

**PROMOTING THE SOCIAL DIALOGUE IN EUROPEAN  
PROFESSIONAL FOOTBALL  
(CANDIDATE EU MEMBER STATES)**

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## 1. Introductory remarks

### **1.1. The project's purpose**

The project is intended to inform about and thereby promote the concept of the Social Dialogue and of collective bargaining at the sectoral level of the professional football industry in the EU candidate countries (now Member states plus Bulgaria and Romania). The aim is to contribute to facilitating the start of consultations of management and labour at national and Community level and, in pursuance thereof, the establishment of relevant contractual relations by the exchange of information and experience on a European basis, in particular regarding employment contracts and collective bargaining agreements. In addition, the current EU legal developments concerning labour and sports will be presented, followed by a comparison with the relevant law in the candidate countries. Differences between the EU and national law will be indicated and solutions for avoiding conflicts will be provided. Besides promoting the Social Dialogue in the professional football sector in the candidate countries the objective of the project is also to identify the national law that is not in conformity with EU law and to propose solutions to remove any conflict.

It is expected that the project will be helpful to pave the way for starting the Social Dialogue in professional football in the EU candidate countries at national and European level by creating awareness amongst organizations involved of the possibilities the Dialogue offers for establishing effective industrial relations and, in particular, by creating common ground amongst management and labour for the purpose of future negotiations.

### **1.2. Legal "pilot" study**

According to the project's Work Programme, the project will be started with the drafting of a preparatory legal "pilot" study. The "pilot" study will summarize the research, which was previously carried out in the candidate countries. It will contain: the feedback received through the questionnaires sent out during the previous research stage; the conclusions on the compliance of national labour laws with the relevant EU legal norms; the structure and legal organization of the relationship between professional football players and professional football clubs in the candidate countries; the conclusions on the possibility to start social dialogue in the professional football sector of the candidate countries.

For the following countries draft reports were prepared:

Bulgaria  
 Cyprus  
 Czech Republic  
 Estonia  
 Hungary  
 Latvia  
 Lithuania  
 Poland  
 Romania  
 Slovakia  
 Slovenia.

As to Malta no material could be obtained.

### **1.3. Round Table Sessions**

According to the project's Work Program, following the conclusion of the "pilot" study, there will be six Round Table Sessions. The first five will concern the 2004 candidate countries, number six concerns the 2007 applicant countries.

The main functions of the Round Table Sessions are:

to inform the football sector at large about the European Social Dialogue; make the football sector aware of the possibilities the Social Dialogue offers to prevent and solve legal conflicts within the professional football sector; enlighten the function of the Social Dialogue as a framework for collective bargaining and the conclusion of collective bargaining agreements; to report on the developments of the Social Dialogue in the professional football sector of the present 15 member states; to point out the current discrepancies between the regulatory framework of the football sector in the candidate countries and European labour law and/or European jurisprudence; to indicate that in the current 15 member states of the EU the relationship between a player and a club is governed by employment law and not, like in most of the candidate countries, by civil law contracts; all the above-mentioned functions are necessary in order to pave the way for a successful "football acquis" in the candidate countries.

The following categories of persons were invited for each regional Round Table Session: representatives of national football associations, of professional football clubs, of national players' unions where applicable, players' agents, sports lawyers (academic and practitioners), media representatives.

The following conferences were organized during the project (see Annexes for texts of invitation letters and lists of participants):

Nicosia, 29 January 2004; region: Cyprus and Malta:

247 invitees; 1 registration;

Vilnius, 5 February 2004; region: Estonia, Latvia, and Lithuania:

128 invitees; 21 registrations;

Ljubljana, 25 March 2004; region: Hungary and Slovenia;

163 invitees; 22 registrations;

Warsaw, 2 April 2004; region: Poland;

Invitations were directly sent by Polish Sports Confederation; 80 registrations;

Prague, 22 April 2004; region: Czech Republic and Slovakia;

198 invitees; 19 registrations.

Bucharest, 3 June 2004; region: Bulgaria and Romania;

206 invitees, 10 registrations.

#### **1.4. Final Report**

The Final Report on the project consists of the country reports ("pilot" study) followed by the reports on the conferences. The reports are arranged per group of countries: Cyprus and Malta; Estonia, Latvia and Lithuania; Hungary and Slovenia; Poland; Czech Republic and Slovakia; Bulgaria and Romania. In each country report the three following main questions are dealt with: 1. What is the legal basis for the relationship between a player and a club?; 2. what has the candidate state already done to implement Council Directive 1990/70/EC of 28 June 1999

concerning the framework agreement on fixed term work concluded by ETUC, UNICE and CEEP?; 3. The possibility of entering into a social dialogue in professional football. This project regarding the candidate countries was carried out in cooperation with the European Federation of professional Football Clubs (EFFC). It in fact is an addendum to the similar project that was undertaken by the EFFC with regard to the 15 “old” Member States in 2003-2004. In the Final Report on that project (Chapter 5) proposals are made to the European Commission for the reasoning it could adopt when dealing with a joint request from organizations who wish to establish a Social Dialogue Committee in European professional football. These proposals in principle are also fully applicable to the 10 “new” Member States, being now part of the family of EU nations.

## 2. COUNTRY AND CONFERENCE REPORTS

### 2.1. CYPRUS AND MALTA

#### 2.1.1. Cyprus: country report

Research into the regulation of professional football in Cyprus was one of the most challenging. Despite the popularity of football in the country, the size of the football industry is rather small. This results in informal regulation of the sector and great involvement of the state. Nevertheless, we were quite successful in collecting the necessary information for the final report, but solely because we were able to conduct numerous personal meetings with the parties involved, which are described in section 2.1.2.

The general system of sport in Cyprus is rather centralized. Due to its small territory and population, there are no regional authorities regulating sport. Although there are local consulting committees on various aspects of sport in the municipalities. Main organizations are the National Olympic Committee and the sport federations. The state has adopted a non-interventionist policy, and there is no separate sports law in Cyprus.

#### 1. Legal basis for the fixed-term contract in professional football

The general practice in Cypriot football is that a football player is employed by a club in order to perform a service. According to the sample agreement drafted by one of the local law firms, representing the football players in the negotiations with the clubs, the contract is called an “employment agreement” where the club is considered to be an “employer” and a football player an “employee”. Both parties are imposed usual employment relationship obligations and rights: an employer must ensure that training and playing conditions are provided to a player and pay him an agreed remuneration, and a player, on the other hand, is obliged to fulfill his tasks i.e. follow the instructions of the club and play at the competitions organized by his employer.

#### 2. Implementation of the Council Directive 1999/70

Cyprus on the way to its accession to the European Union has achieved rather high level of harmonization with EC *acquis communautaire*. This subsequently has led to other problems, which were caused by superficial adoption of the new laws, which could be illustrated by incidents as approval by the Parliament of 41 harmonization laws and 30 regulations in only 40 minutes.<sup>1</sup> Because of this, many laws exist only on paper, without any real effect in practice. A lot of new laws are ignored, mainly because of the public unawareness about their existence. Nevertheless, European Council Directive regarding the use of the fixed-term employment agreements was implemented into the Cypriot legal system by the means of Act No. 98(I)/2003 on employees under fixed-term work agreement (prohibition of unfavourable treatment) adopted 25 July 2003.

In the centre of the attention of the law is an employee with an employment contract concluded for a specified period of time or which end is determined by occurrence of certain objective conditions.<sup>2</sup>

1 “The government should inform the people on the harmonization content”, Cyprus Workers’ Confederation, available at <[www.sek.org.cy/english/developments/36.htm](http://www.sek.org.cy/english/developments/36.htm)>.

2 According to the definitions in Article 2(3).

The objective of this law is to combat discrimination and abuse of successive fixed-term contracts in the employment relations. Employees with the contracts for specified time period may not be treated less favourably than the employees employed for indefinite time in the same business or undertaking, engaged in the same work or occupation.<sup>3</sup>

Article 7 states that the total duration of a fixed-term contract (including the renewals) may not exceed 30 months. Otherwise, such a contract will become an agreement concluded for an undefined period of time. There is one exception: the contract can exceed the term of 30 months if its nature can be justified by the presence of certain objective grounds, which are provided by law and are the following:

- “1) the needs of the business in terms of execution of a task are temporary;
- 2) the employee substitutes another employee;
- 3) the particular nature of the task in course of execution justifies the determined duration of the contract;
  - a. the employee under fixed-term employment contract is employed on probation basis;
  - b. the employment under fixed-term contract is effected in application of a law court decision;
  - c. the employment under fixed-term contract concerns those contracts having as object the employment in the Army of the Republic of 5-years-service volunteer soldiers and volunteer non-commissioned officers.”

It is questionable whether points a) and c) could be applied to justify the fixed-term contracts in professional football. Until this aspect is clarified by practice, what is clear is that a contract may not exceed 30 months.

According to the interviews conducted during the visit to Cyprus in January 2004, a player concludes an education contract until he reaches the age of 18. After this but before he is 23, he enters into a contract, which may not exceed 5 years. In addition, according to employment law, such a contract cannot be longer than 30 months.

### **3. Termination of an employment contract**

In general, termination of the employment relationship is governed by a law passed in 1967, which aims at regulating all matters related to the dismissal of an employee at the initiative of the employer. Basically, it sets out the reasons for justified dismissal, the warning period, compensations and the conditions for redundancy.

The Law on Employees under Fixed-term Work Agreement does not contain any provisions regulating the termination of such a contract. A sample employment contract obtained from the Cypriot law firm provides some insight into what could be possible grounds for the termination of a contract between a club and a player.

Besides the ground of the expiry of the term, a contract can be lawfully terminated on the basis of the mutual agreement of the parties.<sup>4</sup> In addition, a club can end a contract prematurely if the player has demonstrated the conduct incompatible with fair athletic behaviour and as a result of this has been suspended from professional practice for at least 60 days. Any party to the agreement can unilaterally terminate it due to a “significant reason”, which could be “any

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<sup>3</sup> Article 5(1)

<sup>4</sup> Article 15 (a) and (b) of the sample employment agreement, provided by local Nicosia law firm, representing professional football players in the relations with football clubs

substantial infringement of the present and/or the Regulations, and persistent and continuous bad behaviour.” If the player is barred finally from the list of football players in the Cyprus Football Federation or he is not allowed to play due to his physical weakness the contract may also be terminated on the initiative of the club.<sup>5</sup>

Article 14 of the sample contract provides for additional grounds for the possible suspension (not termination) of the contract. This might be done when:

- a player suffered physical injury outside the game or training, which lasts longer than 90 days, or;
- an accident occurs during the game or training, resulting in inability to play for more than 4, 8 or 11 months depending on the length of the contract, or;
- the player has breached the terms of the contract, or;
- a sanction has been imposed upon the player by a competent sports authority, which restrains him from playing for his club;
- a doping case is revealed.

#### **4. Compensation for training**

Article 17 of the sample contract states that in case of either the expiration of the contract or the transfer of a player to another club, the old club has the right to claim damages for the training and development, which must be done in accordance with the Cyprus Football Federation rules.

According to the interviews, the age limit to claim such compensation is 26, which contradicts the FIFA Regulations for the Status and Transfer of Players, which sets the limit at 23 years. The national federation promised to change this irregularity as soon as possible.

CFF rules in this respect provide for a special formula to calculate the amount of compensation. Each year the Federation establishes a coefficient, and the final amount due to be paid depends on the age of a player: the younger the player, the smaller the compensation.

#### **5. Conclusion**

EC Directive 1999/70 has been correctly implemented into the Cypriot legal system by means of the Law on Employees under Fixed-Term Work Agreement (Prohibition of Unfavourable Treatment) No 98/2003. The act provides for maximum fixed-term contract duration of 30 months, including prolongations.

In addition, it lays down a list of objective grounds, which could justify a contract lasting longer than 30 months, provided that it lasts a specified period of time. Though what is still to be seen is whether the law is effectively applied in practice and the interpretation of its terms, in particular the ones granting exemption from the 30-months-rule.

The relationship between the football club and a professional player are of employment nature. Although there is no sports law, which would at the same time explicitly prescribe the employment contract, in practice professional football sector uses employment agreements when hiring the players. Such contract is concluded for a fixed term, which cannot exceed 5 years according to the regulations of the Cypriot Football Federation. Nevertheless, since sport is no way excluded from the application of general employment law, any fixed term contract may not exceed the term of 30 months according to national law implementing the Council Directive 1999/70. If it exceeds this limit, it will automatically be re-qualified into the contract

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<sup>5</sup> Ibid., Article 15.

for unspecified term, unless the excess can be justified by one of the objective grounds, the list of which is set by law. It is not clear whether “the particular nature” of the professional football player service is accepted as falling under the list of these justifications.

This probably has to be decided by the national court in a specific case. Although a positive answer is very unlikely, bearing in mind the previously discussed practice of Cypriot judges to refrain from accepting that a professional basketball player is an employee in terms of general employment law (this has been discussed in the section of the report on the conference).

Therefore, the status of a professional football player is still ambiguous, which can only be remedied by consistent case law of the national courts.

### **2.1.2. Conference report (Nicosia, 29-30 January 2004)**

#### *Set-up of the meeting*

The seminar in Cyprus was the first event of the project, and was intended to cover two countries, Cyprus (the Greek part) and Malta. For this purpose, 247 invitation letters have been sent out by regular mail on 18 December 2003. The invitees targeted were mainly the national football associations and clubs, lawyers and academics. The speakers invited to present papers were:

- H.E. Adriaan van der Meer, Head of the Delegation of the European Commission to Cyprus
- Dr Richard Parrish, Senior Lecturer in Law at Edge Hill College, United Kingdom
- Mr Roberto Branco Martins, general manager of the EFFC project and research fellow at the Asser Institute
- Mr Costakis Koutsokoumnis, President of the Cyprus Football Association
- Mr Marios Orphanides, Legal Advisor to the Pancyprian Footballers Association.

Despite the big number of invitations sent out, the level of interest in the event was unexpectedly low and only one registration was received before the conference. Due to this fact, the set up of the event was changed from a round table session to individual expert meetings with the main sport sector players in Cyprus. As a result we received more “inside” information during these personal meetings and we could enter into an efficient and fruitful discussion on the relevant matters.

#### *Content of the meetings*

The first meeting held was at the Cyprus College with Dr Christos G. Patsalides, Assistant Professor of EU Law and the Chairperson of the Department of Social Sciences, with whom we had a discussion about the accession of Cyprus to the European Union and the issues related to the implementation of *acquis* into the national legal system. Dr Patsalides explained that the state body responsible for implementation of EU laws into Cyprus’ legal system is the Legal Department of the Republic. They do not have special committees responsible for drafting laws in each ministry, as most of the member states. The Department is the institution that drafts legal acts and watches over their correspondence with European laws.

The problem in relation to the accession of Cyprus to EU is the implementation of newly adopted laws. Relevant issue is also lack of information about new laws and the entire EU

membership in general, although the necessary funds have been allocated to resolve this problem recently.

According to the professor, the fixed-term directive (i.e. EC Directive 1999/70) has been implemented into the Cypriot employment law. Cyprus in general has a high record of adopted EU required laws. Industrial relations in Cyprus are very well organized, and the parties in collective bargaining are very powerful.

The second meeting was held with advocate Marios Orphanides, who used to be legal advisor to the Cypriot football players' trade union the Pancyriot Footballers Association. He told us that general employment law regulates contracts between football players and clubs. The contracts used in this regard are usually the same, and in most cases just the names of the signing parties are being changed. But all the contracts are for a specified period of time. The Cypriot employment law is applicable to such an agreement and the law does not mention professional sports nor does it grant any favourable treatment to it.

Recently a Cypriot court ruled that a basketball player did not have the right to question his case before a labour court. The court stated that the player must use other means of mediation, such as a dispute resolution through arbitration or the relevant sport federation. The issue in this case was that a player signed a contract, which was not yet registered by the basketball federation. Thus his contract was not enforceable by the federation since it was not binding according to federation rules. Therefore the basketball federation was incompetent to be the arbitrator in this dispute.

In addition, the court stated that employment law does not apply to professional sports and that a professional sportsman is not an employee. To complicate the matter even more, the previous ruling of the court accepted the status of an employee for a sportsman.

Mr. Orphanides went on by explaining the bad financial situation of the football clubs in Cyprus. The country is small and for each match around 2000 tickets are sold on average. And only 25% of the ticket revenues go to clubs, the rest goes to the state. Some clubs do not even have enough funds to pay for matches.

According to Mr. Orphanides, a separate law designed only for football is required. Otherwise if general employment law is applied to professional football and a player is considered to be an employee, there will be no football in Cyprus at all. He suggested that maybe Cyprus, being a very small country, needs some kind of special solution, different from those adopted by other bigger states in Europe.

The system of clubs in Cyprus is two-tier: some clubs are companies and others are non-profit associations. The company is the operator of all property, which belongs to the association, which assigns the property to the company. The Club (association) still controls all actions of the company.

