

## THE INFLUENCE OF THE EUROPEAN COURT OF JUSTICE ON SPORT LAW – CASE STUDY

Mirela SHAAO, Maria SHAAO

<sup>1</sup>University of Craiova, Faculty of Physical Education and Sport, Craiova

<sup>2</sup>Univeristy of Craiova, Faculty of Law, Craiova, Master's Degree in Business Law

Corresponding author: mirelashaao@yahoo.com

**Abstract:** The study presents two of the most relevant law cases establishing a general framework for freedom of movement for workers in the field of sport, judgments in which The European Court of Justice gave a preliminary ruling based on the questions submitted by the national courts.

The Case C-415/93 of *Bosman v Royal Club Liégeois SA and UEFA* is based on a dispute regarding the free movement of workers and the incompatibility with the Treaty of Rome of definite rules regarding the business relationships between employers which restrict the exercise of rights of the employees established by the European Community for all Member States. In the preliminary ruling, The European Court of Justice decided on establishing a new rule in the world of sports, determining that football is a subject to the European Union rules regarding the freedom of movement for workers, decision which led to FIFA changing regulations on the status of professional football players at the end of a contract and the freedom of choosing another team to evolve.

The Case C-176/96 of *Lehtonen v Fédération royale belge des sociétés de basket-ball ASBL* put in a spotlight a situation regarding the free movement of workers in the case of professional basketball players and sporting rules related to the transfer of players from European States which are part of the European Union organization. The preliminary ruling is based on the question regarding specific articles from the Treaty of Rome which might preclude the application of certain rules of sporting associations, rules which have a role to prohibit a basketball club from using players from other European Member States in the national championship matches, if a certain date of the transfer has not been respected.

By studying the Case Law of the European Court regarding sport cases, it is noticeable that the principles established by the European Union are not to be neglected regardless of the given situations and domains. As primary cases of the Court, the early jurisprudence is an example of the power of the European Court of Justice for all the Member States which is still used as a strong reference to present-day cases.

**Keywords:** *sport law, players, rules, European Court of Justice*

### Introduction

The supremacy of the European Union Law is one of the most important principles established by the European Court of Justice (CJEU) through interpretation and application of the EU law. The principle means that the norms which exist in the EU law shall take precedence over the norms existing in any Member State when a conflict between the two types of laws occurs. As stated in the declaration concerning privacy, “The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the treaties have primacy over the law of Member States, under the conditions laid down by the said case law” [1].

In order for the principle to exist, a conflict between the EU law and the national law needs to appear beforehand. As the Member States are obligated to incorporate the EU law (defined by the term “directive”) into the national legislation within a deadline and to correctly apply the regulations and decisions, by failing to do these actions, the EU Commission is able to start an infringement procedure against the country and eventually refer the case to CJEU. Also, the

European Union citizens who are protected by the EU law are able to take action in order for their rights to be protected and respected by the national authorities which fail to do as they are compelled.

The actions taken by the European Union are based on an agreement between Member States (known as “treaties”). A treaty “sets out EU objectives, rules for EU institutions, how decisions are made and the relationship between EU and its member countries” [2]. Also, in reference to the Treaty on the Functioning of the European Union, article 1 specifies that “this Treaty organises the functioning of the Union and determines the areas of, delimitation of, and arrangements for exercising its competences. This Treaty and the Treaty on European Union constitute the Treaties on which the Union is founded. These two Treaties, which have the same legal value, shall be referred to as *the Treaties*” [3]. By this, the supremacy of the EU law is established based of acts of important value for all Member States.

Regarding the principle of supremacy, it is present starting with the early judgments of the CJEU using a course of action in order to establish a

practice of application of the EU law. As presented by Arena A. (2018) mentioning Case C-262/97 (case *Rijksdienst voor Pensioen v Robert Engelbrecht* on social security and freedom of movement for workers), “national courts and administrations are under a specific duty to interpret domestic law, as far as is at all possible, in a manner which accords with the requirements of EU law” [4].

