

Summary

On goal? Evaluation of the Dutch Combating Football Hooliganism and Serious Public Nuisance (Measures) Act

Pro Facto (H.B. Winter, A. Sibma, N. Struiksma, E.A. Beswerda, N.O.M. Woestenburg)

Since 1 September 2010 the *MBVEO* (*maatregelen bestrijding voetbalvandalisme en ernstige overlast* = Combating Football Hooliganism and Serious Public Nuisance (Measures)) Act has been in force. By virtue of this Act, in cases of repeated disturbance of the peace or if there is serious fear of repeated offences, mayors have the authority to issue an exclusion order, a group ban and/or a requirement to report to the police. These orders last for a period of three months, which can be extended three times at the most. Under this Act, in certain circumstances the Public Prosecutor can impose a behaviour order for a period of a maximum of ninety days, which can be extended three times at the most, on individuals against whom there are serious objections and who are suspected of offences. This behaviour order may consist of an exclusion order, a non-molestation order, a requirement to report to the police and/or an obligation to provide assistance.

After some incidents in professional football, the Act was evaluated earlier than had been planned. For this evaluation, carried out from April to June 2012 by Pro Facto, interviews were held, the literature was reviewed, the relevant statutory provisions were scrutinized, cases in which the Act was applied were examined and the UK approach to football hooliganism was studied.

The cases examined and the interviews with municipal respondents show that the *MBVEO* Act is mainly helpful in neighbourhood nuisance cases and at public events and celebrations (such as New Year's Eve). Problems occur mainly when the Act is used to tackle football hooliganism. The following *legal* problems are encountered in relation to football-related disorder:

- The maximum duration (in the first instance) of an exclusion order (in this case exclusion from football grounds), which may or may not be combined with a requirement to report to the police, is three months. According to mayors this is too short. The number of home matches to which the municipal orders apply during this period is limited. For some mayors this is a reason not to apply the Act or to apply it rarely.
- Because of the repeat offence requirement, first offenders cannot be dealt with. Mayors see this as a problem with football-related disorder in particular.

The measures can only be enforced if offenders are caught in the act. In practice, this is seen as a major legal problem.

Apart from these legal problems, for municipalities there are also some practical problems associated with the Act. Most of these problems relate to all forms of nuisance:

- The Act can only be applied if there is proper documentation. A file must show that an offender meets the criteria. For municipalities, compiling thorough files is seen as complicated and labour-intensive.
- The inter-municipality requirement to report to the police entails a lot of coordination and paperwork.
- Often a complete picture of all the instruments and measures available to combat nuisance is lacking.

Most of these problems do not apply to the Public Prosecution Service:

- An individual does not have to be a repeat offender to be handed a behaviour order by the Public Prosecutor.
- A behaviour order always applies throughout the whole country.
- If the individual in question contravenes a behaviour order issued by the Public Prosecutor which relates to seriously harmful behaviour towards people, the individual can also be arrested even if not caught in the act.
- Within the Public Prosecution Service, compilation of files is not as much of a problem as for municipalities, because in principle for the Public Prosecutor compiling a file for a behaviour order is no different from compiling any other file, and the police are used to the Public Prosecution Service's methods.

Overall, for the Public Prosecution Service there do not seem to be any problems with the implementation of the Act. According to consultation partners at the Public Prosecution Service, the Act provides the instruments that are needed, especially in combination with the Judicial Restraining Measures Act which has been in force since 1 April 2012; under this Act the Public Prosecutor can ask the court to impose an exclusion order, requirement to report to the police or non-molestation order for a maximum of two years.

Some municipal respondents have experienced problems with coordination between municipalities and the Public Prosecution Service. The main problem is that several municipalities have found that the Public Prosecution Service was not very cooperative when asked to apply the instruments of the *MBVEO* Act under criminal law.

At the time of the present evaluation, the *MBVEO* Act has been in force for less than two years. Many mayors and public prosecutors have not yet had any experience with the Act, and others only limited experience. For mayors in particular this lack of familiarity leads to problems relating to compiling files, exchanging information and interpreting concepts. One particular problem with interpreting concepts is that some of the concepts involved have not yet been fully crystallized in case law.

In the UK, the main focus in tackling football hooliganism is on banning orders; football supporters are banned from football grounds, sometimes with additional restraints such as exclusion orders and travel bans, for a period of a minimum of three years to a maximum of ten years. The football clubs and the police also play an important role.

The core of the findings and therefore of possible approaches to solutions is that the application of the available instruments could be improved, but that on some points amendments to the Act might provide a solution. The study describes three possible approaches to solving the problems identified:

Approach 1: improvement of implementation

Practical solutions in the shape of formats, agreements and guides might facilitate implementation of the Act. In addition, other instruments (from administrative law and criminal law) could be used more intensively. The police could also be deployed more intensively, especially as regards access to information. Since 1 April 2012 an additional instrument has been available which makes it easier for the court to impose an exclusion order (under criminal law) from football grounds than in the past. If an individual is found guilty of a minor offence or crime, the court, possibly at the request of the public prosecutor, can impose an exclusion order, a non-molestation order, a requirement to report to the police and/or a order banning the offender from approaching any football ground in the country. This arrangement is very similar to bans 'on conviction' in the UK, which mean that a person convicted of a football-related offence is also made subject to a banning order.

Approach 2: adaptation of the MBVEO Act

It may be helpful to adapt some components of the Act. The first is the duration of football-related measures; specifically, an order could be imposed for a total number of days, not necessarily consecutive. Enforcement could be improved by amending the Act in such a way that if a municipal order is breached, the offender can be arrested by the police even without being caught in the act.

Approach 3: fundamental changes to legislation

The most drastic set of solutions would be to change the distribution of powers by introducing a judicial review in all or some cases. Then more far-reaching measures could be imposed, such as orders with a much longer duration.