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

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Preventive detention in football hooligan case did not breach the Convention

In today's **Grand Chamber** judgment[1] in the case of **S., V. and A. v. Denmark** (application nos. 35553/12, 36678/12, and 36711/12) the European Court of Human Rights held, by 15 votes to 2, that there had been:

no violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.

The case concerned the applicants' detention on 10 October 2009 for over seven hours when they were in Copenhagen to watch a football match between Denmark and Sweden. The authorities detained the applicants in order to prevent hooligan violence. The applicants unsuccessfully sought compensation before the Danish courts.

The Court was satisfied that the Danish courts had struck the right balance between the applicants' right to liberty and the importance of preventing hooliganism. In particular, the courts had thoroughly examined the police's strategy to avoid clashes on the day in question, finding that they had: taken into account the six-hour time-limit for preventive detention under national law, even though it had been slightly overrun; engaged proactive dialogue with fans/supporters, before employing more drastic measures such as detention; aimed to only detain those, such as the applicants, who had been identified as a risk to public safety; and, carefully monitored the situation so that the applicants could be released as soon as the situation had calmed down. The authorities had moreover provided concrete evidence specifying the time, place and victims of the offence of hooliganism which the applicants would in all likelihood have been involved in had it not been prevented by their detention.

In finding that the applicants' detention had been permissible under the Convention the Court applied a flexible approach so that the police's use of short-term detention to protect the public was not made impracticable. In particular, it clarified and adapted its case-law under Article 5 § 1 (c), finding that the second part of that provision, namely "when it is reasonably considered necessary to prevent committing an offence", could be seen as a distinct ground for deprivation of liberty, outside the context of criminal proceedings.

Principal facts

The applicants are three Danish nationals who were born in 1989, 1982, and 1982 respectively.

On 10 October 2009, the applicants were in Copenhagen to watch a football match between Denmark and Sweden. The Danish police were aware that hooligan groups from each country were travelling to the city and planning to fight each other. Therefore, plans were made to arrest and charge the instigators of fights if they occurred or to detain instigators in order to prevent clashes.

During the afternoon, the first big fight started between Danish and Swedish spectators on Amagertorv square in the centre of Copenhagen, which resulted in five or six people being arrested, including two of the three applicants, Mr V. and Mr A. Subsequently, other spectators were arrested elsewhere, including the remaining applicant, Mr S. The applicants were each detained for over seven hours. They were not charged with any criminal offence. In total 138 spectators were arrested, half of whom were charged with various criminal offences.

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The applicants brought compensation proceedings before the Danish courts, alleging that their detention had been unlawful because it had been preventive and had exceeded six hours, which was the time-limit under the relevant law for detention to avert a danger or disturbance of public order.

The three applicants, represented by counsel, were heard by the City Court of Aarhus, and claimed that they had not been involved or had had any intention of becoming involved in altercations.

The strategic commander of the police operation, and a number of other police officers also gave testimony.

The police strategic commander explained that, because the match was to start at 8 p.m., the plan was to avoid resorting to detention early in the day. Otherwise, given the six-hour time-limit, potential troublemakers would have had to be released during or immediately after the match and would have been able to resume their brawls. The police had therefore first talked to the various groups when they had started arriving at midday and had only detained them when a fight had broken out later in the afternoon. The situation had been continuously monitored until after midnight, when the situation in central Copenhagen had calmed down and the police considered that the detainees could be released without their resuming fighting.

One of the police constables testified that Mr V. and Mr A. had been detained after he had seen them talking to an activist from a local faction and issuing orders to other hooligans. Another constable explained that Mr S. had been detained after a man had reported seeing him call on friends to meet at the entrance to Tivoli Gardens to try to start a fight with Swedish supporters.

The City Court refused the applicants' compensation claim in November 2010. It found that the police had had every reason to believe that the applicants had been organising fights between football hooligans in the centre of Copenhagen, which could have caused considerable danger to the safety of peaceful football supporters and uninvolved third parties and which the police had had a duty to attempt to prevent. It therefore found that the police had not exceeded their powers by detaining the applicants. It further held that overrunning the time-limit had been justified in the circumstances, given the extent, duration and organised nature of the disturbances. In any case, the wording of the law set out that detention should not exceed six hours, but only to the extent that this was possible.

That decision was subsequently upheld on appeal by the High Court and leave to appeal to the Supreme Court was ultimately refused in December 2011.

Complaints, procedure and composition of the Court

The applicants complained that their detention had been unlawful as it had exceeded the time-limit prescribed by domestic law, and notably that it had not been justified under Article 5 §§ 1 (b) or (c) (right to liberty and security) of the European Convention of Human Rights.

The applications were lodged with the European Court of Human Rights on 8 June 2012.

Notice of the application was given[2] to the Denmark Government, together with a question from the Court, on 7 January 2014.

On 11 July 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber[3].

