EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 379 (2018)
08.11.2018

Court rejects allegation of double jeopardy in hooliganism case as inadmissible

In its decision in the case of Seražin v. Croatia (application no. 19120/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the measures used in Croatia to fight against hooliganism.

Mr Seražin, the applicant, complained under Article 4 of Protocol No. 7 (right not to be tried or punished twice) that he had been prosecuted and convicted twice for causing disorder at a football match in 2012, first in minor offence proceedings and then in proceedings banning him from attending sports events.

The Court concluded that Article 4 of Protocol No. 7 did not apply in Mr Seražin's case because he had not faced a criminal charge in the second set of proceedings. The measure applied in those proceedings had not involved a fine or his being deprived of his liberty, and had essentially been to prevent him from committing further violence, rather than to punish him a second time for the offence of hooliganism.

Principal facts

The applicant, Tomislav Seražin, is a Croatian national who was born in 1989 and lives in Zagreb.

In August 2012 the Zagreb Minor Offences Court found him guilty of hooliganism for causing disorder at a Dinamo Zagreb football match. He was given a suspended sentenced of 25 days in prison and, under section 32 of the Prevention of Disorder at Sports Events Act ("the Act"), was banned from attending Dinamo Zagreb matches for one year.

Over the next two years, he was arrested both in Croatia and abroad for hooliganism-related offences. He was also found guilty and fined in Bosnia and Herzegovina for creating disorder and attacking the police at a football match.

In April 2014 the same minor offences court allowed a request by the police, under section 34 of the Act, to ban Mr Seražin from attending all matches involving Dinamo Zagreb and the Croatian national team.

The court based its decision on information provided by the police, including the judgment of August 2012 finding him guilty of hooliganism. The court stressed that the measure was needed to prevent him from committing further offences.

Mr Seražin appealed, arguing that the imposition of the exclusion measure under section 34 had breached his right not to be tried and punished twice for the same offence because he had already been found guilty and sentenced for the same conduct in 2012.

The High Minor Offences Court dismissed his appeal. It found that the measure under section 32 was a sanction, while the measure under section 34 was preventive and based on information of previous unlawful conduct.

The courts similarly dismissed the applicant's appeal in another set of proceedings in 2015 to apply a second exclusion measure.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 April 2015.

Relying on Article 4 of Protocol No. 7, Mr Seražin complained that he had been tried and punished twice for his conduct at a football match in 2012, first in the proceedings which found him guilty of hooliganism and then in the proceedings banning him from attending sports events.

The decision was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Ksenija **Turković** (Croatia),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Gilberto **Felici** (San Marino),

and also Abel **Campos**, *Section Registrar.*

Decision of the Court

The Court reiterated that the principle of *ne bis in idem* or double jeopardy only applied to a trial and/or conviction in "criminal proceedings".

The Government argued that the second set of proceedings against Mr Seražin, in which the exclusion measure under section 34 had been applied to ban him from attending sports events, had not concerned a criminal matter within the meaning of the European Convention.

First, looking at national law, the Court noted that the exclusion measure had not been classified as a "criminal penalty". Indeed, the domestic courts' consistent approach had been to consider the measure as preventive.

In the Court's view also, the exclusion measure was chiefly preventive rather than punitive in nature. Operating independently of a minor offences conviction, it could not be applied as a supplementary sanction or be part of the sentencing procedure. Nor was it a direct consequence of his conviction for hooliganism as it remained open to the minor offences court to refuse the application of the measure. Moreover, the police had stressed in their request to apply the measure that it was in the interest of public safety. The measure was therefore to prevent future violence rather than to subject the applicant to a second punishment for his offence.

Furthermore, the measure under section 34 was limited to reporting to a police station two hours before football matches. This was unlike the measure applied under section 32 in the minor offence proceedings which confiscated travel documents or required an individual to remain at a police station during sporting events, and whose distinctive nature was therefore to be considered a sanction.

Lastly, in the second set of proceedings banning him from attending sports events, Mr Seražin had neither been fined nor deprived of his liberty. Indeed, in its previous cases involving even more substantial effects on an applicant than those in the present case, such as obliging those belonging to a "mafia-type" group to report once a week to the police or refusing to grant a residence permit to an individual following his conviction, the Court had found that the measures had not amounted to a "criminal" penalty.

In sum, the Court considered that Mr Seražin had not been subjected to a criminal charge when the courts applied the exclusion measure under section 34 against him. It therefore concluded that Article 4 of Protocol No. 7 did not apply in his case and rejected his application as inadmissible.

The decision is available only in English.

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