The present advisor of the Pancyriot Footballers Association is advocate Paris M. Spanos, with whom we met after Mr. Orphanides. He provided us with further information about the current situation in Cypriot football, especially concentrating on the prerogatives of the trade union. Mr. Spanos first mentioned that one of the main problems faced by the national football is the bad financial situation. This is proven by the fact that the players' salaries have reduced 20% in the past year. Example given, the biggest Cypriot club's income is 1.5 mln Cypriot pounds.

In addition, the Cypriot government recently voiced the demand that football clubs and professional players should pay taxes (income tax). The law, in theory, requires such tax to be paid, but in practice the football clubs and the players were informally excused from such obligation by the government. Moreover, the clubs are now faced with meeting the requirements of UEFA regarding the licensing. In order to help them with this reform, the Cypriot government has agreed to grant 7 mln Cypriot pounds over 4 years.

For the time being the main objective of the Cypriot Footballers Association is to ease the debt recovery procedure and make it faster. The clubs owe the players huge amounts of money (appr. 48 mln Euros). In practice, it takes up to 3 years for a player to recover the money owed by the clubs, which is unacceptable.

Regarding the status of football players, Mr. Spanos explained that contracts concluded between the players and the clubs are for fixed term, but cannot exceed 30 months including the successive contracts. Moreover, the law provides that a fixed-term contract can be concluded only under certain objective justification grounds, such as replacement of an employee, special nature of the job, etc..

The general situation in Cypriot football is that the players usually do not have social insurance, which is due to the fact that their legal status is not very clear. In addition, most of the football players in Cyprus have additional jobs and football is not their main source of income.

Concerning compensation for training and education, he noted that the rules of Cyprus Football Association provide that the age limit to demand compensation for training is 26 years, which is not in compliance with the FIFA rules, which sets this limit at 23 years. The Federation promised to change this irregularity soon, according to Mr. Spanos.

He continued by saying that the possible social partner in the collective bargaining process could be the national football league. According to him, the league is representing the clubs. Its aim is to protect the interests of the clubs and protect their interests against their own presidents, since they do not bear any financial responsibility for the actions of the clubs.

On the second day of our visit to Cyprus, we met with the Cyprus Sport Organization its Chief Technical Department Officer Mr. Panicos Euripides and Facilities Venues Officer Mr. Costas Solomou.

Both of them reiterated the bad financial standing of football clubs in Cyprus as an issue of utmost concern currently. Mr. Euripides said that the state agreed to cover the debts of football clubs, which have been accumulated before 30 September 2003. This will be done on one condition the clubs are obliged to keep their future budgets under exceeding level.

In relation to professional rules in Cypriot football, Mr. Euripides explained that before a young player turns 18 years old, he signs an educational contract with the club. After that - but before he reaches the age of 23 his contract is re-qualified into a normal one, but it cannot exceed the term of 5 years. The national football federation has developed a formula for the calculation of the compensation for training and education of young players. The coefficient, which determines the amount of compensation, increases with the age of the player the older he is, the bigger the compensation.

## 2.2. ESTONIA, LATVIA AND LITHUANIA

### 2.2.1. Estonia: country report

The part of the research concerning Estonian football was rather challenging, mainly due to the absence of any feedback from the local sports community. The only answers to the questionnaire were received from one leading football club and not from the Estonian Football Federation. In addition, none of the Estonian football representatives were present at the Round Table Session in Vilnius on 5 February 2004 (see para. 2.2.4. below). Therefore, this final report is based on the material collected by our independent research in addition to minimal insiders' information.

#### 1. Implementation of the Council Directive 1999/70/EC

Contrary to Lithuania and Latvia, described before, Estonia has a number of separate legal acts governing the employment relations. The one of most relevance to the question of Directive implementation is the *Eesti Vabariigi Töölepingu Seadus* (Employment Contracts Act).<sup>6</sup> First of all, the law distinguishes several types of employment contracts. The Employment Contracts Act applies only to employment agreements, and not to a contract of services.<sup>7</sup> The term of a fixed-term contract is said not to exceed five years, although a minimum duration is not indicated.<sup>8</sup>

The second paragraph of Provision 27 contains a list of objective grounds, under which parties can enter into a contract for a limited duration, and which includes:

- 1) A completion of a task;
- 2) A replacement of an absent employee;
- 3) A need to meet the temporary increase in the amount of work;
- 4) A performance of seasonal work;
- 5) Special benefits, which are provided for under the contract;
- 6) A situation exists which is established by the decree of the Government.”

The EC Directive 1999/70/EC requires any of the three elements be implemented into national laws of the Member States:

- 1) The objective justification grounds, under which the fixed-term contract can be renewed;
- 2) Maximum total duration of all the succeeding contracts concluded for the fixed term;
- 3) Maximum number of renewals of the fixed term contracts.

Employment Contracts Act only lays down the maximum duration of a single fixed-term contract. The law does not say that the term includes the prolongations of the contract. Nevertheless, Estonian law requires objective reasons for conclusion of a fixed-term contract, but not for its prolongation. Anyhow, any prolongation of a contract can be considered a conclusion of a new agreement. In this case, the restriction of objective reasons will be

6 *Eesti Vabariigi Töölepingu Seadus* (Republic of Estonia Employment Contracts Act), passed on 15 April 1992 No. RT 1992, 15/16, 241, English translation available at <<http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>>.

7 Employment Contracts Act, Section 7 (7).

8 Section 27 (1).

applicable as well. Therefore, it can be argued that Estonian employment legislation is in accordance with the Directive. But to avoid any future disputes, the clause, explicitly saying that the term of a contract includes its prolongations, must be added to the Employment Contracts Act.

## **2. Regulation of sport in Estonia**

Organization of sport in Estonia is pretty similar to the rest of European countries. Organization of physical education and sport falls under the competence of the Ministry of Culture, which Sport Department is the main governmental body dealing with professional sport matters on the highest level. Besides, the Estonian Sports Council arranges co-ordination and consult on sport and physical education related matters. Finally, the Estonian Olympic Committee and Central Sports Union are the non- governmental bodies in charge of organizing sport movement in Estonia.

The tasks and competences of the previously mentioned organizations, financing of sport and doping are all dealt with in the *Spordiseadusest* (Estonian Sports Act), passed in 1998.<sup>9</sup> The law outlines only very general questions, like representation of Estonian sport or competences of state institutions. It does contain a chapter on athletes, which merely states that he/she can participate in sports individually or as a member of sports organization. In addition, it states that each sportsman is entitled to conclude a contract, taxation of which secures him with social guarantees. Thus an athlete can sign several types of contracts, including a service agreement. If under this law, he/she must pay social security contributions.

### **2.1. Contract between football players and clubs**

According to the answers to the questionnaire received from the football clubs in March 2003, the contracts concluded between football clubs and players are governed by Estonian employment law and are entered into for a fixed term. General labour law is applied despite its unfitness to the peculiarities of the professional sport sector, as the respondents noted. The legal basis for a fixed-term employment contract in professional football is laid down in Section 27(2)(5) of the Employment Contracts Act. It provides for an objective ground under which an employment contract prescribes “special benefits” (e.g. training at the expense of the employer). If such benefit is provided for in the contract, it can be concluded for a limited duration. This option is expressly mentioned as a legal basis in the sample employment contract, adopted and imposed upon the football clubs by the Estonian Football Federation (EFF). According to the feedback from the Estonian football club, sample contract is imposed upon all the clubs by the EFF and must be used when signing agreements with all players. The “special benefit”, according to the sample contract, is the “training at the cost of the Employer in the form of regular training sessions.”<sup>10</sup>

Therefore, a contract between a player and a club is a fixed-term employment contract, which may not exceed the term of five years (according to Section 27(1)(2) of the Employment Contracts Act) and must prescribe certain benefits, such as training at the expense of the employer (according to Section 27(2)(5)). In addition, the EFF has established a rule that the minimum term of such contract may not be shorter than one year in order to ensure that a player will have a training period between seasons. This is in accordance with FIFA Regulations for the Status and Transfer of Players.

<sup>9</sup> *Eesti Spordiseadusest* (Estonian Sports Act), passed on June 15, 1998.

<sup>10</sup> *Employment Contract*, English version available at <[www.jalgpall.ee](http://www.jalgpall.ee)>.

## 2.2. Termination of a contract

Employment contracts can be terminated in several ways: 1) when it expires, 2) by mutual agreement of both parties, or 3) by one party. If both parties agree upon the termination, the contract can be ended at any time without any prior notice.<sup>11</sup>

If termination happens due to expiry of the contract term, advance notice must be given, either by the employee or the employer, according to Section 77 of the Employment Contracts Act. If after the expiry of the term, none of the parties demand termination of the fixed term contract, or the employment relationship between the two continues, the limited duration contract becomes a contract for an unspecified term.<sup>12</sup> Estonian employment law is peculiar in this respect since even after the expiry of a fixed term contract, its termination must be explicitly announced by one of the parties. Such a contract does not end automatically.

Employees have the right to terminate contracts. If they do so, they have to give an advance notice of two weeks or 5 calendar days, depending on the length of their contracts. If employers want to end contracts prematurely, they can only do this in specified instances, which are provided for in Section 86. For example employees breach duties under contract when they become unsuitable for work due to defects in professional skills, health or age.<sup>13</sup>

The Sample Employment Contract of the EFF provides a more detailed overview of the termination procedure for employment contracts in professional football. In addition to the legal basis, provided for in the Employment Contracts Act, the sample allows the contract to be either suspended or terminated in the case of lending or transfers of a player to another football club.<sup>14</sup> It continues by explaining what could be considered a “gross breach”, which would justify early termination of contracts. Violation of players’ obligations, such as breach of principles of fair play or failure to maintain a strict discipline, justifies early termination of the contract by the club. In addition, if an employee participates in the football organizations’ activities, which are forbidden by FIFA, or enters into transfer negotiations without the medium of his club, or he individually participates in the advertising contracts or any promotional events without prior written consent of the club the player may as well face the sanction of early termination. Furthermore, a contract can be terminated upon the “loss of trust” in the employee if he causes damage to the employer’s assets, according to Section 11.5 of the sample Contract.

In general, employees (players) do not have the right to terminate contracts according to the Sample Contract. It only provides for one exception if the reason for early termination is the employee’s illness, disability or the need to care for a family member.<sup>15</sup>

The Federation extended the right of termination by the player after adopting *Mängijate Üleminekute Kord* (Rules on Young Football Players)<sup>16</sup>. This regulation was adopted on 20 November 2002. According to Article 13, players have the right to terminate their contract if the club does not fulfill its obligations under the contract. In addition, if the club fails to pay salary to the player for three months in a row, he/she can apply for premature termination of his/her contract to the Federation.

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11 Section 76.

12 Section 78.

13 Section 86.

14 Sample Employment Contract, Section 11.2 and 11.3.

15 Section 11.6 of the sample Employment Contract, and Section 80(2) of the Employment Contracts Act.

16 *Mängijate Üleminekute Kord* (Rules on Young Football Players), adopted by the Estonian Football Federation, Estonian text only, available at <[www.jalgpalli.ee](http://www.jalgpalli.ee)>.

### 3. Internal regulation of the transfer of the players in Estonian football

The rules governing the transfer of players are set out in the Federation (EFF) rules Mängijate Üleminekute Kord, which came into force on 1 January 2003. The rules generally refer to the change of a club after the professional contract is expired. The peculiar principle in Estonian labour law is reflected in the Federation rules as well – fixed-term contracts do not end automatically after the expiry of their term. The party wishing to end it still has to notify the other party in advance and compensation should be paid.

The main assumption underlying the rules on transfers is the distinction between a player with a professional contract (non-amateur) and a player without a professional contract (an amateur). How to determine the type of a player is provided for in another regulation of the EFF -- Mitteanatöormängija tüüplepingu vormi kehtstamine No 74/7.1 (Rules on the Status of a Football Player).<sup>17</sup> Players are considered to be professionals if they receive a monthly salary of not less than 1.5 of Estonian minimum salary, set by the Estonian Government. At this moment, this would constitute around 2.000 EEK (128,2 EUR). Therefore, the fact that a sportsman earns remuneration for his sporting activity does not necessarily mean he will be considered a professional.

Coming back to the question of transfer, an amateur player can switch clubs without paying any compensation.<sup>18</sup> A professional player (i.e. the one getting a salary bigger than 1.5 of the minimum salary) can conclude a new one with another club after the expiry of the contract. When this happens, the new club has to pay compensation to the old club equal to 12 average salaries received by the player the previous year. If a succeeding contract was concluded with a new club after 12 months have passed from the end of previous contracts, the new club does not have to pay any compensation to the player's old club.<sup>19</sup> If players wish to switch clubs before the end of their contract, an agreement concerning this matter should be reached between the clubs involved in the transfer.

The Sample Employment Contract of the Federation, discussed above, imposes mutual obligations on players and clubs with regard to transfers. First, players can enter into negotiations of future transfers only through the medium of their present clubs. Secondly, the present club, at the same time, should participate in such negotiations if the transfer in question “promotes the Employee’s career as a football player and complies with the interests of the Employer”.<sup>20</sup>

### 4. Regulation of compensation for training and education in Estonian football

Mängijate Üleminekute Kord, the rules of the Federation on young football players, lays down certain principles concerning compensation for training and education of young players. According to Article 2, if players switch clubs during the first year after they turned 18 years old, the new club is obliged to pay the previous club an amount equal to 18 minimum salaries, established once again by the Estonian Government. If young players change clubs during their second or third year after they have turned 18, the amount paid to the old club should be 12 and 6 minimum salaries respectively.

Section 96 of the Employment Contracts Act states that when a fixed-term contract, prescribing certain benefits (the type of contract used in professional football), is terminated due to: 1) the employee’s unsuitability for work because of his professional skills or his health

17 *Mitteanatöormängija tüüplepingu vormi kehtstamine*, No 74/7.1, Rules on the Status of a Football Player), adopted by the Estonian Football Federation. Estonian text only, available, at <[www.estonia.fifa.com/files%2Fest%2F345.doc](http://www.estonia.fifa.com/files%2Fest%2F345.doc)>.

18 Article 3 of *Mängijate Üleminekute Kord*.

19 Ibid. Article 6.

20 Ibid. Article 5.1.5.

state; or 2) due to the breach of employee's duties, etc., an employer has a right to claim back the money that he has spent on the employee's "benefits", such as education, grants and other. Therefore, if a football club terminates the contract due to the unsuitability of a player, it can demand to get a compensation for training rendered to the player during his employment there. Although this provision seems to be unlikely to justify the demand for compensation for training and education of a young player aged 18 to 20. If young players change clubs, it will most likely not be because of unsuitability for the game. Therefore, legal basis for compensation in employment law is only found when compensation is demanded after young players breach their duties according to their contracts.

## **5. Social Dialogue in professional football in Estonia**

### **5.1. Social partners**

According to the questionnaire, there is no organization representing football clubs or players in relation to social matters. But EFF has imposed certain rules in this respect, in particular: minimum salaries for the players, employment contract samples and length of contracts. Nevertheless, competence of the EFF to represent one of the football sector sides in collective bargaining is questioned.

According to the local football sector, general labour law regulates relations between clubs and players. This implies that football industry sides have the right to establish social partners organizations, which can eventually conclude collective bargaining agreements. First, the right to unite into trade unions is reserved to all persons with employment contracts, whether they are fixed or not-fixed term contracts. Establishment and competences of trade unions are laid down in the *Ametiühingute seadus* (Trade Unions Act).<sup>21</sup> In order to represent the interests of employees, among a number of competences, trade unions have the right to enter into collective bargaining agreements pertaining to employment or social affairs. Trade unions and employers or associations of employers agree upon such agreements after the collective bargaining process is complete, according to Section 18(2) of the Act.

### **5.2. Collective bargaining**

A special law *Kollektiivlepingu seadus* (Collective Agreements Act) regulates conclusions and content of the collective bargaining agreements (CBAs).<sup>22</sup> According to Section 3 of the Act, CBA may be bilateral or tripartite, an may be entered into between employers and trade unions, associations of employers and trade unions or local government associations and trade unions or their associations etc. Section 6 provides a list of aspects that can be dealt with in the CBA, including wages, working and rest conditions, conditions for suspension, amendment and termination of employment contracts. A tripartite agreement can establish a minimum wage and the procedure for its amendment or provide for any additional measures to guarantee safety and health at work. A bipartite CBA can at the same time determine wages and working and rest conditions. In addition, it can also provide for the suspension, amendment and termination of employment contracts. In general, CBA can provide for all additional employment guarantees, which do not impede upon the employees' rights established by the law.

21 *Ametiühingute seadus* (Trade Unions Act), RT I 2000, 57, 372, adopted on 14 June 2000. English versions available at <[www.legaltext.ee/en/andmebaas/ava.asp?m=022](http://www.legaltext.ee/en/andmebaas/ava.asp?m=022)>

22 *Kollektiivlepingu seadus* (Collective Agreements Act), RT I 1993, 20, 353, adopted on 14 April 1993. English version available at <[www.legaltext.ee/en/andmebaas/ava.asp?m=022](http://www.legaltext.ee/en/andmebaas/ava.asp?m=022)>.

