

Case C-415/93 Bosman [1995] ECR I-4921

Facts: The transfer rules laid down by a football association regulated transfers of players between teams. In particular, an international transfer could not take place unless the former national association issued a transfer certificate acknowledging that all financial commitments, including any transfer fee, had been settled. After refusing to stay with his team at the end of his contract, the applicant, Mr Bosman, was put on a transfer list. Due to the failure to deliver a transfer certificate, Mr Bosman was suspended from playing. He challenged the rule that football clubs could require a fee from other football clubs for the transfer of a player, even though his contract had run out.

Held: These rules imposed by the football association were against the free movement of the footballer. Firstly, it was not considered necessary for the employer to be an undertaking: sport was subject to Community law in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty, as in the case of the activities of professional or semi-professional footballers, where they are in gainful employment or provide a remunerated service. Secondly, it was stated that the abolition as between Member States of obstacles to freedom of movement for persons would be compromised if the abolition of State barriers could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations not governed by public law. Therefore, the rules in question had the effect of restricting the freedom of movement of players who wished to pursue their activity in another Member State by preventing or deterring them from leaving the clubs to which they belonged even after the expiry of their contracts of employment with those clubs. Such rules fell foul also of the principle of prohibition of discrimination based on nationality as regards employment, remuneration and conditions of work.

The rules were subject to proportionality review. On suitability, the Court felt that the transfer rules were not an adequate means of maintaining financial and competitive balance. As they did not preclude wealthier clubs from securing the services of the best players. Moreover, the transfer rules could not be considered to be necessary, as limits for players' salaries could have been negotiated collectively.