



“Autonomy” of Sport Policy and Sport Activities in the European Union: Connections between Human Rights and Sports*

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Abstract. With the increasing social role of sports, respectively its ever more decisive economic role the matter of sports takes an increasingly distinguished rank in EU politics. In close connection with that, the organisations dealing with sports claim a special status for sport activities, one that is different from the general judicial practice of the European Union, one which represents an exception in many respects. This phenomenon will the present study call “the autonomy of sport activities”. The special, “autonomous” nature of sport appears most of all perhaps in the legal conflicts on the agenda of European Union level justice institutions; therefore the study lays a special emphasis on the analysis of these legal cases (e.g. “Bosman Case”, “Abdelmajid Oulmers Case”, “6+5 Rule”). At the same time, we seek answers to the question of what further types of directives are necessary within the sport policies of the European Union, from the point of view of the social and economic role of sport activities.

Keywords: human rights and sport, sport policy in the EU, autonomy of sport activities

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The broadcast of the Super Bowl, the championship game of the premier association of professional American football – the American National Football League (NFL) – is an annual most-watched event in world television broadcasting. Yet one must not go very far for an even handier example: football games of European and world championships, or even the competitions of the Olympic Games also make millions of viewers sit in front of televisions every time. A suggestive piece of information about the popularity of sport events is that the opening ceremony of the 2008 Olympic Games in Beijing was watched by two billion people, even according to the most pessimistic estimates. In addition to the popularity of proper sport activities and events, the taking of steroids, hooliganism, or the issues of selling/buying players are also permanent topics of sport media. The legal aspects of these issues can at the same time also be found in legal or European Union discourse. Simultaneously with the increasing social role of sport, respectively its ever more decisive economic role (in the case of certain sport branches the invested amounts of money resulted in real “superpowers”)¹, the matter of sports takes an increasingly distinguished rank in EU politics. In close connection with that, the organisations and institutions dealing with sports, and sports clubs themselves not the least, claim a special status for sport activities, one that is different from the general judicial practice of the European Union, one which represents an exception in many respects. This phenomenon will the present study call “the autonomy of sport activities”, and at the same time the investigation of the matter will also be the main purpose of our analyses below². The special, “autonomous” nature of sport, pointing beyond the legal and other type regulation framework of the European Community, appears most of all perhaps in the legal conflicts on the agenda of European Union level justice institutions; therefore we lay a special emphasis in our paper on the analysis of these legal cases (e.g. “Bosman Case”, “Abdelmajid Oulmers Case”, “6+5 Rule”). At the same time, we seek answers to the question of what further types of directives, regulations are necessary

¹Sport as an economic activity produces circa 4% of the annual total output of the European Union, while in addition, it provides 15 million jobs on the level of the Member States.

²The adequacy of the expression “autonomy of sport activities” is proven to an even larger degree by a most recent development of sports diplomacy: the international sports diplomacy conference organised on 21 October 2009 in the building of the Hungarian Parliament – attended by leading figures of international sports – was given the title of “International Conference on the Specificity and Autonomy of Sport in the European Union” by its organisers. Later in the present paper we will discuss more about the *Budapest Declaration* – the closing declaration of this conference.

within the sport policies of the European Union from the point of view of the social and economic role of sport activities.

Sports in community treaties and documents

On a European Community level the EU Constitution, by now off the agenda in its original form, would have been the first treaty to deal with sports issues - but because it has not been ratified, the article on sports has not come into operation either. Yet, the failure of the coming into force of the Constitutional Treaty does not mean that the leading bodies of the European Union did nothing to remedy the challenges faced by sports. The events of the recent years, the increasing number of sport-related legal cases ending up in front of the European Court of Justice prove that sport policy and regulations become more and more a necessity in order to ensure the healthy and vigorous development of sports (Weatherill 2007: 34). The uncertain legal framework imposes increasing problems for commercialising and steadily and irreversibly developing sports. On the other hand, the enlargement of the EU also contributes to the necessity of further regulations, as the Member States adhering in 2004, and later in 2007 have all different cultures of sports organisation. In 2005, during the British Presidency of the European Union, a decision has been taken to prepare an independent report on the specific nature of sport, respectively – based on European football – to analyse the situation of sport and its problematic issues.