### 5.3. Social dialogue

Although Estonia has a well-developed tripartite collective bargaining, the bilateral collective agreements are still a rare occurrence.<sup>23</sup> This may be influenced also by the fact that the Collective Agreements Act does not oblige the employers to initiate the collective bargaining procedure and does grant rights to employees in order to demand commencement of bargaining. Section 7 stipulates that a party, initiating the negotiations, presents a proposal for the agreement to another party and in such a way proposes to start negotiations. Yet, parties are not obliged to start negotiations.

Social dialogue, as already discussed previously, is undergoing its development in most of the ex-Soviet states. Main reason behind that is the absence of the social partners. If they do exist, they are still very young and inexperienced. Estonian football suffers from the first scenario players do not have an established trade union and clubs do not have representatives.

### 6. Conclusion

Since it is undisputedly accepted by the football sector that professional football players are employees whose rights are established under general labour law, football players have the right to establish trade unions, just like football clubs have the right to unite themselves into associations of employers. Here again, the main element missing is the initiative to establish social partners.

A new draft for the Employment Contracts Act is being currently discussed in the Estonian Parliament. The aim of the new law is to make employment relationships more flexible and to give more space for collective agreements. Fixed term contracts are being discussed as well, and on this matter the social partners on a national level could not yet come to an agreement.<sup>24</sup> In addition, experts pointed out that the draft does not comply with relevant EU Directives.

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23 For an extensive overview of the collective bargaining in Estonia, see European Industrial Relations Observatory On-line at <<http://www.eiro.eurofound.eu.int/print/2003/09/feature/et0309102f.html>>.

24 "*Social partners discuss new Employment Contracts Act*", at European Industrial Relations Observatory On-line, at <<http://www.eiro.eurofound.eu.int/print/2003/09/inbrief/et0309101n.html>>.

## 2.2.2. Latvia: country report

Latvia is one of the New Member States of the European Union, as well as one of the three Baltic States, which were part of the Soviet Union. It is the second biggest Baltic State, but its national football sector is stronger than that of the other two Baltic countries, best example of which was the surprising qualification of its national team to the Euro 2004 championship in Portugal.

### 1. Implementation of the Council Directive 1999/70/EC

Darba likums (Labour Law of Latvia), passed on 20 June 2001, governs all employment relations.<sup>25</sup> General rule established by law is that employment contracts are entered into for unspecified periods of time, according to Section 43. Nevertheless, fixed term agreements are also allowed in certain cases. Section 44 provides for a list of circumstances, under which employment relationships may last for defined period of time. The list includes seasonal work, replacement of sick employees, temporary expansion of workload in the employers' organization or when the nature of a particular job position requires employment to be of a temporary nature. The latter must be defined by a government decree.

In relation to the term of the contract, the Law states that it cannot exceed two years, including the extensions. A newly concluded employment contract will be considered a "successive contract" if it has been concluded without an interruption of less than 30 consecutive days, according to Section 45(1). The same section also lays down the limit for the length of seasonal work contracts, which is said not to exceed 10 months within the period of one month.

The EC Directive 1999/70/EC requires that any of the three elements are implemented into national laws of the Member States:

- 1) the objective justification grounds, under which the fixed-term contract can be renewed;
- 2) the maximum total duration of all the succeeding contracts concluded for the fixed term;
- 3) the maximum number of renewals of the fixed term contracts.

Latvian Labour Law limits the use of fixed term employment contracts by imposing the requirements of both objective justification grounds and the maximum total duration of succeeding contracts. Therefore, Latvia has correctly implemented the requirements of the EC Directive.

### 2. Regulation of sport in Latvia

According to feedback received from the Latvian football sector, general practice there is to use employment contracts to establish a club-player relationship. That is to say, the general employment law, i.e. Labour Law of Latvia, governs this relation. Indeed, a legal basis for this practice can be found in the Sporta Likuma (Sports Law), adopted on 13 November 2002.<sup>26</sup>

<sup>25</sup> *Darba Likums* (Labour Law), adopted on 20 June 2001. English version is available at <<http://www.ttc.lv/New/lv/tulkojumi/E0223.doc>>

<sup>26</sup> *Sporta Likums* (Sports Law), adopted on 13 November 2002. English translation available at <[www.sp.gov.lv](http://www.sp.gov.lv)>.

The content of this law is rather general, mostly laying down the fundamentals for the competencies of the state institutions in sport, defining rights and duties of national sports associations and principles of organization of various sport events. Nevertheless, it also establishes a few very important ground rules for individual sportsmen. First of all, it defines what is a professional sportsman, which in some countries is still being left out of sport laws (e.g. Slovenia). Latvian Sports Law in Section 19 states that a professional sportsman is the one who prepares himself for and participates in the sports competitions and for this he receives remuneration. More importantly, this is done on the basis of the labour contract, according to the provision, which makes Latvia one of the few countries, where sportsmen are officially considered employees and not individual entrepreneurs.

### **2.1. Effect of the EC Directive 1999/70/EC on Latvian professional football**

Employment law, i.e. labour law, regulates the relationship between football clubs and professional football players. Contracts concluded in this sector are for a determined period of time, and are imposed upon certain restrictions by the Latvian law. As already mentioned above, such agreements can only be entered into upon the existence of pre-determined objective circumstances, one of which is said to be “work in activity areas where an employment contract is normally not entered into for an unspecified period”<sup>27</sup>. The list of such activities must be defined by a decree of the Latvian government, according to Section 44(2) of the Labour Code. Indeed, such regulation has been passed on 6 August in 2002.<sup>28</sup> Point 2.3 states that work in the field of sports can be contracted on a specified time period basis, in particular work as a professional sportsman, coach, referee or competition manager. Therefore, fixed term employment contracts between football clubs and professional football players has an unambiguous legal basis in both labour law and Government Regulation No 353. Nevertheless, each employment contract entered into by clubs and players for a predetermined period of time will have to meet the restrictions imposed upon it by labour law, i.e. it may not exceed a period of two years, including all extensions. The provisions of the Directive have been implemented correctly, and the law affects the national football sector in the most direct way – limiting the scope of the clubs as employers to conclude successive fixed-term contracts for a longer than two years period.

### **3. Termination of an employment contract**

According to labour law an employee has to give notice in writing one month in advance before any termination of an employment contract is possible, unless the employment agreement or collective bargaining agreement provides otherwise.<sup>29</sup> An employer can only terminate a contract due to circumstances related to the conduct of an employee, his professional abilities or other objective circumstances present in the employing organization, which are spelled out in the list provided for in Section 101. An employer can terminate the contract if e.g. the employee has significantly violated the contract, acted illegally or lacks adequate occupational competence for the job.<sup>30</sup>

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27 Section 44(1)(2)

28 Regulation regarding Work in Activity Areas where an Employment Contract is Normally not Entered into for an Unspecified Period (*Noteikumi par darbiem jomās, kurās darba līgums parasti netiek slēgts uz nenoteiktu laiku*) No. 353, adopted on 6 August 2002. Not available online

29 Section 100 (1).

30 Section 101 (1) (6).

Section 113 provides that a fixed-term contract ends when the term provided therein expires. In addition, the contract can be terminated by mutual agreement of parties.<sup>31</sup> Latvian labour law does not provide for a possibility to demand compensation from an employee if he terminates a contract early. There is no clause providing that an employer has the right to require training costs being reimbursed.

Certain provisions of the Civillikumam (Civil Law) apply to contracts of employment as far as they do not conflict to labour law provisions. Certain aspects of termination of employment contracts are also dealt with by the civil law, which provides, first, that any employment contract ends when its term expires.<sup>32</sup> If a party wants to terminate the contract before its terms, it is allowed to do so if there is a “good cause” for it. According to Section 2193 paragraph two of the Civil Law, a “good cause” is circumstances that make the execution of the contract impossible due to the moral considerations or mutual fairness.

#### **4. Position of a football player in Latvia**

From the above it can be seen that a professional football player in Latvia is an employee, whose relationship with a club is governed mostly by general employment law, and only to a limited extent by the civil law provisions. Status of a professional sportsman is clear – he is an employee, with all the rights ascribed to all them by law. Nevertheless, as in most ex-Soviet countries, Latvian sport sector, football in particular, is in the transition phase from the centrally controlled and state funded sector to a liberal and commercial industry. Significance of employment contracts in practice is still underestimated by both players and clubs. Players usually sign the contracts, which are identical in its content and are just being copied and put to another name. According to our source in the Latvian football world, sometimes the visual quality of signed contracts is so bad that it is impossible to read the names of the parties. And sometimes, the club keeps both copies of the contract. Therefore, although the law in theory clearly contributes to the development of professional football and protection of the players’ rights, the practice still reflects the remains of a Soviet sport system.

#### **5. Transfer of football players**

According to the questionnaire, there is no definite regulation for football players’ transfers in Latvia. The Youth Department of the Federation (LFF) drafted some guidelines on this matter, which were not available for the research team to get acknowledged with.

A transfer fee in professional football is a contractual penalty for the early termination of an employment contract. Section 1717 of the Civil Law states that such penalties may be included in any contract, and may be either financial or expressed in real property. In addition, a transfer fee may be treated as a compensation for employer’s loss, suffered by the club. Section 1779 says that everyone has the duty to compensate loss, which was caused by his or her acts or failure to act. This provision could also be relevant in justifying the compensation for training, provided for in the FIFA Player’s Status and Transfer Rules.

#### **6. Social dialogue in professional football in Latvia**

The employers and employees have a right to unite themselves into organizations for defending their social, economic and occupational rights and for this cause conclude collective

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31 Section 114.

32 *Civillikums* (Civil Law), Section 2192. English translation is available at <[www.ttc.lv/?id=50](http://www.ttc.lv/?id=50)>.

bargaining agreements (CBAs).<sup>33</sup> Such agreements can be concluded either on national, industry or company level. Nevertheless, social dialogue at sectoral level is rare in Latvia and most of the CBAs are limited to single companies. “One of the reasons for this appears to be the lack of resources.”<sup>34</sup>

### 6.1. Social partners

Employees may be represented in the collective bargaining either by trade unions or authorized employee representatives. The latter can be elected in an undertaking, having more than 5 employees. Both of these have the right to participate in collective bargaining, but only trade unions have the right to conclude a sector-wide CBA, according to Section 18(2) of the Labour Law. In general, the Law on Employers’ Associations regulates the Trade Unions Law of 1990, and employers’ employees’ organizations. At a national level, the Free Trade Union Confederation of Latvia (LBAS), and employers by the Latvian Employers’ Confederation (LDDK), represents employees.

According to the Latvian Football Federation (LFF), there is no organization representing football clubs on the social matters in Latvia. The Association of Latvian Football Clubs was established recently, although it is not yet clear if it could represent the clubs in collective bargaining. Concerning representation of football players in Latvia, there is currently no organization of such kind. Although, according to the Federation, there was an attempt to establish a trade union of players, which failed due to a lack of interest.

## 7. Conclusion

None of the provisions of the laws discussed above preclude representation of football players and clubs, or allow the conclusion that collective bargaining agreements between them are in effect. To the opposite, such right is very clearly established in Latvian labour law. Despite that, the chance of such agreement being concluded in the near future seems very vague and distant, mainly due to few reasons.

First, almost all new transitional economies suffer from the low interest of industrial sectors in the social dialogue mechanism. In Latvia, according to Ms. Gita Feldhune, professor at the Human Rights Institute at the University of Latvia, collective agreements exist only in 26% of the workplaces, from which only 19% are concluded in the private sector. Until now only 10 sectoral agreements have been concluded in the country.

Thus, considering the low coverage of CBAs in all industries, and keeping in mind the sluggish move towards commercialization and modernization of the Latvian sport sector in general, absence of social partners there seems very much understandable. In addition, lack of financial resources creates insecurity for the whole sector, but of course more for the players, which weakens them even more in relation to the clubs. Taking into consideration their weakness and lack of motivation to organize their representation, the creation of a players’ trade union seem to be possible only in a distant future.

Finally, the possibility to avoid negative effects of EC Directive 1999/70/EC on professional football is rather limited as well. Section 17 of the Labour Law states that a collective agreement can deal with such matters as remuneration, labour protection, social security and establishment and termination of employment legal relationship. It is questionable whether the

33 Section 8 and Section 17(1) of the Labour Law.

34 Gita Feldhune, *Social dialogue and EMU in Latvia*, European Foundation for the Improvement of Living and Working Conditions. Available at <<http://www.eiro.eurofound.eu.int>>.

effect of the provision limiting the term of succeeding fixed-term contracts to two years could be avoided through the collective agreement, if ever concluded in the Latvian football world.

Concluding it must be said that considering all odds of national collective agreement in Latvian professional football, the alternative of the social dialogue on a European level seems more advantageous. Such a conclusion is well accepted by the local football sector representatives, who participated in the Round Table Sessions held during the project in the New Member States of the EU. But then again, the missing elements for this opportunity to be realized are formally recognized and well-functioning social partners. Latvian football clubs probably have a feasible representative (the Association of Latvian Football Clubs), but the players once again seem to be more interested in the real game on the pitch.

### 2.2.3. Lithuania: country report

Lithuania, being one of the ten new Member States that joined the European Union on 1 May 2004, has an obligation to comply with the *acquis communautaire* of the Union. The *acquis* acceptance process was praised in numerous reports, presented by European institutions in the past. Nevertheless, it is obvious that some gaps still exist, especially in the implementation phase.

#### 1. Implementation of the Council Directive 1999/70/EC

The most important piece of legislation to this research is the Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

The employment law system recently underwent a significant change in Lithuania: A single Labour Code, which came into force 1 January 2003, substituted numerous individual pieces of legislation. The Code is the only source regulating individual employment relationships in Lithuania. According to Art. 109 (1), an employment contract can also be concluded for a defined period of time but not for a longer than for 5 years. General principle being that contracts are concluded for an indefinite duration, the Code prohibits the usage of fixed-term agreements when the work is obviously of continuous nature, although a collective bargaining agreement may provide for an exemption to this rule.

The Labour Code does not provide for any objective reasons, which would justify the conclusion of employment contracts for a defined period of time. Nor does it establish any limitations on the number of renewals or a total duration of succeeding fixed-term contracts. The only provision, in any way limiting the use of successive fixed-term contracts, is Art. 111(3), according to which an employee has the right to demand re-qualification of his contract into one for indefinite duration, if after the expiration or termination of a fixed-term contract, a new contract has been concluded within one month since the end of the previous contract. The labour dispute body will carry out re-qualification, and effect of it is yet unclear due to the absence of relevant case law. Nevertheless, it seems that such limitation would not be enough to prevent the abuse of fixed-term contracts and meet the requirement of the 1999/70/EC Directive.

Art. 112 provides that employment contracts can also be concluded for seasonal work. According to it, the Government of Lithuania is to adopt a list of types of work that are considered seasonal. Such a list was issued in 1994 March.<sup>35</sup> Professional sports, in particular football, is not on the list.

The EC Directive 1999/70/EC requires than any of the three elements would be implemented into national laws of the Member States:

- 1) the objective justification grounds, under which the fixed-term contract can be renewed;
- 2) the maximum total duration of all the succeeding contracts concluded for the fixed term;
- 3) the maximum number of renewals of fixed term contracts.

All these are aimed at fighting the abuse of fixed- term contracts, when employers use them in order to avoid the burdensome regulation of indefinite employment contracts and by doing so

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<sup>35</sup> Decree of the Government of the Republic of Lithuania No. 154.

place the employees in a worse position than those employed for an indefinite period of time. Lithuanian Labour law provides only for a possibility for an employee to ask his fixed-term contract to be transformed into the contract for unspecified period if the break was not longer than one month, which clearly does not meet the requirements of the Directive.<sup>36</sup> Although the Directive does not prohibit the Member States to employ stricter requirements, some may argue that Lithuanian provisions is exactly such.

## **2. Regulation of sport in Lithuania**

At the beginning of the initial research on the regulation of professional football in the 10 New Member states, a questionnaire was sent to main Lithuanian football world actors. National employment law, i.e. the Labour Code, governs the relationship between football players and football clubs, according to feedback received from the national football association (Lithuanian Football Federation (LFF)). Nevertheless, after the subsequent research it became obvious that player-club relationship regulation is rather more complicated than this.

### **2.1. Law on Physical Culture and Sport**

A special law, called *Lietuvos Respublikos Kūno Kultūros ir Sporto Ástatymas* (Law on Physical Culture and Sport), adopted in 1995, regulates sport in Lithuania.<sup>37</sup>

A new draft law is being prepared and many interested parties are being involved in the consultation process. Nevertheless, this process has proved to be extremely slow and confidential, and no potential changes to the current Law have been made official. Therefore, it would be still useful to discuss the provisions under currently valid law.

The 1995 Law defines the organization of professional sport in Lithuania sets the competences of state institutions in the field and lays down the legal principles governing the functioning of sport organizations. According to Art. 3, football clubs must have a legal personality, i.e. they must be established as companies under national law. The same applies to federations and the leagues.

