

## **Harmonization of the Legal Status of Professional Football Players within the European Union: *Lex Mercatoria and Lex Sportiva*” by Boris Kolev**

The common perception for professional football players in the EU is that they are workers providing labour under relationship of employment. However, in some of the new Member States joined in 2004 like Czech Republic and Lithuania, for instance, football players enter into civil law contracts and are considered independent service providers - something at odds with the universally accepted status of employees by virtually all pre-2004 Member States. Can football players rely on a uniform legal status within the EU and can the EU law remedy this discrepancy in the legal treatment?

The brief review of the jurisprudence of ECJ concerning the definition and interpretation of the term “worker” clearly demonstrates that no legal rationale could uphold the view that football players are independent service providers. This fact, however, does not prevent Member States from departing from the rule if this is deemed to suit better the interests of the stakeholders in sport and its adequate regulation at national level and is provided for in law. Court of a Member State will not be obliged to apply the EU concept of “worker” for the purpose of definition of the legal status of football players if it could simply restate the law in operation in such a country equating football players to independent service providers. As far as no issue of concern for the EU law may be raised, this situation may be successfully maintained.

Besides this disharmonized aspect of the legal status of football players, which mostly triggers taxation and social security implications, harmonization problems arise also from the subordinated position of the FIFA regulations vis-à-vis the national laws of the Member States. The positivist and autonomist approaches for legal regulation may be considered as alternatives for harmonization, however, in both cases – specific regulation of sport at EU level or exemption of sport from regulation - would confer a privileged status to one profession. After all, despite its recreational, social and psychological significance, in purely economic terms sport is simply an occupation, one sector of the economy.

, a concept emerged in result of the development of the jurisprudence of the Court of Arbitration for Sport (CAS), may serve as a powerful harmonization instrument. may apply to relations in sport, first, if incorporated in the national laws, secondly, as an autonomous body of law, which is to be recognized as such by national laws, and thirdly, as mandatory rules reflecting a public policy so commanding that they must be applied even if the general body of law to which they belong is not competent by application of the relevant rule of conflict of laws.<sup>1</sup> However, there is currently need for making the legislative and decision-making process in sport more democratic and transparent in order to give legitimacy to as a transnational law made by the world community of sportsmen and enforced by CAS.

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<sup>1</sup> Mayer, Pierre, Mandatory Rules of Law in International Arbitration, 2 Arb. Int'l. 274 (1986) at 275