

Case C-415/93

**Union Royale Belge des Sociétés de Football
Association ASBL and Others**

v

Jean-Marc Bosman and Others

(Reference for a preliminary ruling
from the Cour d'Appel, Liège)

(Freedom of movement for workers — Competition rules
applicable to undertakings — Professional footballers —
Sporting rules on the transfer of players
requiring the new club to pay a fee to the old club —
Limitation of the number of players having the nationality of other
Member States who may be fielded in a match)

Opinion of Advocate General Lenz delivered on 20 September 1995 I - 4930
Judgment of the Court, 15 December 1995 I - 5040

Summary of the Judgment

1. *Procedure — Request for measures of inquiry — Request made after the close of the oral procedure — Conditions for admissibility*
(*Rules of Procedure of the Court of Justice, Arts 59(2) and 60*)

2. *Preliminary rulings — Jurisdiction of the Court — Limits — Manifestly irrelevant questions and hypothetical questions referred in circumstances in which a useful answer is precluded — Jurisdiction to reply to questions raised in the context of declaratory proceedings permitted under national law*
(EEC Treaty, Art. 177)
3. *Community law — Scope — Sport as an economic activity — Included*
(EEC Treaty, Art. 2)
4. *Freedom of movement for persons — Workers — Treaty provisions — Conditions of application — Existence of an employment relationship — Employer not an undertaking — Not relevant*
(EEC Treaty, Art. 48)
5. *Freedom of movement for persons — Workers — Treaty provisions — Scope — Rules governing business relationships between employers but affecting the terms of employment of workers — Included*
(EEC Treaty, Art. 48)
6. *Freedom of movement for persons — Workers — Freedom of establishment — Freedom to provide services — Treaty provisions — Scope — Sporting activity — Limits*
(EEC Treaty, Arts 48, 52 and 59)
7. *Freedom of movement for persons — Workers — Treaty provisions — Scope — Limitation in order to respect the diversity of national cultures as required by Article 128 of the EC Treaty — Not possible*
(EEC Treaty, Art. 48; EC Treaty, Art 128(1))
8. *Community law — Principles — Fundamental rights — Freedom of association — Implications — Right of sporting associations to lay down rules likely to restrict freedom of movement for professional sportsmen — Excluded*
(Single European Act, preamble; Treaty on European Union, Art. F(2))
9. *Community law — Principles — Principle of subsidiarity — Scope — Restriction on the exercise of rights conferred on individuals by the Treaty — Excluded*
10. *Freedom of movement for persons — Workers — Treaty provisions — Scope — Rules aimed at regulating gainful employment in a collective manner but not emanating from a public authority — Included*
(EEC Treaty, Art. 48)

11. *Freedom of movement for persons — Workers — Restrictions justified on grounds of public policy, public security or public health — Grounds which may be relied on by any private individual or public body*
(EEC Treaty, Art. 48)
 12. *Freedom of movement for persons — Workers — Treaty provisions — Scope — Rules laid down by sporting associations which determine the terms on which professional sportsmen can engage in gainful employment — Included*
(EEC Treaty, Art. 48)
 13. *Freedom of movement for persons — Workers — Treaty provisions — Scope — Professional sportsman who is a national of a Member State and has entered into a contract of employment with a club in another Member State with a view to exercising gainful employment in that State — Included*
(EEC Treaty, Art. 48)
 14. *Freedom of movement for persons — Workers — Rules laid down by sporting associations making the recruitment of a professional sportsman by a new employer in another Member State subject to the payment of a fee by the new employer to the old employer — Not permissible — Justification — None*
(EEC Treaty, Art. 48)
 15. *Freedom of movement for persons — Workers — Equal treatment — Rules laid down by sporting associations limiting the participation of players who are nationals of other Member States in certain competitions — Not permissible — Justification — None*
(EEC Treaty, Art. 48)
 16. *Commission — Powers — Power to give guarantees concerning the compatibility of specific practices with the Treaty — None unless specifically conferred — Power to authorize practices contrary to the Treaty — None*
 17. *Preliminary rulings — Interpretation — Temporal effects of judgments ruling on interpretation — Retroactive effect — Limits — Legal certainty — Power of assessment of the Court*
(EEC Treaty, Art. 177)
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1. A request for the Court to order a measure of inquiry under Article 60 of the Rules of Procedure, made by a party after the close of the oral procedure, can be admitted only if it relates to facts which may have a decisive influence and which the party concerned could not put forward before the close of the oral procedure.
 2. In the context of the cooperation between the Court of Justice and the national

