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Advocate General's Opinion in Case C-325/08

Olympique Lyonnais v Olivier Bernard & Newcastle United

ADVOCATE GENERAL SHARPSTON CONSIDERS THAT RULES REQUIRING A FOOTBALL CLUB SIGNING A YOUNG PLAYER TO PAY COMPENSATION TO ANOTHER CLUB WHICH TRAINED THAT PLAYER MAY BE CAPABLE OF JUSTIFICATION

However, such compensation would be proportionate only if it were calculated as a proportion of the club's overall training costs and distributed appropriately amongst all the clubs who had participated in the player's training.

In 1997 Olivier Bernard signed a three-year training contract as a “joueur espoir” with the French football club Olympique Lyonnais. At the end of the contract, he decided not to take up the offer of a professional contract with the French club but instead signed a contract with English club Newcastle United.

At the time, the French Professional Football Charter required “joueurs espoir” – promising players between the ages of 16 and 22 given training contracts with professional clubs – to sign with the club which trained them if offered a contract at the end of their training. If they chose not to take up that offer they could not sign with another French club for three years without the consent of the club which had trained them.

Olympique Lyonnais sued Mr Bernard and Newcastle United in the French courts for €53 357.16 – equivalent to the salary that Mr Bernard would have received over one year had he signed with Olympique Lyonnais.

At first instance, Olympique Lyonnais was awarded half the amount requested, with Mr Bernard and Newcastle United held jointly liable. Following a successful appeal by the player and Newcastle United, Olympique Lyonnais appealed to the French Court of Cassation. That court has asked the Court of Justice whether a provision which may require a trainee who signs a professional contract with a club in another Member State to pay damages is a restriction on freedom of movement for workers, a principle enshrined in the EC Treaty, and, if so, whether it can be justified by the need to encourage recruitment and training of young professional players.

In the opinion of Advocate General Eleanor Sharpston, it is clear that such a rule, pursuant to which a “joueur espoir” who at the end of his training period signs a professional contract with a

club in another Member State of the EU may be ordered to pay damages, is a restriction on freedom of movement for workers.

She notes that sport is subject to Community law in so far as it constitutes an economic activity. Paid employment of professional footballers is such an activity. Moreover, the prohibition on restrictions on freedom of movement for workers extends to rules aimed at collective regulation of employment, including football association rules. Finally, the Advocate General recalls, rules may inhibit freedom of movement even if they apply without regard to nationality, and rules which require payment of a transfer, training or development fee between clubs on the transfer of a professional footballer are in principle an obstacle to freedom of movement for workers.

As to the potential justification for the restriction, the Advocate General notes that such rules ensure that clubs are not discouraged from recruitment and training by the prospect of seeing their investment applied to the benefit of some other club, with no compensation for themselves. Taking into account the social importance of football and the broad public consensus that the training and recruitment of young players should be encouraged, Ms Sharpston considers that it is plausible that rules compensating clubs for their investment in training young players could be justified in the public interest.

However, she considers that the French rule in question goes beyond what is necessary to achieve that aim as regards the compensation awarded. Only a measure which compensates clubs in a manner commensurate with their actual training costs could be appropriate and proportionate. Consequently, compensation based on the player's prospective earnings or on the club's prospective loss of profits would not be acceptable, neither factor having any relevance to the aim of encouraging the recruitment or training of young players.

Expanding on this, Ms Sharpston considers that, since only a small proportion of trainee players will go on to have successful professional careers, it would be appropriate for compensation to be calculated as a proportion of the club's overall training costs rather than the actual costs of training that specific player. Furthermore, where a particular player has been trained by more than one club, any compensation ought to be shared appropriately among the clubs in question. Finally, the Advocate General finds it not unreasonable that, in certain circumstances, the trainee could be liable to pay some of the compensation himself, provided that – in that event – such compensation is calculated on the basis of the individual cost of training him and not the overall costs of training incurred by the club.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: BG ES CS DE EL EN FR IT HU NL PL PT RO SK

The full text of the Opinion may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-325/08>

It can usually be consulted after midday (CET) on the day of delivery.

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*Pictures of the delivery of the Opinion are available on EbS "Europe by Satellite",
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