

Balog – Kolpak and the future?

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The free movement of workers is one of the four primary rights in the EU internal market. Liberalization that assures free employing of sportsmen and -women is a result of the development of public laws, 'acquis communautaire' in terms of case-law.

The name of a Hungarian sportsman has got linked with the history of the development of European sports case law. The case of Balog Tibor known as "Bosman B", representative footballer, was brought before the European Court of Justice. The football-player found it prejudicial that his would-be football team offering him a contract was asked to pay a premium of 5, then 3 million Francs to his former team in the summer 1997. The contract got resiled therefore Mr Balog went to law and entered a legal action asking for the extension of the operation of 'Bosman rule' over football-players coming from countries which were not members of the European Union. Jean-Louis Dupon, Mr Balog's former attorney in a successful case before the European Court of Justice, took his legal representation again. His action did not insist only the principle of free movement of employees but the question of free competition within the European Union as well.

The legal representative of the European Committee supported Mr Balog's action, however, the European Court of Justice did not give preliminary ruling for the case. The parties concerned came to an agreement and Mr Balog obtained considerable compensation.

In consequence of this only some years later the European Court of Justice was provided an opportunity to judge over the rules carrying discrimination based on nationality concerning non-EU member players of sports associations.

Since 8th May 2003, the date of the pronounced ruling by the ECJ on the case of the German Handball Association vs Maros Kolpak the regulations of sports associations in European Union countries have not been allowed to set limits to professional sportsman - and women - coming from countries that have an Association Agreement so called 'Europe Agreement' with the EU and members of the European Union and having already been available in the labour market of any member countries of the European Union - to participate in league as well as cup matches.

And what will the future of employees/ sportsmen and -women coming from Eastern- and Central European countries be like after the date of Accession?

With the Treaty of Accession coming into force Association Agreements will become derogated. The claim of the Kolpak-case in connection with Hungarian sportsmen- and women among others will be out of question. However, Article 39; Treaty of the European Communities will cease to have effect since employees from newcomer countries - joining on 1st May 2004 -will not have the right of the freedom of movement of workers for transitional measures of 7 years.

The exception is:

“Hungarian nationals legally working in a present Member State at the date of accession and admitted to the labour market of that Member State for an uninterrupted period of 12 months or longer will enjoy access to the labour market of that Member State but not to the labour market of other Member States applying national measures. Hungarian nationals admitted to the labour market of a present Member State following accession for an uninterrupted period of 12 months or longer shall also enjoy the same rights.”(The Treaty of Accession 2003, Annex X: Temporary provisions, transitional measures for Hungary)

The new member states of the EU since the 1st May 2004 are: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia and Malta.

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