[2] In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure"). Further information about the procedure after a case is communicated to a Government can be found in the Rules of Court.

[3] Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might

A Grand Chamber hearing was held in Strasbourg on 17 January 2018.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Helena **Jäderblom** (Sweden),
Robert **Spano** (Iceland),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro),
Vincent A. **De Gaetano** (Malta),
Erik **Møse** (Norway),
Paul **Lemmens** (Belgium),
Krzysztof **Wojtyczek** (Poland),
Dmitry **Dedov** (Russia),
Jon Fridrik **Kjølbro** (Denmark),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Lətif **Hüseynov** (Azerbaijan),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

The Court found that the applicants' detention had not been covered by Article 5 § 1 (b), which authorised detention to "secure the fulfilment of any obligation prescribed by law" as they had not been given any specific orders regarding any such obligation. For example, they had not been told to refrain from instigating hooligan fights on 10 October 2009 at the Copenhagen international football match, to remain within a certain group or to leave a specific place. Nor could they have been implicitly aware that they should refrain from committing a specific act, namely hooliganism, because of the large police presence that day, as argued by the Government. Such a wide interpretation of sub-paragraph (b) would be incompatible with the rule of law.

However, it considered that the applicants' detention had been covered by the second part of Article 5 § 1 (c), which allows detention "on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent committing an offence".

Before coming to that conclusion, the Court found it necessary to clarify and adapt its case-law under that sub-paragraph. In particular, it accepted that the second part of the sub-paragraph, namely "when it is reasonably considered necessary to prevent committing an offence", could be seen as a distinct ground for deprivation of liberty, outside the context of criminal proceedings.

Furthermore, the requirement under this sub-paragraph that a person be lawfully arrested or detained "for the purpose of bringing him before the competent legal authority" should not constitute an obstacle to short-term detention and should thus be applied with a degree of flexibility. A strict interpretation of the purpose requirement could unduly prolong the detention and make it impracticable for the police to maintain order and protect the public. As long as the detainee was brought promptly before a judge to have the lawfulness of his or her detention reviewed or was

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have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects. "

released before such time, the Court would consider that the purpose requirement under Article 5 § 1 (c) had been complied with.

Any flexibility should however be limited by certain safeguards under Article 5 §§ 3 and 5, including the requirement that the deprivation of liberty be lawful, that the offence be concrete and specific and that the authorities show that the person would in all likelihood have been involved in the offence had it not been prevented by his or her detention and have an enforceable right to compensation. In addition, the Court found that, generally speaking, release "at a time before prompt judicial control" in the context of preventive detention should be a matter of hours rather than days.

In the present case, where the applicants had been released within a matter of hours at a time before it became necessary to bring them before a judge, the Court was satisfied that such a flexible approach could be applied. Indeed, they had had the opportunity to bring the question of the lawfulness of their detention before the domestic courts and, if they had been successful, they could have been awarded compensation.

The Court went on to determine whether their detention had been justified under Article 5 § 1 (c).

First, it found that the domestic authorities' assessment of the applicants' case had not been arbitrary or manifestly unreasonable and accepted that their detention had conformed to the rules of national law. In particular, the courts had examined the police's conduct on the day in question, finding that its strategy had taken into account the six-hour time-limit for preventive detention and accepting its justification for the moderate exceeding of that period.

Nor could it criticise the domestic courts' findings that the applicants had been detained because the police had had sufficient reason to believe that they had incited others to start a fight with Swedish football fans, thus causing a concrete and imminent risk to public order and safety. In particular, they had been specific and concrete as to the offence, citing the place (Amagertorv square and Tivoli Gardens), the time (the afternoon of 10 October 2009) and the victims (the public present at those places at those times). The authorities had therefore provided evidence to show that the applicants would in all likelihood have been involved in the offence of hooliganism unless detained.

Lastly, the Court was satisfied that less stringent measures would not have sufficed to prevent the serious offence of a hooligan brawl. Before the first fight had broken out the police had had a very careful and lenient approach to avoid clashes, notably a proactive dialogue with fans/spectators when they had started to arrive at the beginning of the afternoon. The police had also taken care to detain only those such as the applicants who, in their assessment, had been identified as instigators and posed a risk to public safety. Moreover, that risk had been carefully monitored, enabling the Chief Inspector in charge of the detainees to assess when they should start to be released.

Overall, the Court found that the applicants had been released as soon as the risk of brawls had passed, that their detention had lasted no longer than was necessary to prevent them from taking further steps towards instigating violence and that the risk assessment had been sufficiently monitored. The Danish courts had struck a fair balance between the applicants' right to liberty and the importance of preventing hooliganism and there had been no violation of Article 5 § 1.

Separate opinions

Judges De Gaetano and Wojtyczek expressed a joint partly dissenting opinion which is annexed to the judgment.

The judgment is available in English and French.

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