—served by only 23 turnstiles—while the rest of the stadium had triple the number of turnstiles for a capacity of 29. *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 600 (explaining how the design of the Leppings Lane End’s terminals caused most Liverpool fans to go directly down the tunnel into the middle two pens of the terrace.).

<sup>121</sup> *Id.* (“[T]he game . . . kicked-off [as planned] but was abandoned after six minutes . . .”).

<sup>122</sup> *Justice For The 96*, LIVERPOOL FC, <http://www.liverpoolfc.com/history/hillsborough> (last visited Nov. 14, 2012).

<sup>123</sup> See THE SUN (London), Apr. 19, 1989, at 1. The acronym “PC” stands for police constable and “kiss of life” refers to CPR. This headline, and *The Sun*’s subsequent coverage of the Hillsborough disaster, led to a boycott of the paper, and many Liverpoolians still refuse to buy *The Sun*. See *Touch Luck, Kelvin: Former Sun Editor Will NOT Receive an Apology Over His Hillsborough ‘Suffering,’* MIRROR NEWS (Sept. 27, 2012, 8:07 PM), <http://www.mirror.co.uk/news/uk-news/kelvin-mackenzie-will-not-receive-hillsborough-1347485>.

<sup>124</sup> Goldblatt, *supra* note 110, at 600–01 (“It . . . was not the responsibility of the violent and drunken dregs of the working classes but directly stemmed from the grotesque assumptions and beliefs of the police, and from the neglect and disdain of the football and political elites who had come to view football supporters as pack animals and rabid dogs.”).

<sup>125</sup> HOME OFFICE, THE HILLSBOROUGH STADIUM DISASTER, 15 APRIL 1989, INQUIRY BY THE RT HON LORD JUSTICE TAYLOR, FINAL REPORT, 1990, Cm. 962, at 1, 15 (U.K.) [hereinafter TAYLOR REPORT]

and laid the majority of the blame on the South Yorkshire Police and its commanding officers for the failure to manage the crowd and respond properly to the situation.<sup>126</sup>

The Football Spectators Act of 1989 outlawed standing-room-only areas and required every stadium of a specified size to be an all-seater.<sup>127</sup> This is a major contributing factor to the considerable decrease of violence inside British stadiums.<sup>128</sup> While there are still hooligan firms associated with football clubs and isolated instances of racism at matches, the widespread disorder of the 1960s through the 1980s seems to be overcome.

### C. *Hooliganism in Eastern Europe*

The prevalence of football-related disorder may have diminished in the United Kingdom, but the destructive weekend pastime made popular by British hooligans spread to continental Europe. For instance, in Italy and Spain, the problem of football-related violence and racism remains a part of football.<sup>129</sup> Paralleling the two specific forms of football hooliganism found during its peak in the United Kingdom,<sup>130</sup> Eastern European hooliganism developed in the same manner.<sup>131</sup>

European football has seen an increasing numbers of black and minority players in the elite European leagues.<sup>132</sup> However, many clubs still face problems of racist abuse directed at players and other fans from elements of their supporters.<sup>133</sup>

Italian “ultras” are one of the most visible examples of British-style hooligan behavior affecting European football today.<sup>134</sup> The ultras create an

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(recommending converting all the stadiums with standing-room-only terraces into all-seater stadiums, and the removal of perimeter fencing and pens from the terraces).

<sup>126</sup> See *id.* para. 243, at 42.

<sup>127</sup> See *id.* para. 84, at 15; see generally Football Spectators Act, 1989, c. 37 (U.K.).

<sup>128</sup> *Football Hooliganism*, *supra* note 100.

<sup>129</sup> Wynn, *supra* note 30, at 313–14, 318.

<sup>130</sup> Pearson, *supra* note 104.

<sup>131</sup> Smolik, *supra* note 106 (noting that hooliganism in the Czech Republic started with disorganized instances of football-related violence before becoming more organized with the development of hooligan firms).

<sup>132</sup> BEBBER, *supra* note 107, at 205.

<sup>133</sup> Phil Minshull, *Colour Barrier Finally Broken at Athletic Bilbao*, BBC: PHIL MINSHULL'S BLOG (Dec. 16, 2009, 6:30 AM), [http://www.bbc.co.uk/blogs/philmishull/2009/12/colour\\_barrier\\_finally\\_broken.html](http://www.bbc.co.uk/blogs/philmishull/2009/12/colour_barrier_finally_broken.html).

<sup>134</sup> See GOLDBLATT, *supra* note 110, at 554–57 (noting that by the mid-1980's every professional and nearly every semi-professional club in Italy had an ultra group).

atmosphere that is visually and audibly amazing, but incidents of serious disorder caused by the ultras force many clubs to play matches “behind closed doors,” and are likely the reason Italy’s bid to host the 2012 European Championships was not accepted.<sup>135</sup> In April 2012, Italian Olympic Committee President Giovanni Petrucci described Italy’s football crisis as “beyond the point of no return” after an incident during a Serie A match between Genoa and Siena where fans threw fireworks and small bombs onto the field during play.<sup>136</sup>

Some of the world’s fiercest sporting rivalries are found in Eastern Europe. In Poland, the Kraków derby, called the “Holy War,” pits Wisła Kraków against Cracovia, two teams whose respective stadiums are 500 meters apart.<sup>137</sup> Annually, local authorities “spend around 150,000 złoty, or around €35,000, scrubbing Kraków’s walls clean of the racist or anti-Semitic graffiti.”<sup>138</sup> In addition, some consider the 1990 match between Dinamo Zagreb and Red Star Belgrade at Maksimirski Stadium to be the catalyst of the Yugoslav War, when Serbian fans of Red Star Belgrade fought the Croatian Dinamo Zagreb fans, as well as the Serbian-controlled Yugoslav police force.<sup>139</sup>

As shown in the *Panorama* program, Polish and Ukrainian ultra groups are given carte blanche to say and do as they please inside the stadiums.<sup>140</sup> Similar to what happened in the United Kingdom with the British National Party and the National Front,<sup>141</sup> “an aggressive, desperate nationalism, particularly in the

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<sup>135</sup> Pearson, *supra* note 100.

<sup>136</sup> *Genoa Soccer Fans Hold Match Hostage, Demand Players to Take Off Uniforms*, NEW YORK DAILY NEWS (Apr. 23, 2012, 10:34 AM), [http://articles.nydailynews.com/2012-04-23/news/31388428\\_1\\_serbian-fans-siena-ban](http://articles.nydailynews.com/2012-04-23/news/31388428_1_serbian-fans-siena-ban). The disorder of the Genoa supporters forced the referee to abandon the match after 45 minutes with Siena leading 4-0. *Id.* Genoa players tried to appease the ultras “by removing their shirts to acknowledge they weren’t worthy of wearing them.” *Id.*

<sup>137</sup> *Euro 2012: Stadiums of Hate, supra* note 1; *The Beautiful Game?*, HOPE NOT HATE (June 2, 2012), <http://www.hopenothate.org.uk/the-beautiful-game/>.

<sup>138</sup> Christian Cummins, *A More Tolerant Poland: While Racism is Real, Activists Say “That’s not how we see ourselves,”* VIENNA REVIEW (July 3, 2012), <http://www.viennareview.net/news/front-page/a-more-tolerant-poland>.

<sup>139</sup> Dan Ripley, *Croatia v Serbia... Now This is What You Call a Rivalry! Duo Clash for First Time Since War, with 1,500 Police Ready Despite Ban on Away Fans*, DAILY MAIL (Mar. 22, 2013, 3:45 AM), <http://www.dailymail.co.uk/sport/football/article-2297037/Croatia-Serbia-clash-time-Yugoslav-war-1-500-police-deployed-despite-ban-away-fans.html>.

<sup>140</sup> *Euro 2012: Stadiums of Hate, supra* note 1; *see also* Pearson, *supra* note 104 (explaining that, compared with the U.K., where disorder in and around stadiums is now rare, the countries in Eastern Europe all frequently face problems with hooliganism inside stadiums).

<sup>141</sup> *See generally* BEBBER, *supra* note 107, at 147–74.



‘liberated’ Eastern European states” is growing in size and popularity, and right-wing groups are recruiting members from among the ultra groups of football clubs.<sup>142</sup> Another problem related to hooliganism seeming to disproportionately affect Eastern Europe is pre-arranged fights between rival ultra groups, known as “ustawki.”<sup>143</sup> These fights take place in secluded areas where police cannot find and prevent the altercations.<sup>144</sup>

While visiting the Ukrainian city of Kharkiv, BBC correspondent Chris Rogers met with the Patriots of Ukraine, a group of nationalist ultras who support the club Metalist Kharkiv.<sup>145</sup> Vadim, a recruiter for the Patriots, told Rogers he recruits from the football terraces because in post-Soviet Ukraine, “right-wing politics and hooliganism have gone hand-in-hand.”<sup>146</sup> Rogers accompanied Vadim to Metalist Stadium, where he witnessed the Metalist fans giving the Nazi salute and chanting “Zeig Heil.”<sup>147</sup> Vadim also took Rogers into the Ukrainian forest to a secret training camp where the Patriots train recruits in hand-to-hand combat tactics and weapons skills.<sup>148</sup>

Studies on xenophobic violence conducted by the non-profit group Human Rights First also show an increase in racially-motivated violence, revealing that Ukraine had a dramatic increase in racist violence in the first four months of 2011, a total already greater than the entire 2010 calendar year.<sup>149</sup> Despite these statistics, Ukrainian President Viktor Yanukovich downplayed the amount of hooligans in his country in the lead up to Euro 2012,<sup>150</sup> even though

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<sup>142</sup> See *Euro 2012: Stadium of Hate*, *supra* note 1.

<sup>143</sup> *Football: Euro 2012 Spotlights East European Hooliganism*, EUBUSINESS.COM (June 15, 2012, 11:12 AM), <http://www.eubusiness.com/news-eu/security-racism-fbl.h63>.

<sup>144</sup> Donal MacIntyre, *Football Firms Tool Up for War*, SUNDAY WORLD (June 4, 2012), <http://www.sundayworld.com/top-stories/crime-desk/donal-macintyre-s-crime-cafe/football-firms-tool-up-for-war>.