Sports related questions are not something new in the European Union. Although the Founding Treaties do not include articles referring to sports, sport policy has increasingly gained ground in EU law, simultaneously with the recognition of the significance of the matter. Sport at the same time is also connected to many EU policies; moreover, if it appears as an economic activity, it becomes subject of EU legislation with the applicable rules of competition and of the internal market. Thus, the classification of professional sport as an economic activity for instance means that the economic regulations of the community apply to it and it must operate in accordance with those principles (Arnaut 2006.). The activities that can be qualified as amateur or leisure time sports however, remain in the competence of the Member States, just as culture and education. Until the eighties sport was only defined as an economic activity; yet in the early nineties this way of looking to it was extended, and the outstanding social significance of sports was recognised. As a result of the recognition of its social functions, the European Olympic Committee (EOC)

established the European Sports Forum, which functions as an advisory body. The main task of this institution is to organise an annual meeting among the Member States, the civil sphere and the European Union, to create a forum for dialogue and consultations. The annual fora are commonly attended beside national delegations by representatives of the Member States' sports organisations and of international institutions; yet the representatives of European Union institutions (European Council, the Commission and the Parliament), and some delegations of non-member countries and of other concerning sectors (e.g. media, universities, sports requisites manufacturers) also partake. Sport made its way into the *acquis* for the first time in 1997, when a Declaration on Sport³ was attached to the Treaty of Amsterdam. The importance of the Declaration itself resides in the fact that it recognises the social significance of sport, and calls the attention of political leaders that when decisions in sport-related matters are taken, they should listen to sports associations.

The next important station of community sport policy is a Consultation Document issued in 1998 by the Commission, entitled "The European Model of Sport"⁴. The document is in fact a situation assessment, which presents the organisation model of European sport, its characteristic features and the emerging problems. In the document released in 1998 the Commission declares that in spite of the large diversity, it does not wish to make sport structures in the Member States become more uniform, but would like to maintain the existing differences – thus making the keynote based on which the relative "autonomy" of sport activities can later be claimed. Even if the Union did not set up a uniform model of sport organisation for the Member States, these organisations show great resemblance throughout the states of Europe. In its report issued during the summit in 1999 in Helsinki⁵ the European Commission reinforces once again the acceptance of sport organisation models functioning in the Member States, yet in addition to that it further enlarges the sports-related thematic palette of EU policies. The document lays a special emphasis on the increased economic dimension of sport, which is especially due to television broadcasts. Beside the increased economic role, the report also renders an account about the negative tendencies affecting sports. It highlights the spreading of violence in stadiums, hooliganism, corruption and doping practices, as well as the frequent exploitation of young sportsmen and -women, and it also indicates concrete sports policy objectives: the development of sports and physical education at school, the promotion of the subsequent switch to

³ *Declaration on Sport*. Amsterdam, 1997.

⁴ *The European Model of Sport*. European Commission, 1998.

⁵ *The Helsinki Report on Sport*. COM (1999) 644 final.

other employment and future integration onto the labour market of sportsmen and -women, respectively the promotion of the convergence between the training systems for sports workers in each Member State. Still, the most important objective set is the better and more detailed clarification of the legal environment of sport within the framework of the European Union.

The Nice Declaration⁶ has also meant a step forward in the history of the EU from the point of view of sport activities: it recognised the specific particularities and outstanding social functions of sports, which therefore would have to be taken into account when implementing community policies. The declaration is extremely important on the level of principles as it formulates that the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport (Nice Declaration 2000, Article 1). Sporting activity should be accessible to every man and woman, with especial regard to the physically or mentally disabled, as it provides a particularly favourable opening for rehabilitation and – not incidentally – social integration (Nice Declaration 2000, Article 5). Beside these, in the declaration the European Union encourages voluntary or social work in sport, and supports the independence of sport organisations and their right to organise themselves. Another important matter was touched upon by the declaration, namely the issue of ownership of sport clubs. The attention was called upon the fact that single ownership or financial control of more than one sport club entering the same competition in the same sport may jeopardise fair competition. In order to clear up the question, the Council proposes that the sport federations may introduce arrangements for overseeing the management of clubs. Based on this recommendation for instance the UEFA initiated a rule that two clubs with the same owner cannot compete in the same competition within European championships. The Nice Declaration includes a reaction with reference to one of the most important problems of European sports - also from the point of view of our present paper: in matters related to player transfers the Council expressed its support for a permanent dialogue between EU institutions and organisations representing professional sportsmen and -women. The latter recommendation was practically on par with the increased role of the European Sports Forum.