Chapter V of the Law is called “Professional Sport” and contains detailed rules regulating this area of sport in Lithuania. Art. 29 defines the term “professional sportsman”, which is said to be a person who gets a salary for the preparation for and participation in the sports competitions, and is paid by a sports organization under a sports activity contract concluded between two parties. Two elements distinguish a professional from an amateur sportsman: 1) remuneration, and 2) a sports activity contract. The latter is defined in Art. 30, which states that it is an agreement under which a sportsman is obliged to prepare for and participate in a sports competition, following the established sports organization order and rules. The organization on the other hand, has an obligation to pay the sportsman a salary and has to ensure the presence of all necessary conditions for his training.

The requirement in the law that the sportsman has to be insured for both health and social security insurance tends to confirm the assumption that he is seen more as an employee than an independent service provider. Indeed, the definition of a sports activity contract reflects all the elements of an employment contract, more specifically - of a fixed-term contract. Limited

36 European Union Law Department is responsible for carrying out analysis whether the national law is in compliance with the EU law. Report on whether draft Labour Code provisions are in conformity with the obligations under the European rules was presented to the Government before its adoption, and its Lithuanian version could be found on <[http://www.etd.lt/indexframez\\_isvados.htm](http://www.etd.lt/indexframez_isvados.htm)>. Directive 1999/70/EC or any of the Code=s provisions concerning the use of fixed-term contracts were not discussed in the opinion of the Department.

37 *Lietuvos Respublikos Kūno Kultūros ir Sporto Ástatymas* (Law on Physical Culture and Sport), adopted on 20 December 1995, No. I-1151, Lithuanian text available from <[www.lrs.lt/Dpaieska](http://www.lrs.lt/Dpaieska)>.

duration of the contract of a football player is provided for in the LFF competition regulations, which says that every professional player must have a sports activity contract concluded for the period from 1 to 5 years.<sup>38</sup>

## **2.2. Position of football players in Lithuania**

Despite all the employment relationship elements present, the labour code does not regulate a club-player relationship. This has been established by the Supreme Court of Lithuania in case *Romanas Safronovas v. Vilniaus "Statybos" krepinio klubas*. The basketball club in Vilnius hired the plaintiff in the case, a Russian citizen: Roman Safronov. After almost a year, the club announced an early termination of the contract and refused to pay the agreed monthly payment. The lower district court accepted the illegality of early termination and approved that a contract between a player and a sports club is an employment contract. The decision was appealed and consequently reversed. The court dismissed the view that the club-player relationship is of employment nature. The contract concluded between the two parties was seen by it as being of a civil law nature, although not expressly provided for in the Civil Code. Although certain elements of a sports activity contract are also common to fixed-term employment agreements, certain totally different provisions exist as well. In addition, the court noted that special laws regulate contractual links in professional sports, namely the Law on Physical Culture and Sports, which provisions were followed in the contract in question. Therefore, any disputes arising from such sports activity contract should be resolved under the dispute resolution procedure provided for by law. It should be understood, that the clause on termination of the contract should be applied, which were agreed by parties upon signing it. If there is no clause governing the matter, the Civil Code provisions will be applied.

Ascription of sports contracts to civil law is also confirmed by the national tax regulations. The Law on the Taxation of Income Earned by the Residents defines "sport activity" as an "individual activity", which involves training for and participation in the sport competitions. The Law has been adopted after the Safronovas case decision, and reaffirmed the approach of the Lithuanian state institutions towards sports under which it is being considered as a service rather than employment. Despite the negative impact of such conclusions on the rights of professional players, one advantage was welcomed – the lower, 15%, tax rate on the income derived from the individual economic activity as opposed to normal 33% rate on other types of income.

## **3. Effect of Council Directive 1999/70/EC on Lithuanian professional football**

As mentioned above, the new labour code does not contain provisions limiting the use of the fixed-term employment contracts. The requirements of EC Directive 1999/70/EC are not implemented in Lithuania, and therefore there is no direct effect on professional football in Lithuania.

Despite the wide and unrestricted opportunities for the football world to use employment contracts for a defined period of time, such an option is not frequently used mainly due to ambiguous legal regulations of professional sport. To summarize what was said before, a professional player concludes a sports activity contract with a club, which is a special type of employment/civil law agreement, limited in time to maximum of 5 years, and disputes from which would be resolved under the civil law.

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38 *Competition Regulations 2003*, Lithuanian Football Federation, Point 116 & 117(g).

#### **4. Internal regulation of redemption fees of fixed-term contracts/transfer fees**

According to the Lithuanian Football Federation (LFF), transfers of football players is regulated by the FIFA Regulations for the Status and Transfer of Players, but the national football federation and the Law on Physical Culture and Sport lay down detailed rules on this matter. Transfer fee is prohibited, according to the FIFA Regulations.

##### **4.1. LFF Competition Regulations 2003**

The Regulations provide for a possibility of a temporary transfer of a player from his old club to a new club. If the transfer is intended to take place before the expiry of a contract, a three-party agreement must be concluded between the player and both clubs. The document must be registered with the Federation in order to become legally binding.

##### **4.2. Law on Physical Culture and Sport**

General principle, established in Art. 34 of the law is that a professional player may not leave his present club until his contract expires and all his obligations towards the club are satisfied. Nevertheless, if the old club and a new club agree on the transfer of the player, early change of clubs is possible. The difference between law provisions and LFF rules is that law does not require the consent of a player in order to agree on the transfer. More detailed rules are to be laid down by the national club association (league or union) in question, according to Art. 34(3)(1).

#### **5. Social partners in Lithuanian professional football**

For the time being there is no collective bargaining agreement concluded in Lithuanian professional football, which probably is the case due to the absence of formal social partners in the sector. The potential employers' (clubs) representative body could be a recently established Association of National Football Clubs (NFKA), although it seems it has not taken this role upon itself yet. General aim of this new organization was to overtake the organization of the national football league, which previously was the sole responsibility of the Federation (LFF). Nevertheless apart from the competition organization, other matters such as collective bargaining could and should be handled by this Association in the future as well. Nevertheless, with the non-existence of a trade union representing football players, social dialogue in Lithuanian football seems to be a distant future.

##### **5.1. Social dialogue in sports**

The absence of formal social partners in professional football is mainly affected by the lack of initiative and information. Social dialogue and collective bargaining agreements can be used by all industries, including sport. The mechanism of collective bargaining is established in the Labour Code of Lithuania. Art. 40 defines it as a system of industrial relations between the representatives or organizations of employees and employers, through which they seek to reconcile their interests. The employees may be represented through trade unions or labour councils, if no trade union is established in the company or a sector of that industry. The establishment, functions and competences of trade unions are laid down in a special law

Profesiniø Sąjungø Ástatymas (Law on Trade Unions).<sup>39</sup> The labour councils, according to Art. 21 of the Code, will also be regulated by a special law, which until now has not been adopted yet by the Seimas (Parliament).<sup>40</sup> Representatives of employers, on the other hand, are defined in Art. 24 of the Labour Code, according to which the head of the organization or its administration represents them.

All professional sportsmen have the right to establish a trade union. This right is established by Art. 35 of the Law on Physical Culture and Sport. Despite this clearly formulated rule, the forecast of enjoying such right is very unclear especially after the above discussed Safronovas case, where the Supreme Court has clearly said that club-player relationship is of civil law nature. Such statement leads to the conclusion that players cannot establish trade union, which can only represent employees with an employment contract and not individual entrepreneurs. Under the current circumstances, football players could only unite themselves into associations and would not possess the right to employ more powerful collective bargaining tools and to initiate the social dialogue.

## 6. Conclusion

Lithuanian professional football is still undergoing major developments while in transition from a centrally governed and state funded sector to a mostly liberalized and commercially functioning industry. Main problems faced by most of the clubs in Lithuania (and, as it will be seen from the report, most of the New Member States) are lack of funds and unclear legal regulation of professional sport. The clubs only recently have established a body representing their collective interests, which is mainly aimed at establishing a well-functioning and financially feasible football league. In this way, the sport community is tackling one of the problems - funding -. Ambiguous rules are in the process of reform as well, though not exactly showing any prospects of major changes so badly needed in the sector. New sport law clear-cut decision whether professional sport relations belong to civil or employment law must resolve one question.

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39 *Profesiniø Sąjungø Ástatymas* (Law on Trade Union), adopted on 21 November 1991, No I-2018. English version available at <[http://www3.lrs.lt/c-bin/eng/preps2?Condition1=21129&Condition2=trade\\_union](http://www3.lrs.lt/c-bin/eng/preps2?Condition1=21129&Condition2=trade_union)>

40 Although, Seimas has adopted the Law on European Labour Councils (No IX-2031, of 19 February, 2004), which lays down provisions governing the labour councils in the European Community company or company groups.

#### **2.2.4. Conference report (Vilnius, 5 February 2004)**

##### *Set-up of meeting*

This meeting was intended to cover the three Baltic States: Lithuania, Latvia and Estonia. The location of the Lithuanian capital was chosen for several reasons. First, Lithuania is the biggest country in the region. Second, the feedback was the greatest from the Lithuanian football world during the initial phase of the research.

The number of invitations sent out was 128, from which we have received 21 registrations for participation. The cooperation of Sports Management Alliance Ltd. together with the Lithuanian Football Federation has helped significantly to inform the football world about the planned conference.

##### *Participants*

**Lithuanian Football Federation** - Mr. Liutauras Varanavicius (President), Ms. Stase Tuzikaite (Lawyer)

**FC Ekranas** - Ms. Ineta Nakrosiene (Manager), Ms. J. Paukstiene

**FC Atlantas** - Mr. Tomas Balciunas (Manager)

**FC Vetra** - Mr. Romas Stasauskas (Manager)

**FC Vilniaus Futbolo Centras** - Mr. Ruslanas Telnovas (Manager)

**Ernst & Young Law, FIFA Licensed Players' Agent** - Mr. Raimundas Jurevicius

**Sports Management Alliance Ltd.** - Mr. Algirdas Jotautas (Director)

**Non-Olympic Committee of Lithuania** - Mr. Rolandas Jakucionis (Executive Committee)

**TG "Sokol" na Litwie** - Mr. Michal Sienkiewicz

**Institute of Labour and Social Research** - Mr. Boguslavas Gruzevskis, Ms. Inga Blaziene

**Vilnius Pedagogical University** - Mr. V. Janciauskas

**Football Player** - Mr. Tomas Razanauskas

**T.M.C. Asser Institute** - Mr. Robert Siekmann (Director, ASSER Sports Law Centre), Ms. Dovile Vaigauskaite (EU Law Expert), Ms. Tina Drolec (subcontracted expert)

**EFFC** - Mr. Roberto Branco Martins (Secretary)

##### *Opening and introduction*

Chairman of the Session, Mr. Robert Siekmann, welcomes the participants and introduces the organizing team of the conference. He briefly explains the purpose and history of the Social

Dialogue II project, at the same time mentioning that it is a follow-up to the Social Dialogue I project undertaken by EFFC. The Chairman thanks the attendees for their participation and introduces the first speaker Mr. Richard Parrish<sup>41</sup> and later on - Mr. Martins. It was decided questions were to be dealt with after all speakers delivered their presentations.

After the coffee break, Ms. Vaigauskaite presented the conclusions of the initial research into the regulation of professional football in the Baltic States. Pilot Studies for Lithuania and Latvia were also included in the informational packages distributed among the attendees of the Session. First, Ms. Vaigauskaite explained the reasons behind the idea to start a follow-up project on the promotion of social dialogue, this time aimed at the 10 Candidate States. Main questions of the research at the beginning were:

1. What is the real situation in the nature of relations between football clubs and professional players?
2. What laws govern this relationship?
3. Does current regulation triggers problems and if yes, how can they be overcome?

In relation to Lithuania, the situation was determined to be the following. First, according to the questionnaires the nature of the relation of a player with a club is of employment nature. Legal basis for that is the Sports Law of 1995, according to which every professional sportsman must have a sporting activity contract concluded with his sports organization, which would not exceed the term of 5 years. The definition of this type of agreement contains most of the elements of an employment agreement. According to Ms. Vaigauskaite, the more detailed regulation of fixed term employment contracts is contained in the Labour Code. She said that the right of an employer to use fixed term contracts is still very much unrestricted, and the Code fails to implement the requirements of the EC Directive 1999/70.

Ms. Vaigauskaite brought an example of Latvian labour laws in order to demonstrate the possible situation after the Directive is implemented correctly in the national legal systems. Latvian Labour Law provides for mandatory objective grounds under which any fixed term agreement can be concluded. In addition, the maximum duration of such a contract may not exceed 2 years. The expert also told the audience that similar requirements were introduced into the Estonian labour law. She then concluded that the football world in the Baltic States (not Lithuania at the moment) faces the same strict employment law requirements imposed upon them due to the lack of exemption. Lithuanian national laws provide for a possibility of parties of industrial relations to enter into collective negotiations, which can eventually lead to conclusion of a collective bargaining agreement. Sport is not excluded from this mechanism by law. There are no negotiations going on due to the lack of representatives of clubs and players. Just recently football clubs have established an association in Lithuania and Latvia. But in none of the Baltic States is there a union representing the interest of professional players, and there seems to be very low interest in it happening in the future.

After coffee and tea break, Mr. Siekmann invited the president of Lithuanian Football Federation, Mr. Liutauras Varanavicius to present his views about the current situation in Lithuanian professional football.

First, the president thanked the organizing team and the attendants for the event. He was very glad such a seminar took place in Vilnius, capital of Lithuania, which is very close to all the players of Lithuanian football world. He noted that any kind of initiative in Lithuanian football towards any positive change is welcome by the LFF. According to him, UEFA's cooperation

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41 The contents of his presentation can be found in part 2 of the Final Report "Speakers".

with FIFPro is also welcomed and is an encouraging development. Although he noted that the interference of the European Union with professional football should be kept to a minimum.

In most candidate countries football suffers from under funding. The state does not allocate enough resources to sport organizations and football clubs undergo transformation of their activities. They move more towards commercialization of their business. Lithuanian football has been receiving funding assistance from UEFA for 10 years, which is granted under the solidarity principle - common marketing and promotion.

Mr. Varanavicius said that there should be an initiative to clear up relations between the football parties and that the social dialogue should go on among three parties including UEFA. He also noted that an alternative to participate in the European Social Dialogue looks to be more effective than trying to influence the national legislature through means of national social dialogue.

Mr. Raimundas Jurevicius, who was intended to cover the outlook of professional football players, followed the president's speech. After introducing himself to the audience, Mr. Jurevicius briefly described his experience drawn from work with Sports Management Alliance Ltd., which is the only agency representing players and consulting sports organizations in Lithuania. Main problem in the regulation of sport in Lithuania, according to him, is the ambiguity of applicable laws. First, the Labour Code is applicable to sport employment relations, because there is no general exemption. Application of general employment law is detrimental mainly due to inflexibility and imposed limitation on fixed-term contracts. Besides, a case, decided by the High Court of Lithuania in 2000, sets a precedent that relations between sport clubs and its players are not of employment nature. Below is a copy of an article on the regulation of professional football in Lithuania, written jointly by Mr. R. Jurevicius and Ms. D. Vaigauskaite and published in The International Sports Law Journal (ISLJ), Issue 1-2 of 2004, pp. 33-37 (published by the ASSER International Sports Law Centre), which summarizes the papers delivered during the Round Table Session by both speakers.

## **Legal Regulation of the Relationship between Football Clubs and Professional Players in Lithuania**

by Raimundas Jurevicius and Dovilė Vaigauskaitė\*

### **1. Introduction**

The last decade of the 20th century witnessed significant change in the nature of professional sports, especially professional football. Football has gone from being a mere social activity at which crowds of fans gather to a successful sector of the economy with a turnover of e 10 billion in 2002 in the European sector alone.<sup>42</sup> This shift has triggered much debate among the professionals in the field concerning various aspects of professional sports which have never come under this kind of scrutiny before. Among these new issues is the legal nature of the relationship between the football club and the professional football player. Is the player an employee or is he a contractor providing services to the club?

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\* Mr Raimundas Jurevicius is a partner in the Law Firm Jurevicius, Balciunas & Partners, EY Law, Vilnius, Lithuania, and LFF Licensed Players' Agent; Ms Dovile Vaigauskaite is sports law researcher and EU law expert for the EFFC Project (Promoting the Social Dialogue in European Professional Football) at the ASSER International Sports Law Centre. This paper appeared in The International Sports Law Journal (ISLJ) 2004/1-2 pp. 33-37.

42 According to the 12th edition of the Deloitte & Touche Annual Review of Football Finance, available at <[www.deloitte.com/dtt/press\\_release/0,2309,cid=22163&pv=Y,00.html](http://www.deloitte.com/dtt/press_release/0,2309,cid=22163&pv=Y,00.html)>.

The status of employee certainly grants more rights to professional football players than that of service contractor. More rights for employees also mean more obligations for the employer, in this case: the club. Despite the increased importance of the commercial aspects of the clubs' activities, the advantage for clubs of having employer status in professional football is on the whole questioned.

