

INTERNATIONAL LABOUR ORGANIZATION AND SPORTS HUMAN RIGHTS

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Abstract

The study aims to make a general analysis to a significant aspect of Western civilization and contemporary approaches of democratic and capitalist systems. Labor relations, employment contracts, sports contracts in athletes transfers, freedom of association and their legal frameworks, are the foundations of social welfare in democratic countries of rule of law, nowadays.

Because labor relations dealing with issues of human rights (such as national, racial, religious, social, or gender based non-discrimination, child labor or exploitation of minors, prohibition of slavery and forced labor, etc.), basic labor standards are also an essential criterion to be fulfilled and respected by countries to join the EU.

Relevant international documents and institutions, such as International Labour Organization and its conventions, European Union legislation (regulations, directives, decisions, recommendations, etc.) The European Charter on Social related to this field, will be the focus of our study.

Thus, the methodology used in my study will be that of analyzing international remedies, regional and provisions that define and ensure basic human rights in the world of work.

Keywords

Fundamental human rights, sports labour contracts, labor relations, ILO, international labor legislation, sports human rights.

Introduction

Contracts and labour are amongst the most ancient and important institutions of law, where parties assess between themselves mutual engagement, innovations, potentials,

evaluations and capacities. In our case, the sports labour contract is one of the newest fields of the contractual system, and amongst the best paid in the sports labour market. A century ago, no one would have imagined that Sport and

Sport Activities would have this kind of economic interactivity, development and significance that it has lately. International community has invested a lot in sports, which is seen as strong social component in entertaining and connecting people. Nowadays some of professional sports are “million dollars” industry, being also an important point in the economy of most Nations. Amongst other sports, Football has taken the lead in most parts of the world, particularly in Europe (taking season 2010-11, over 3 billion Euros was the total value of transfers in European football, compared to the 27 million Euros in basketball). European Football Clubs spend every season tens and hundreds million of Euros to enforce their squads with talented players, which serve to their club in exchange for wealthy remunerations, reaching up to millions of Euros. Therefore, in these conditions it is crucial for this industry to be well regulated by specific rules and laws, which in the first place shall guarantee the protection of fundamental rights of sportsmen. The study goals of this review were: to highlight the importance of scientific, practical, legal protection of labour athletes and their contract; the importance of increasing demand for legal support in sports competitions; to stress the value of sports contracts in the labour market. The importance of Sports Contracts There are several theories focused on the contractual nature of human and financial relationships in sports activities. Nowadays we cannot refer to contracts only as legal tools, but much more than that, they are used as powerful guarantors

of basic rights and liberties of human kind. Sports and labour brought peace without the existence of contract.² There are undoubtedly several question marks related to the efficacy, jurisdiction and potentials of signing, continuation and termination of the sports labour individual contract. Many facts related to the contract are important: professional sportsmen and professional sports associations, the sportsman as sole entrepreneurship, and bearer of rights and obligations. Sportsmen, always referring to their contracts are destined to sell their sports work, talent and fame for the achievement of results.³ On the other hand, the sports associations are public entities, with public or private legal character, which aim to support the sportsmen through subsidizing and financial or promotional treatment. It is clear that the Contract itself and the legal background supporting it are strong legal instruments fully-protecting both the sportsmen and the entities employing them, in a time when professional sport is confronted by new challenges, such as:

- A debt crisis which threatens financial and contractual stability in the sector;
- The influence of criminality on the game (trafficking of players, illegal betting, corruption and fraud, abusive terms of employment);
- New forms of investment in players which endanger the capacity of sporting bodies to regulate their activities (Third party ownership – TPO);
- The questioning of federations’ role and power in organizing and regulating the game

² Kaufmann-Kohler, G. et al (2003). "Legal Opinion on the Conformity of Certain Provisions of the Draft World Anti-Doping Code with Commonly Accepted Principles of International Law" February. Available at www.wada-ama.org.