<sup>145</sup> *Euro 2012: Stadiums of Hate*, *supra* note 1. The Patriots of Ukraine do not identify as neo-Nazi or Nazi, but do support “some positive aspects” of Nazism “because Germany would not be Germany right now without Adolf Hitler.” *Id.*

<sup>146</sup> *Id.*; see also HUMAN RIGHTS FIRST, UKRAINE: 2008 HATE CRIME STUDY I (2008), <http://www.humanrightsfirst.org/wp-content/uploads/pdf/fd-080924-ukraine-web.pdf> [hereinafter UKRAINE HATE CRIME STUDY]. “A burgeoning movement of skinheads continues to be responsible for the most violent hate crimes.” *Id.*

<sup>147</sup> *Euro 2012: Stadiums of Hate*, *supra* note 1.

<sup>148</sup> *Id.* (noting that one Patriot recruit admitted to Rogers that the tactics learned at the training camps have been used in attacks on the streets).

<sup>149</sup> COMBATTING XENOPHOBIC VIOLENCE, *supra* note 21, at 24.

<sup>150</sup> *Ukraine’s President Downplays Euro 2012 Racism Fears*, BBC (May 31, 2012), <http://www.bbc.co.uk/news/world-europe-18286941>. President Yanukovich said his country’s problem with hooliganism is “smaller” than in other countries, and that his country has a list of people who participate in anti-social behavior at matches, but “[t]heir numbers are tiny.” *Id.*

immigrants and minorities continue to be vulnerable to racially-motivated attacks.<sup>151</sup> Although President Yanukovich condemned racist violence when the study was first published, his statements before Euro 2012 seem to show him backtracking from that stance.<sup>152</sup>

During Euro 2012, some of the most violent incidents surrounded the Poland-Russia match.<sup>153</sup> The Russian fans marched in Warsaw to celebrate Russia Day prior to the match, which the Polish government permitted, despite some Poles considering it “a provocation, given the historic animosity” between the two countries.<sup>154</sup> This intense rivalry aside, violence in Poland during Euro 2012 had the potential to be worse. However, since most hardcore Polish hooligans solely affiliate with a club, they do not have a real interest in supporting or causing disorder around Polish national team matches.<sup>155</sup>

As the global economic crisis continues to ravage European nations, the membership and popularity nationalist and far-right organizations is increasing.<sup>156</sup> In Greece, the neo-Nazi political party Golden Dawn recently won eighteen seats in the Greek Parliament and claims to count more than half of the Greek police force as supporters.<sup>157</sup> This neo-Nazi and fascist movement has already shown its influence in the world of football. On March 16, 2013, AEK Athens midfielder Giorgos Katidis celebrated scoring the winning goal for his team by removing his shirt and giving the Nazi salute to supporters.<sup>158</sup> The Greek Football Federation quickly responded by banning the 20-year old

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<sup>151</sup> UKRAINE HATE CRIME STUDY, *supra* note 146, at 1. Collection of hate crime data in Ukraine is hampered because the government does not collect this type of data, meaning figures are likely higher because many violent attacks are not reported to the nongovernmental monitoring groups. *Id.*

<sup>152</sup> *Id.* at 11. The study is critical of the Ukrainian government officials who deny the problems of race-related violence. *Id.* at 1.

<sup>153</sup> *Euro 2012: Russia Blames Poles for Football Clashes*, BBC (June 13, 2012, 6:32 PM), <http://www.bbc.co.uk/news/world-europe-18421824>; *Football: Euro 2012 Spotlights East European Hooliganism*, *supra* note 147.

<sup>154</sup> *Id.* (noting that 157 Polish and 24 Russians were arrested, and between 11 and 24 injuries were reported, as police used tear gas, rubber bullets and water cannons to disperse the crowds).

<sup>155</sup> *Football: Euro 2012 Spotlights East European Hooliganism*, *supra* note 147. Warsaw expert, Janusz Czapinski, stated that if club hooligans did mobilize for Euro 2012, “the 6,000 police officers deployed in the capital wouldn’t have been enough and the situation would have been far more serious.”

<sup>156</sup> Maria Margaronis, *Fear and Loathing in Athens: The Rise of Golden Dawn and the Far Right*, *GUARDIAN* (Oct. 26, 2012), <http://www.guardian.co.uk/world/2012/oct/26/golden-dawn-greece-far-right?intcmp=239>.

<sup>157</sup> *Id.*

<sup>158</sup> *AEK Athens Suspend Giorgos Katidis for Rest of Season Over Nazi Salute*, *GUARDIAN* (Mar. 20, 2013, 8:02 PM), <http://www.guardian.co.uk/football/2013/mar/20/aek-suspend-giorgos-katidis-nazi-salute>.

Katidis from any Greek national team for life.<sup>159</sup> This is a concern for Eastern Europe because the rise of these groups will further entrench the influence and violent tactics of these groups into society. Greek football should be commended for acting quickly in response to this outrageous display, but as this conduct becomes more frequent, a legal framework is required.

#### *D. Criminal Codes of Poland and Ukraine*

This Subpart presents the available punishments and sentencing guidelines in Polish and Ukrainian criminal law applicable to hooliganism and football-related disorder. Both the Polish and Ukrainian codes are broad and allow for prosecutorial and judicial discretion.<sup>160</sup> This discretion factors in when discussing the lack of control over hooligans. Broader laws can lead to less guidance for law enforcement, more sentencing discretion, and reluctance from prosecutors in bringing certain charges.<sup>161</sup> Creating football-specific offenses with strong penalties would benefit society by increasing minimum sentences for offenders and showing potential offenders the severity of the consequences.

On June 6, 1997, the current Polish Criminal Code, in its current form, was approved by the two houses of Parliament and entered into force in September 1998.<sup>162</sup> There are five basic punishments under the Code; “[t]hree of them consist of the deprivation of liberty but for different terms . . . . The other two types of punishment are limitation of liberty and a fine.”<sup>163</sup> The Criminal Code lists the penalties in ascending order of gravity: (1) fines; (2) limitation of liberty; (3) deprivation of liberty for a fixed term; (4) deprivation of liberty for twenty-five years; and (5) deprivation of liberty for life.<sup>164</sup> “A fine is meant as

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<sup>159</sup> Graham Wood, *Midfielder Katidis Penalised Further for Nazi Salute*, REUTERS, Apr. 5, 2013, available at <http://uk.reuters.com/article/2013/04/05/uk-soccer-greece-katidis-nazi-idUKBRE9340F120130405> (“AEK Athens footballer Giorgos Katidis is disqualified for five matches, banned from entering sports stadia for three months and is ordered to pay a fine of €1,000 due to the incidents in the Super League match AEK-Veria.”) Giorgos Katidis transferred to “Serie B side Novara” after AEK Athens released him. Ben Gladwell, *Katidis to Make Most of Novara Chance*, ESPNFC (July 18, 2013), [http://espnfc.com/news/story/\\_/id/1501577/katidis-make-most-novara-chance?cc=5901](http://espnfc.com/news/story/_/id/1501577/katidis-make-most-novara-chance?cc=5901).

<sup>160</sup> Kodeks Karny [K.K.] [Penal Code of 06 June 1997] art. 53–63, Dz.U. 1997 Nr. 88, Poz. 553, at 2682–83 (Pol.); KRYMINAL’NYI KODEKS UKRAINY [KK UA] [Criminal Code] art. 5 (Ukr.).

<sup>161</sup> KRYMINAL’NYI KODEKS UKRAINY [KK UA] [Criminal Code] art. 67, 161 (Ukr.); see also UKRAINE HATE CRIME STUDY, *supra* note 148, at 14 (implying that they could be prosecuting under different code provisions that are not specifically related to racial discrimination); see also Stanisław Frankowski, *Criminal Law*, in INTRODUCTION TO POLISH LAW 340, 349–50 (Stanisław Frankowski ed., 2010); cf. Kodeks Karny [K.K.] [Penal Code] art. 53–63, at 2682–83 (Pol.).

<sup>162</sup> Kodeks Karny [K.K.] [Penal Code] (Pol.); see also Frankowski, *supra* note 161, at 350.

<sup>163</sup> Frankowski, *supra* note 161, at 359; Kodeks Karny [K.K.] [Penal Code] art. 32 (Pol.).

<sup>164</sup> See Frankowski, *supra* note 161, at 358–59; Kodeks Karny [K.K.] [Penal Code] art. 60, §§ 1–5 (Pol.).

the penalty of choice except in the case of the commissions of felonies. Thus[,] it is provided for most crimes, almost invariably in conjunction with the penalty of deprivation of liberty.”<sup>165</sup> Additionally, courts may impose a fine as a “separate penalty when a court has refrained from imposing the penalty of deprivation of liberty or decided to apply extraordinary mitigation of the penalty.”<sup>166</sup>

In addition to the five penalties found in Article 32, Article 39 provides penal measures applicable to certain convictions and sentences, such as redressing the damage caused, and compensatory or monetary damages.<sup>167</sup> The Polish code does not explicitly mention hooliganism, but does have broad provisions criminalizing organized groups or associations that are against any other person or group based on their nationality, ethnicity, or religion for criminal purposes.<sup>168</sup>

The Code is specific with respect to discrimination and promotion of criminal acts, containing numerous articles criminalizing discrimination based on religion, race and ethnicity, and inciting crime.<sup>169</sup> While the Code contains specific laws related to discriminatory crimes, the sentences for these crimes merely can be a small fine or restriction of liberty.<sup>170</sup> The most penal of all sentences in the Polish Code is reserved for offenders convicted of war crimes, crime against peace, or crimes against humanity based on the victim’s national, ethnic, political or religious beliefs, where the offender can be sentenced to deprivation of liberty for a time of twenty-five years to life, but no less than twelve years.<sup>171</sup>

The Criminal Code of Ukraine, enacted on September 1, 2001, while a longer code than the Polish Penal Code and containing specific articles with

<sup>165</sup> Frankowski, *supra* note 161, at 361.

<sup>166</sup> *Id.* (citing Kodeks Karny [K.K.] [Penal Code] art. 60, § 6 (Pol.).

In all of these situations, a fine is clearly meant as an alternative to short- and mid-term imprisonment. In addition, a fine may also be imposed along with deprivation of liberty for a fixed term if an offender committed a crime with the purpose of obtaining a material benefit or had obtained such a benefit. One of the most interesting innovations of the code allows a judge to suspend conditionally the implementation of an adjudged fine.

*Id.* (citing Kodeks Karny [K.K.] [Penal Code] art. 69, § 1, at 2684.)

<sup>167</sup> Kodeks Karny [K.K.] [Penal Code] art. 39, §§ (5)–(7) (Pol.); Frankowski, *supra* note 161, at 361.

