

In Case 13/76,

Reference to the Court under Article 177 of the EEC Treaty by the Giudice Conciliatore, Rovigo, for a preliminary ruling in the action pending before that court between

GAETANO DONÀ

and

MARIO MANTERO

on the interpretation in particular of Articles 7, 48 and 59 of the EEC Treaty,

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keefe, Presidents of Chambers, J. Mertens de Wilmars, P. Pescatore, M. Sørensen and F. Capotorti, Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Facts

The order referring the case to the Court, the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

#### I — Facts and procedure

1. Mr Mantero, former Chairman of the Rovigo Football Club and defendant in the main action, had entrusted Mr Donà, the plaintiff in the main action, with

undertaking inquiries in football circles abroad in order to discover players willing to play in the Rovigo team. Mr Donà therefore arranged for the publication of an advertisement in a Belgian sporting newspaper with this object in view but Mr Mantero refused to consider the offers submitted as a result of the advertisement and to repay to Mr Donà the expenses incurred in the publication of the advertisement. In his action before the Giudice Conciliatore, Rovigo, Mr Donà requested that Mr

Mantero be ordered to pay the expenses in question.

Mr Mantero replied that Mr Donà acted prematurely. In support of this statement he referred to the combined provisions of Articles 16 and 28 (g) of the 'Rules of the Italian Football Federation' according to which only players who are affiliated to that federation may take part in matches, membership being in principle only open to players of Italian nationality. Only when this 'blocking of the frontiers' has been abandoned will it be possible to consider the engagement of foreign players. Mr Donà replied that the provisions quoted were invalid on the ground that they were contrary to Articles 7, 48 and 59 of the Treaty.

2. By order of 7 February 1976, received at the Court Registry on 13 February 1976, the Giudice Conciliatore, Rovigo, decided to submit the following questions to the Court:

1. Do Articles 48 and 59 and perhaps Article 7 confer upon all nationals of any Member State of the Community the right to engage in their occupations anywhere in the Community either as employed persons or as independent persons providing services?
2. Do football players also enjoy the same right since their services are in the nature of a gainful occupation?
3. If so, does such a right prevail also with regard to rules issued by a national association which is competent to control the game of football on the territory of one Member State when such rules render the participation of players in matches dependent on their membership of the association itself, but reserve membership exclusively to players who are nationals of the State to which the association belongs?
4. If so, may such a right be directly invoked in the national courts and are the latter bound to protect it?

In accordance with Article 20 of the Protocol on the Statute of the Court of

Justice of the EEC, written observations were submitted by the applicant in the main action and the Commission.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without holding any preliminary inquiry.

## II — Summary of the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

### *The first and second questions*

The *plaintiff in the main action* sets out in detail the provisions governing football in Italy and points out in particular that:

- the Italian Football Federation, which is a constituent body of the Italian National Olympic Committee, is made up of sporting associations concerned with football and includes bodies and persons who carry out general or special competitive, technical, organizational or similar activities; it is the sole body qualified to draw up rules governing the game of football in the national territory;
- the organization of competitive activities is left to three sectors: the professional, the semi-professional and the amateur. The first two cover the clubs which employ professional players or which normally employ semi-professional players respectively;
- professional players, who cannot in principle take up any other form of paid employment, are, like semi-professional players, entitled to a number of financial benefits and insurance against certain risks;
- the participation of the players in competitions is dependent upon possession of the 'Federation card' which, in the professional and semi-professional sectors, is only given to players of Italian nationality.

Semi-professional or professional sport, which is alone relevant in this instance, constitutes a gainful activity, carried out for profit and thus economic in nature. It is therefore governed by Article 2 of the EEC Treaty. This applies independently of the fact that other persons engage in the same sport solely for the purposes of entertainment. The contrary interpretation which would reduce the field of application of the Treaty to industrial, agricultural and commercial activities, is negated by Article 60 which refers to the activities of the professions among those which are governed by the principle of freedom to provide services. Moreover, in so far as sport constitutes an economic activity, the Court has held that it is governed by the Treaty and in particular by Articles 48 to 51 or 59 to 66, which implement the prohibition set out in Article 7 against any discrimination on grounds of nationality (judgment of 12 December 1974, in Case 36/74, *Walrave v Union Cycliste Internationale* [1974] ECR 1417).

The exceptions set out in the Treaty to the principle of freedom of movement of persons and of provision of services must be restrictively interpreted. The only exceptions to this principle provided for by the Treaty concern the activities of public authorities and are linked to the concepts of public policy, public security and public health; they are thus of no relevance in this instance.

Furthermore, it cannot be maintained that such forms of discrimination as that contained in the provisions in dispute are in any case inherent in the nature of the sport. Only in certain clearly defined cases does it appear justified to exclude foreign sportsmen, that is:

- In international competitions between athletes or teams representing each nation, in this case the players are defending the national flag;
- In national competitions which are open only to those who are born in a given district; in this case a foreigner is excluded on the same ground as a

national who does not satisfy that condition.