## **2. The current situation in five EU Member States**

There is no universal or commonly accepted answer to the issue of clubs as employers and solutions vary from Member State to Member State. According to the research performed by the Dutch Federation of Professional Football Clubs (FBO) together with the ASSER International Sports Law Centre, most of the five different Member States covered by the research treat professional footballers as employees,<sup>43</sup> although the means by which employee status is established differ per country. For instance, in Belgium, Portugal and the United Kingdom, special laws provide that the conclusion of an employment contract between clubs and their players is obligatory. Dutch national courts have established the precedent that professional footballers are employees under Dutch labour law. In the case of Germany, there is no special law on sports contracts and they are not exempted from the application of general employment law. Nevertheless, the practice in the German football sector indicates that it is commonly understood that the club-player relationship is an employment relationship by nature.

## **3. Harmonized rules at the European level - ECJ case-law**

European Union law could be a possible source of harmonized rules in relation to the club-player relationship. However, there is no article on sports contained in the EC Treaty. The competence of the EU institutions in this respect is limited to the spheres where sports intertwine with certain economic activities that are covered by the EC Treaty (such as competition, intellectual property or broadcasting). Nevertheless, the European Court of Justice (ECJ) has delivered several judgments where sports were involved in some way. In the controversial *Bosman*<sup>44</sup> case the Court held that the then valid rules for the transfer of footballers were contrary to Article 39 (ex 48) of the EC Treaty, which protects the free movement of workers in the EU. The Court did not raise the question whether the relationship between the football club and the player is an employment relationship by nature. The Court considered Jean-Marc Bosman, a professional football player, an employee under the Treaty, who is entitled to all the rights conferred upon him by the freedom of movement for workers. The ECJ also affirmed the status of employee in other cases before it.<sup>45</sup> One of them involved the rules of the Belgian national basketball association in relation to the fielding of non-Belgian nationals in the matches of the national championship.<sup>46</sup> In the *Lehtonen* case the Court was expressly asked whether Mr Lehtonen, a Finnish professional basketball player, could be regarded as an employee under the EC Treaty. The Court defined the term 'employment relationship' as a relationship whereby a person "for a certain period of time (...) performs services for and under the direction of another person, in return for which he receives remuneration".<sup>47</sup> All these objective criteria were found to exist in the club-player relationship.

43 R. C. Branco Martins, *European Sport's First Collective Labour Agreement*, (2002), FBO/EFFC.

44 Case C-415/93, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman*, [1995] E.C.R. I-04921.

45 See e.g. Case C-438/00, *Deutscher Handballbund eV v Maros Kolpak*, [2003] E.C.R. I-04135 (2003).

46 Case C-176/96, *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)*, [2000] E.C.R. I-02681 (2000).

47 *Ibid.*, para. 45.

Therefore Mr Lehtonen was entitled to freedom of movement, just like any other employee under the EC Treaty.

Following the above, it is important to note that the ECJ accepted that professional athletes should only be treated as ordinary workers in cases where the agreement between the club and the athlete was already concluded in the form of an employment contract.<sup>48</sup> In some countries, this was also a requirement of relevant national legislation (Belgium)<sup>49</sup> or common practice in the professional football sector (Germany).<sup>50</sup> Whether the club-player relationship is one of employment or a service contract is left to the national legislator and judiciary to determine.<sup>51</sup> As mentioned above, most EU Member States treat the club-player relationship as an employment relationship, although by different means (i.e. as provided by laws, case-law or common practice). Where the future EU members are concerned (ten countries to join as of 1 May 2004), the situation is very much the opposite.<sup>52</sup>

#### **4. Other accession countries than Lithuania and the regulation of their national football sectors**

In the Slovak Republic, for example, general employment law does not exempt professional sports or football from its application. Nevertheless, professional footballers usually conclude civil law contracts with their clubs which are termed ‘contract for the performance of a sporting activity’ and which give the players the status of a self-employed person. In addition, the rules of the Slovak Football Federation provide that the legal nature of a club-player contract does not determine how they should be registered with the organization.

Slovenia does not have a special law according to which a certain type of a contract would be mandatory for football players either. This means that agreements between clubs and their players could be governed by either employment law or civil law. What happens in practice is that football players are employed by the Ministry of Sports, but perform their work for a football club. This way, players are guaranteed the right to social security benefits.

The Czech football sector, although it could choose between labour law and civil law, opted to use the means of a commercial contract to take on footballers: nearly 90% of all club-player contracts are concluded under company law and regard footballers as entrepreneurs.

In Poland, the situation is more complex. Instead of opting for just one type of contract, clubs make use of both employment contracts and contracts under company law. A footballer playing for a Polish club will usually get a fixed minimum salary (e.g. Euro 200 a month) under the employment contract, and a much higher annual amount (e.g. Euro 8000) under the company law contract. The trick here is that the rules of the Polish Football Federation only protect the player for the extent of his employment contract.<sup>53</sup>

#### **5. The case of Lithuania - ambiguity concerning the status of footballers**

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48 Both Jean-Marc Bosman and Jyri Lehtonen had valid employment contracts with the relevant national sports associations.

49 In Belgium the law concerning professional athletes (in force since 1984) provides that professional athletes must have fixed-term employment contracts.

50 See Case C-438/00, *Deutscher Handballbund eV v Maros Kolpak*, [2003] E.C.R. I-04135 (2003), para. 16.

51 See e.g. Lehtonen case, para. 40.

52 The ASSER International Sports Law Centre in cooperation with the EFC Project undertook this research into the regulation of professional football in 10 EU candidate states. The research was commissioned by the European Commission under budget heading B 3-4000.

53 This happened to Edward Cecot, a football player in the club KS Ruch Chorzów. More information about this case can be found at <[www.ffpro.org/index.php?mod=one&id=12398](http://www.ffpro.org/index.php?mod=one&id=12398)>.

The regulation of sports relations, i.e. club-player relations, in Lithuania is very specific. Although the issue is covered by legislation and has been the subject of judicial decision making, the actual rules are still unclear in the sense of defining the legal status of the club-player relationship. Different laws provide different approaches to the status of athletes in their relations with sports club, showing that the legislative authorities have not yet succeeded in presenting a clear vision of the position of professional sports in the legal system as a whole. Such uncertainty at the governmental level of sport regulation also negatively impacts the regulation of sports relations in Lithuanian football. As a general requirement, laid down in the Competition Regulations for 2003 (Regulations) as adopted by the Lithuanian Football Federation (LFF), every professional football player must have a written contract with his club for the performance of sports activities before he is allowed to play for the club. The Regulations define the sports activities contract as a contract between an athlete and a club whereby the athlete undertakes to prepare for and participate in the competition under the internal rules of the club and the club undertakes to pay the athlete the agreed salary, ensure proper training conditions and fulfill other obligations under the contract.<sup>54</sup>

The definition of the contract for sports activities is similar to the definition of the employment contract provided under the Lithuanian Labour Code<sup>55</sup>, which appears to be evidence of a link between sports and employment law. However, certain theoretical and practical issues in this field make it questionable that such a link exists.

The regulation of employment relations in Lithuania is quite formal and strict. The Labour Code is employee-orientated and provides a very limited amount of flexibility for changing the terms of employment it lays down where such changes would adversely affect the position of the employee. The Labour Code does not include a list of instances in which changed conditions might be regarded as adversely affecting the position of the employee, but experience with the application of labour law may provide a general understanding of the implications of the possible regulation under this law of club-player relations.

The applicability of legal provisions governing employment in order to regulate sports would cause problems of practical implementation in respect of certain provisions of the Labour Code as they conflict with the current practice in sport. One of the areas of conflict is the termination of the employment contract.

The Labour Code provides<sup>56</sup> that employees are entitled to terminate their employment contract (either fixed-term or for an indefinite time) with 14 days' notice. In certain cases, termination may even become effective after only 3 days' notice.

This provision basically grants the employee an unrestricted right to terminate the employment contract at any time he/she sees fit. In addition, the Labour Code does not contain any provisions on compensating the employer for damage incurred as the result of such termination, save for reimbursement of the actual costs of training, internships, improvement of qualifications, etc., paid by the employer during the final calendar year of the employment. These conditions of termination of the employment contract, when applied to football player-football club relations, undoubtedly threaten the stability of sports contracts, as they give players unlimited freedom to terminate their contract with the club at any time during the season or off season.

Another example of the possible incompatibility of labour law and its application to sports relations is the existence of disciplinary sanctions. In sports, it is common practice to fine athletes for various disciplinary violations, i.e. being late for practice or the game,

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54 Art. 116 of the Competition Regulations for 2003, adopted by the Lithuanian Football Federation (only available in Lithuanian).

55 Labour Code of the Republic of Lithuania, adopted by Seimas on 4 June 2002, available at <[www.lrs.lt/Dpaireska.html](http://www.lrs.lt/Dpaireska.html)>.

56 Ibid. Art. 127.

unsportsmanlike behaviour within the club or in public, etc. However, Lithuanian labour law does not permit that financial sanctions are imposed on employees (fines, reduced wages, etc). Under labour law, disciplinary violations could only be punished by a warning, a grave warning or termination of the contract.

Furthermore, employers are not allowed to interfere in their employees' personal life (as a general principle, which lies outside the scope of what is regulated by labour law), while football clubs usually try to maintain control over their players even when they are "off duty". From the above it emerges that the direct application of labour law to the realm of sports could lead to legal conflict between legislation and practice. These specific issues and the possible legal conflicts had to be regulated by a special law, which became the Law of the Republic of Lithuania on Physical Culture and Sport of 20 December 1995.<sup>57</sup> Sadly though, this Law, although intended specifically to regulate sport, has generally failed to achieve this aim where professional sports are concerned.

## **6. The Law on Physical Culture and Sport**

The Law on Physical Culture and Sport mainly concerns amateur sport and governmental policy concerning sport as a social activity. The objective of formalizing the social role of sport was clearly defined in the Explanatory Memorandum to the draft Law on Physical Culture and Sport, which is a mandatory document in the legislative process and is designed to explain the purpose and possible implications of the law submitted to the parliament (Lietuvos Respublikos Seimas) for its approval.

The regulation of professional sport, however, was fragmented at best. The Law included provisions on professional athletes and professional sports clubs, the contents of the contract for sports activities concluded between athletes (or coaches) and clubs, and provisions concerning social security.

These regulations did not constitute a comprehensive system of rules for professional sport and were also insufficient to determine the legal status of club-player relations.

By the provisions of the Law on Physical Culture and Sport it was intended to establish a link between the contract concerning sports activity and the employment contract. The definition of the contract for sports activities is almost identical to the definition of the employment contract<sup>58</sup> and, for example, the Law refers to the compulsory insurance of athletes.<sup>59</sup> The link was, however, not expressly intended to concern employment relations, as the Law on Physical Culture and Sport did not contain any reference to the applicability of employment law to relations in the sports sphere. Furthermore, the Law specifically regulated the contents of the contract for sports activities<sup>60</sup> in a way that was quite different from that of the employment contract stipulated in the Lithuanian Labour Code. Taking into account the highly formalized regulation of employment relations in Lithuania, it was necessary to consider the club-player relationship as a special relationship, closely linked with but more specific than the employment relationship.

The idea of regarding professional sports relations as employment relations was strongly supported by the tax and social insurance authorities. Although no specific provisions on the taxation of athletes were in force and their status was not clearly linked to that of regular employees, for taxation purposes athletes were treated as ordinary employees and taxed along the same rates (33% for income tax, plus 3% for social security contributions payable by the

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57 Available at [www.lrs.lt/Dpaieska.html](http://www.lrs.lt/Dpaieska.html).

58 Art. 30(1).

59 Art. 31.

60 Art. 30(2).

athletes and 31% for social security contributions payable by the clubs on top of the athletes' salaries). Athletes were also entitled to the same social security benefits as regular employees.

### **7. Romanas Safronovas v Vilnius BC "Statyba"**

The prevailing practice was not challenged until the year 2000 when the Safronovas case<sup>61</sup> was decided by the Supreme Court of Lithuania. Romanas Safronovas, a basketball player, had a contract for sports activities with the basketball club "Statyba" (Vilnius "Statybos" krepšinio klubas). The contract was prematurely terminated by the club on the ground that Mr Safronovas had failed to perform on a professional level and meet the standards applicable for professional athletes. Mr Safronovas argued that his contract with the club was an employment contract and challenged its termination in court, where he claimed that as the club had failed to follow the legal procedure for termination of an employment contract, the termination had been illegal.

The Supreme Court held that sports relations, including those in professional sports between an athlete and a club, are regulated by a special law, namely the Law on Physical Culture and Sport. The Supreme Court admitted that the playing of sports as the object of employment is a special kind of employment activity, but that it was nevertheless governed by the Law on Physical Culture and Sport instead of by labour law. Moreover, the Court specifically stated that legal rules regulating the relationship between employers and employees do not apply to the relations between athletes and clubs.

By its decision, the Supreme Court set aside the generally accepted and widely used definition of the nature of club-player relations. In fact, the Supreme Court even went so far as to challenge the existence of any connection between sport and employment, a connection which was at least partially included in the Law on Physical Culture and Sport. This decision has clearly shown that sport relations are still not regulated adequately and that their statutory regulation must be adjusted.

### **8. Taxation of athletes' income**

The special nature of sport that was recognized in the Safronovas case was insufficiently considered by the authorities. The special relationship between athletes and clubs failed to find specific regulation e.g. where taxation was concerned. As far as tax authorities and social security authorities were concerned, athletes' income remained income derived from an employment relationship.

The next step that was taken to clarify the status of player-club relations was the adoption of the new Law of the Republic of Lithuania on the Taxation of Income Earned by Residents (Law on Income Tax).<sup>62</sup> This Law specifically addressed the issue of the taxation of income derived from sports activities. The enactment of these specific provisions was the result of the debate on sports and athlete-club relations launched after the Safronovas case and it was warmly welcomed by the sports society. This was not surprising, as the Law on Income Tax established a different, lower, rate of taxation to apply to the income of athletes. The law put athletes on the same footing as sole traders, i.e. self-employed persons without an employment contract. Following the Safronovas case, which by comparison made less impact in achieving practical shifts in the legal status of sport relations, the Law on Income Tax completely altered the

<sup>61</sup> Case no. 3K-3-602/2000 Romanas Safronovas v Vilnius "Statybos" krepšinio klubas.

<sup>62</sup> Available at <[www.lrs.lt/Dpaieska.html](http://www.lrs.lt/Dpaieska.html)>.

system of taxation that had applied before and which still retained the connection with employment relations. As a result, the income earned by athletes is now taxed at a 15% rate. Neither athletes nor clubs need pay social security contributions anymore, but this did deprive athletes of practically all social security guarantees they had enjoyed before. Recent developments in case-law and tax legislation indicate that the Law on Physical Culture and Sport, instead of being the main source of sports regulation, in practice usually proves difficult to implement as it does not correspond to the current developments in sport. Attempts have recently been made to amend the Law on Physical Culture and Sport and the first drafts of the amendments have already been completed.

### **9. A new Law on Physical Culture and Sport**

As amateur sport is already extensively and adequately regulated in the current Law on Physical Culture and Sport, the emphasis in the new draft must be on professional sport. The main task of the working group which is preparing the draft is to clearly determine the nature and status of professional sports relations. The initial drafts indicate a tendency to isolate these relations from the influence of labour law, thereby affirming the independent nature of the club-player relationship. If this approach is followed, a number of other related issues will have to be examined and regulated carefully: the state's social policy in respect of athletes, their integration into 'normal society' after ending their careers, the collective representation of professional athletes (e.g. by creating a possibility for trade unions to represent athletes as independent contractors), etc. Obviously, it would be impossible to regulate all these issues by means of a single law. Therefore, a complex revision of legislation will have to be performed for the purpose of defining the legal status of sports and this we can expect to be a lengthy process, especially taking into account the integration of Lithuania into the EU and all the related consequences which would also affect the regulation of sport. Lithuanian football must make sure it plays an active role in this process and help sport find a suitable place within the Lithuanian legal system.

## **2.3. HUNGARY AND SLOVENIA**

### **2.3.1. Hungary: country report**

The following report consists of five Sections. Section 1 draws the distinction between the legal status of amateur athletes and professional athletes as specified by the Act CXLV. of 2000 on Sports. It defines the nature of the contract the athletes may conclude, hence defines the nature of the relationship between a player and a club. The distinction between a work contract for a specific period of time and a contract of agency is detailed in this part. The employment relationship according to the Act XXII of 1992 on the Labour Code is detailed in this section.

Section 2 concludes what the candidate state has already done in the view of implementing the Directive 1999/70/EC. The possibility for future social dialogue between potential social partners in Hungary is detailed in Section 3 of this report where the legal framework for collective bargaining agreements is also presented. The last Section 4 outlines some additional information on the sport regulatory framework.