<sup>168</sup> *See generally* Kodeks Karny [K.K.] [Penal Code] arts. 252–59 (Pol.).

<sup>169</sup> Kodeks Karny [K.K.] [Penal Code] arts. 118–19, 194–96, 256–58 (Pol.) (regarding crimes against freedom of conscience and religion).

<sup>170</sup> *See generally id.* arts. 119, 194–96, 255–57.

<sup>171</sup> *Id.* arts. 118–19.

respect to hooliganism offenses,<sup>172</sup> critically lacks provisions related to discrimination and crime based on religion or race.<sup>173</sup> Article 51 sets out the twelve forms of punishment the court can impose for criminal convictions:<sup>174</sup> (1) fines;<sup>175</sup> (2) revocation of military or special title, rank, grade or qualification class; (3) deprivation of right to occupy certain positions or engage in certain activities;<sup>176</sup> (4) community service; (5) correctional labor; (6) service restrictions for military servants; (7) forfeiture of property; (8) arrest;<sup>177</sup> (9) restraint of liberty;<sup>178</sup> (10) custody of military servants in a penal battalion; (11) imprisonment for determinate term;<sup>179</sup> and (12) life imprisonment.<sup>180</sup>

Additionally, there are four grades of criminal punishment in Ukraine, based on the gravity of the offense: (1) minor offenses are punishable by imprisonment for a term up to two years or a more lenient penalty; (2) medium offenses call for imprisonment up to five years; (3) grave offenses for a prison term up to ten years; and (4) special grave offenses are punishable by ten or more years to life imprisonment.<sup>181</sup> The Code also defines thirteen aggravating circumstances that the court can consider for increasing the sentence, but those are the only aggravating factors the court can take into account.<sup>182</sup>

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<sup>172</sup> KRYMINAL'NYI KODEKS UKRAÏNY [KK UA] [Criminal Code] art. 296 (Ukr.).

<sup>173</sup> See KRYMINAL'NYI KODEKS UKRAÏNY [KK UA] [Criminal Code] arts. 67, 161 (Ukr.).

<sup>174</sup> *Id.* art. 51 (defining the forms of punishment in arts. 53–64).

<sup>175</sup> KRYMINAL'NYI KODEKS UKRAÏNY [KK UA] [Criminal Code] art. 53 (Ukr.). Fines are determined by the court depending on the gravity of the crime and property status of the guilty person, ranging from 30 to 1,000 TFMI, “unless a larger amount of a fine is prescribed by articles of the Special Part of this Code.” *Id.*

<sup>176</sup> *Id.* art. 55. (This punishment can be imposed as the principle penalty for a term of “two to five years” or as additional punishment for a term of “one to three years.”).

<sup>177</sup> *Id.* art. 60. Arrest is defined as “holding a convicted person in custody” for a term of one to six months. *Id.*

<sup>178</sup> *Id.* art. 61. “[R]estraint of liberty consists [of] holding a person in an open penitentiary institution without isolation from the society but under supervision and with compulsory engagement of the convicted person in work[.]” for a term of one to five years. *Id.*

<sup>179</sup> *Id.* art. 63 (“Imprisonment shall be imposed for a term of one to fifteen years.”).

<sup>180</sup> *Id.* art. 64. Only imposed for special grave offenses *and* where specifically provided for by this Code, “where a court does not find it possible to impose imprisonment for a determinate term.” *Id.*

<sup>181</sup> *Id.* art. 12.

<sup>182</sup> *Id.* art. 67. Defining the aggravating circumstances as:

- (1) [R]epetition of an offense or recidivism;
- (2) commission of an offense by a group of persons upon prior conspiracy;
- (3) commission of an offense based on racial, national or religious enmity and hostility;
- (4) commission of an offense in connection with the discharge of official or public duty by the victim;
- (5) grave consequences caused by the offense;
- (6) commission of an offense against a minor, an elderly or helpless person;
- (7) commission of an offense against a woman who, to the knowledge of the culprit, was pregnant;
- (8) commission of an offense against a person who was in a financial, official or other dependence on the culprit;
- (9) commission of an

Ukraine only has two applicable articles specifically relating to racial or religious discrimination crimes, other than the mention of race and religion in the aggravating circumstances found in Article 67.<sup>183</sup> Article 161 criminalizes willful actions inciting hatred, restricting rights, or granting privilege based on race, nationality, or religion.<sup>184</sup> If that action also includes violence or threats<sup>185</sup> or is done by a group or the act causes grave consequences,<sup>186</sup> the penalties are enhanced. It is also a criminal act to import, make, or distribute works promoting violence and cruelty, and racial, national, or religious intolerance and discrimination.<sup>187</sup> These provisions are hardly sufficient to deal with the rising racial and religious violence in Ukraine.

The violent or group-related criminal offenses in Ukraine, in addition to providing more specific and defined statutory language, also have more severe minimum sentences for convicted individuals. Whereas the penalty in Poland would fall within a range of a month to a few years in prison, Ukrainian offenses generally start at a year to an amount greater than ten years.<sup>188</sup> Additionally, Ukraine's Criminal Code covers: (1) creating criminal organizations; (2) gangsterism; (3) unlawful paramilitaries; and (4) group violation of public order.<sup>189</sup>

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offense through the use of a minor, a person of unsound mind or mentally defective person; (10) commission of an especially violent offense; (11) commission of an offense by taking advantage of a martial law or a state of emergency or other extraordinary events; (12) commission of an offense by a generally dangerous method; (13) commission of an offense by a person in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances.

*Id.*

<sup>183</sup> *Id.* art. 67, 161.

<sup>184</sup> *Id.* art. 161. The Code states:

Willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens' feelings in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, color of skin, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics . . .

are punishable by a fine of 50 times the maximum income. *Id.*

<sup>185</sup> *Id.* This offense is "punishable by correctional labor for a term up to two years, or imprisonment for a term up to five years."

<sup>186</sup> *Id.* This offense is "punishable by imprisonment for a term of two to five years."

<sup>187</sup> *Id.* art. 300.

<sup>188</sup> *Compare id.* art. 294 (penalty for rioting is a term of five to eight years imprisonment, and eight to fifteen years if the rioting results in death of a person), *with* Kodeks Karny [K.K.] [Penal Code of 06 June 1997] art. 254, § 2, Dz.U. 1997 Nr. 88, Poz. 553, at 2705 (Pol.) (penalties for rioting are imprisonment up to three years, or between three months and five years if the rioting results in the death of a person).

<sup>189</sup> KRYMINAL'NYI KODEKS UKRAINY [KK UA] [Criminal Code] arts. 255, 257, 260, 293 (Ukr.).

Article 296 specifically criminalizes hooliganism, defining it as a “serious disturbance of the public order based on motives of explicit disrespect to community in a most outrageous or exceptionally cynical manner.”<sup>190</sup> The aggravating factors of this offense include whether: (1) a group committed this action; (2) the individual resisted authority; (3) the individual has a previous hooliganism conviction; (4) a firearm was used in the commission of this act; and (5) there was a prior intent to cause bodily harm.<sup>191</sup>

### *E. Britain’s Legal Response to Hooliganism*

This article presents three measures the governments of Poland and Ukraine can implement to help battle hooliganism and stop violence and racism related to football. The *Panorama* documentary brought the existence of the problem to the public but did not provide any possible solutions. This Article intends to answer the question of what needs to happen before minority players and fans can feel safe at football stadiums in Eastern Europe.

In the United Kingdom, statutes authorizing severe restrictions on convicted and suspected hooligans are crucial tools for law enforcement in combating racism and violence related to football.<sup>192</sup> The stadium disasters at Heysel and Hillsborough forced Parliament to act swiftly, which it did by passing laws restricting the travel of known hooligans, banning them from stadiums and associating with football clubs, and establishing strict criminal sanctions for those charged with hooliganism and related offenses.<sup>193</sup>

Part II of this Article discusses banning orders and travel bans created by the British Parliament with the passing of the Football Spectators Act of 1989,<sup>194</sup> the Football (Offenses and Disorder) Act of 1999,<sup>195</sup> and the Football

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<sup>190</sup> *Id.* art. 296. Hooliganism is “punishable by a fine in the amount of five-hundred to one-thousand non-taxable minimum incomes . . . or by arrest for a term up to six months, or by restriction of freedom for a term up to five years.”

COMMENT: need consistent use of TFMI abbreviation and numbers

<sup>191</sup> *Id.*

<sup>192</sup> Stott et al., *supra* note 97, at 116.

<sup>193</sup> Football (Disorder) Act, 2000, c. 25 (amending Football Spectators Act, 1989, c. 37 (U.K.)); Football (Offenses and Disorder) Act, 1999, c. 21 (amending Football Spectators Act, 1989, c. 37 (U.K.)); Football Spectators Act, 1989, c. 37, *amended by* Football (Offenses and Disorder) Act, 1999, c. 21, *and* Football (Disorder) Act, 2000, c. 25 (U.K.).

<sup>194</sup> Football Spectators Act, 1989, c. 37, *amended by* Football (Offenses and Disorder) Act, 1999, c. 21, *and* Football (Disorder) Act, 2000, c. 25 (U.K.).

<sup>195</sup> Football (Offenses and Disorder) Act, 1999, c. 21 (U.K.) (amending Football Spectators Act, 1989, c. 37 (U.K.)).

(Disorder) Act of 2000.<sup>196</sup> These statutes created banning orders for football-related disorder, giving the government a powerful tool against individuals who engage in or promote violence at football matches.<sup>197</sup> Due to football's importance in European culture and to its society, these banning orders are seen as a major deterrent to all but the most hardened of hooligans.<sup>198</sup> This Article argues that if Poland and Ukraine modeled its laws on those passed in the United Kingdom, they could decrease the number of convicted and known hooligans inside football stadiums, consequently removing the disorder hooligans tend to cause.

In Scotland, hooliganism is primarily connected to the historical religious affiliation of each club, which leads to a unique form of sectarian violence more akin to Northern Ireland or Israel than the violence of English football hooligans.<sup>199</sup> In Glasgow, Scotland's largest city, sectarianism is so prevalent and heated that most bars, pubs, and restaurants prohibit patrons from wearing "football colors."<sup>200</sup> To combat these sectarian troubles plaguing football, especially in the rivalry between the two Glaswegian clubs, the Scottish Parliament revamped its restrictions on hate speech and chanting related to race and religion.<sup>201</sup>

Part III argues that Poland and Ukraine should adopt legislation like the Offensive Behaviour at Football and Threatening Communications (Scotland)

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<sup>196</sup> Football (Disorder) Act, 2000, c. 25 (amending Football Spectators Act, 1989, c. 37 (U.K.)).

