

Case C-176/96

Jyri Lehtonen

and

Castors Canada Dry Namur-Braine ASBL

v

Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)

(Reference for a preliminary ruling  
from the Tribunal de première instance de Bruxelles)

(Freedom of movement for workers — Competition rules applicable to  
undertakings — Professional basketball players — Sporting rules on the transfer  
of players from other Member States)

Opinion of Advocate General Alber delivered on 22 June 1999 . . . . . I-2685

Judgment of the Court (Sixth Chamber), 13 April 2000 . . . . . I-2714

Summary of the Judgment

1. *Preliminary rulings — Admissibility — Need to provide the Court with sufficient details of the factual and legal context*  
(EC Treaty, Art. 177 (now Art. 234 EC))

2. *Community law — Scope — Sport as an economic activity — Included*  
(EC Treaty, Art. 2 (now, after amendment, Art. 2 EC))
3. *Freedom of movement for persons — Workers — Treaty provisions — Scope — Sporting activity — Limits*  
(EC Treaty, Art. 48 (now, after amendment, Art. 39 EC))
4. *Freedom of movement for persons — Workers — Freedom of establishment — Freedom to provide services — Treaty provisions — Scope — Rules aimed at regulating gainful employment in a collective manner but not emanating from a public authority — Included*  
(EC Treaty, Arts 48, 52 and 59 (now, after amendment, Arts 39 EC, 43 EC and 49 EC))
5. *Freedom of movement for persons — Workers — Definition — 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*  
(EC Treaty, Art. 48 (now, after amendment, Art. 39 EC))
6. *Freedom of movement for persons — Workers — Rules laid down by sporting associations of a Member State making the participation of professional players from another Member State in certain competitions subject to compliance with transfer deadlines — Not permitted in the absence of objective justification*  
(EC Treaty, Art. 48 (now, after amendment, Art. 39 EC))

1. The need to provide an interpretation of Community law which will be of use to the national court makes it necessary that the national court define the factual and legal context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based. Those requirements are of particular importance in certain areas, such as that of competition, where the factual and legal situations are often complex. The information provided in decisions making references must not only enable the Court to reply usefully but also give the governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 20 of the Statute of the Court of Justice. It is the Court's duty to

ensure that that opportunity is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the decisions making references are notified to the interested parties.

(see paras 22-23)

2. Having regard to the objectives of the Community, sport is subject to Com-

munity law in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty (now, after amendment, Article 2 EC). That is the case with the activities of professional basketball players, where they work as paid employees or provide services for remuneration and those activities are effective and genuine activities and not such as to be regarded as purely marginal and ancillary.

(see paras 32, 43-44)

3. The Treaty provisions concerning freedom of movement for persons do not preclude rules or practices in the field of sport excluding foreign players from certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, as in the case of matches between national teams from different countries. That restriction on the scope of those provisions must, however, remain limited to its proper objective, and may not be relied on to exclude all sporting activity from the scope of the Treaty.

(see para. 34)

4. The Community provisions on freedom of movement for persons and freedom to provide services not only apply to the action of public authorities but extend also to rules of any other nature aimed at regulating gainful employment and the provision of services in a collective manner. The abolition as between Member States of obstacles to freedom of movement for persons and freedom to provide services would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise of their legal autonomy by associations or organisations not governed by public law.

(see para. 35)

5. A professional basketball player who is a national of a Member State must be regarded as a worker within the meaning of Article 48 of the Treaty (now, after amendment, Article 39 EC) where, having entered into a contract of employment with a club in another Member State with a view to exercising gainful employment in that State, he thereby accepts an offer of employment actually made, within the meaning of Article 48(3)(a) of the Treaty.

(see para. 46)

6. Article 48 of the EC Treaty (now, after amendment, Article 39 EC) precludes the application of rules laid down in a Member State by sporting associations which prohibit a basketball club from fielding players from other Member States in matches in the national championship, where they have been transferred after a specified date, 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.

(see para. 60 and operative part)