### **1. What is the legal basis for the relationship between a player and a club?**

#### **1.1. amateur athletes**

##### **1.1.1. amateur athlete sports contracts**

According to Chapter II Article 3 of the **Act CXLV of 2000 On Sports** (hereinafter referred to as: **Act on Sports**), the amateur athlete may conclude an amateur athlete sports contract (hereinafter: sports contract) with a sport organization. Within the framework of a sports enterprise, the amateur athlete must have a sports contract in order to engage in sporting activities. Paragraph 3 of Article 3 regulates that sports contracts shall only be valid if they are concluded for a specific period of time, not exceeding five years. However, its term of validity may be extended. Further, sports contracts shall be concluded in writing, and shall detail the support provided by the sports organization to the athlete, and the detailed conditions of the athlete's co-operative obligations in relation to his or her sporting activities. The Act on Sports details that provisions from Act IV of 1959 on the Civil Code of the Republic of Hungary regarding the contract of agency shall apply to sports contract with the differences stipulated by the Act on Sports.

##### **1.1.2. Legal status of amateur athletes**

According to Article 4 of the Sports Act, the amateur athlete shall not receive remuneration from a sport organization for his or her sporting activities. It is detailed that the following shall not qualify as remuneration:

- a) reimbursement of reasonable expenses of the amateur athlete related to participation in competitions;
- b) allowances in kind provided in connection with participation in competitions or preparation for them;
- c) efficiency rewards given after achieving an outstanding sports result;
- d) support provided in the framework of a sponsoring contract;
- e) medals and trophies won in the open competition system.

General rules of indemnification of the Civil Code shall apply for damages caused to a sports organization by an amateur athlete within the framework of a contractual relationship.

### 1.1.3. Transfer of the amateur athlete

Article 7 of the Act on Sports regulates the transfer by specifying that during the term of a valid sports contract, the amateur athlete shall only be transferred to another sports organization with the consent of his sports organization, which may make its consent conditional upon payment of a training reimbursement. During the term of a valid sports contract, the amateur athlete shall only be transferred or be temporarily lent to another sports organization with his consent. In the absence of a valid sports contract, training reimbursements shall not be paid to the athlete's previous sports organization. The training reimbursement should be equivalent to the value of training the amateur athlete. It shall qualify as a service provision for taxation purposes. According to Article 7 (5), the rate of the training reimbursement shall be determined by the regulations of the sports league. In the absence of such regulation, the sports organizations are entitled to determine the rate.

## 1.2. Provisions concerning professional athletes

According to Article 8 of the **Act on Sports**, Act XXII of 1992 on the Labour Code (hereinafter referred to as: the **Labour Code**) shall apply to the employment of professional athletes in relation to sporting activities with the following exceptions:

- a) a **work contract** shall only be concluded for a **specific period of time**;
- b) a trial period shall not be longer than half of the duration of the work contract, with a maximum duration of six months;
- c) if the sports league does not issue a competition permit, the employer shall terminate the work contract in accordance with Article 88(2) of the Labour Code with the provision that the professional athlete shall not be entitled to claim compensation for his or her average wage over the remaining time period of the work contract.

A valid work contract with the professional athlete shall only be established if it contains agreements on the manner of work, working hours and leisure time, the allocation of leave, and the remuneration for work. If according to regulation pertaining to employment a work contract shall not be concluded until the professional athlete reaches the age of sixteen, the athlete shall only be employed in the framework of a **contract of agency**.

The II. Chapter of the Labour Code regulates the institution of employment relation. The employment contract is the base constituting employment relation. It has to be in writing. The employment contract allows parties to agree on any question (hence also preliminary breach of the contract). It can only be modified with mutual agreement between the parties.

However, in practice Hungarian football players do not sign the employment contracts as they are required under the Act of Sports, under Article 8 (professional athletes should conclude a work contract only for a specific period of time when they conduct sport activities). In those situations the XL. Chapter of the IV of the 1959 **Civil Code** allows for the **agency contract** to be entered into (this is the usual practice among Hungarian football players).

According to Article 13 of the Act on Sports a professional athlete shall practice sporting activity within a framework of a sports club on the basis of a **work contract or other contract regarding the performance of work**.

### **1.3. Employment relationship according to Chapter V, Part 3 of the Act XXII of 1992 on the Labour Code**

According to Article 76 of the Labour Code, an employment relationship is established by an employment contract. The parties to an employment contract may settle any issue in the contract. The employment contract shall not be contrary to law and the collective agreement, unless it stipulates more favorable terms for the employee. **Article 79** stipulates that in the absence of an agreement to the contrary, an employment relation is established for an **unfixed duration**. The period of **fixed-duration employment** shall be determined according to the calendar or by other appropriate means. If the duration of an employment relation is not determined by the calendar, the employer is obliged to inform employee of the expected duration of employment. Paragraph 4 of Article 79 establishes the limitations for renewal of a fixed-duration employment by specifying the following:

Where fixed-duration employment is **renewed or extended** between the same parties without any rightful interest attached on the part of the employer and the conclusion of the contract is aimed at infringing on the rightful interests of the employee, the employment shall be deemed to be established for an unfixed duration.

Further, the **duration of a fixed-term employment relation may not exceed five years**, including the duration of an extended relation and that of another fixed-term employment relation created within six months of the termination of the previous fixed-term employment relation (Article 79(5)).

A fixed-duration employment relation shall be considered open-ended if the employee works for at least one extra day following the expiry of the original term with the knowledge of his immediate superior (Article 79(6)).

Article 86 details a fixed-term employment relationship shall cease upon the expiration of the fixed term. More specifically, Article 88 also stipulates that an employment relationship established for a fixed-term shall only be terminated by mutual consent or by extraordinary dismissal or, if a trial period applies, within immediate effect. An employer may terminate the employment relationship of an employee employed for a fixed term under conditions other than stipulated above; in such case, however, the employee shall be paid one year's average salary, or his average salary for the period remaining, if such period is less than one year. Articles 100 and 101 regulate the unlawful termination of employment relationships and its legal ramifications. In the event employees unlawfully terminate their fixed-term employment relationship, they shall be liable to pay compensation to the employer in an amount equal to his average earnings falling due to the notice period. Employers shall be entitled to demand payment for damages if such are in excess of the amount described above. If, on the other hand it is determined by court that the employer has unlawfully terminated an employee's employment, such employee, upon request, shall continue to be employed in his original position.

Social benefits arising from an employment relationship are detailed in Article 165 of the Labor Code by stating that employers may support the fulfillment of the employees' cultural, welfare and health care needs, and the improvement of their living standards. The fringe benefits provided therefore shall be set forth in the collective bargaining agreement, however employers may also provide additional support for employees. In addition to that, an employer shall be entitled to take over from his employee or provide assistance in the payment of membership dues in a voluntary mutual insurance fund (employer's contribution).

#### **1.4. Agency contracts**

Chapter XL of the Civil Code in Articles 474 to 483 details this type of contract. According to the Article 474, agency contracts shall be concluded to oblige an agent to carry out the matters entrusted to him. An agent must fulfill the principal's instructions and represent his interests regarding the authority conferred upon him. Article 478 details that principal shall pay an appropriate fee, unless the circumstances or the relationship between the parties suggest that the agent has assumed the agency without any consideration. If a contract is terminated before the agency has been fulfilled, the agent shall be entitled to demand an appropriate fraction of the fee for his activities.

An agency contract shall be terminated even if the agency has not been fulfilled, if:

- a) either party cancels the contract by notice;
- b) either party dies or if an artificial person is dissolved, unless the dissolved artificial person has a legal successor;
- c) the principal becomes partially or fully incompetent or if the agent becomes incompetent;
- d) the object of agency becomes obsolete.

Principals shall be entitled to abrogate contracts with immediate effect at any time. However they shall be obliged to uphold the obligations already assumed by agents. Agents shall also be entitled to abrogate contracts at any time; however, the period of notice must be sufficient for allowing the principal to handle the matter. In the event of principal's grave breach of contract, abrogation can have immediate effect.

If an agency is cancelled without grounds, the damages that are caused shall be indemnified. Any limitation or exclusion of the right to cancellation shall be null and void.

#### **1.5. Transfer of rights of managing the right to play**

Article 9 and 10 of the Act on Sports regulate transfers of rights of managing the right to play. According to para.1) Article 9 the right of management of the professional athlete's right to play shall only be validly transferred to a sports organization during the period of the work contract or other contract involving the performance of work. An additional condition of transferring the right of managing the right to play shall be that the professional athlete possesses a professional athletic competition permit issued by the sports league. During the period of validity of a contract concluded in accordance with para. 1) of Article 9, the sports organization may temporarily lend the right of managing the right to play (loan) or transfer it to another sports organisation with the consent of the athlete. The sports organization concluding a work contract or other contract involving the performance of work with the professional athlete shall be considered as the holder of the right of management, if the professional athlete has transferred the right to manage his right to play to the sports organization. Transfers of the right of managing the right to play by the professional athlete shall qualify as registration, transfers of the right of managing the right to play by the sports organization shall qualify as transfer.

According to para.1) of Article 10 of Act on Sports, the professional athlete may claim remuneration from the sports organization (registration fee) for transferring the right of managing the right to play. The sports organization may claim remuneration for transferring the right of managing the right to play from the other sports organization as a payment in

exchange (transfer fee). The sports organization transferring the right of managing the right to play may pay a sum of money (commission) to the professional athlete in accordance with the percentage contained in a separate agreement. The right of managing the right to play shall pass back to the professional athlete without payment of compensation after the term of validity for the contract concluded in accordance with Article 9 para. (1) expires. Any agreement to the contrary shall be null and void.

Article 10 para. (4) of Act on Sports states that a contract on transferring the professional athlete's right of managing the right to play shall only be valid if it is concluded:

- (a) directly between the professional player and the employer sports organization;
- (b) directly between the employer sports organization and another sports organization; or with the intercession of a commercial agent.

## **2. What has the candidate state already done to implement the Directive 1999/70/EC?**

To prevent abuse arising from the use of successive fixed-term contracts or relationships, Member States shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors one or more of the following measures:

- (a) objective reasons justifying the renewal of such contracts or relationships;
- (b) the maximum total duration of successive fixed-term employment contracts or relationships;
- (c) the number of renewals of such contracts or relationships.

Member States shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

- (a) shall be regarded as successive;
- (b) shall be deemed to be contracts or relationships of indefinite duration.

By placing Article 79(5) in the Labour Code, the legislator has chosen to state the maximum total duration of successive fixed-term employment contracts or relationships in order to implement the Directive 1999/70/EC and to achieve its objectives. The above mentioned provision details that the **duration of a fixed-term employment relation may not exceed five years**, including the duration of an extended relation and that of another fixed-term employment relation created within six months of the termination of the previous fixed-term employment relation.

The Hungarian legislator also determined under what conditions fixed-term contracts or relationships shall be deemed to be contracts or relationships of indefinite duration when in Paragraph 6 of the Article 79 it stipulated that a fixed-duration employment relation shall be considered open-ended if the employee works at least one extra day following the expiry of the original term with the knowledge or his immediate superior. However, the employment relation established for a period of thirty days or less shall be extended only by the amount of time for which it was originally established.

## **3. Possibility for the social dialogue between social partners in Hungary**

### **3.1. Legal Framework**

#### **3.1.1. Trade unions**

Trade Unions are regulated by **Chapter II of the Act XXII of 1992 on the Labour Code** by detailing that all employee organizations whose primary function is the promotion and protection of employees' interests related to their employment relationship shall be construed as trade unions. Employees are entitled to organize trade unions within the work organization. Trade Unions shall have the right to inform their members of their rights and obligations concerning their financial, social, cultural as well as living and working conditions, furthermore to represent their members against the employers and before state agencies in matters concerning labour relations and employment matters. Moreover, trade unions are entitled to represent their members, if duly authorized, before the court or any other authority or agency in matters concerning their living and working conditions. Trade Unions shall be entitled to conclude collective bargaining agreements in accordance with the regulations set in the Labour Code.

According to the Article 22 of the Labour Code, trade unions may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment. Employers shall not refuse such information or the justification of their actions. Additionally, trade unions shall be entitled to express their position and opinion to the employer concerning any employer actions and, furthermore, to initiate talks in connection with such actions.

As detailed in Article 23, a local trade union branch shall be entitled to contest any unlawful action taken by the employer (or his failure to act) by way of demurrer if such action directly affects the employees or the interest representation organizations of employees. A demurrer may not be submitted if an employee is entitled to file for legal action against the action in question. If the employer disputes the grievance, the conciliation procedure shall be set in motion. If the conciliation procedure fails within the seven-day period, the trade union may proceed to a court within five days of the failure of the conciliation procedures. Measures that are the subject of conciliation procedures shall not be implemented, or shall be suspended, until after the successful completion of the conciliation procedures or until a binding court decision has been made.

#### **3.1.2. Collective bargaining agreement**

Collective bargaining agreements are detailed in **Section 30-41 of the Labour Code**.

According to the Article 30 of the Labour Code, collective bargaining agreements may govern:

- a) rights and obligations originating from employment relationship, the method of exercising and fulfilling and the procedural order of such relationships;
- b) relations between parties with regard to the collective bargaining agreement.

Collective bargaining agreements may be concluded, on one hand, by an employer, an employer interest representation organization, or several employers, and on the other, by a trade union or several trade unions (Article 31). The trade union or the employer interest representation organization that is independent of the other party in respect of its interest representation activities shall be entitled to conclude a collective bargaining agreement. The scope of the collective bargaining agreement can be extended to the entire sector provided the organizations concluding the agreement qualify as representative for the sector in question.

Article 39 details the cancellation of collective bargaining agreements. A three months notice is required for a collective bargaining agreement to be canceled by either party. The dissolution of an employer or a trade union without a legal successor will terminate the collective bargaining agreement (Article 40).

### **3.2. Social partners in the hungarian professional football sector**

In Hungary, there exists a **Trade Union of Professional Footballers** as well as the **Hungarian Professional League**. The Trade Union of Professional Footballers is an employee organization according to **Article 18 of the Labour Code** and according to its statute its primary function is the promotion and protection of employees' interests related to their employment relationship. Hence, professional footballers in Hungary are represented by their trade union according to the Labour Code, thus, this constitutes the condition for being a partner in concluding collective bargaining agreement with employer interest representation organization on the other side. Moreover, the Trade Union of Professional Footballers are members of the F.I.F.Pro.

**The Hungarian Professional League** on the other hand does not act as an employer or an employer interest representation organization due to the fact that clubs (members of the League) do not act as employers. Professional footballers in Hungary in practice do not enter into employment relationships; hence, they do not conduct their sporting activities according to Article 8 of the Act on Sports. They do not enter into work contracts for a specific period of time and consequently the Labour Code does not apply to their relationship since they are not entering an employment relationship. According to the president of the Hungarian Player Association, Mr. Horvat Gabor, professional footballers enter into commission contracts, governed by the Civil Code. These are actually called contracts **of agency** as governed by the XL. Chapter of the IV of the 1959 **Civil Code**. According to the Chapter VII of the *Act CXLV of 2000 On Sports* that regulates National professional sports leagues, their legal status, tasks and their organizational structure (Articles 24 - 31), Hungarian Professional League is, inter alia, entitled to carry out the following tasks:

- a) to develop the professional, amateur, and open competition system of the given sport in accordance with the international regulations of sport;
- b) to take charge of the registration, certification, and transfer of athletes in the given sport and shall exercise the right of sport disciplinary in accordance with legal statutes;
- c) to apply legal penalties determined by sports disciplinary regulations;
- d) to conclude sponsorship and other commercial contracts for achieving the goals of the given sport;
- e) to determine the conditions and methods of transfer from one sport organization to another for the athlete regularly participating in competitions.

The Act on Sports (Article 25) stipulates that provisions of the Civil Code and the Association Act and Non-profit Organization Act shall apply to sports leagues to determine the legal status of sports leagues.

## **4. Additional information**

### **4.1. Resolving individual employment disputes**

This section examines how individual labour/employment disputes are handled through the courts in Hungary. In Hungarian jurisprudence, the notion of a ‘dispute of rights’ covers all disputes in which the interpretation or application of a certain piece of law is disputed. The term also covers disputes arising from employment contracts, other agreements between the employer and the employee, work rules, collective agreements or any pieces of legislation related to their work relationship.

In the terminology of the 1992 Labour Code, ‘employment-related individual legal disputes’ (egyéni munkaügyi jogvita) are individual disputes of rights, that is, all disputes which may arise over the existence or non-existence of a right of one of the parties, or in which violation, non-performance or non-proper-performance of an obligation is disputed. The parties to a legal dispute may be the employer and the employee(s). Labour courts adjudicate legal disputes.

The labour courts deal with **labour disputes**, having an exclusive authority and competence to adjudicate such disputes. Formal rules of court procedure govern the procedure in labour courts, and specific rules applied in the course of hearing labour law cases are included in Chapter XXIII of the Act on Civil Procedure. Most of the costs resulting from labour court cases are paid by the state. An employee losing a lawsuit should cover the litigation costs of the opposing party, but has to pay neither the relevant state dues nor the other costs of the legal procedure (for example, expert fees).

The majority of cases tend to be won by employees, which indicates that only those who are fairly sure about their prospects of winning the case use the labour courts. The amount of litigation is considered to be fairly low compared with more developed countries. This fact is thought by experts to be due partly to cultural factors, partly to weaknesses in workers’ representation and partly to labour market conditions, which favour employers. This imbalance of power is reflected in the fact that in the mid-1990s employees typically sued their employers after having left the company. In the majority of cases, employees try to find remedy for their complaints individually in direct negotiation with their managers and they only sue the company as a last resort.