<sup>197</sup> Ryan, *supra* note 39, at 273 (arguing that banning orders are "effective tool[s] because it allows [for] the removal of an offending fan from soccer stadiums for an extended period of time, whereby he or she will no longer be capable of inciting spectator racism inside the stadium.")

<sup>198</sup> See Geoff Pearson, *Qualifying for Europe? The Legitimacy of Football Banning Orders 'On Complaint' under the Principle of Proportionality*, 3 EUR. SPORTS L.J., at 1, 1 (2005).

<sup>199</sup> See GOLDBLATT, *supra* note 110, at 69–70, 187; see also Amos Bershad, *How Soccer Explains Israel: Jerusalem's FC Beitar Signed Two Muslim Players from Russia in February and-Intentionally or Not-Stirred a National Controversy*, GRANTLAND.COM (Mar. 19, 2013), [http://www.grantland.com/story/\\_id/9066752/jerusalem-fc-beitar-signed-two-muslim-players-russia-february-stirred-national-controversy](http://www.grantland.com/story/_id/9066752/jerusalem-fc-beitar-signed-two-muslim-players-russia-february-stirred-national-controversy). Before it signed two Chechnyan-born Muslim players, Beitar Jerusalem FC was the last Israeli Premier League club to sign an Arab player. Beitar supporters responded by creating a banner, "in a surreal echo of Nazi terminology: 'Beitar Will Be Pure Forever,'" and later fans set fire to the office of the building superintendent at Beitar's team headquarters. *Id.*

<sup>200</sup> See DUNCAN ADAMS, *THE ESSENTIAL SCOTTISH FOOTBALL FAN: THE DEFINITIVE GUIDE TO SCOTTISH GROUNDS 5* (2004).

<sup>201</sup> *Football Ban Orders Take Effect*, BBC NEWS (Aug. 29, 2006), [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/5293288.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/5293288.stm).



Act of 2012<sup>202</sup> to allow the government to prosecute and punish individuals who speak publically with the intent to incite racial or religious violence.<sup>203</sup>

Beginning with the *Taylor Report* in 1990, policing and crowd-control tactics used by British police drastically changed.<sup>204</sup> A spectator at a British stadium does not see heavily armed, paramilitary-style police with muzzled German Shepherds, like those Chris Rogers encountered in Poland and Ukraine. This heavy-handed, intimidating style of policing is no longer utilized in the United Kingdom and is beginning to be replaced by less intrusive, more efficient crowd-control methods.<sup>205</sup> Better communication, cooperation, and the sharing of information on known hooligans also helps law enforcement monitor and enforce anti-hooligan legislation.

Part IV of this article argues that Poland and Ukraine should adopt these more modern policing tactics in order to decrease tensions between supporters and police, which will result in less incidents of violence in and around football stadiums.

## II. BANNING ORDERS AND TRAVEL BANS

*The U.K. Government-led approach to preventing football violence was highly successful during Euro 2004. The U.K. strategy based on tough legislation, effective co-ordination and supporter empowerment is proving effective and is to be commended.*

—Lars-Christer Olsson, Chief Executive of UEFA<sup>206</sup>

### A. *British Banning Order Legislation*

The United Kingdom has an extensive record of enacting legislation to regulate public-disorder offenses, but during the 1980s the statutes in place

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<sup>202</sup> Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 2012, (A.S.P. 1).

<sup>203</sup> See *id.* § 6. The Act was pushed through Scottish Parliament as an “emergency bill,” showing the urgency felt by MP’s, their constituents, and those in football. Scottish Parliament Justice Committee, *Offensive Behaviour at Football and Threatening Communications (Scotland) Bill: Justice Committee Scrutiny*, <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/31384.aspx> (last visited Nov. 14, 2012).

<sup>204</sup> See TAYLOR REPORT, *supra* note 125.

<sup>205</sup> See *id.* at 48–49.

<sup>206</sup> HOME OFFICE, FOOTBALL (DISORDER ACT) 2000, IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT (AND ASSOCIATED FOOTBALL DISORDER STRATEGY), REPORT, 2005-3, 8.10 (U.K.) [hereinafter IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT].

proved insufficient to control the increase of violent football hooliganism.<sup>207</sup> To better react to and combat hooliganism, Parliament passed the Football Spectators Acts of 1989 with the goal of curbing disorderly behavior at football matches.<sup>208</sup> The 1989 Act established a national membership scheme for supporters in England and Wales requiring fans to register so the government can track and monitor who went to matches to better identify individuals who commit acts of disorder.<sup>209</sup>

Under this law, restriction orders can be ordered by the Crown Court for any individual convicted of a relevant offense set out in Section 22 of the Act.<sup>210</sup> The court customizes each banning order on a case-by-case basis and sets the length of the ban for a period between three and ten years.<sup>211</sup> A breach of the order is punishable by a maximum sentence of 6 months in prison.<sup>212</sup> The 1989 Act also called for the national licensing of stadiums that want to hold football matches.<sup>213</sup>

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<sup>207</sup> See Public Order Act, 1936, 1 Edw. 8 & 1 Geo. 6, c. 6 (U.K.); Public Order Act, 1986, c. 64 (U.K.); see also Greenfield & Osborn, *supra* note 24, at 324–25. The Public Order Act of 1936 was enacted to control issues relating to fascist marching in the 1930’s, while the Public Order Act of 1986 was “aimed at minor acts of hooliganism.” *Id.*

<sup>208</sup> Football Spectators Act, 1989, c. 37, *amended by* Football (Offenses and Disorder) Act, 1999, c. 21, and Football (Disorder) Act, 2000, c. 25 (U.K.); TAYLOR REPORT, *supra* note 125, at 58 (stating that breaking the link between football and hooliganism was the main objective for passing the 1989 Act); see also IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, para. 9.8. This report listed eight reasons why this line of legislation continues to be the cornerstone of the U.K.’s multi-agency approach to controlling hooliganism:

- (1) prevent known problem fans from traveling to matches overseas; (2) provide a tool for preventing repeat disorder; (3) deter football related misbehaviour generally; (4) empower genuine fans and help provide a climate in which they can take responsibility for their behaviour and reputation; (5) reassure host authorities and communities and encourage them to adopt a welcoming approach to England fans; (6) encourage host police to adopt proportionate and appropriate tactics for English as well as other visiting fans; (7) help ensure that tournaments can be a safe, secure and enjoyable experience for host communities and visiting fans alike; and (8) provide a clear and unequivocal demonstration of the U.K.’s determination to take responsibility for preventing the export of its domestic football disorder problems.

*Id.*

<sup>209</sup> Football Spectators Act, 1989, c. 37, §§ 2(1) (U.K.).

<sup>210</sup> *Id.* § 22 (establishing that a restriction order may only be made: in addition to a sentence imposed in respect of the offence of which the accused is (or was) convicted of, or in addition to a probation order (U.K.)).

<sup>211</sup> *Reducing and Preventing Crime: Football Banning Orders*, HOME OFF. (March 26, 2013), <https://www.gov.uk/government/policies/reducing-and-preventing-crime--2/supporting-pages/football-banning-orders>.

<sup>212</sup> *Id.*

<sup>213</sup> Football Spectators Act, 1989, §§ 8–13. Section 10(6) establishes the condition “requiring specified descriptions of spectators to be refused admittance to the premises to watch designated football matches[.]” *Id.* § 10(6).

The membership scheme ultimately failed as a consequence of the Hillsborough disaster,<sup>214</sup> and the reactive nature of the scheme “proved futile in combatting the increasingly violent activity of football supporters both inside and outside stadiums.”<sup>215</sup> Nevertheless, the government’s ability to restrict individuals convicted of football-related offenses from going to matches within England and Wales was a lasting impact of the 1989 Act.

A decade after the 1989 Act, Parliament passed the next in the line of football-specific legislative measures, the Football (Offenses and Disorder) Act of 1999 (the 1999 Act).<sup>216</sup> By establishing court-ordered international bans, the 1999 Act added considerably to the government’s arsenal for preventing football-related disorder.<sup>217</sup> When the English or Welsh national teams, or individuals clubs play abroad, the person subjected to the order must report to a local police station during the relevant “control period.”<sup>218</sup> The individual must also surrender their passport for the duration of the “control period,” an effective way to prevent those with violent and racist football-related convictions from traveling to matches abroad to cause trouble.<sup>219</sup> It is the duty of the convicting court to issue an international banning order on an offender “if it is satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with designated football matches.”<sup>220</sup>

Further amendments were made in 2000 by enacting the Football (Disorder) Act of 2000.<sup>221</sup> The 2000 Act “established a more proactive scheme

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<sup>214</sup> TAYLOR REPORT, *supra* note 128, at 52 (concluding that the supporter licensing scheme was impracticable going forward because making improvements to the nation’s stadiums jumped up the government’s priority list, forcing funds to shift away from the implementation of the scheme).

<sup>215</sup> Geoff Beckham, *The Price of Passion: The Banishment of English Hooligans from Football Matches in Violation of Fundamental Freedoms*, 25 HASTINGS INT’L & COMP. L. REV. 41, 44 (2001).

<sup>216</sup> Football (Offenses and Disorder) Act, 1999, c. 21 (amending Football Spectators Act, 1989, c. 37 (U.K.)).

<sup>217</sup> *Id.* secs. 1(1)–(5) (amending Football Spectators Act, 1989, c. 37, §§ 15(1)–(5) (U.K.)). These amendments set out the procedure for court-ordered international banning orders. *Id.* The amended act establishes that “[a]n international football banning order shall specify the police station in England or Wales at which the person subject to the order is to report initially.” *Id.* § 1(5) (internal quotation marks omitted).

<sup>218</sup> *Id.* secs. 1(1)–(5), §§ 15(1)–(5) (U.K.). The “control period” begins five days prior to the match and ends when the match finishes. *Id.*; accord Beckham, *supra* note 215, at 44.

<sup>219</sup> *Id.* sec. 3(1), § 15(5).

