

Joined Cases C-51/96 and C-191/97

Christelle Delière

v

Ligue francophone de judo et disciplines associées ASBL

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

(Freedom to provide services — Competition rules applicable to undertakings —
Judokas — Sports rules providing for national quotas and national federations’
selection procedures for participation in international tournaments)

Opinion of Advocate General Cosmas delivered on 18 May 1999 1-2553
Judgment of the Court, 11 April 2000 1-2595

Summary of the Judgment

1. *Preliminary rulings — Admissibility — Need to provide the Court with sufficient details of the relevant 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 to provide services — Services — Definition — Sporting activity*
(EC Treaty, Art. 59 (now, after amendment, Art. 49 EC) and Art. 60 (now Art. 50 EC))
6. *Freedom to provide services — Restrictions — Sports rules making participation by professional or semi-professional sportsmen in international competitions subject to a selection procedure — Permissible*
(EC Treaty, Art. 59 (now, after amendment, Art. 49 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 orders for reference must not only be such as to enable the Court to reply usefully but must also give the Governments of the Member States and other interested parties an 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 the opportunity to submit observations is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the orders for reference are notified to the interested parties.

(see paras 30-31)

2. Having regard to the objectives of the Community, sport is subject to Community law only in so far as it consti-

tutes an economic activity within the meaning of Article 2 of the Treaty (now, after amendment, Article 2 EC). That applies to the professional or semi-professional activity of judokas, provided that they are working as employed persons or providing services for remuneration and that the activity is genuine and effective and not such as to be regarded as purely marginal and ancillary.

(see paras 41, 53-54)

3. The Treaty provisions concerning freedom of movement for persons do not prevent the adoption of 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, such as, for example, matches between national teams from different countries. That restriction on the scope of the provisions in question must, however, remain limited to its proper objective and cannot be relied upon to exclude the whole of a sporting activity from the scope of the Treaty.

(see para. 43)

4. The Community provisions on freedom of movement for persons and freedom of 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, by associations or organisations not governed by public law, of their legal autonomy.

(see para. 47)

5. Sporting activities and, in particular, a high-ranking athlete's participation in an international competition are capable of involving the provision of a number of separate, but closely related, services which may fall within the scope of Article 59 of the Treaty (now, after amendment, Article 49 EC) and Article 60 of the Treaty (now Article 50 EC) even if some of those services are not paid for by those for whom they are performed.

(see paras 55-56)

6. Sports rules requiring professional or semi-professional athletes or persons aspiring to take part in a professional or semi-professional activity to have been authorised or selected by their federation in order to be able to participate in a high-level international sports competition, which does not involve national teams competing against each other, does not in itself, as long as it derives from a need

inherent in the organisation of such a competition, constitute a restriction on the freedom to provide services prohibited by Article 59 of the Treaty (now, after amendment, Article 49 EC).

(see para. 69 and operative part)