#### **4.1.1. Other legal mechanisms encouraging the two parties to resolve a dispute by prior negotiation**

The 1992 Labour Code abolished the mandatory workplace-level grievance boards, and included only a brief passage concerning a pre-court conciliation procedure between the employer and the employee. It stipulates that, within 15 days of the employer taking measures allegedly injuring the rights of an employee, the employee had the right to initiate steps and demand a conciliation process in writing. This **conciliation process** was a precondition for filing a lawsuit. If, however, the conciliation did not produce an agreement within eight days, the employee was free to file a suit. The requirement for this company-level pre-litigation conciliation procedure was repealed in 1999, following an amendment of Civil Procedure Law. The modified procedure now makes it compulsory for the parties to hold a conciliation meeting at the labour court before the litigation is allowed to begin. Nevertheless, the Labour Code still contains a provision, which authorizes a **collective agreement**, or a joint decision of the parties, to **provide for conciliation** at company level in order to seek an agreement. If, however, the conciliation fails, the claimant has the right to **file a suit in the labour court** by the statutory deadline.

Although trade unions and works councils have no statutory role in the individual legal dispute procedure, unions may assist their members or employees with legal advice or by providing

legal representation during the court procedure. Generally, legal advice is deemed to be the most important service that unions provide to their members.

Given an absence of legal regulations and well-established traditions in this area, there is no solid pattern of grievance procedures with trade union involvement at Hungarian workplaces

Regarding legal disputes, 2002 saw the adoption of the **Act on Mediation**, with the aim of furthering the resolution of civil law disputes in out-of-court procedures.

The Labour Mediation and Arbitration Service (Munkaügyi Közvetítő és Döntőbírói Szolgálat, MKDSZ), whose mission is to facilitate reaching agreements in collective labour disputes, is barred from providing conciliation, mediation or arbitration services in pre-court reconciliation processes over individual legal disputes. In practice MKDSZ sometimes receives requests to mediate in disputes of rights, but cannot act officially given its mandate.

#### **4.2. Sport regulatory framework**

Hungary applies an interventionist sport legislation model. The following elements can assist us in assessing the nature of the Hungarian sport legislation model. Under section 70/D(2) of the Hungarian Constitution the right to regular physical training is one of the fundamental rights of citizens. The Sports Act seems to devise a formalized scheme of recognition of national sport federations into “branch associations”. Each association is given a legal mandate to regulate one sport on an exclusive basis. The Hungarian Olympic Committee is a public body under the Sports Act. The sport organizations are created under the general associations law (Act II of 1989) and the principles of freedom of association. Based on the above-mentioned information, Hungary seems to be utilizing an interventionist sport legislation model. As in Cyprus, the Hungarian government works through a government agency, the National Office for Physical Education and Sport (NOPES), to implement its policy. NOPES is an independent state administrative agency. It is under direct control of the government and the prime minister appoints its president. Since 1999 its activities are under supervision of the Minister of Youth and Sport (until 1999, Ministry of Home Affairs). He is the co-ordinator and facilitator of sport initiatives across the country.

#### **4.3. Governmental jurisdiction over sport**

When describing the division of jurisdiction over sport among different levels of government, the responsibility for sport matters has to be revised. The three major levels of government, i.e. national, regional and local, can share it. Unless otherwise indicated, the national level of government refers to the central power of the state. The regional level of government refers to the provinces, autonomous regions and similar authorities. The local level refers to citizens, municipalities, counties, etc. In Hungary, most of the legislation regarding sport is enacted by the central government. However, the municipal governments play an important role in the implementation of physical education and sports participation. These local governments possess considerable freedom in implementing their sport policy. Municipalities can determine the objectives and tasks of physical education and the general development of sport for the territory under their jurisdiction. Municipalities are responsible for the management and maintenance of sports facilities under their ownership. To conclude, governmental jurisdiction in Hungary is centralized. Smaller states usually apply a more centralized sport legislation model than larger ones. The trend, however, in most European countries is towards decentralization and rationalization of state responsibilities for sport.

#### **4.4. Consolidation of the national sports movement**

The following subsection addresses the structure of the sports movement in Hungary. The distinction between consolidated and non-consolidated sports movements is made on the following characteristic: consolidated sports movements are those that include the national Olympic committee and the national sports confederation under one umbrella. All other sports movements are deemed to be non-consolidated. The sport movement is non-consolidated in Hungary. The Hungarian Sports Confederation represents the accredited national sport federations and is not given a particular duty or status under the Sport Act. The Hungarian Sports Confederation pursues its activities under the provisions of the general Associations Law, Act II of 1989 on the rights of association and assembly.

Another organization, the National Association of Sport Clubs is a social organization, an ordinary non-profit making organization, that has a preponderant role in Hungarian sports life. The national association is another umbrella organization that promotes sport for all. The government has set up Sports Council made up of 13 major stakeholders in the nation's sports life. It is an advisory committee for the government, established to improve the government's fulfilment of sport-related duties, control execution of governmental sport programs, and strengthen the social character of sport administration. The Sports Council is a highly representative body of the country's sports movement. Overall, it gives direction to the country's sport policy.

#### **4.5. Finance**

Article 12 of the European Sports Charter states: "Appropriate support and resources from public funds (at central, regional and local levels) shall be made available for the fulfilment of the aims and purposes of this charter. Mixed public and private financial support for sport should be encouraged, including the generation by the sports sector itself of resources necessary for further development."

In Hungary, under the provisions of the Sport Act, the president of NOPES is entitled to decide on the allocation of funds from the central government's sport budget. To ensure greater impartiality in funding distribution, the act provides for the distribution of some funds through two major sports foundations. This process must receive special authorisation from Parliament. The average that municipalities spend on sport results to about 20 per cent more than the government spends from its central budget. That makes the cities of Hungary the largest financial stakeholders in sport. This assistance comes from the municipalities' initiatives, as the Sport Act and the Act of Self-Government (Act LXIV of 1990) stipulate that the municipalities' financial obligations for sport are merely voluntary. Hungary's central government continues to fund sport at almost the same level as the regional governments.

### 2.3.2. Slovenia: country report

The following report consists of four sections. In section 1 the legal basis for the relationship between a player and a club is detailed. The legal framework is provided, outlining the provision of The Labour Code (*Zakon o delovnih razmerjih*, ULRS, No.102/02) as well as the relevant provisions of The Civil Code (*Obligacijski zakon*). Later in this section the association's regulatory framework is presented. Moreover the internal regulation with regard to redemption fees (transfer fees) is detailed in relation to contracts for a specific period of time.

Section 2 draws the conclusion whether the member state has implemented correctly the revised Directive 1999/70/EC and details what measures has the member state introduced in order to prevent the abuse from the use of successive fixed-term contracts.

Section 3 examines the possibility of entering into a Social Dialogue in the professional football sector in Slovenia. The existence of a separate entity, independent from the national football federation to enter into such a dialogue is examined. Potential social partners in the football sector are revised. This section also outlines some of the recent troubles in entering into a social dialogue faced by the football world in Slovenia. Section 4 offers some additional specific information on professional football in Slovenia.

#### 1. What is the legal basis for the relationship between a player and a club?

##### 1.1. Labour Law

In Slovenia, the relationship between players and clubs can be of two different types. If the **Labour Code** establishes it, it gains the nature of an employment relationship. Both parties then sign the employment contract for a specific period of time. Legal consequences of employment relationship are then attached to this relationship, along with all the social and economic rights and obligations that derive from the employment contract. The second way of establishing a relationship between a player and a club is under the **Civil Code**, as a work contract. Chapter XI. Of the Civil Code in Articles 619 to 648 will then apply to this kind of relationship. The Civil Code defines the work contract in Article 619 as follows: entering into a work contract an employee takes an obligation to carry on certain work, that could be of physical or mental nature. The following articles are irrelevant to any kind of relationship between a club and a player and are therefore impossible to apply to those relationships. Employment Law (common labour law) applies to the relationship between players and clubs when an employment contract for specific period of time is entered into. Article 52 and 53 of the Labour Law details that relationship. There is also a specific legislation on sports in force, the **Sports Law (*Zakon o sportu*, ULRS)**, however, it does not mention anything about a relationship between player and club. Articles 34 and 35 of the Sports Law regulate the status of private and professional athlete. Article 36 determines the obligation of being registered in a national register at the ministry of sport as a professional athlete. Article 39 then details the social rights that athletes can obtain (health insurance, damage insurance, pension fund insurance?) Article 40 states that a high rank professional athlete can apply, under certain conditions laid down by the national government, for the payment of monthly charges for health or other insurances from the national budget. Article 41 details the obligations of the high rank athlete. It is stated in this article that if the athlete does not perform any of those obligations, the minister for sport can limit or refuse any of the rights mentioned in Article 39. Chapter X. of Sports Law regulates the issue of health care of athletes. According to Article 42 the participation in any sporting activity may not jeopardize the health state of the sport

participant. Article 43 assures regular mandatory health checks, financed by the national health association (ZZZRS).

The fixed-term employment contract between player and club is regulated by **The Labour Code (Zakon o delovnih razmerjih)** in Article 52-56. According to article 52 of The Employment Law (Zakon o delovnih razmerjih, ULRS) an employment contract for a specific period of time can only be entered into if an objective reason justifies the choice for this type of contract. The law states the following 13 objective reasons:

1. justification that lies in the nature of activities;
2. for the temporary replacement of an employee;
3. for the temporary enlargement of the working schedule;
4. for the employment of foreigners or persons without a citizenship who have a working permit, except in the case of individual employment relationship;
5. for management
6. seasonal work;
7. in connection with a study programme or education;
8. during a probation period;
9. to conduct public service or to integrate into activities of the employment policies in accordance to the law;
10. for work that is organised as a project;
11. for work necessary to introduce new programmes, new technologies and other technological improvement in the working process;
12. for elected or appointed persons or for other employees who depend on a mandate or for persons working within local communities, political parties, syndicates, associations;
13. other cases decided by law or collective agreements for specific industry.

It is however allowed to establish a collective agreement between both parties to establish a possibility for a smaller employer to enter into employment contracts for a specific period of time even if none of the above-mentioned objective reason exist. (Article 52, Paragraph 2) According to the Article 53 of Employment Law, employment contracts have to be concluded for a limited period of time, which needed for the work, mentioned in the Paragraph 1 of the Article 52, to be done. Furthermore, an employer is not allowed to enter into one or more successive employment contracts for specific periods of time with the same employee or for the same nature of activity, for the period of time being more than two years, **except** in certain cases established by law or if the fixed-term contract is entered into:

- a. for temporary replacement of an employee;
- b. for employment of foreigners or persons without a citizenship who have working permits;
- c. for management;
- d. for elected or appointed persons who depend on mandate.

The exemption list that allows the contract to be entered into for a period of time longer than 2 years, does not cover the employment contract between a player and a club. If we assume that the first objective reason of Paragraph 1 of Article 52 when the justification for a fixed-term contract lies in the nature of the activity itself could represent a ground for an employment contract between a player and a club, the maximum 2 years period of duration would apply to

this contract. We come to the same conclusion if the ground for the contract between a player and a club is the last objective reason on the list, this being any case specified by law or by collective agreement. Only the 1<sup>st</sup> and 13<sup>th</sup> listed objective reasons could potentially justify the conclusion of a fixed-term contract between a player and a club, however, a comparative analysis with other legal systems in EU and the candidate countries reveals that “seasonal work” is the objective reason that justifies the conclusion of such contract. The Slovenian Labour Code does not list seasonal work as one of the objective reasons. The following question remains: Is professional sport of such nature that would justify the fixed-term contract? The intent of the legislator is not clear on this matter.

Although the 13<sup>th</sup> objective reason gives room for collective bargaining agreement, in Slovenia football players are not organized as a syndicate and are rather individually represented by sports managers.

The Labour Code applies for a **maximum period of 2 years** for duration of fixed term contracts. After this period, a contract for a specific period of time will automatically convert into a contract for an unlimited period of time.

The employment contracts with breaks of no more than three months has to respect the above mentioned time period of maximum two years.

A contract for a specific period of time will be converted to a contract for an undefined period of time as soon as it becomes clear that the contract is entered into not according to the law or to collective agreement or as soon as the employee continues with his work after the end of the period stipulated in the contract.

According to Article 77 of Employment Law, termination of the contract for a specific period of time will occur:

1. when the time period specified in the contract is over or
2. when the work is done or
3. when the objective reason no longer exists.

Employment contracts can end before the end of the agreed period only if:

1. both parties agree on termination of the contract or
2. in case other reasons for termination of the contract occur, decided by Employment Law.

However, the majority of professional football players do not enter into employment relationships (do not sign a labour contract with the club under the Common Labour Law - employment contract for a specific period of time) they do not enjoy all the social rights deriving from an employment relationship. In practice, a lot of professional players are “employed” in the Ministry of Sports, hence they are employed by the national government, so they could enjoy all the social and economical benefits arising from the employment relationship.

**For the contractual relationships concluded before 1 January 2003, the formal Yugoslavian labour law and civil law apply. From 1 January 2003, the new Labour Code applies for employment relationships entered into after that date. For work relationships that are not of employment nature, a work contract will be concluded, based on the new Civil Code, however, only under condition that no elements of an employment relationship will be present in a contractual relationship.**

Article 4 of Labour Code details the elements of an employment relationship as follows:

The employment relationship is a relationship between an employee and an employer where the employee voluntarily enters into an organized working process by an employer and where the employee for remuneration personally and continuously performs work under the supervision of an employer.

**If this condition is not satisfied, regardless of how the parties named the agreement, and regardless of the way the rights and obligations are defined in a contract, the work will not be performed on the basis of a civil law contract but on the basis of employment contract and according to the Labour Code.**

The conclusion that arises from above mentioned regulation of the fixed-term contract is the following: **the new Labour Code (Zakon o delovnih razmerjih, ULRS, No. 102/02) is in accordance with the European Law (more detailed, with the Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work).** The Labour Code in Paragraph 1 of Article 52 gives the ground for a fixed-term contract if a collective bargaining agreement in any industrial sector decides for the possibility of entering into a fixed-term contract. Therefore, it is on the social partners to conclude collective bargaining agreements that also specify the possibility of a fixed-term contract.

## 1.2. Association law

The Professional Football Association of Slovenia issued a **Regulation on registration and status of the players (Pravilnik o registraciji in statusu igralcev)** and according to Article 7 the professional football player can enter into an agreement with the club on the basis of:

- employment contract
- work contract (civil nature)
- scholarship contract

This contract will serve as a legal basis for player to be able to register himself in a national register of all the professional football players. According to Article 8 of this Regulation, the contract has to determine:

- the time period for which the contract is being concluded for (minimum 1, maximum 5 years);
- obligations of the contractual parties.

As a consequence of association rules players require to be registered in a national register of professional football players in order to be able to enter into a competition. The player is required to enter into a contract that specifies the time period (this time period not being longer than 5 years). This is where the rules of association (professional Football Association of Slovenia) collide with national employment law. This controversial rule implies that after a 2 year fixed-term employment contract has to either convert into a contract of unlimited period of time or the contractual parties have to change the nature of their contractual relationship from a labour to civil one. In practice, none of the mentioned situations will prevail. This means that association rules encourage the parties to avoid the fixed-term employment relationship, since the club will not be able to enter into another fixed-term contract after 2 years. The club will not prefer a contract that is limited with the 2 year-time limit, since the player would be free to go after 2 years without being liable to pay the transfer fee for changing clubs. Therefore, a contract for a longer period of time will be more appealing for the

club so as to allow for the transfer fee to be paid when a player wants to leave the club before the end of the contractual relationship.

Football players under the age of 18 cannot sign contracts for a time period being longer than 3 years. According to Article 10 of the abovementioned Regulation, a professional football player can enter into a contract with another club in the following 4 situations:

1. if the present contract has terminated or shall terminate in the following 6 months;
2. if there was a justified reason for preliminary breach of the contract by any of the contractual party;
3. if there was a mutual written agreement for preliminary breach of a contract;
4. if the competent authority decided on the nullity of the contract.

Article 11 of the Regulation allows the player to conclude a new contract with another club in a time frame of 6 months before the termination of the present contract. A player can only do that with one other club and the new contract should not contain any provision that would jeopardize the fulfilment of obligations set in the present contract.

### **1.3. Internal regulation with regard to redemption fees of contracts for specific periods of time / transfer fees**

The legal basis for the fees or damages to be paid to the club when a player is preliminary breaking his fixed term contract can be found in Article 17 and 18 of **Regulation on registration and status of the players (Pravilnik o registraciji in statusu igralcev)** issued by the football Association of Slovenia. According to Article 10 of the abovementioned Regulation a player can preliminary break his fixed term contract if he has a justified reason or if he comes to a mutual agreement with his club about termination of the contract before the end of the original contract period. Then a player can register himself in another club and enter into a new contract with a new club. In that case, the old club is entitled to a transfer fee under Article 17 of the Regulation.

