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Denis Musso

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Continuing to build the European Model of Sport

By Professor Denis MUSSO

Economics-Law-Management of Sport Department.

INSEP.Paris

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General Editor: ASSER International Sports Law Centre

T.M.C. Asser Instituut

P.O. Box 50461

2500 GL The Hague

Fax: +31-(0)70-3420359

www.sportslaw.nl

1. Introduction

The recent European Court of Justice's *Kolpak* ruling¹ gives us another opportunity to focus on the combination of public law and sporting rules in the sport law matters, particularly regarding professional sport.

Each sporting situation is positioned in the spotlight of different levels of legality. Three geographical zones may be distinguished: the regional level as, for example, in Italy or Spain where Regional Sport Acts exist; the central national level; and the European level where Community law applies.

What has changed since 1995 and the famous *Bosman* ruling²? Although *Deliege* and *Lethonen*, have confirmed the applicability of the freedom of movement of workers in sport, they also have allowed more flexibility in the application of Community law to sport.

Nevertheless, with respect to fair competition, have the sport federations, in the light of their monopoly, secured their role in the future of professional sport?

As professional sport includes not only sporting and economic, but also cultural and historical dimensions, a special treatment is needed.

2. Basics

Some basics have to be stressed before considering the future.

With reference to the pertinent document that was drafted by the European Commission in 1998³, one could say that if there is no real model of sport in Europe, there still are enough shared values and forms of organisation to make up a genuine model, which is based on some established principles.

It is time now to define them. Different aspects may be observed.

2.1. System of Sports Organisations

Some aspects concern the system of sports organisations. The Nice Declaration, which was adopted in December 2000, stressed the need to preserve and promote the social functions of sport and the key role of sports federations to ensure the necessary solidarity between the various levels at which sport is practiced: from recreational to top-level sport. In Europe, sports federations have a historical legitimacy to run the professional sport system. The pyramid form of sports organisation and the promotion/relegation system are a common feature and a guarantee of the sporting, which is superior to the economic one.

¹ Case C-438/00, 8 May (2003).

² Case C-415/93, (1995) ECR I-4921

³ "The development and prospects for Community action in the field of sport", 29 September 1998.

If public actors- like States and European Union- recognise the social, educational and identity-building roles of sport, it means that sport is not an ordinary article. Sport must have ethical meanings, i.e., encouraging team spirit, solidarity and fair-play, helping to fight against doping⁴, racism and xenophobia and protecting young people who are taking part in top-level competitions.

2.2. Legal nature of Sports Federation

Another issue is the legal nature of the sports federations. Originally, the federations are non-profit organisations, run by elected volunteers. Board members are not the owners of the federation, they are militants pursuing the goal of the federation and implementing its actions. This is the main difference in comparison with the management of private commercial companies⁵.

2.3. Decision-making process

The third issue concerns the decision-making process. The typical method used in the sports federations is the one-sided decision. Today, it is an outdated and inadequate instrument for running professional sport. In professional sport management, the various actors must be involved in the decision-making process; in particular, the clubs and the players. This is the essence of the Social Dialogue which was launched by the European Commission⁶. The Social Dialogue is a consultation mechanism for employers and employees, "both sides of the industry", at the central European level and at the level of industrial sectors. The Social Dialogue is incorporated in articles 138 and 139 of the EC Treaty. However in the E.U., professional sport is not an industry. It is under control of the sports federations; and a key success factor for the Social Dialogue in professional sport will be how to imagine and create an original way to integrate sports federations in the process.

With regard to the various aspects, it is important to have a better knowledge of the characteristics and initiatives undertaken in different European countries.

3. Matters to be considered

3.1. Foundations

For example, the United Kingdom tells us that sport essentially is an autonomous movement, based on private initiative, where superior goals are not of an economic nature. Therefore, both State intervention and economic power should be limited.

In Italy, it is interesting to see how the professional sector is construed⁷. If the federation decides to set up a professional sector, the employment contract of each athlete has to be concluded under a collective bargaining agreement, which is signed every three years, by the representatives of employers and employees, under the aegis of the federation.

Inspiration can be drawn also from France. Some particular points, which are included in the present Sport Act⁸, may serve not as a model but as food for thought.