courts provided for by Article 177 of the Treaty, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling.

Nevertheless, in order to determine whether it has jurisdiction, the Court should examine the conditions in which the case was referred to it by the national court. The spirit of cooperation which must prevail in the preliminary-ruling procedure requires the national court, for its part, to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions.

That is why the Court has no jurisdiction to give a preliminary ruling on a question submitted by a national court where it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical and the Court does not have before it the factual or legal

material necessary to give a useful answer to the questions submitted to it.

Questions submitted by a national court called upon to decide on declaratory actions seeking to prevent the infringement of a right which is seriously threatened are to be regarded as meeting an objective need for the purpose of settling the dispute brought before that court, even though they are necessarily based on hypotheses which are, by their nature, uncertain, if it holds them to be admissible under its interpretation of its national law.

3. 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 Treaty, as in the case of the activities of professional or semi-professional footballers, where they are in gainful employment or provide a remunerated service.
4. It is not necessary, for the purposes of the application of the Community provisions on freedom of movement for workers, for the employer to be an undertaking; all that is required is the existence of, or the intention to create, an employment relationship.

5. Rules governing business relationships between employers in a sector of activity fall within the scope of the Community provisions relating to freedom of movement for workers if their application affects the terms of employment of workers.
7. Freedom of movement for workers, guaranteed by Article 48 of the Treaty, is a fundamental freedom in the Community system and its scope cannot be limited by the Community's obligation to respect the national and regional cultural diversity of the Member States when it uses the powers of limited extent conferred upon it by Article 128(1) of the EC Treaty in the field of culture.

That is true of rules relating to the transfer of players between football clubs which, although they govern the business relationships between clubs rather than the employment relationships between clubs and players, affect, because the employing clubs must pay fees on recruiting a player from another club, players' opportunities for finding employment and the terms under which such employment is offered.

6. The Community provisions concerning freedom of movement for persons and freedom to provide services do not preclude rules or practices in sport which are justified on non-economic grounds which relate to the particular nature and context of certain competitions. Such a restriction on the scope of the provisions in question must remain limited to its proper objective and cannot, therefore, be relied upon to exclude the whole of a sporting activity from the scope of the Treaty.
8. The principle of freedom of association, enshrined in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and resulting from the constitutional traditions common to the Member States, is one of the fundamental rights which, as the Court has consistently held and as is reaffirmed in the preamble to the Single European Act and in Article F(2) of the Treaty on European Union, are protected in the Community legal order.

However, rules likely to restrict freedom of movement for professional sportsmen, laid down by sporting associations, cannot be seen as necessary to ensure enjoyment of that freedom by those associations, by the clubs or by their players, nor can they be seen as an inevitable result thereof.

9. The principle of subsidiarity, even when interpreted broadly to the effect that intervention by Community authorities in the area of organization of sporting activities must be confined to what is strictly necessary, cannot lead to a situation in which the freedom of private associations to adopt sporting rules restricts the exercise of rights conferred on individuals by the Treaty.
10. Article 48 of the Treaty not only applies to the action of public authorities but extends also to rules of any other nature aimed at regulating gainful employment in a collective manner.
11. There is nothing to preclude individuals from relying, to justify restrictions on freedom of movement for workers which they may be alleged to have set up, on the grounds of public policy, public security or public health permitted by Article 48 of the Treaty. Neither the scope nor the content of those grounds of justification is in any way affected by the public or private nature of the restrictive rules in support of which they are adduced.
12. Article 48 of the Treaty applies to rules laid down by sporting associations which determine the terms on which professional sportsmen can engage in gainful employment.