³ S. Cassese, E. D., Alterio, M. D. Bellis (2011). The Enforcement of Transitional law Private regulation, Public Law and private regulation in the global legal space.

in the face of more powerful clubs, run like businesses and, sometimes quoted on the stock exchanges with an obligation to deliver financial results to their shareholders.⁴

International and European Legal Framework of Sports Contracts

At European level, a sportsman is legally seen as a regular labourer entitled with all the rights and obligations that EU's *acquis communautaire* provides for them. But, of course the employment practices in sport are not exactly the same due to unequal characteristics of sport activity. The rules are examined in relation to sport's alleged specificity as an activity deserving specific treatment in the implementation of general law and which, to a large extent, justifies the autonomy of sports institutions in regulating their competition. The EU institutions and notably the European Court of Justice are playing a key role in defining the scope of sport's specificity.⁵

The most famous decision of the ECJ (European Court of Justice), which shaped forever the relationships in professional football, regarding to Contracts standards, player transfers, touching also other fundamental principles of EU Law such as "free movement of workers", is "The Bosman ruling".⁶

The *Bosman* ruling had a decisive influence on the development of professional football in Europe and beyond by reinforcing the social rights of players and by abolishing

nationality requirements in the composition of teams at club level. Remarkably, the Court assessed the proportionality of the rules in force at that time in relation to an important criterion: the ability of a rich club to recruit the best players and therefore to undermine the balance of competition.⁷

However, the approach that EU Institutions have toward the interpretation of sport's specificities is essential to understand sporting bodies' self-regulatory powers. EU institutions emphasize the importance of rules aimed at supporting solidarity, redistribution of resources amongst clubs (to promote fair and balanced competition) and youth development as key reasons for justifying derogations from traditional implementation of EU Treaty rules.⁸

Other important documents at international level, such as the European sports chart, the recommendations of Council of Europe and the UN Conventions aim to support the engagement of employers, either public or private, in the encouragement, harmonization, and improvement of sports labour, not only in national but also in European and Olympic levels. In addition, an important European document in European football is an agreement among important football institutions in Europe (UEFA, EPFL, ECA and FIFPro Division Europe), having the support of European Commission and titled "Agreement regarding the minimum requirements for standard player contracts in the professional football sector in

⁴ KEA(European Affairs) – CDES(The Centre for the Law and Economics of Sport): "Study on the economic and legal aspects of transfers of players", January 2013.

⁵ *Ibid.*

⁶ C-415/93 Union Royale Belges des Societes de Football Association and others v Bosman and others, (1995) ECR I-4921.

⁷ KEA(European Affairs) – CDES(The Centre for the Law and Economics of Sport): "Study on the economic and legal aspects of transfers of players", January 2013.

⁸ *Ibid.*

the European Union and in the rest of the UEFA territory”.

The Minimal Requirements Agreement

As mentioned above, a decisive document regulating football Contracts in Europe and setting the minimal requirements of standard Contracts is the “Agreement regarding the minimum requirements for standard player contracts in the professional football sector in the European Union and in the rest of the UEFA territory”. This is a joint autonomous agreement between player associations, leagues, clubs and federations and it is considered as a great achievement for all parties and an example for the value of the European Social Dialogue for all stakeholders in sport supported by the European Commission. It is important to underline the autonomous character of this document due to the approach that EU Institutions hold toward sport and its institutions, seeing them as self-regulated-bodies. This agreement is also a first step in offering minimum social and legal standards as to the form of players’ contracts being implemented in the EU and in all 53 UEFA countries.⁹

To ensure that player contracts throughout Europe meet certain minimum standards such as:

- i. Contracts must be in writing;
- ii. They must define the rights and duties of club and player and they must address matters such as salary, health insurance, social security or paid leave;
- iii. Contracts also must refer to the duty of players to participate in training, to

maintain a healthy lifestyle and to comply with disciplinary procedures;

- iv. They must contain provisions on dispute resolution and applicable law;
- v. Another important point is the duration of the contracts which the minimum period would be 1 year and the maximum 5 years;¹⁰

These conditions and others are binding to all European Football Clubs (in the position of the employer in this case), to be applied when preparing the standard Contracts.

Conclusions

In conclusion of this review it is important to be underlined, that every athlete has the right under the European Sports Charter and the rules of the Council of Europe to be protected by law and assignments. Finally sports contracts of employment should be based only document and fulfil several minimal requirements to enable the process of movement and transfer of athletes from one club to another and from one country to another according to European legal requirements, to avoid abuse and corruption in the work and process sports, and therefore fundamental rights of every sportsman to be fully protected and guaranteed.

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⁹ FIFPro, UEFA, ECA, EPFL sign agreement on minimal requirements, 20 April 2012, EU Athletes (www.euathletes.org).

¹⁰ The Federation Internationale de Footballers Professionels Division Europe (FIFPro Division Europe), Press Release, 20 April 2012.

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