Part III, Chapter V, Section 5 of the draft Constitutional Treaty of the European Union deals with education, vocational training, youth and sport. According to the document the European Union can adopt co-ordinating, complementary or supporting regulations in the named areas with the aims – nar-

⁶ *Nice Declaration*, 2000.

rowed down to our subject – of developing a European dimension of sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially children and young sportsmen and sportswomen. In the draft Constitution the Union turns away from the possibility of changing the existing European sports model, therefore this continues to remain within the sphere of authority of the Member States. The Treaty of Lisbon, “growing out” of the Constitutional Treaty, presently being in stage of ratification (and possibly soon to be adopted) on the other hand can easily become the first treaty in the history of the EU which will make a concrete mention of sport, and within it the special character of sport activities⁷.

The evolution, development of the sport policy of the European Union basically reflects the recognition of the fact that sport is not merely an economic activity, but by its social significance it is also part of European cultural heritage and an important educational tool. The latter feature of sport activities is important from the perspective of a unified European spirituality because the results of the educating function are social cohesion on a community level, and deepening and strengthening social integration. (As a result of this new outlook, year 2004 was declared the *European Year of Education through Sport*, and in 2007 a White Paper on Sport was published.) The tendency taking shape shows a developing European Union sport policy, while furthermore, a series of legal questions related to sports have been answered over the last decades. In spite of that, the obstacles still present in European sports create further challenges for the European Union and the sports organisations. The White Paper raises issues such as the licensing systems for clubs, ownership issues and financial management of clubs, or the system of player transfers (White Paper 2007).

⁷ Article 124 of the Treaty of Lisbon establishes the following in connection with sports: a) “The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.”; b) “Union action shall be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.”

The special character of sports: the “autonomy” of sport activities

One of the main features of European sport is that its governing bodies enjoy legitimate autonomy. This independence does not mean that sports are beyond law but that in certain areas of sport a regulating autonomy must be taken into account and respected. There are cases when general law can be applied in sports, but even in these situations the concrete characteristics must be acknowledged. This aspect of sports has also been recognised by the Nice Declaration. In other words, when we speak of the economic dimension of sport, it is not sure that it should be treated as a business from a legal point of view. The specificities of sports have also been recognised in the Declaration by European heads of state and government, consequently the debate from now is not about questioning whether or not sports have a special character. The essential task is to find those practical measures by which European legislation can take into account the specific aspects of sport (Arnaut 2006: 10). In the legal disputes ending up in front of the European Court of Justice and the European Commission, this principle has already been applied, although erratically and on a case-by-case basis; yet no transparent legal environment has been built up in connection with the issue. The lack of an adequate regulation on the other hand resulted in situations when certain “autonomous” sport activities conflicted with the unified European law and order – or created a borderline case at best. A good example for that – and later on we will discuss it more in detail because of its topicality – is the issue of “release” of under-contract players to play for national teams⁸. The aim of the international bodies in order to attract as many spectators as possible is to have the best teams participate in the most important competitions. In football for instance the aim is to have the best composition of national teams participate in world and European championships. The measure of releasing the players defends the aims and effectiveness of such championships, as well as the interests of smaller and poorer countries and public (Arnaut 2006: 12), yet it may hurt the interest of club teams, which can also be considered economic undertakings.

The same contradiction, but from an opposite direction is supported by a phenomenon not unfamiliar at all in the area of sport activities, i.e. that the results of the competition are solely determined by money. Although as

⁸The regulation is specifically European, as similar rules do not exist for instance in the case of American professional leagues. Simultaneously with the ice hockey world championships for example, current NHL seasons are in full speed and foreign players do not participate in the world competitions.

economic activities, sports events could also make reference to the theory of the "Invisible Hand" (i.e. the self-regulating mechanism of market forces); the FIFA has presented a draft regulation on domestic players, which will also be further discussed in the present paper due to its topicality and importance. The proposal is the idea of the leaders of the international association, yet the issue is relevant mostly in European championships, as one can hardly talk of the employment of so many "foreign players" in the championships of other countries. The proposal known as the "6+5 Rule" stimulates the training of players, and to a certain degree it restricts the "trade" with them. The regulation of costs is also an issue connected to the proposal on domestic players. The aim in this case is to prevent that the competitors with most money, being able to buy the best players, rule the competitions. This is not in the interest of sport and the spectators, but it is important to mention that the aim is not to set restrictions regarding the upper limit of players' payments. A concrete solution for the extremely complex problem has not yet been found, one possible alternative would be that the general level of expenditure of a club should be proportionate with its turnover. Another alternative for cost regulation could be the strict payment ceiling applied in professional American leagues (NBA, NHL, NFL).