The abolition as between Member States of obstacles to freedom of movement for persons would be compromised if the abolition of State barriers could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations not governed by public law. Furthermore, if the scope of Article 48 were confined to acts of a public authority there would be a risk of creating inequality in its application, inasmuch as working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons.

13. The situation of a professional footballer who is a national of a Member State and, by entering into a contract of employment with a club in another Member State with a view to exercising gainful employment in that State, has accepted an offer of employment actually made within the meaning of Article 48(3)(a) of the Treaty, cannot be classified as purely internal and therefore not covered by Community law.
14. Article 48 of the Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his

contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee.

- the fees provided for in those rules are by nature contingent and uncertain and are in any event unrelated to the actual cost of training borne by clubs and

Such rules, even though they do not differ from those governing transfers within the same Member State, are likely to restrict the freedom of movement of players who wish to pursue their activity in another Member State by preventing or deterring them from leaving the clubs to which they belong even after the expiry of their contracts of employment with those clubs.

- the same aims can be achieved at least as efficiently by other means which do not impede freedom of movement for workers.

Nor are they an adequate means of achieving such legitimate aims as maintaining a financial and competitive balance between clubs and supporting the search for talent and the training of young players, since

15. Article 48 of the Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States.

- those rules neither preclude the richest clubs from securing the services of the best players nor prevent the availability of financial resources from being a decisive factor in competitive sport, thus considerably altering the balance between clubs,

Such rules are contrary to the principle of the prohibition of discrimination based on nationality as regards employment, remuneration and conditions of work and employment and it is of no relevance that they concern not the employment of such players, on which there is no restriction, but the extent to which their clubs may field them in official matches, since, in so far as participation in such matches is the essential purpose of a professional

player's activity, a rule which restricts that participation obviously also restricts the chances of employment of the player concerned.

have the power to authorize practices which are contrary to the Treaty.

Nor can those rules, which do not concern specific matches between teams representing their countries but apply to all official matches between clubs, be justified for reasons which are not of an economic nature and are of sporting interest only, such as: preserving the traditional link between each club and its country, since a football club's links with the Member State in which it is established cannot be regarded as inherent in its sporting activity; creating a sufficient pool of national players to provide the national teams with top players to field in all team positions, since, whilst national teams must be made up of players having the nationality of the relevant country, those players need not necessarily be registered to play for clubs in that country; or maintaining a competitive balance between clubs, since there are no rules limiting the possibility for richer clubs to recruit the best national players, thus undermining that balance to just the same extent.

17. The interpretation which the Court, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty, gives to a rule of Community law clarifies and where necessary defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted can, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing before the courts having jurisdiction an action relating to the application of that rule are satisfied.

It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict the opportunity for any person concerned to rely upon the provision as thus interpreted with a view to calling in question legal relationships established in good faith. Such a restriction may be allowed only by the Court, in the actual judgment ruling upon the interpretation sought.

16. Except where such powers are expressly conferred upon it, the Commission may not give guarantees concerning the compatibility of specific practices with the Treaty and in no circumstances does it

Since the specific features of the rules laid down by the sporting associations for

transfers of players between clubs of different Member States, together with the fact that the same or similar rules applied to transfers both between clubs belonging to the same national association and between clubs belonging to different national associations within the same Member State, may have caused uncertainty as to whether those rules were compatible with Community law, overriding considerations of legal certainty militate against calling in question legal situations whose effects have already been exhausted.

It must therefore be held that the direct effect of Article 48 of the Treaty cannot be relied upon in support of claims relating to a fee in respect of transfer, training or development which has already been paid on, or is still payable under an obligation which arose before, the date of this judgment, except by those who have brought court proceedings or raised an equivalent claim under the applicable national law before that date.