⁴ The US professional leagues remained apart from the World Anti-Doping Code, which was accepted at the World Conference on Doping in Sport, Copenhagen, March 2003.

⁵ See the property rights theory; for instance: Alchan A.A. (1969), "Corporate Management and Property Rights", in H.Manne (ed), Economic policy and the regulation of corporate securities, American Economic Institute, Washington.

⁶ Conference on the Social Dialogue in professional football, Brussels, 3 April 2003.

⁷ Legge n° 91 del 23 marzo 1981, sullo lo sport professionistico

⁸ Loi n°84-610 du 16 juillet 1984 relative à l'organisation et à la promotion des activités physiques et sportives. In 1999 the Act was amended.

3.2. Relationship between Sports Federations and the State:

The French model of sport is based on a special relationship between the State and the federations. Since 1940, the State delegates the organisation of all sporting competitions to the federations and only one federation is authorised for each specific sport⁹. This monopoly also allows them to organise and control the professional sports sector. If an organiser, who is not a member of the federation, invites athletes and makes competition prize money available, he has to obtain federal agreement beforehand¹⁰. Therefore, in France, the federation is in a strong position to organise and/or control professional sport, but, at the same time, to a certain degree, being dependant on the State. For example, when the private company "Société du Tour de France" wants to organise the "Tour", it needs the agreement of the French Cycling Federation. The authorised federation has to respect, as in public service, principles of equality and legality. By way of compensation, the federations are state-subsidized.

3.3. Relationship between Sports Federations and the Economic Sector

The second aspect concerns the power of the clubs and leagues. The main aim in France is to limit their powers and bring them under the control of the federations. Professional clubs now have to adopt the statutes of commercial companies but with various obligations¹¹. For example, they cannot be involved in the stock-exchange and, until the 1999 Act; they were not allowed to share profits. They were "non-profit companies". Today, only one kind of legal entity allows the profit to be shared¹². Professional clubs can be grouped in a league. However the league has to be under the control of the federation. Leagues can have an autonomous legal personality only through a non profit organisation¹³.

3.4. Property Rights partition

The confrontation between commercial companies and non-profit organisations may be unbalanced. Therefore, the Act gives the federations the exclusive right to commercialise competitions¹⁴. It is up to them to share TV rights income, for instance between the different actors, i.e., themselves, league and clubs.

This system is based on a centralised negotiation of TV rights by the league on behalf of the federation.

The brand and logo of the clubs (having the status of non-profit organisations according to French law), can be sold only through establishing a commercial company for professional sporting activities.

3.5. Collective agreement

Albeit late, the French sports organisations are now involved in negotiations to prepare and adopt a collective agreement for the whole sports activities branch. It will include a chapter on professional sport which is currently being discussed. The lack of an Act-like the one in Italy, where the federations are obliged by law to sign the agreement- undermines the position of

⁹ Art. 17 *ibid.*

¹⁰ Art.18 *ibid.*

¹¹ Art.11 *ibid.*

¹² Société anonyme sportive professionnelle

¹³ Art.17.II *ibid.*

¹⁴ Art.18-1 *ibid.*

the federation in the France. The clubs organised themselves in a specific structure named "Conseil Social du Mouvement Sportif" (COSMOS¹⁵) to be involved and be active in the negotiating process. On the part of the players, a common organisation named "Federation Nationale des Associations et Syndicats de Sportifs (FNASS¹⁶)" - was set up.

4. Conclusion

In conclusion, these brief illustrations remind us that the future of the professional sports system has to be considered also taking history into account, in order to preserve the aim of the Olympic and sporting movement. Today, the genuine European model of professional sport is living on borrowed time. Its future structure in the European Union has still to be built, despite some progress having been made. A new impulse can be given by the European Convention. Article I-16 of the draft proposal provides that the Union may take supporting, coordinating or complementary actions, in particular, education, vocational training, youth and sport. For the first time, the word "sport" is included in the basic legal document of the Union. Despite possible threats, this will provide a first opportunity for continuing to build the European model of sport.

¹⁵ www.cosmos.asso.fr

¹⁶ Contact: UNFP, 32 rue Feydeau, 75002 Paris, phone: + 33 1 40 39 91 07; fax: + 33 1 42 36 22 21