Neither of these possibilities applies in this case. Moreover, although they generally bear the name of the town in which the club to which they belong is established, Italian teams playing against one another in the national football championship are made up of players who are chosen exclusively for their abilities and who are very often not citizens of the town in question. Thus, no reason of a sporting nature prevents the participation of nationals of other Member States in the football matches involved in that championship. Furthermore, no other Member State imposes a restriction as severe as that in question in this instance. In addition, even in Italy foreign nationals may take part in matches restricted to the amateur sector and there are no reasons of a sporting nature to justify different rules for those players whose activities are carried out for gain or reward. This distinction is in fact based on economic grounds, since the Italian football clubs are commercial organizations which themselves act for gain or reward.

The *Commission* considers that the reply to the first two questions is to be found in the *Walrave* judgment. This judgment shows that sport is covered by Community law where it constitutes an economic activity, whether engaged in by a worker (Article 48), by a self-employed person established in the territory of another Member State (Article 52) or by a person providing services (Article 59); conversely it falls outside these provisions only where the activities in question are carried out on an amateur basis, that is, without remuneration. It is therefore impossible to set up against the nationals of other Member States provisions which restrict, or even exclude, the presence of professional players in a club.

That judgment nevertheless shows (cf. point 2 of the operative part) that any

sports club is free to choose from among its professional players those who are to make up the team for a specific match, provided that the composition of that team is determined by reference to criteria based on technical sporting ability alone. Nevertheless, when the team is being selected, the question of giving preference to nationals may arise. In this respect it is appropriate to bear in mind the finding in the *Walrave* judgment according to which 'This restriction on the scope of the provisions in question must . . . remain limited to its proper objective' (cf. ground of judgment No 9). As regards the composition of a national team, however, this judgment shows that in such a case the selection for a match between different countries may be limited to such players as are nationals. On the other hand, where it is necessary to select a team at a level other than national level, even if such team is required to take part in a match between teams from different countries, it is difficult to accept that reasons based on technical sporting ability alone may render it objectively necessary to select national players alone to defend the club colours.

#### *The third question*

The *plaintiff in the main action and the Commission* put forward arguments which are essentially identical. Taken as a whole they maintain that the affirmative reply to be given to this question arises directly out of the *Walrave* judgment, that is, from rules such as those in question 'aimed at regulating in a collective manner gainful employment and the provision of services' ([1974] ECR 1418, ground of judgment No 17). Moreover, the judgment found that 'the rule of non-discrimination covers in identical terms all work or services' (ground of judgment No 7), so that it is of no importance whether the professional or semi-professional football players are covered by Articles 48 to 51 or by Articles 59 to 66 of the Treaty. Even if it

were to be accepted that such players carry on activities as self-employed persons within the meaning of Articles 52 *et seq.* they would be able to rely on the principle of non-discrimination in Article 7, as those articles implement that principle as regards the right of establishment.

As regards employed workers in particular, the *Walrave* judgment simply confirmed the solution which arises out of Article 7 (4) of Regulation No 1612/68 of the Council of 15 October 1968 (OJ, English Special Edition 1968 (II), p. 477), according to which: 'Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorizes discriminatory conditions in respect of workers who are nationals of the other Member States'.

#### *The fourth question*

The *plaintiff in the main action and the Commission* both maintain that the Court has already confirmed the direct applicability of the provisions in question, and in particular of:

- Article 48, in its judgment of 4 December 1974 (*van Duyn v Home Office*, Case 41/74 [1974] ECR 1337);
- Article 52, in its judgment of 21 June 1974 (*Reyners v Belgian State*, Case 2/74 [1974] ECR 656);
- Article 59, in its judgment of 3 December 1974 (*van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid*, Case 33/74 [1974] ECR 1313), and in the *Walrave* judgment.

#### *Conclusions*

Both the *plaintiff in the main action* and the *Commission* consider that an affirmative answer should be given to the four questions submitted by the Giudice Conciliatore, Rovigo.

The *Plaintiff in the main action* adds that the reply to the first two questions submitted by the national court should be formulated in such a way as to extend the field of application of the principle of non-discrimination to amateur sport, although this aspect of the question is outside the subject-matter of the main action. With this in mind, he refers in particular to the fifth recital in the preamble to Regulation No 1612/68, according to which 'the right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires ... also that obstacles to the mobility of workers shall be eliminated, in particular as regards the worker's right to be joined by his family and the conditions for the integration of that family into the host country'. From this it follows that the Treaty covers not only economic, but also recreational, activities.

The *Commission* suggests that following details be added:

- It is lawful for participation in national teams for matches between different countries to be restricted to national players alone;
- On the other hand, such a restriction is not lawful as regards participation in teams which are not selected at national level, even on the occasion of matches between different countries.

During the oral procedure, which took place on 16 June 1976, the plaintiff in the main action, represented by Wilma Viscardini of the Padua Bar, and the Commission of the European Communities, represented by Jean-Claude Séché, Legal Adviser, and Eugenio de March, a member of the Legal Department, developed the arguments which they had put forward in the course of the written procedure.

The Advocate-General delivered his opinion at the hearing on 6 July 1976.