<sup>220</sup> *Id.* sec. 5(3) (amending Football Spectators Act, 1989, c. 37, § 22(5) (U.K.)). Renewals of banning orders can only be obtained “if there is evidence that the subject continues to pose a risk of violence or disorder at football matches.” IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, para. 9.3.

<sup>221</sup> Football (Disorder) Act, 2000, c. 25 (amending Football Spectators Act, 1989, c. 37 (U.K.))

for combating hooliganism,”<sup>222</sup> and strengthened the ability of law enforcement in some crucial areas.<sup>223</sup> For example, the Impact Assessment of the 2000 Act stated, “football banning orders played a major part in preventing and deterring English football disorder during Euro 2004. They are and remain the cornerstone of the multi-agency football disorder strategy.”<sup>224</sup> The 2000 Act established that any exclusionary order results in a comprehensive ban from traveling to and attending all domestic and international matches.<sup>225</sup>

Furthermore, the 2000 Act amended the statutory definitions of “violence”<sup>226</sup> and “disorder,”<sup>227</sup> adding factors the judge can consider when deciding whether to issue a banning order.<sup>228</sup> In applying the updated definitions of “violence” and “disorder,” instances of disorder are no longer limited only to those connected with football.<sup>229</sup> Now, courts have the ability “to impose banning orders against individuals who have never been convicted of a football-related offence.”<sup>230</sup>

The 2000 Act also revised some of the earlier limitations from the 1989 and 1999 Acts by allowing broader application of banning orders.<sup>231</sup> Section 14B(1)–(2) established a procedure allowing the judiciary to issue a banning order solely on a complaint made by a chief police officer if “the respondent

<sup>222</sup> Beckham, *supra* note 215, at 45. The Act has “real teeth and, [when] rigorously applied, will go a long way to further squeeze the criminal element out of support for our national game.” *UK Government New Police Powers Come Into Force*, M2 PRESSWIRE, Aug. 29, 2000, available at Proquest, Doc. No. 445968878 (quoting Bryan Drew, the head of Strategic and Specialist Intelligence at the National Criminal Intelligence Service (“NCIS”).

<sup>223</sup> IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, para. 2.2. Incidents caused by English fans at Euro 2000 in the Netherland and Belgium “demonstrated that the existing powers were not sufficient to prevent English fans from being involved in serious incidents overseas.” *Id.*

<sup>224</sup> IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, 9.8.

<sup>225</sup> Football (Disorder) Act, 2000, c. 25, sec. 1, § 14E(1)–(3), sch. 1 (amending Football Spectators Act, 1989, c. 37 (U.K.)); see also IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, para. 2.8.

<sup>226</sup> Football (Disorder) Act, 2000, c. 25, sec. 1, § 14C(1), sch. 1. The statute defines “violence” as any “violence against persons or property and includes threatening violence and doing anything which endangers the life of any person.”

<sup>227</sup> *Id.* sec. 1, § 14C(2), sch. 1 “[D]isorder” is defined as:

- (a) stirring up hatred against a group of persons defined by reference to a colour, race, nationality (including citizenship) or ethnic or national origins, or against an individual as a member of such a group;
- (b) using threatening, abusive or insulting words or behaviour or disorderly behaviour;
- or (c) displaying any writing or other thing which is threatening, abusive or insulting).

*Id.* (alteration in original).

<sup>228</sup> *Id.* sec. 1, §§ 14(C)(4)(a)–(d).

<sup>229</sup> See Football (Disorder) Act, 2000, c. 25, sch. 1.

<sup>230</sup> Beckham, *supra* note 215, at 46 (alteration in original).

<sup>231</sup> Football (Disorder) Act, 2000, c. 25, sec. 1, §§ 14, 15, 17, sch. 1.

has at any time caused or contributed to any violence or disorder in the United Kingdom or elsewhere.”<sup>232</sup>

In 2006, Scotland’s Parliament instituted its own banning-order legislation at the urging of Scottish law enforcement, which considered it a necessary tool in their fight against football violence.<sup>233</sup> Scottish Justice Minister Cathy Jamieson cited the growing call from Scottish citizens for the government to stop sectarianism, racism, and violence.<sup>234</sup>

The British Home Office conducted research to assess the impact of the 2000 Act at Euro 2004 and found that 2,370 British nationals had international banning orders preventing them from traveling to Portugal where they could have potentially engaged in football-related disorder.<sup>235</sup> When the report was finally presented to Parliament in 2005, the number of banning orders had already increased to 3,139.<sup>236</sup> Regarding the legislation’s impact on Euro 2004, the Home Office concluded that “football banning orders played a major part in preventing and deterring English football disorder” at the tournament.<sup>237</sup>

### B. *Applying Bans in Poland and Ukraine*

While there is little consensus within the literature studying football-related violence, the various schools of thought tend to share the assumption that football crowd disorder results from “the convergence of fans who have some form of predisposition toward violent confrontation.”<sup>238</sup> Therefore, prohibiting individuals known for or suspected of causing violence and disorder from attending matches is a sensible method to stop hooliganism. Research confirms the success of legislation prescribing stadium-banning orders and international travel bans.<sup>239</sup> To stop their growing problems with football-related violence,

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<sup>232</sup> *Id.* sec. 1, §§ 14B(1)–(2), sch. 1.

<sup>233</sup> Police, Public Order and Criminal Justice (Scotland) Act, 2006, (A.S.P. 10); *see also Football Ban Orders Take Effect*, BBC NEWS (Aug. 29, 2006, 1:40 PM), [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/5293288.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/5293288.stm). Although banning orders were employed in England and Wales, Scotland did not have national legislation prescribing banning orders before 2006. *Id.*

<sup>234</sup> *Football Ban Orders Take Effect*, *supra* note 233. Minister Jamieson called individuals that engage in bigotry, racism, and sectarianism “a disgrace to us all,” and called on the Scottish people “to respect our rivals and unite against the common enemies that would stain our game.” *Id.*

<sup>235</sup> IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, para 9.1 (comparing the increased number of banning orders from the 105 before Euro 2000, the 1,053 for the 2002 World Cup in Japan and South Korea, to the 2,370 during Euro 2004).

<sup>236</sup> *Id.* para. 9.2.

<sup>237</sup> *Id.* para. 9.8.

<sup>238</sup> Stott et al., *supra* note 93, at 117.

<sup>239</sup> *See* discussion *supra* Part II.A..

the Polish and Ukrainian governments should follow the lead of nations who have already implemented statutory banning orders.

In its annual report on football banning orders, the British Home Office found that for ninety-two percent of the banning orders that have expired since 2000, police concluded the individual no longer posed a risk of committing further football-related disorder.<sup>240</sup> Evidence from Euro 2004 points out that a major reason for the general lack of disorder and violence at the tournament were legislative measures passed by national governments “prevent[ing] ‘known hooligans’ from leaving their home countr[ies] during the tournament.”<sup>241</sup> Statistics from England and Wales continue to provide evidence that the bans reduce football-related violence: The number of arrests decreased by 302 (nine percent) from the 2009–2010 to the 2010–2011 seasons, and the total number of new banning orders issued fell as well.<sup>242</sup>

Genuine supporters want to be able to attend the matches of the club they support, so enforcing banning orders on individuals convicted of football-related disorder will offer two positive outcomes in Poland and Ukraine. First, banning orders exclude individuals who use football solely to have an outlet for their violent and/or racist tendencies.<sup>243</sup> Additionally, banning genuine fans serves as a deterrent for other supporters, showing there are real and serious consequences for engaging in disorder at matches.

Poland and Ukraine would also benefit from establishing penalties for violent and racist incidents outside football stadiums, as is done in the UK. Making racist chants while watching a match at a pub, engaging in violence while traveling to a match, or committing an attack motivated by the victim wearing a certain color are just as related to football as incidents that occur inside stadiums during a match.<sup>244</sup> Thus, these offenses should all result in a judicially-imposed football banning order against the offending individual.

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<sup>240</sup> HOME OFFICE, STATISTICS ON FOOTBALL-RELATED ARRESTS & BANNING ORDERS: SEASON 2010–11, (2011) [hereinafter STATISTICS 2010–11].

<sup>241</sup> Stott et al., *supra* note 93, at 118 (citing IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 211). Enforcement of the legislation, specifically in the U.K. and Germany, resulted in success “controlling the movement across national borders of those individuals and groups who were seen by the authorities as likely to initiate disorder.” *Id.*

<sup>242</sup> STATISTICS 2010–11, *supra* note 240. There were no arrests at 71 percent of English and Welsh matches, and 51 percent of all matches were “police free—continuing to free up police resources to deal with local police and community priorities.” *Id.*

<sup>243</sup> *Cf.* Pearson, *supra* note 198, at 1.

<sup>244</sup> See discussion *supra* Part I.E.

The current laws in Poland and Ukraine are insufficient to combat racism and violence related to football. Merely banning all opposing fans from matches—as the Łódź police did when they prohibited Widzew supporters from attending the derby match against ŁKS—does not offer a lasting solution to football-related disorder.<sup>245</sup> The consequence of a blanket ban of an entire club's fan base is that well-behaved fans are not permitted to attend, while dangerous fans from the other club are still allowed to go and cause disorder. ŁKS fans proved this when they attacked the Łódź riot police despite rival supporters not being present.<sup>246</sup> Banning individual offenders—those who are actually suspected or convicted of football-related disorder—is the right solution to rid Polish and Ukrainian football of this problem.

New laws need to be enforced to be successful. The Ukrainian parliament, the Verkhovna Rada, enacted tougher punishments in 2009 for serious crimes based on race, religion or national origin, but they are weak in comparison to other European nations.<sup>247</sup> The scenes filmed by *Panorama* in Kharkiv at the Metalist-Shakhtar Donetsk match, one of the biggest matches of the Ukrainian Premier League season, proved that the punishments enacted by the Rada are insufficient to stop the disorder and are not enforced in a meaningful way.<sup>248</sup>

During the match, in addition to the Nazi chanting mentioned earlier, Metalist fans attacked a group of Asian students sitting in the family section.<sup>249</sup> The Asian students were beaten, but neither the stewards nor police stepped in until some of the students had suffered injuries.<sup>250</sup> What was especially significant about this attack was that the Asian students were supporting

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<sup>245</sup> *Euro 2012: Stadiums of Hate*, *supra* note 1.