From all these it consequently becomes clear that on a Union level the special character of sport requires an application of law that is different from the one generally applied. When applying the regulations one must observe the "autonomy" and self-reliance of sport-governing bodies and sport activities, respectively the specificities of sport.

Relationship between the fundamental human rights and sports

When attempting to analyse the relationship between sports and fundamental human rights, the researcher has to confront the question whether and to what degree can sport be considered a human right. The answer to the question may even seem simple as none of the human rights declarations or agreements include articles on the performance of sport activities or on the accessibility of sports. In that light one can conclude that practising sports is not classified into the category of fundamental human rights. Sport, however, as a social activity can constitute a very important element of the fundamental human right of equal access to education and culture.

The right to education is included in Article 26 of the Universal Declaration of Human Rights: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities [...] for the maintenance of peace.” (Universal Declaration of Human Rights, 2nd paragraph). By its basic characteristics, sport develops the self-respect of people, creates an opportunity for self-fulfilment, and on a social level it promotes cohesion. The spirit of *fair play* in sport teaches respect for work and performance, and also respect for the opponent or the other party. The social solidarity effect of sport can be witnessed every day, when sportsmen and -women and spectators with various cultural, religious backgrounds, speaking different languages rise above these differences, helping to overcome social stereotypes, discrimination, intolerance. The fact that women can perform such “typical male sport activities” as football or weight-lifting can also give an impulse to combat discrimination against them (Voicu 1999).

Fundamental human rights can be enforced by sport, yet these can also be harmed by it. The most frequent cases of the infringement of fundamental human rights in sports are related to doping (Nádori 2007: 147). The use of artificial performance-enhancing drugs endangers human health, and in addition to that they are in contradiction with the spirit of sports. Human dignity and the private sphere are harmed when sportsmen and sportswomen are submitted to examinations in order to check drug use. Knowing about the possible risks of achieving outstanding performances belongs to the basic rights, and in that context fundamental rights can also be harmed. The processes going on today in sports often provide opportunities for some of the sponsors to exploit sportsmen and sportswomen, or in certain cases for the parents to make use of their children’s talent, without paying attention to the effects of sport activities on their physical and mental development. In recurrent cases talented young people are either physically or mentally worn down by their daily training and the burdens of responsibility during the competitions. The infringement of other types of human rights can result from the assertion by bribery of commercial or other interests on the race grounds.

Recent events have also proven that sports, politics and fundamental human rights are in close connection with one another. The International Olympic Committee was strongly criticised when it awarded the right of organising the 2008 Olympic Games to Beijing as it was common knowledge that the People’s Republic of China had often failed to respect human rights. Yet the Olympiad was organised and after the event it can be concluded that the Chinese Olympic

Games at least provided an opportunity for basic human rights related issues to be debated at important fora. It is also the “merit” of the event that the Chinese State made an attempt to prove to the world the opposite of the allegations, therefore paying better attention to critical remarks. As Jacques Rogge formulated on the occasion of the closing ceremony: “The world learned more about China, and China learned more about the world”⁹.

One of the most frequent human rights element that keeps coming up in connection with sport activities is one of the four freedoms of the European Union, the free movement of persons. The freedom guaranteed in the Community Treaty is a prerequisite of the operation of the common market, therefore Article 2 of the Treaty rules on the elimination of all restrictions regarding the free movement of persons (Szalayné 2008: 29). The principle of free movement of persons includes the free movement of workers, the freedom to pursue employment freely and the freedom to establish companies. Of the freedoms listed, it is primarily the free movement of workers that bears special relevance from the point of view of sport activities. Although the concept of a worker is not made clear by legal documents, the accepted definition is that workers are those who carry out activities based on instructions, for being compensated/remunerated. According to the definition, employment can be linked to many different types of activities, sport being one among these, provided that it results in economic consequences. As a result, the professional sportsmen and sportswomen, who carry out their activity by occupation, for compensation, are workers.