The influence of EU law and its power is present in all CJEU judgments and it affects the future of all law cases in different domains. One of the main areas in which the principles of the Union law are applicable is the freedom of movement in sports-related cases. Some of the most relevant law cases in the field of sport are Case C-415/93 of *Bosman v Royal Club Liégeois SA and UEFA* and Case C-176/96 of *Lehtonen v Fédération royale belge des sociétés de basket-ball ASBL*.

#### **First Case**

The Bosman case is based on a dispute between Mr. Bosman, a professional football player of Belgian origin, and the Royal Club Liégeois (RCL) where he was a player. In 1990, Mr. Bosman claimed that UEFA, FIFA and the Belgian football federation had stopped him from choosing to perform in a French club (US Dunkerque) by demanding a transfer fee. During the same year, Mr. Bosman brought an action before the Court of First Instance (Liège) against the club he played in and concurrently applied for an interlocutory decision asking RCL and the Belgian Royal Union of Football Clubs (URBSFA) “to pay him a monthly advance until he found a new employer, restraining the defendants from impeding his engagement and referring a question to the European Court of Justice for a preliminary ruling” [5].

The preliminary question sent to the CJEU (case C-340/90) is based on the interpretation of Article 48 of the Treaty of Rome regarding the rules which govern the transfer of professional players. In 1991, the Liège Court of Appeal reformed the order for interim measures of the Court of First Instance (Liège) which intended to refer a question to the Court of Justice for a preliminary ruling but confirmed the obligation on RCL to pay a monthly sum to Mr. Bosman and ordered RCL and URBSFA to place Mr. Bosman at the disposal of any club wishing to benefit from his services without being able to claim any compensation. The order removed the Case C-340/90 from the register of the Court.

In April 1992, during the disputes before the Court of First Instance (Liège), Mr. Bosman

requested that the rules on transfers and nationality clauses are to be declared inapplicable in his case and ordered to be paid a sum by RCL, URBSFA and UEFA, representing the unrealized benefit from the start of his career due to the rules on transfers. At the same time, he asked for a preliminary ruling (case C-269/92) from CJEU on interpretation of Articles 48, 85 and 86 Treaty of Rome. The questions for a preliminary ruling were on “Articles 48, 85 and 86 of the Treaty of Rome of 25 March 1957 to be interpreted as: (i) prohibiting a football club from requiring payment of a sum of money upon the engagement of one of its players who had come to the end of his contract by a new employing club? (ii) prohibiting the national and international sports associations or federations from including in their respective regulations provisions restricting access of foreign players from the European Community to the competitions which they organize?” [6].

With reference to the provisions of Article 48, it is stated that the freedom of movement for workers must be protected within the Community and it shall reduce cases of discrimination until elimination based on nationality in every Member State. Furthermore, “it shall entail the right, subjects to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of Member States for this purpose; (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission” [7].

In connection with the matters existing in the case and regarding the questions addressed to CJEU by Liège Court of Appeal, the Court of Justice of the European Union decided that Article 48 of the Treaty of Rome prohibits the application of certain rules adopted by sports associations which provide that a transferring, training or development fee needs to be paid when a professional football player is employed by a club from a Member State, once the football player’s contract concluded with the previous club expired. These rules are considered to discourage a national of a Member State to exercise his right to freedom of movement and are therefore obstacles to freedom for every individual. In this case, by

establishing a rule that obligates a club from another Member State to pay to the old club a certain amount of money for the transfer of a professional football player, CJEU considers that the rules for payment of a compensation agreed between the two clubs or established in accordance with the regulations of sports associations constitute an obstacle to the free movement of workers.

In regard to a second matter which needed a decision, CJEU considers that the Article 48 precludes the application of certain rules concerning the usage in competitions of a limited number of professional players who are nationals of another Member State (the “3+2” rule). Moreover, obstacles relating to the nationality of professional players who come from other Member States and participate in competitions are considered to restrict the rights conferred in the context of freedom of movement of workers.