<sup>246</sup> *Id.*

<sup>247</sup> КРИМІНАЛ'НІЙ КОДЕКС УКРАЇНИ [KK UA] [Criminal Code] *amended by* ПРО ВНЕСЕННЯ ЗМІН ДО КРИМІНАЛЬНОГО КОДЕКСУ УКРАЇНИ ЩОДО ВІДПОВІДАЛЬНОСТІ ЗА ЗЛОЧИНИ З МОТИВІВ РАСОВОЇ, НАЦІОНАЛЬНОЇ ЧИ РЕЛІГІЙНОЇ НЕТЕРПИМОСТІ, N. 1707-17 [The Act Concerning Amendments to the Criminal Code of Ukraine in regards to Crimes Committed on the grounds of Racial, National or Religious Intolerance] 2009, No. 5, art. 43. The new and tougher punishments for murder committed out of motives of racial, national, or religious intolerance is ten to fifteen years with confiscation of property. *Id.* art 115(14). Actions intended to “humiliat[e] national honor and dignity for people’s religion, race, nationality, or language” are now punishable by a fine of 200 to 500 times the tax-fee minimum income, or up to five years of restrained liberty. *Id.* art. 161(1). Restriction of freedom means “deprivation of the right to certain posts or certain activities”).

<sup>248</sup> *Euro 2012: Stadiums of Hate*, *supra* note 1.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

Metalist.<sup>251</sup> This means there was no other motive for the attack other than the race of the victims.<sup>252</sup>

Right now the only available sentences for football-related crimes are fines, certain civic restrictions, probation, and jail time.<sup>253</sup> Without adding banning orders and travel restrictions as punishments for those convicted of football-related disorder offenses to the criminal code, incidents of disorder will continue to plague Polish and Ukrainian football.

### III. HATE SPEECH AND THE INCITEMENT OF VIOLENCE

*We will not tolerate sectarianism as a parasite in our national game of football or anywhere else in this society.*

—Alex Salmond, Scottish First Minister<sup>254</sup>

#### A. *Offensive Behaviour at Football and Threatening Communications (Scotland) Act*

Unlike the United States where free speech is sacrosanct to democracy, the European governments do not need to worry about potential constitutional violations when making legislation that limits free speech and expression.<sup>255</sup> European countries that have criminal or civil statutes restricting speech usually do so to protect public order or the human dignity of citizens.<sup>256</sup>

Incidents of racism in British football grew during the 1970's and 1980's as more minority players became prominent footballers.<sup>257</sup> Former Liverpool and England player, John Barnes, remembered “there wasn't a game in the '80s when you didn't get racial abuse as a black player.”<sup>258</sup> Following three football

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> See discussion *supra* Part I.D.

<sup>254</sup> *Law, Order & Public Safety: People and the Law, Sectarianism*, SCOT. GOV'T (last updated Dec. 19, 2011), <http://www.scotland.gov.uk/Topics/Justice/law/sectarianism-action-1/football-violence/bill>.

<sup>255</sup> See Elisabeth Zoller, *Foreword, Freedom of Expression: “Precious Right” in Europe, “Sacred Right” in the United States?*, 84 IND. L.J. 803, 804–05 (2009) (comparing the American view of free speech to that of Europe, and noting international treaties recognize legal limitations can be placed on free speech).

<sup>256</sup> Jeannine Bell, *Restraining the Heartless: Racist Speech and Minority Rights*, 84 IND. L.J. 963, 976 (2009). The United Kingdom's anti-hate speech laws are aimed at maintaining public order. *Id.* This category of speech restrictions “are based on the idea that hate speech that vilifies a group poses a more serious threat to the public order than insults directed at a person for his or her personal characteristics.” *Id.*

<sup>257</sup> Roger Bennett, *In the Struggle Against Racism, England Finds Hope*, ESPN (Nov. 6, 2012, 8:59 PM), [http://soccernet.espn.go.com/blog/\\_/name/espnfcunited/id/1472?cc=5901](http://soccernet.espn.go.com/blog/_/name/espnfcunited/id/1472?cc=5901).

<sup>258</sup> *Id.*



stadium disasters within weeks of each other in May 1985, the British government commissioned Justice Popplewell to investigate the causes of these incidents.<sup>259</sup> One of the key recommendations made in Popplewell's inquiry was for the creation of new offenses criminalizing "chanting obscene or racist abuse at a sports ground."<sup>260</sup> In 1991, Parliament recognized the need to create a separate statute for regulation of racist chanting at football matches and enacted the Football Offenses Act of 1991.<sup>261</sup>

The 1999 Act, discussed earlier, added more teeth to the racial chanting component of the Football Offenses Act of 1991 by substituting "whether alone or in concert with one or more others" for "in concert with one or more others."<sup>262</sup> This slight modification in language is a significant positive change, because it allows police to charge a lone individual for making racist remarks.

Recently, English football has seen a troubling increase in incidents of racism. Nevertheless, this may signal a positive cultural change, because the increase in incidents could be due to an increase in reporting them.<sup>263</sup> Journalist Roger Bennett remarked, "[t]he ugliness of these incidents may yet conceal a societal truth. While each occurrence has been grating to witness, their collective effect may ultimately prove positive."<sup>264</sup>

Problems relating to inciting violence through religious-based chanting are primarily felt in Scotland.<sup>265</sup> The Scottish Government, although still governed by the Westminster Parliament in London, had more powers devolved to it in 2001, which led to the creation of a Scottish Parliament in Edinburgh.<sup>266</sup> One

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<sup>259</sup> Greenfield & Osborn, *supra* note 22, at 323–24 n.34.

On May 11, 1985, a fire in a stand at a Bradford City Football Club resulted in 56 Deaths. On the same day a boy of 15 died during serious crowd disorder at Birmingham City Football Club. On May 29, 1985, 38 fans, mainly Italian, were killed during serious disturbances at European Cup Final between Liverpool Football Club and Juventus.

*Id.*

<sup>260</sup> *Id.* at 324.

<sup>261</sup> *Id.* at 326; Football (Offences) Act, 1991, c.19 (U.K.).

<sup>262</sup> Football (Offences and Disorder) Act, 1999, c. 21, sec. 9, § 3(2) (amending Football (Offences) Act, 1991, c.19 (U.K.)).

<sup>263</sup> See generally Bennett, *supra* note 257. "[Wh]en a single Chelsea fan, Gavin Kirkham, was accused of abusing Manchester United's Danny Welbeck, the offender was named and shamed across the back pages [of the tabloids] in howling coverage, replete with photos of the wrongdoer in a 'Borat mankini.'" *Id.*

<sup>264</sup> See generally Bennett, *supra* note 257.

<sup>265</sup> Offensive Behaviour in Football and Threatening Communications Bill, 2011 SP Bill [1]-PM, 2011, cl. 7, (Scot.).

<sup>266</sup> Scotland Act, 1998, c. 46, § 1 (U.K.) (talk about constitution).

of the devolved powers granted to the Scottish Parliament is the authority to enact criminal laws that are solely applicable to Scotland.<sup>267</sup>

Scotland enacted criminal laws regulating hooliganism. The Football (Offences and Disorder) Act of 1999 never specifically targeted the unique brand of sectarian violence found in Scottish football.<sup>268</sup> A poll conducted by the Scottish Parliament found that 91% of the Scottish population felt stronger legislation was needed to deal with the increasing sectarian and offensive behavior relating to football.<sup>269</sup> Therefore, Scottish Parliament felt pressured to pass legislation to specifically address these problems that plagued Scottish football and society.

In response to the call for stronger legislation, the Offensive Behaviour at Football and Threatening Communications Act was officially enacted in March 2012.<sup>270</sup> The Act provides law enforcement with two new criminal offenses for limiting anti-social behavior related to football: “offensive behavior”<sup>271</sup> and “threatening communication.”<sup>272</sup> The new offenses apply not only to incidents occurring at football stadiums but also apply to non-domestic property where football matches are broadcast and while fans are traveling to and from matches.<sup>273</sup>

Furthermore, the Threatening Communications Act has extraterritorial reach so acts taking place outside of Scotland fall within its scope if committed by an individual who habitually resides in Scotland.<sup>274</sup> The new criminal laws also apply to anything done by a foreign national while in Scotland and to communications made from outside Scotland, if the intention of such communication is “to be read, looked at, watched or listened to primarily in

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<sup>267</sup> *Id.* § 29.

<sup>268</sup> Football (Offences and Disorder) Act, 1999, c. 21, sec 9(2), § 3(1).

<sup>269</sup> *Law, Order & Public Safety: People and the Law, Sectarianism*, *supra* note 254.

<sup>270</sup> Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 2012, (A.S.P. 1).

<sup>271</sup> *Id.* § 1. The Act defines “offensive behaviour” as “sectarian and other offensive chanting and threatening behaviour related to football which is likely to cause public disorder.”

<sup>272</sup> *Id.* § 6; *see also Law, Order & Public Safety: People and the Law, Sectarianism*, *supra* note 254. The addition of “threatening communication” to the bill “strengthen[s] current law covering threats of serious harm and criminalise threats inciting religious hatred.” *Id.*

<sup>273</sup> Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 2012, (A.S.P. 1), § 2.

<sup>274</sup> *Id.* § 10(1).

Scotland.<sup>275</sup> Scottish Parliament created severe penalties for violation of the statute, including the possibility of a fine and up to five years in prison.<sup>276</sup>

The first offense criminalized by the Threatening Communications Act is offensive behavior at regulated football matches.<sup>277</sup> This prohibits behavior that expresses or stirs up hatred against people based on religion, race, and other identities.<sup>278</sup> The statutory language is broad, prohibiting discriminatory behavior that is wholly or partly based on hatred of a mentioned group, any threatening behavior, and any behavior a reasonable person is likely to consider offensive.<sup>279</sup>

Another part of the Act criminalizes threatening communications that meet one of two established conditions.<sup>280</sup> The first condition is met if the material contains or implies a threat or incitement to carry out a violent act against a particular group, causes people to fear, and the communicator intends to or recklessly causes fear.<sup>281</sup> The second condition occurs when material is threatening and the communicator intends to stir up hatred based on religion.<sup>282</sup>

<sup>275</sup> *Id.* § 10(2).

<sup>276</sup> *Id.* § 1(6).

<sup>277</sup> *Id.* § 1.

<sup>278</sup> *Id.* § 1(2)–(4).

(a) [E]xpressing hatred of, or stirring up hatred against, a group of persons based on the membership (or presumed membership) of—

(i) a religious group,

(ii) a social or cultural group with a perceived religious affiliation,

(iii) a group defined by reference to a thing mentioned in subsection (4). The groups referred to in subsection (4) include; color, race, nationality (including citizenship), ethnic or national origins, sexual orientation, transgender identity, and disability.