An important element of the free movement of workers is the interdiction of discrimination, be it even a positive discrimination for the benefit of own citizens. Based on the legal practice of the European Court of Justice in the past years, we can assert that on the grounds of the free movement of workers not only discrimination is prohibited, but all forms of obstructions and restrictions of the freedom. The Bosman case (1995) had the most significant contribution to the extension of these principles, as not the issue of employment was the most important aspect in this case, but the obstructive attitude of the club that had formerly employed the football player. The Bosman case did not only alter the basic principles of the Union, but also induced enormous changes in European sport (Szalayné 2008). Jean-Marc Bosman had been the professional player of the Belgian team Liège RC until 1990. Following the expiration of his contract he refused the offer of a contract of employment proposed by the association, as it was disadvantageous to him. The club

⁹24 August 2008

accordingly placed him on the list of players to be sold, and determined a transfer fee of 11,743,000 Belgian francs. This meant that the club that would employ him in the future would be obliged to pay that amount of money in order to employ him. The regulations regarding this huge amount of money, respectively those restricting the number of foreign players¹⁰ made Bosman's situation impossible, therefore he was not hired by any of the clubs. In the case ending up in front of the European Court of Justice a judgment was passed on 15 December 1995, and beginning with that day a new chapter has started in the history of team games, but also in that of the “autonomy” of sport activities. During the legal proceedings Bosman argued that as his contract had expired in Liège, the club had no right to ask for a transfer fee, moreover, his Belgian employers had violated the article of the free movement of working force from the Treaty of Rome. In his decision, the European Court of Justice ruled in favour of the free movement of sportsmen and -women. On the one hand this meant that the clubs cannot request a transfer fee for the football players and sportsmen and sportswomen whose contracts had expired, while on the other hand it also meant that the restriction on the number of “foreign players” was against EU principles. The ruling in the Bosman case, the later Bosman rule in fact, declares that professional players from a legal point of view are not different at all from other employees, and the same rules must be applied in their case as in the case of any other citizens of the Union, performing any other profession. This second bearing of the rule was extended in 2003 to those countries for which bilateral agreements with the EU pronounce that citizenship cannot constitute a discriminative aspect with regard to employment (this was achieved by a Slovak handball player, Maros Kolpak at the end of a similar case at the European Court of Justice in 2003)¹¹.

The Bosman case is a copybook example of the tensions among the regulations on sport activities, the “relative autonomy” of sport, and community law (*acquis communautaire*) – and in its decision the European Court of Justice

¹⁰According to the rules of the UEFA at that time, the maximum number of “foreign players” on the playing field within one team at a time was limited to three players.

¹¹One of the first “victims” of the regulations introduced as a consequence of the Bosman case was the Dutch team Ajax Amsterdam. The winner association of the Champions' League Trophy in 1995 lost most of its best players within less than three years. Clarence Seedorf signed abroad before the Bosman case but by January 1998 the following players left Ajax: Edgar Davids, Michael Reiziger, Finidi George, Nwankwo Kanu, Patrick Kluivert, Marc Overmars, Winston Bogarde, Ronald and Frank de Boer. Three of them left the Dutch team without a transfer fee, after the expiration of their contracts. The departure of the other players was indirectly related to the effects of the Bosman rule, i.e. to the fact that the wages of “free” football players reached astronomical amounts.

maintained the unconditional application in the area of sports of the freedom of movement, the free movement of workforce and the freedom of employment. Yet the decision raised further legal questions related to the special status of sport activities, of which the most representative and in its effects the most important one was a type of a second Bosman case, the case that became famous under the name of “Abdelmajid Oulmers”. The latter legal case is still on the agenda of the European Court of Justice, and a decision in that matter may become a new milestone in the history of the status of sport activities in the European Union.