## Law

- 1 By order of 7 February 1976, received at the Court Registry on 13 February 1976, the Giudice Conciliatore, Rovigo, referred to the Court under Article 177 of the EEC Treaty various questions concerning the interpretation of Articles 7, 48 and 59 of that Treaty.
- 2 The first two questions ask whether Articles 7, 48 and 59 of the Treaty confer upon all nationals of the Member States of the Community the right to provide a service anywhere in the Community and, in particular, whether football players also enjoy the same right where their services are in the nature of a gainful occupation.
- 3 Should the answer to these two questions be in the affirmative, the third question asks the Court essentially to rule whether the abovementioned right

may also be relied on to prevent the application of contrary rules drawn up by a sporting federation which is competent to control football on the territory of a Member State.

- 4 In case the first three questions should be answered in the affirmative, the fourth question asks the Court whether the right in question may be directly invoked in the national courts and whether the latter are bound to protect it.
- 5 These questions have arisen in the context of an action between two Italian nationals over the compatibility of the abovementioned articles of the Treaty with certain provisions of the Rules of the Italian Football Federation, under which only players who are affiliated to that federation may take part in matches as professional or semi-professional players, whilst affiliation in that capacity is in principle only open to players of Italian nationality.
- 6 (1) Article 7 of the Treaty provides that within the scope of application of the Treaty, any discrimination on grounds of nationality shall be prohibited.

As regards employed persons and persons providing services, this rule has been implemented by Articles 48 to 51 and 59 to 66 of the Treaty respectively and by measures of the Community institutions adopted on the basis of those provisions.

- 7 As regards workers in particular, Article 48 provides that freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
- 8 Under the terms of Article 1 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, (OJ English Special Edition 1968 (II), p. 476), any national of a Member State shall, irrespective of his place of residence, 'have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State'.
- 9 As regards freedom to provide services within the Community, Article 59 provides that the restrictions existing in this field shall be abolished in respect

of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

- 10 Under the third paragraph of Article 60 the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.
- 11 The result of the foregoing is that any national provision which limits an activity covered by Articles 48 to 51 or 59 to 66 of the Treaty to the nationals of one Member State alone is incompatible with the Community rule.
- 12 (2) Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

This applies to the activities of professional or semi-professional football players, which are in the nature of gainful employment or remunerated service.

- 13 Where such players are nationals of a Member State they benefit in all the other Member States from the provisions of Community law concerning freedom of movement of persons and of provision of services.
- 14 However, those provisions do not prevent the adoption of rules or of a practice excluding foreign players from participation in 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, such as, for example, matches between national teams from different countries.
- 15 This restriction on the scope of the provisions in question must however remain limited to its proper objective.
- 16 Having regard to the above, it is for the national court to determine the nature of the activity submitted to its judgment.

- 17 (3) As the Court has already ruled in its judgment of 12 December 1974 in *Walrave v Union Cycliste Internationale* (Case 36/74 [1974] ECR 1405), the prohibition on discrimination based on nationality does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at collectively regulating gainful employment and services.
- 18 It follows that the provisions of Articles 7, 48 and 59 of the Treaty, which are mandatory in nature, must be taken into account by the national court in judging the validity or the effects of a provision inserted in the rules of a sporting organization.
- 19 The answer to the questions referred to the Court must therefore be that rules or a national practice, even adopted by a sporting organization, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question, are incompatible with Article 7 and, as the case may be, with Articles 48 to 51 or 59 to 66 of the Treaty unless such rules or practice exclude foreign players from participation in 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.
- 20 (4) As the Court has already ruled in its judgments of 4 December 1974 in Case 41/74 (*van Duyn v Home Office* [1974] ECR 1337) and 3 December 1974 in Case 33/74 (*van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* [1974] ECR 1299) respectively, Article 48 on the one hand and the first paragraph of Article 59 and the third paragraph of Article 60 of the Treaty on the other — the last two provisions at least in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resides in a Member State other than that in which the service is to be provided — have a direct effect in the legal orders of the Member States and confer on individuals rights which national courts must protect.

#### Costs

- 21 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Giudice Conciliatore, Rovigo, the decision as to costs is a matter for that court.

On those grounds,

## THE COURT

in answer to the questions referred to it by the Giudice Conciliatore, Rovigo, by order of 7 February 1976, hereby rules:

1. Rules or a national practice, even adopted by a sporting organization, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question, are incompatible with Article 7 and, as the case may be, with Articles 48 to 51 or 59 to 66 of the Treaty, unless such rules or practice exclude foreign players from participation in 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.
- 2 Article 48 on the one hand and the first paragraph of Article 59 and the third paragraph of Article 60 of the Treaty on the other — the last two provisions at least in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or the fact that he resides in a Member State other than that in which the service is to be provided — have a direct effect in the legal orders of the Member States and confer on individuals rights which national courts must protect.

Lecourt

Kutscher

O'Keeffe

Mertens de Wilmars

Sørensen

Mackenzie Stuart

Capotorti

Delivered in open court in Luxembourg on 14 July 1976.

A. Van Houtte

Registrar

R. Lecourt

President