*Id.* § 1(4).

<sup>279</sup> *Id.* § 1(2)(c)–(e).

<sup>280</sup> *Id.* § 6(1).

<sup>281</sup> *Id.* § 6(2). “Condition A is that—

(a) the material consists of, contains or implies a threat, or an incitement, to carry out a seriously violent act against a person or against persons of a particular description,

(b) the material or the communication of it would be likely to cause a reasonable person to suffer fear or alarm, and

(c) the person communicating the material—

(i) intends by doing so to cause fear or alarm, or

(ii) is reckless as to whether the communication of the material would cause fear or alarm

<sup>282</sup> *Id.* § 6(5). “Condition B is that—(a) the material is threatening, and (b) the person communicating it intends by doing so to stir up hatred on religious grounds.” *Id.*

The two conditions constituting “threatening communication” give the Scottish government and law enforcement officials wide discretion to charge an individual on the grounds of hate speech while not being a blanket restriction of speech.<sup>283</sup> This is a crucial point of the law; people will not come into the purview of the Act if they are engaging in non-threatening discourse on religion, even if that discourse is negative.<sup>284</sup>

A year after passing this legislation, Scotland’s Justice Secretary, Kenny MacAskill, reports that the law has been a success thus far.<sup>285</sup> MacAskill stated “[t]he charge and conviction rates for people arrested show that it is working well,” and that they “have made clear that bigotry and religious hatred have no place in modern Scotland and they will stamp on it wherever and whenever it occurs.”<sup>286</sup> In November, Lord Advocate Frank Mullholland QC reported authorities had prosecuted eighty-nine percent of those charged under the Act, with an eighty-three percent conviction rate.<sup>287</sup> It is important to note, as MacAskill did, “[t]he overwhelming majority of football fans are law abiding and want to enjoy the friendly rivalry that is part of any game without this being marred by the actions of a mindless minority,” and further stated that the government will spend £9 million in the next three years to try and rid sectarianism in wider society.<sup>288</sup>

### *B. Football-Specific Speech Restrictions in Poland and Ukraine*

Poland and Ukraine both currently have statutory provisions relating to racism and discrimination, but they are not sufficient.<sup>289</sup> In 2008, the Ukrainian government attempted to amend its penal code with respect to inciting racial violence, but these amendments failed to fully overcome the problems they attempted to solve.<sup>290</sup>

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<sup>283</sup> *Id.* § 7(1). “[T]hreatening communication” does not include peaceful preaching or proselytizing, criticisms, comment, satire, or jokes about religious or non-religious beliefs. *Id.*

<sup>284</sup> *See id.*

<sup>285</sup> *Anti-Sectarian Legislation ‘Working Well,’* BBC NEWS (Mar. 1, 2013, 2:24 AM), <http://www.bbc.co.uk/news/uk-scotland-21626656>.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *See supra* Part I.D; Kodeks Karny [K.K.] [Penal Code of 06 June 1997] art. 119, §§ 1–2, Dz. U. 1997 Nr 88, Poz. 553, at 2691 (Pol.); KRYMINAL’NYĬ KODEKS UKRAĬNY [KK UA] [Criminal Code] art. 67 (Ukr.); *see also Euro 2012: Stadiums of Hate*, *supra* note 1 (discussing the overall lack of enforcement in these countries).

<sup>290</sup> UKRAINE HATE CRIME STUDY, *supra* note 146, at 14–16.

Article 67 of the Ukrainian Criminal Code establishes sentencing guidelines that identify various aggravating factors that lead to longer sentences, including crimes based on “racial, national, or religious hatred.”<sup>291</sup> But these are not mandatory for a judge to consider when sentencing an individual, and there are no recorded cases where a judge has taken the aggravating factors into account when issuing a sentence.<sup>292</sup>

The example of supporters of Resovia Rzeszów in *Panorama* is telling of Polish enforcement of anti-hate speech laws.<sup>293</sup> By redefining “Jew” as a derogatory term to mean “someone who deserves to be defeated or even killed,” Polish fans attack both Jewish people and the target of their insult.<sup>294</sup> At a match in May 2010, Resovia supporters unfurled a large banner proclaiming “Death to Hook-noses,” and another with a stereotypical anti-Semitic depiction of a Jewish person with an “X” through it.<sup>295</sup> The Polish Football Association eventually fined Resovia, but not until a year after the original incident.<sup>296</sup> When the BBC crew filmed in Rzeszów in April 2012, cameras captured a Resovia fan holding a banner proclaiming, “[t]he Anti-Jew Front.”<sup>297</sup> No club officials, stewards, or police took immediate action to remove the banner or confront the individual.<sup>298</sup>

Another problem in Eastern Europe relating to racism and football is the abundance of firm-related graffiti.<sup>299</sup> More so than supporters in other countries, Eastern European hooligans mark their turf and promote their club and firm using graffiti.<sup>300</sup> Poland has a law banning the printing or spray painting of fascist signs or statements, like the swastika, but this restriction has little to no effect on hooligans spray painting fascist and anti-Semitic sentiments throughout Polish cities.<sup>301</sup>

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<sup>291</sup> KRYMINAL'NYI KODEKS UKRAINY [KK UA] [Criminal Code] art. 67 (Ukr.); *see also* UKRAINE HATE CRIME STUDY, *supra* note 146, at 14.

<sup>292</sup> UKRAINE HATE CRIME STUDY, *supra* note 146, at 14.

<sup>293</sup> *Euro 2012: Stadiums of Hate*, *supra* note 1.

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.* Police later arrested the supporter who brought the banner to the match. *Id.* The Polish FA fined Resovia £1,000 and banned supporters from the next two home matches. *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> Kodeks Karny [K.K.] [Penal Code of 06 June 1997] art. 53–63, Dz.U. 1997 Nr. 88, Poz. 553, at 2682–83 (Pol.).

If Poland or Ukraine established statutes allowing its courts to issue meaningful sentences for hate speech, it would be a positive step in removing derogatory and offensive communications from football. Stopping hate speech and racism is a global problem. This is especially true in the less-economically developed region of Eastern Europe, as immigrants from Asia and Africa continue to come in search of jobs or to migrate to Western Europe.<sup>302</sup> Poland and Ukraine should follow the model of British legislation and establish speech restrictions aimed at protecting public order in order to curtail the growing problem of racist speech and violence.

The EU's commitment to fighting discrimination and racism should signal to nations interested in joining the EU, like Ukraine, that they should voluntarily enact stronger racism and hate speech legislation.<sup>303</sup> Non-governmental organization's recommendations should also be considered, because many Eastern European nations underestimate the severity of their issues related to racism and currently do not collect data on racially or religiously motivated crimes.<sup>304</sup>

The restriction on communications intending to incite violence is widely recognized in many international and European treaties and conventions, as well as in the national legal frameworks in many countries.<sup>305</sup> Poland and Ukraine must follow the European community and create statutes to protect minorities from abuse and violence. The present situation in Greece is a cautionary tale of how growing unemployment and economic austerity

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<sup>302</sup> World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Geneva, Switz., May 21–June 1, 2001, *Report of the Central and Eastern European Regional Seminar of Experts on the Protection of Minorities and Other Vulnerable Groups and Strengthening Human Rights Capacity at the National Level*, paras. 16–39, U.N. Doc. A/CONF.189/PC.2/2, Annex (Aug. 14, 2000); see FRANK DÜVEL, CENTRE ON MIGRATION-POLICY & SOCIETY, UKRAINE-EUROPE'S MEXICO 4 (2006) (noting that Ukraine and Eastern Europe lie at the crossroads for migration from Asia and Africa to the more prosperous Western European countries).

<sup>303</sup> Council Directive 2000/43/EC, Implementing the Principle of Equal treatment Between Persons Irrespective of Racial or Ethnic Origin, 2000 O.J. (L 180) 22; Ryan, *supra* note 40, at 270–71.

<sup>304</sup> See, e.g., UKRAINE HATE CRIME STUDY, *supra* note 146, at 17–18 (noting the recommendations made by Human Rights First to the Ukrainian government to address Ukraine's problems with racist violence).

<sup>305</sup> See, e.g., Additional Protocol to the Convention on Cybercrime Concerning Criminalization of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, Jan. 28, 2003, E.T.S. No. 189; Criminal Code, R.S.C., 1985, c. C-46, §§ 318–19 (Can.); Human Rights Act 1993 (N.Z.); Prohibition of Incitement to Hatred Act 1989 (Act No. 19/1989) (Ir.), *available at* [www.irishstatutebook.ie/1989/en/act/pub/0019/print.html](http://www.irishstatutebook.ie/1989/en/act/pub/0019/print.html).

measures can create a situation that allows a racist, anti-Semitic political party to gain a foothold in the national government and among law enforcement.<sup>306</sup>

If Poland and Ukraine are not proactive in establishing hate speech restrictions, a far-right group like the Patriots of Ukraine could seize on the economic problems and gain power within these nations. Both countries contain laws outlawing organizations,<sup>307</sup> they must now apply them with enough force to prevent them from continuing to spread their bigoted and hateful message.

#### IV. POLICING TACTICS AT FOOTBALL MATCHES

##### A. *Crowd Control Methods and Hooliganism*

After the peak period of troubles with hooliganism, the U.K. Home Office conducted a series of extensive inquiries into government and law enforcement reactions to incidents of football-related disorder.<sup>308</sup> Lord Taylor devoted Part III of his Hillsborough inquiry to reviewing crowd control at football matches.<sup>309</sup> Because of the failures of the South Yorkshire Police to effectively control the crowd at the match, Lord Taylor recommended police make better use of Closed-Circuit Television (“CCTV”) technology, computerize ticket records, establish a national football intelligence unit, and create restrictions on alcohol consumption.<sup>310</sup>

Many of Lord Taylor’s recommendations have been implemented by the British government, law enforcement agencies, and individual football clubs, and they are contributing to vast reductions in the instances of football-related disorder in the United Kingdom.<sup>311</sup> Although there are still risks of spontaneous disorder, the effect of the tougher legislation and new policing

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<sup>306</sup> Antonis A. Ellinas, *The Rise of Golden Dawn: The New Face of the Far Right in Greece*, S. EUR. SOC’Y & POL., March 25, 2013, at 1–2, 6–7, <http://www.tandfonline.com/doi/pdf/10.1080/13608746.2013.782838>.