On 17 November 2004 the national football team of Morocco hosted the team of Burkina Faso at an exhibition game. The match ended with a score of 4:0, and the Moroccan Abdelmajid Oulmers playing in the Belgian team of Charleroi was injured. The injury, which seemed to be an easy one, turned out to be serious resulting in a forced rest of a minimum of eight months for the player. Oulmers had signed a contract with the Belgian club about a year earlier and played well during the whole season, therefore the club considered that it had suffered a provable loss as a result of the injury of its employee - so it sued the FIFA. The competent leaders of the International Federation of Association Football thought there was no connection between the injury of the player and the successfulness of the team, consequently they were not willing to pay what the Charleroi claimed. In the case that was submitted to the European Court of Justice the Belgian club argues following a simple logic, which makes the point that the international association by the conditions set forth clearly in its regulations on the employment and transfer of players, forces the clubs to allow their players to play at international matches in the competition agenda. Yet the subsequent parts of the rules do not dispose that compensation should be paid in the event of an injury to the player during the match resulting in an influence on the player's performance at the club team. The question here is not that the club continues to pay a wage to the player during the period of his/her injury, respectively provides rehabilitation expenses, but that the ability of the player to generate an income is reduced. It is important to stress that as sport increasingly fulfils a commercial role, the ability of a player to generate income is not only limited any more to his/her performance on the ground, but it also includes sponsorship, advertising, publicity-related commercial activities (Dénes 2006.). During the legal dispute the Belgian club has been endorsed by the G-14¹² group – compressing 14 European leading clubs

¹²Members of the G14 group were: Ajax Amsterdam, FC Barcelona, Bayern München, Borussia Dortmund, PSV Eindhoven, Internazionale Milan, Juventus, Liverpool, Manchester United, AC Milan, Olympique Marseille, Paris Saint-Germain, FC Porto, Real Madrid.

– that has since then disbanded. At the proposal of the G-14 group, Charleroi determined the amount of the compensation requested to be 860 million Euros. The interest of the club teams is unequivocal, on the other hand similar is the interest of the International Federation of Association Football, as the latter had consciously turned world and European championships, where national teams participate, (as well as the respective qualifying rounds) into commercial products. The most important positive feature of such sport events is that they require minimal financial investment from the FIFA, as players are paid by the clubs, the infrastructure is given, and although there are certain renting and organising expenses, the revenues – especially resulting from the royalties of television broadcasts – are enormous. The European Court of Justice has not yet ruled in connection with the mentioned case, yet it is estimated that the sport clubs will win the case.

It is important nonetheless to draw as a conclusion that in connection with the Abdelmajid-Oulmers case the autonomy of sport activities (in this particular case the regulating monopoly of the FIFA and the continental sports associations) is questioned once again in comparison with Union legislation, or in other words an autonomy is questioned which can create rules and adopt regulations without taking national laws and international treaties into consideration.

Although the Oulmers case is still on the agenda of the European Court of Justice, together with the Bosman case it has got important influence and bears significant consequences in another direction of sport legislation as well. At the end of May 2008, at its congress held in Sydney the representatives of FIFA member states adopted the so-called “6+5 Rule”, which is in contradiction with the basic principles of the Union, – or to say the least, with the decision taken in the Bosman legal case discussed earlier. The initiative has not been put into practice ever since, exactly because of the series of disputes connected to it. Leaders of the FIFA think that the rule is reconcilable with Union law, yet the standpoint of the European Union is that the rule would harm community law, particularly the principle of the free flow of working force. The President of the most important football association proposes that the number of “foreign players” sent on the playing ground at the same time should again be restricted, namely in the sense that starting with the 2012-2013 season, each club must field at least six players eligible to play for the national team of the country of the club, of the eleven players at the beginning of the match. To avoid misinterpretations, it is important to emphasise right from the very

Further four teams joined in 2002: Arsenal, Bayer Leverkusen, Olympique Lyon, Valencia.

beginning that the proposal as such cannot be considered as discriminative on grounds of nationality, as it rules about the national teams of the countries, where the eligibility to play for the national team is conditioned by citizenship, and not by belonging to one national group or another. It can happen that a player with a Spanish national background, but with a British passport, can play in the national team of Great Britain. In order to make the “6+5 Rule” be accepted, the FIFA requested a fully independent expert team to study whether the stipulation was in harmony with European law. Five legal experts of the Institute for European Affairs (INEA) declared after the examination of the matter that the rule was compatible with the system of regulations of the European Union. Namely, according to the report said to be independent the 6+5 restriction could at most constitute indirect discrimination because it is not directly based on the nationality of professional football players, but considers entitlement to play for the national team concerned, even if in the great majority of the cases these two mean the same thing.