In reference to Articles 85 and 86, the Court considers that there is no need to rule on the interpretation of the articles since the two types of rules are contrary to Article 48.

In the last place, the decision refers to the direct effect of Article 48 which cannot be invoked regarding the claims for transfer, training or development fee which has already been paid or is still payable due to an obligation born before the date of the judgment. Also, it is stated that those who brought legal proceedings in accordance with the applicable national law are an exception to the statement above.

### **Second Case**

The Lehtonen case is based on a dispute between Mr. Lehtonen, a Finnish basketball player, Castors Canada Dry Namur-Braine (hereinafter “Castors Braine”), Belgian Royal Federation of Basketball Clubs (FRBSB) and the Belgian League regarding the right of Castors Braine to field Mr. Lehtonen in the first division matches of the Belgian national basketball championship. The Court of First Instance (Brussels) referred to the CJEU for a preliminary ruling on the interpretation of Articles 6, 48, 85 and 86 of the Treaty of Rome concerning the legal proceedings between the parties.

In the main proceedings it is stated that Mr. Lehtonen played in a team which took part in the Finnish championship and later he was engaged by a club affiliated to the FRBSB, Castors Braine, in order for him to take part in the final stage of a Belgian championship. The parties concluded a contract of employment for a remunerated sportsman which was registered with the FRBSB.

Later on, the FRBSB informed Castors Braine that the club might be penalized if FIBA did not issue the authorization needed for a player to be allowed to play basketball for a club which was a member of the federation and if Mr. Lehtonen was fielded, it would be at the club’s own risk.

Despite the warning, Mr. Lehtonen was fielded in a match on 6 April 1996 helping Castors Braine win the game, but this was followed by a complaint submitted by the defeated team (Belgacom Quaregnon), thus making FRBSB penalize Castors Braine. “On 11 April 1996, following a complaint by Belgacom Quaregnon, the competition department of the FRBSB penalised Castors Braine by awarding to the other club by 20-0 the match in which Mr. Lehtonen had taken part in breach of the FIBA rules on transfers of players within the European zone” [8]. This was followed by the club getting penalized again when including Mr. Lehtonen on the team sheet for the next match, even though he was not fielded. In the end, Castors Braine dispensed with the services of him for the next matches.

On 16 April 1996, proceedings were brought against the FRBSB by Mr. Lehtonen and Castors Braine sitting to hear applications for interim relief. They sought for the FRBSB to lift the penalty imposed on the club for the match against Belgacom Quaregnon and to prohibit from imposing any other penalties preventing the club from fielding Mr. Lehtonen in the Belgian championship. By agreement, the parties decided to seek reference to the Court of Justice for a preliminary ruling and referred the following question: “Are the rules of a sports federation which prohibit a club from playing a player in the competition for the first time if he has been engaged after a specified date contrary to the Treaty of Rome (in particular Articles 6, 48, 85 and 86) in the case of a professional player who is a national of a Member State of the European Union, notwithstanding the sporting reasons put forward by the federations to justify those rules, namely the need to prevent distortion of the competitions?” [8].

In regard to the question, the Court is able to answer to the extent that it relates to the interpretation of the Treaty rules related to the principle of the prohibition of discrimination on grounds of nationality and on freedom of movement for workers. However, the question is inadmissible if it relates to the interpretation of competition rules which are applicable to undertakings.

The Court of Justice states that the scope of the Treaty, in particular Articles 6 and 48, may be applied to sports activities and to rules set by sports associations. Also, regarding the application of Article 48, the principle of prohibition of discrimination on grounds of nationality shall be applied in cases of salaried workers. In the present case, Mr. Lehtonen is a professional basketball player who concluded a contract of employment with Castors Braine, therefore he is a remunerated sportsman.

In connection with the presented matters, the existence of an obstacle to freedom of movement for workers is to be observed as the rules on transfer periods are able to restrict this right of players who wish “to pursue an activity in another Member State by preventing Belgian clubs from fielding in championship matches basketball players from other Member States where they had been engaged after a specified date. Those rules consequently constituted an obstacle to freedom of movement for workers. Insofar as participation in such matches was the essential purpose of a professional player’s activity, a rule which restricted that participation obviously also restricted the chances of employment of the player concerned” [5].