<sup>307</sup> Konstytucja Rzeczypospolitej Polskiej [Polish Constitution of 02 Apr. 1997] art. 13, Dz.U. 1997 Nr. 78, Poz. 483, at 2416 (Pol.); KONSTYTUSIJA UKRAINY [KONST. UA] [CONSTITUTION] art. 37 (Ukr.).

<sup>308</sup> TAYLOR REPORT, *supra* note 128, at 1.

<sup>309</sup> *Id.* at 42–58 (the subject headings in Part III of the report are: police planning and control, alcohol, tickets and touts, police strategies against hooligans, and other possible measures against hooligans).

<sup>310</sup> *Id.* at 42.

<sup>311</sup> See IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, para. 3.3. In 1996 levels of hooliganism had decreased in the United Kingdom because of better CCTV coverage, the conversion to all-seater stadia recommended by the *Taylor Report*, and more stringent ticketing schemes to separate rival fans. Greenfield & Osborn, *supra* note 22, at 328–29.

tactics has been to push the individuals committing these acts to the margins of society.<sup>312</sup>

The next major step for European governments and the EU is to increase the exchange of information and inter-agency cooperation. The Council of the European Union adopted a decision in 2007 that requires Member States “to strengthen their cooperation and to put the exchange of information on a professional footing in order to prevent disturbances to law and order . . . .” and to exchange information on “recommendations for international police cooperation and measures to prevent and control violence and disturbances.”<sup>313</sup>

The United Kingdom had already established a policing unit dealing specifically with football prior to the 2002 council decision.<sup>314</sup> In the system called the United Kingdom Football Policing Unit, each of the ninety-two Football League clubs is assigned a police “spotter” who is responsible for developing information and sharing it with the national agency.<sup>315</sup> This advanced system of intelligence gathering and exchange makes it possible for the United Kingdom to implement its national system of banning orders and travel bans, as information can be quickly directed to the specific law enforcement agencies and officials that need it.<sup>316</sup> Furthermore, the Home Office funds research aimed directly at developing a model “for policing high-risk crowds of foreign nationals attending football matches.”<sup>317</sup>

This system was especially successful for enforcing banning orders during Euro 2004.<sup>318</sup> In preparation for the tournament in Portugal, the National Crime Intelligence Service gathered intelligence to share with its Portuguese counterparts and coordinated a nationwide port policing operation to prevent those with travel bans from leaving the United Kingdom.<sup>319</sup>

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<sup>312</sup> IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, para 3.4 (stating that most of current trouble in England seems to center around local derbies and other high risk matches, but is no longer a common occurrence at normal matches).

<sup>313</sup> Council Decision 2007/412/JHA *amending* Decisions 2002/348/JHA, concerning Security in Connection with Football Matches with an International Dimension, 2007 O.J. (L 155) 1.

<sup>314</sup> Frank Gregory, *The European Union and the Promotion of Major Event Security Within the EU Area*, in *TERRORISM AND THE OLYMPICS: MAJOR EVENT SECURITY AND LESSONS FOR THE FUTURE* 212 (Anthony Richards, Pete Fussey & Andrew Silke eds., 2011).

<sup>315</sup> *Id.*

<sup>316</sup> *See id.*

<sup>317</sup> Stott et al., *supra* note 93, at 121.

<sup>318</sup> *See* IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 206, para. 9.1.

<sup>319</sup> *Id.* para. 7.5.



The Council's effort to improve coordination of law enforcement and intelligence was also furthered by integrating the 2005 Treaty of Prüm<sup>320</sup> into the EU legal framework.<sup>321</sup> The Treaty intensifies cross-border law enforcement efforts specifically, with respect to "terrorism, cross-border crime and illegal migration."<sup>322</sup> This has significant implications for policing international football matches because it vastly improves information exchange procedures by automatically allowing contracting nations to access European-wide and national police databases,<sup>323</sup> and creates new avenues for operational coordination between law enforcement agencies.<sup>324</sup>

### *B. Applying Modern Policing Tactics in Poland and Ukraine*

In addition to instituting tougher criminal punishments for those convicted of football-related disorder and creating new criminal offenses for hate speech, Poland and Ukraine must modernize their policing tactics and procedures with respect to football-related disorder. These must be implemented locally, within the police forces of cities hosting matches, as well as nationally, by developing a system to exchange information and coordinate inter-agency efforts to monitor known hooligans. Currently, Poland and Ukraine base their policing efforts on an outdated theory that expects football fans to be violent, which in turn leads to increased instances of violence.<sup>325</sup>

The footage from *Panorama* clearly shows Polish and Ukrainian police relying on the paramilitary-style of policing football supporters.<sup>326</sup> The *Taylor Report* noted that disrespectful and contemptuous policing tactics "sour[] the attitude of the supporters towards all police."<sup>327</sup> In Łódź, ŁKS fans expecting to do battle with Widzew supporters instead fought with the riot police

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<sup>320</sup> Convention on the Stepping Up of Cross-Border Cooperation, Particularly in Combating Terrorism, Cross-Border Crime and Illegal Migration, May 27, 2005, 2617 U.N.T.S. 3.

<sup>321</sup> Council Decision 2008/615/JHA, of 23 June 2008 on the Stepping Up of Cross-border Cooperation, Particularly in Combating Terrorism and Cross-border Crime, 2008 O.J. (L 210) 1; *see also* Press Release, Council of the European Union, 2781st Council Meeting, No. 5922/07 (Feb. 15, 2007), *available at* [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/92800.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/92800.pdf).

<sup>322</sup> Council Decision 2008/615/JHA, 2008 O.J. (L 210) 1.

<sup>323</sup> *Id.* at 2.

<sup>324</sup> *Id.*

<sup>325</sup> Stott et al., *supra* note 93, at 136. This theory leads police to "see their role as simply to react to, control, contain, and disperse the inherent tendencies of the crowd toward disorder and to undermine the actions of violent minorities seeking to hijack the irrational mass." *Id.*

<sup>326</sup> *Euro 2012: Stadiums of Hate*, *supra* note 1.

<sup>327</sup> TAYLOR REPORT, *supra* note 125, para. 246, at 42 (noting that some tactics used by police and the police's treatment of supporters, especially those traveling to away matches, could create more harm than good).

stationed outside the stadium after Łódź police banned the Widzew supporters from attending the match. An editorial written in the *Kraków Post* described the Polish police's toughness: "These lads' mums and dads rioted under Soviet machine guns—a few chairs thrown by beered-up fans is not going to intimidate them."<sup>328</sup>

Research into previous violent incidents involving English fans concluded that "undifferentiated forms of coercive police intervention,"<sup>329</sup> like those threatened in the *Kraków Post* editorial, only serve to unify regular supporters with hooligans, and create a perception of victimization leading to the view that retaliation against the police is legitimate.<sup>330</sup> Deployments of paramilitary police forces at large events like football matches is counterproductive and creates the opposite affect the police set out to achieve.<sup>331</sup>

As an EU Member State, Poland must comply with binding legislative measures of the Council, like the Treaty of Prüm, and work towards implementing cooperative police measures. While EU is not applicable to Ukraine, implementing similar measures should help Ukraine overcome its hooligan problem and put it in better position to join the EU in the future. Establishing a national database and intelligence system modeled on the British NCIS is ideal and makes it easier to implement the other ideas proposed in this article.

Following the example of Portugal's policing tactics at Euro 2004, where paramilitary police forces were on call but kept out of sight, will also help control violence between supporters and police.<sup>332</sup> Furthermore, the international cooperation and free exchange of information prior to Euro 2004 between Portuguese and British law enforcement and intelligence agencies should be the model for other European nations to look to.<sup>333</sup> By modernizing policing tactics, limiting the use of paramilitary tactics to situations of absolute necessity, and instituting a database and system of information exchange for

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<sup>328</sup> Jamie Stokes, *10 Tips for Staying Safe and Legal in Poland During the Euros*, KRAKOW POST (June 7, 2012), <http://www.krakowpost.com/article/5226>.

<sup>329</sup> Stott et al., *supra* note 93, at 120.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.* at 136 (noting that riots are often provoked by zero tolerance, deterrence, and "command and control" policing efforts).

<sup>332</sup> *Id.* at 134.

<sup>333</sup> IMPACT OF MEASURES INTRODUCED BY THE 2000 ACT, *supra* note 211, para 7.4 "The aim throughout was to influence host perceptions and expectation and encourage the adoption of interactive, low friction policing strategies in venue cities and towns designed to minimise the risk of minor incidents being transformed into disorder and violence." *Id.*

known hooligans, Poland and Ukraine will better be able to control violent football supporters.

### CONCLUSION

The implications of racism and football-related violence extend far past the boundaries of the sport, spreading fear, conflict, and social unrest in the wider community. If left unchecked, it can create major issues for law enforcement officials charged with protecting citizens and politicians in the government. Society in general is greatly affected by hooliganism left unchecked. Those who want to watch a match in a stadium or bar, or walk down a street wearing their club's colors, cannot do so without risking physical or verbal abuse.

Poland and Ukraine are both currently struggling to cope with violent and racist football supporters, much like the United Kingdom did during the peak of the "English Disease." The attention brought to Poland and Ukraine as co-hosts of Euro 2012 and highlighted by the *Panorama* documentary, exposed these issues to the world. Comparing Poland and Ukraine to the United Kingdom provides a case study in how to tackle the difficult problem of hooliganism and fan disorder.

Because of the make-up of European football's governance structure, national governments must strengthen criminal sanctions for football-related disorder because other organizations are not in a position to enact and enforce the necessary laws. Nevertheless, this does not absolve the sport's governing bodies of responsibility for aiding in finding a solution to racism and violence.

This article proposes three measures Poland and Ukraine should implement to solve their problems of football-related violence and racism: (1) enact legislation establishing mandatory travel restrictions and banning orders for individuals convicted of football-related crimes; (2) criminalize hate speech and inciting violence related to football using Scotland's Offensive Behaviour at Football and Threatening Communications Act of 2012 as a guide; (3) develop less confrontational policing methods for football matches and crowd control, (4) and establish better channels of communication within national borders and with other European nations to track and monitor hooligan activity.

Racist and violent behavior has no place in sports or society. By adopting the proposals laid out in this Article, Polish and Ukrainian football can make great strides in keeping individuals who intend on causing trouble out of the game and can take back the football terraces for the law-abiding majority.