Yet the situation is presently in stagnation, one could even say that we witness a real stalemate: both parties insist on their own interests, and it is hard to imagine they would be willing to alter their standpoints. This is supported by the latest developments connected to the “6+5 Rule”, as the parties reinforced once more their previous standpoints at the conference on sport diplomacy in Budapest mentioned earlier, organised on 21 October 2009. As Joseph Blatter representing FIFA put it, in case the introduction of the rule is widely supported by sport leaders, then the effective provisions of law (i.e. the *aquis* of the European Community) should be changed, whereas the head of the Sport Unit of the Education and Culture Directorate General of the EU, Michal Krejza declared that the Union will continue not to restrict the free flow of workforce. The closing document adopted by the conference (*The Budapest Declaration*) for that matter newly points out the tensions between the autonomy of sport activities and the provisions of law and the policies on the level of the EU, and the signatories ask the European institutions and the Member States of the European Union to have the political will to support decisions strengthening the specificity and the autonomy of sport¹³.

¹³ Articles 4-6 of the declaration include the following: “4. We commit ourselves to mobilize our connections and our efforts to preserve the autonomy of sport respecting the principle of subsidiarity, the competences of the Member States as well as the pyramid of international sport.; 5. We urge the decision-makers in Europe to recognize, realize and support the specificity and the autonomy of sport in the light of the Article 165 of the *Lisbon Treaty* as we need to safeguard these principles, the fairness and the openness of the competitions, the training of young players, youth development at club level and the national teams in

The experts of the field on the other hand consider that the introduction of the rule would not change the present balance of power in football, as the richest clubs will continue to buy the best football players – at the very most some of them will also have to receive citizenship. A major difference would nonetheless be that the price of football players within one country would increase. Yet the issue is a significant one indeed from the point of view of professional sport, it is enough to say here that the degree of workforce migration among professional football players exceeds 45% at present. According to the report published on the official site of the Union of European Football Associations (UEFA) the migration of labour force (i.e. proportion of “foreign players”) is the largest in England, but almost all European championships show an increasing tendency (see Table 1).

Country	Proportion of Foreign Players	Average Number of Foreign Players per Club
1. England	59.1 %	16
2. Portugal	53.7 %	13
3. Belgium	51.9 %	12
4. Germany	51.7 %	13
5. Greece	51.2 %	13
6. Russia	50.2 %	13
7. Switzerland	47.7 %	12
8. Scotland	42.4 %	10
9. Italy	40.6 %	10
10. Turkey	40.6 %	10
Romania	36.1 %	10.8
Hungary	24.0 %	6.5

Table 1. The proportion of foreign players playing in European championships¹⁴

all sports, in the spirit of the Nice Declaration adopted in 2000, of the document presented in September 2008 by the Olympic and Sport Movement, of the Declaration adopted in Biarritz in November 2008 and of the action developed by the Swedish Presidency of the EU to promote these principles.; 6. We call upon the European Institutions and all of the EU Member States, in particular Spain, Belgium and Hungary, which will preside the European Union in 2010 and in the first semester of 2011, to have the political will to support decisions strengthening the specificity and the autonomy of sport in the interest of future development for generations to come.”

¹⁴The proportion of foreign players playing in European championships

It is clear from the table that the statistics is led by the English championship, which continues to be the strongest and at the same time the one most watched, in which most front rank teams employ only one or two domestic players. In the 2005 season for instance, the historic occurrence came about when no English (not even British) players appeared in the Arsenal team (neither among the beginning 11, nor on the substitutes' bench). The table released by UEFA was complemented with data referring to the Romanian and Hungarian championships; in these cases we used the respective statistics to calculate the proportion of foreign players playing in front rank teams. It can be concluded in the latter cases that while the Hungarian championship is below the European average (also) in this respect, the proportion of foreign players in the Romanian forefront is relatively high, and even extreme examples similar to the English Arsenal can be found: among the 29 players entered for the team of CFR from Cluj for the 2008/2009 championship season there were 22 foreign players. In the case of Romania, the accession to the European Union was also an outstanding moment in the growth of the number of foreign players employed by Romanian club teams: starting with the 2006/2007 championship season the number of foreign players increased drastically.

The European and world level tendencies shown by the above examples and statistics adequately reflect the importance and well-founded character of the debates around the "6+5 Rule", but also the ambitions of European sports organisations to claim a special, autonomous status for their sport activities, which tries to find a way out from under the uniform legal regulation of the European Union, by making reference to the social, cultural, educational role of sports.