The existence of an obstacle to freedom of movement for workers, in order to ensure the proper functioning of sporting competitions, by setting of deadlines for transfers of players, might be proven, in case the measures taken by sports federations go beyond what is necessary to achieve the aim pursued. The Court states that such a rule goes beyond the limits in order to achieve what is pursued. Also, “it does not appear from the material in the case-file that a transfer between 28 February and 31 March of a player from a federation in the European zone jeopardises the regularity of the championship more than a transfer in that period of a player from a federation not in that zone” [8].

In the end, the Court of Justice of the European Union decided that Article 48 of the Treaty of Rome prohibits the application of certain rules established by sporting associations in a Member State which forbid a basketball club to field players from other Member States in the national championship matches, “if that date is earlier than the date which applies to transfers of players from certain non-member countries, unless objective reasons concerning only sport as such or relating to differences between the position of players from a federation in the European zone and that of

players from a federation not in that zone justify such different treatment” [8].

### Conclusions

As stated by Costaş C.F. (2007) [9], “by its judgment in the Bosman affair, the European Court of Justice applied, on 15 December 1995, certain fundamental principles - the free movement of workers in the community space and the prohibition of discrimination - in sport”.

The two types of rules applied in the case, the transfer rules that condition the payment of a fee when transferring the player to another club and the nationality clauses which limit the number of foreign players that could be used in competitions, were the reason why Mr. Bosman invoked the violation of his right to free movement and the discrimination against his status as a worker conferred by the EU law.

By analyzing the circumstances, CJEU decided that Mr. Bosman’s rights had been violated. The judgement and its effects forced FIFA, UEFA and national federations to amend at least partially the rules concerned, by this eliminating those provisions which were not in accordance with the Community law.

In the end, the rules regarding transfers were reformed and professional football players are now allowed to sign a new contract during the last 6 months of validity of their current contract, giving them the status of free players, with the possibility of transferring to another club without paying a transfer fee. Moreover, the nationality clauses were eliminated regarding players coming from the Member States, any club being allowed to use as many professional players as needed.

As a start, this judgment helped a lot of other parties who had encountered a similar problem regarding their freedom of movement in the European zone in the field of sport, CJEU always taking as an example those judgements with similar circumstances and using them as a primary reference in solving a new case. By this, the Court shows its powerful influence in every situation concerning the application of European law, its jurisprudence being considered a key to solving even present-day cases. An example is the Lehtonen case regarding the interpretation of the Treaty rules. As stated by CJEU, “it should be noted, as a preliminary point, that, having regard to the objectives of the Community, sport is subject to Community law in so far as it constitutes an economic activity within the meaning of Article 2 of the EC Treaty (now, after amendment, Article 2 EC) (see [...] Case C-415/93 Union Royale Belge des Sociétés de

Football Association and Others v Bosman and Others [1995] ECR I-4921, paragraph 73). The Court has also acknowledged that sport has considerable social importance in the Community (see Bosman, paragraph 106)” [10]. Also, the Bosman case is mentioned with reference to the legal provisions of the Treaty concerning freedom of movement for workers and the obstacles to the exercise of this right.

In regard to the rules which violated Mr. Lehtonen’s right, the court made a reference to the Bosman case about the obstacle to freedom of movement for workers, adding that the rules regarding players who wish to pursue their activity in another Member State but are prevented from being fielded in championship matches in other Member States, if they were engaged after a specified date, are liable to restrict the freedom of movement of players. As the participation of a professional player in such matches is essential for his activity, any rule which restricts him from performing his work also limit the chances of employment for that player.

By studying the Case Law of the European Court regarding sport cases, it is noticeable that the principles established by the European Union are not to be neglected regardless of the given situations and domains. As primary cases of the Court, the early jurisprudence is an example of the power of the European Court of Justice for all the Member States which is still used as a strong reference to present-day cases.

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