Conclusions

A very important conclusion of our study may be formulated by the statement that community level regulations concerning sport activities, and generally the domain of sports are not in par with their significance and economic power. The specific features of sports, the legal instruments and case studies presented above prove without exception that there is a real need for cooperation between EU institutions and sports organisations, and also for the creation of official structures that can form the basis of such cooperation. Because of the uncertain legal environment, only in the last five years series of corruption and cross case scandals connected to sports pools or to the agencies managing player employments have occurred in Europe - Belgium, Finland, Germany,

Italy and Portugal are the most important examples. In Italy for instance, even the elite clubs with the best traditions were involved in these practices, and the Juventus team was for example placed among the B Series for a season. The referee bribery scandal in volleyball could affect even the decisive match of the most prestigious European championship series, but criminal offences are permanent also in tennis and cycling. Another consequence of the legal uncertainty is that many clubs and associations ended up in difficult financial situations and have to deal with deficits of several millions.

The institutions of the European Union and the organs governing sports must cooperate in every respect in order to protect the specific nature of sport activities and to safeguard legal security. It is the task of the highest European governing organs of sport branches to initiate a dialogue with the European Commission. In football, the task of the UEFA is to maintain a dialogue with the institutions of the EU, to elaborate the legal framework necessary for the security of football – while respecting community law. The statement of sport lawyers that an official agreement is in any case necessary between the European Union and UEFA, in which the nature of the relationship between the parties is defined is quite pertinent, and should be extended to other branches of sports. Such contracts would make clear which in the different sports branches are the organisations that are the negotiating partners of the Union, respectively these agreements should also include which institution is competent in which issue and what are the methods of cooperation. The European Union has already taken decisions with regard to cycling, basketball, volleyball, swimming, or judo, but the areas that should be regulated must be extended to all branches of sports, for the sake of uniformity and transparency. At the same time, the sport model building from bottom up, in which all could participate, played an important part in the increasing social and economic role of sport. In the process of shaping legal security therefore one must be careful to protect the several decades old European sport model, so that its appreciation and esteem is further strengthened. Perhaps even by paying the price of the “autonomy” of sport activities.

References

- Arnaut, José Luis 2006 *Independent European Sport Review* (Report). Executive Summary, October. Report by José Luis Arnaut. p. 41
- Dénes Ferenc 2006 Lábától szaglik. Az Abdelmajid Oulmers-eset (The Abdelmajid-Oulmers Case). *Magyar Narancs* XVIII. 21. (25 May 2005).

- Nádori László – Bátonyi Viola 2003 *Az Európai Unió és a sport (The European Union and Sport)*. Budapest – Pécs, Dialóg Campus Kiadó, p. 215.
- Szalayné Sándor Erzsébet 2008 *Az egyén jogi helyzete az Európai Unióban (Tansegédlet) (The Legal Status of the Individual in the European Union – University Course)*. Manuscript. Pécsi Tudományegyetem, Állam- és Jogtudományi Kar, p. 160.
- Voicu, Alexandru Virgil 1999 *Răspunderea civilă delictuală cu privire la activitatea sportivă (Delinquent Civil Responsibility with Regard to Sport Activity)*. Bucureşti, Editura Lumina Lex, p. 480.
- Weatherill, Stephen 2007 European Sports Law. *The International Sports Law Journal* 1-2. 33-37.
- xxx 1948 *The Universal Declaration of Human Rights*. United Nations Organization.
- xxx 1997 *Treaty of Amsterdam – Declaration on Sport*. Publications Office of the European Union, Official Journal C 340, 10/11/1997 P. 0136.
- xxx 1998 *The European Model of Sport*. European Commission – Consultation Document of DG X (Information, Communication, Culture, Audiovisual Media. Audiovisual policy, culture and sport), p. 28.
- xxx 1999 *Report from the Commission to the European Council, with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework. The Helsinki Report on Sport*. European Commission, COM(1999) 644 final.
- xxx 2000 *Declaration on the Specific Characteristics of Sport and its Social Function in Europe, of Which Account Should be Taken in Implementing Common Policies*. Presidency Conclusions, Nice European Council Meeting, 7-9. December.
- xxx 2004 *Treaty establishing a Constitution for Europe*. Publications Office of the European Union, Official Journal, C310/01.
- xxx 2007 *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*. Publications Office of the European Union, Official Journal C 306/01.
- xxx 2007 *Fehér Könyv a Sportról (White Paper on Sport)*. Európai Bizottság, Európai Községek Hivatalos Kiadványainak Hivatala, Luxembourg, p. 40.