The old club has the right to receive the transfer fee in the amount decided upon by the Committee for the status of players within the Football Association of Slovenia. Article 18 details that the amount of transfer fee is determined by the written agreement (contract) between the two clubs or between the old club and the player. If the amount is not determined in the contract, the transfer fee will be calculated as follows: by multiplying the brut salary of the player in the past 12 months with the following factor that depends on the age of the player:

Age	Factor
14 - 20 let	3
above 20 - 30 let	2
above 30 let	1

This amount can be raised by 20% if a player has been playing 5 official games for any national teams in the last 2 years.

Provisions in the Civil Code regarding the preliminary breach of the civil contract (work contract) can not be applied to a relationship between a player and a club. Articles 627 and 628 of the Civil Code talk about the preliminary breach of the work contract.

If a player enters into an employment relationship (by entering into employment contract for a specific period of time) Article 77 of the Labour Code determines termination of this contract. The contract for a specific period of time terminates:

4. when the time period specified in the contract is over or
5. when the work is done or
6. when an objective reason is not there anymore .

Employment contract can terminate before the end of the agreed period only if:

1. both parties agree on termination of the contract or
2. in case of other reasons for termination of the contract decided by the Employment Law.

Hence, national employment law and national civil law do not regulate redemption fees in Slovenia. The only system in place at the moment that mentions the payment of fees when a player transfers to another club is the internal regulation of the Slovenian Football Association. Therefore, the system to regulate redemption fees in Slovenia should be established on the level of National Employment Law to form the basis for payment transfer fees on the level of national law and not on the level of association rules.

#### **1.4. Training compensation for young players**

Chapter VII. of the FIFA Regulations for the Status and Transfer of Players details the training compensation for young players. Article 13 states that a player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training occurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. The calculation of the amount of compensation shall be based on the years between 12 and the age when it is established that the player actually completed his training.

When a first contract as a professional player is being signed, a sum of compensation shall be paid to the clubs involved in the training and education of the player.

Compensation shall be paid, according to Article 15 of the FIFA Regulations, each time a player changes clubs up to the time his training and education is complete, which, as a general rule, occurs when the player reaches the age of 23.

When a player moves as a non-amateur at the end of his contract but before reaching 23, the amount of compensation shall be limited to compensation for training and education, calculated in accordance with the parameters set out in the Application Regulations.

Regulation on registration and status of the players (Pravilnik o registraciji in statusu igralcev) issued by the football Association of Slovenia does not mention training compensation for young players, hence this compensation is not being exercised in Slovenia.

## **2. What did the candidate state already do to implement the Directive 1999/70/EC?**

To prevent abuse arising from the use of successive fixed-term contracts or relationships, Member States shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes into account the needs of specific sectors by using one or more of the following measures:

- (d) objective reasons justifying the renewal of such contracts or relationships;
- (e) the maximum total duration of successive fixed-term employment contracts or relationships;
- (f) the number of renewals of such contracts or relationships.

Member States shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

- (c) shall be regarded as successive;
- (b) shall be deemed to be contracts or relationships of indefinite duration.

Slovenian legislator decided to introduce the following measure in order to prevent abuse arising from the use of successive fixed-term contracts:

Paragraph 2 of Article 53 of the Labour Code regulates the maximum total duration of successive fixed-term employment contract when it states:

The employer is **not allowed** to enter into one or more successive fixed-term contracts with the same employee or regarding the same work, for total duration of such contract(s) being **more than 2 years**, except in the cases, determined by law, or in case the fixed-term contract is entered into:

- a. for temporary replacement of an employee;
- b. for employment of foreigners or a person without a citizenship who has a working permit;
- c. for management;
- d. for elected or appointed persons who depend on the mandate.

If the relationship terminates for the period of time no longer than 3 months, the maximum duration of 2 years is still applicable.

The Slovenian legislator also determined under what conditions fixed-term employment contracts or relationships shall be deemed to be contracts or relationships of indefinite duration. In Article 54 the consequences of illegally concluded fixed-term employment contracts are detailed as follows.

If a fixed-term contract is entered into, not in accordance with the law or if the employee continues to perform his work after the time specified in the employment contract, it is assumed that employee entered into a employment contract for an indefinite period of time.

### **3. The possibility of entering into social dialogue in slovenia; the existance of a separate entity, independent from the national football federation to enter into collective bargaining agreement.**

#### **3.1. Social partners in professional football in Slovenia**

The organisation representing the collectivity of professional football clubs on subjects of labour and social dialogue with the players in Slovenia is The Association of football clubs of

1. Slovenian football League (Združenje nogometnih klubov 1. slovenske nogometne lige), established in 1994. According to article 9 of its Statutes, the objectives of the Association are the following:

- to coordinate the activities that promote the progress of football
- to make football more popular through the media
- to cooperate with other domestic and foreign football associations and clubs
- to deal with all the questions that are in the common interest of all the clubs and their players and other sports workers
- to coordinate opinions and different views on questions dealt by the National Football Association and are of vital importance for the Association and the clubs
- to deal with the financial matters of the players
- to organize and lead the competitions in 1. national football league

In article 10 of the Statue it is stated that those objectives represent the common interest of all the clubs that are members of the Associations. This organisation only represents **professional clubs in the 1<sup>st</sup> national league**. According to the Statutes of the Association of football clubs in Slovenia and to the Statutes of the Football Association of Slovenia, the employers' association is independent from the national football association. Clubs in 1. Slovenian football league are not members of the national federation, the members are associations of clubs in each separate municipality in Slovenia. Therefore, The Association of football clubs of 1. Slovenian football league (The League) presents an independent entity that could be the social partner representing clubs in the social dialogue and entering into a collective bargaining agreement. The League's articles of association do not actually contain any specific provisions, which would allow the organisation to enter into a collective labour agreement. Therefore, it is not clear whether the League is empowered to provide representation for the employers in Slovenian professional football.

However, among the goals and objectives of the Leagues listed in Article 9 of the League's articles of association, one might find it strange that the League is competent to solve the questions that are in the common interests of all the clubs and their players. What happens when the interests of the clubs do not match the interests of the players? The League's members can only be clubs of the first league, therefore, the League should be acting as the representative of these clubs, hence, act in the interest of these clubs only.

On the employees' side, The Union of Professional Football Players of Slovenia (**Sindikat Profesionalnih igralcev nogometa Slovenije - SPINS**) was established in October 2003 when it was agreed only to be a representative body for the 1st League players. The Law on the Representativeness details that a Union to be representative it needs to have minimum 15% members from a certain industry sector. At the moment it already meets this criterion since it has 260 full members at this point (out of 300 professional players, it would need at least 50 so as to satisfy the representativeness criteria). Their objective in the future is to represent all football players in Slovenia.

SPINS also became a candidate member of FIFPro at the end of 2003. By October 2004 we will become a full member of the FIFPro. Hence, the Union (SPINS) presents a social partner for potential social dialogue in professional football.

The main objective of the Union is to change, modify the Rules of the Football Association of Slovenia in a direction of establishing an independent tribunal (arbitrage) in line with FIFA rules. Also FIFA rules on assuring stability of the contract, rules on preliminary breach of the contract should be implemented into the Rules of the Association (NZS: Nogometna Zveza

Slovenije). Another objective of the Union is to draft a standard contract for players who are amateurs and non-amateurs. Players usually do not even read those contracts before signing them, most of the times contracts are full of provisions unfavorable to players. To draft one sample of the contract that would include variables, such as the amount of payment, transfer fees, etc. The amateurs do not sign contracts in Slovenia, what they sign in practice is a registration form, hence they do not have any legal base to turn to in case the club is not fulfilling its obligations. Amateur player in Slovenia is a player who is only entitled to get costs of playing football refunded by the club and does not receive any salary for exercising his activity. On the other hand, the club can require a transfer fee in case of a player's transfer. Another objective of the Union is to provide for tax exemptions by establishing a retirement fund into which players would be allowed to invest up to 50% of their income each month and this investment would not be taxable until the player ends his career and decides to end his savings. In line with that, the Union is proposing an amendment to the Law on a personal income. We have based our proposal on the Dutch example. Following objective is to adapt the status of the non-amateurs in line of entering into relationship for indefinite period of time. Personally I see a professional sportsman is a person who is so actively involved into exercising certain activity that this prevents him from being engaged into any other regular employment activity at the same time. Employment contracts in the Slovenian football League do not exist anymore. All of the clubs have moved towards the status of professional athletes, where a professional football player (or any other professional athlete) is practically equalized with the status of a single-man company. The burden of payment of social contributions has shifted from the club to the player.

The Union of Professional Football Players is requesting the following modifications in the Slovenian professional football sector:

1. **A creation of an independent arbitration tribunal:** there are negotiations going on between the SPINS and the Committee for regulations within the Football Federation of Slovenia, regarding the foundation of such arbitrage. SPINS has been advocating for the need of such tribunal since its establishment, which will ensure equal protection of the interests of the players on one side as well as the clubs on the other, hence the representation ratio of the player in such arbitration tribunal should be 50%. In case of number of arbiters would be odd, the president of the arbitrage should not be appointed among members of either Football Federation of Slovenia nor the Association of the 1<sup>st</sup> Division Clubs of Slovenia. The practice until now has been as follows: when a club was no longer fulfilling its contractual responsibilities towards a player, the player had the right to bring his case in front of the Committee for the Status of the players established within the Association of 1<sup>st</sup> Division Clubs in Slovenia to demand a termination of the contract. According to the established practice of the work of the referred Committee, a player does not possess the right to demand compensation for breach of contract from the club nor has the right to demand the debt to be paid to him by the club. It is more than obvious now that the clubs' argument that 80% of the cases brought in front of this Committee were decided in favour of the players, is not that convincing, since according to the explanation given above, it is not in the interest of the players to get such decisions. Interests of players would be properly protected only if the Committee would decide that the contract has to be respected and the clubs are liable to pay their debts according to their contractual obligations. Under the new Rules of Procedure each party that preliminarily breaches the contract shall be liable (economically and disciplinary).

2. **A Standard Model contract** is needed in Slovenian football for the proper protections of the interests of the players. This kind of model contract should be adopted and made mandatory. The Union is demanding for recognition of collective contracts for the football sector as a result of common efforts and compromise coming from both sides, representatives of the players and the clubs as their counterparts. A compromise should be achieved when defining the rights and obligations of both, players and the clubs.
3. **Status of the players** is completely undefined, especially in respect to the new Law on personal income (*Zakon o dohodnini*) that will be in force since January 2005. Until now, a very favourable exemption was applicable to sportsmen and sportswomen regarding the percentage of their income that formed a tax base. Only 60% of the total income was regarded as the tax base, the 40% was treated as costs (this percentage did not have to be proved, it was admitted in advance for all sportsmen). Hence, the tax rate was applied to only 60% of all the payments received and sportsmen were not burdened with proving any occurred costs. The new system consequently abolishes the meaning and signification of the status of professional athlete when it actually directs, leads the clubs to evade taxes by fictitious cost increases. According to the Players' Union the main problem of the present regulation is the obligation of paying social contributions put upon the players even when the clubs have not fulfil their contractual obligations (even if the player has not received the payment from his club, he is still obliged to pay his social contributions). Consequently, it is quite understandable that certain players with such experiences do not wish to maintain the status of professional athlete.
4. **Tax legislation:** The Players' Union (SPINS) in collaboration with the Union of Athletes of Slovenia has partially succeeded with its proposal for tax exemption for investing into special funds. Even though, this is not sufficient for the social status of football players. The Association of the 1<sup>st</sup> Division Football Clubs has not yet responded to this request. The Players' Union is basing its request and proposal on comparative analysis of different EU systems made in collaboration with FIFPro.
5. **Financial Requirements:** The SPINS' representatives requested negotiations with the Association of the 1<sup>st</sup> Division Football Clubs and the Football Federation of Slovenia. Financial independence is needed for professional and organised activity. SPINS' budget is not sufficient to even cover the material costs of its activities. For the functioning of the Union a stable source of financing should be established as well as for the proper functioning of the arbitrage tribunal that requires involvement and dedication of specific professionals. The Players' Union also requires the creation of specific funds to help those players who lost their contract, injured themselves, etc. Neither the Association of the 1<sup>st</sup> Division Clubs nor the Football Federation put any importance to this matter. The Union (SPINS) is of opinion that this is the example in other EU countries as well as around the world since clubs as well as federations are the ones that gain from commercial aspects of sports (for example, they are the beneficiaries of the image rights of the players). Consequently, they should also take care for protection and safety of the players when in troubles.

The Players' Union emphasizes that by increasing transparent relationships between all actors in the football arena (also the fans) will prevent the future conflicts, increase the general interest for sport and attract more potential sponsors for the Slovenian football sector overall.

### **3.2 Recent trouble in entering into a social dialogue**

Due to the failure to develop any constructive dialogue with the Association of the 1<sup>st</sup> division Clubs, the Union of Professional football players in Slovenia (SPINS) decided to use the ultimate measure and announced a general strike in September 2004. According to president of the Players' Union, Mr. Dejan Stefanovic, the board of Slovenian National Football Association discussed none of the proposals from SPINS in the past year, that is, since the formation of the Players' Union. A few meetings have been held regarding the implementation of FIFA rules into the national regulations, but the proposal is still left in the draft stage. Hence, the Players' Union SPINS felt that the only alternative left for them is to announce a strike. Among the demands from the SPINS side are the following requests:

- A creation of an independent arbitration tribunal;
- Start of negotiations for the collective bargaining agreement;
- Resolving labour and tax status of professional football players;
- Adjustment of training compensations for players younger than 23 years.

Recently SPINS has formed an alliance with Association of Slovenian Sports Unions (ZSSS). As a result to the SPINS' strike, the Football Association of Slovenia has officially recognised SPINS as an equal partner to the Association of Football Clubs of the 1<sup>st</sup> Division and therefore gave the Players' Union another, now formal ground for negotiations with their counterpart organisation.

## **4. Additional specifics of Slovenian professional sport**

### **4.1. Reasoning behind the status of professional athlete under Slovenian income tax legislation**

According to the Players' Union, the current tax system that applies to the taxation of professional athletes who have this status according to the Article 53 of the Law on personal income should be sustained also in the newly proposed income tax system applicable after January 2005.

The current income tax system that applies for athletes allows a preferential treatment. It provides for 40% of the total income to be regarded as costs without proving they actually occurred, hence, only 60% of the income is subject to tax. The tax rate applied on that tax base is then 30%. This provides for a preferential system of taxation, especially in comparison with other Member States of EU. Another preferential treatment provided by the law is the simplified accountancy standards (lower strictness that consequently means lower costs born by athletes). Moreover, the current law provides for another exemption: the above outlined system applies for all income of the athlete, whereas according to newly proposed amendments to the law this preferential treatment would only apply for the limited amount of income (maximum 3 mil SIT annual).

The main weakness of the current tax system is in the payment of the social security premium for health and pension insurance. A sportsman or a sportswoman with his professional status of an athlete is obliged to pay those premiums on a monthly or periodical basis irrespective to the fact whether he receives income from sports activity or not. In case of an athlete not receiving any payment for conducting sport activities for a certain period of time, he is still under an obligation to pay his social contributions. If he fails to fulfil this obligation he is sanctioned and also deprived from social rights.

For all the above stated reasons the Players' Union is of opinion that the new income tax system does not take into account all efforts and results for transparent taxation of the incomes of athletes. This may result in anarchy on this field that will result in a grey economy. Consequently this will decrease the efficiency in tax payments and in functioning of sport in general. For this reason it would be desirable to also keep the currently functioning tax system in the new legislation. However, a significant deficiency that obliges the athletes to pay social contributions also in times when they do not receive any income should be amended according to the opinion of the Players' Union.

#### **4.2. National sports regulatory framework**

In order to determine the nature and scope of state intervention in sports, the role the government plays in sport and the legislative tools it uses to implement the sports policies has to be investigated. In Europe, two major sports legislation models are reported: interventionist and non-interventionist sports legislation models. Slovenia opted for an interventionist sport legislation model.

Sport is not included in the Slovenian Constitution. The state has taken the responsibility for the development of sport. Until 1998, in the absence of a law on sport, sport has been mostly regulated through a recent Associations Law (1995). For the first time in history, Slovenia had introduced its own National Programme of Sport to be supported by sports legislation that was adopted by Parliament in April 1998. Slovenia puts sport under undefined legislative regulation because of the public interest inherent to sport. The country decided to apply the interventionist sport legislation model that had continued under the provisions of the new sports legislation. The interventionist model offers the possible advantage of regularity in policy and accountability based on statutory provisions. With their roles included in legal rules, the interventionist model can offer a better tool for the accountability of the government and the sports movement. It does not offer flexibility in policy-making, that is one of the advantages of the non-interventionist model. However, by a well-drafted sports law, well-designed provisions could ensure the flexibility needed to accommodate new sports disciplines.

#### **4.3. Government jurisdiction over sport**

Slovenia has a centralised legal system. Under the provisions of the new Sports Act of 1998, the national government intends to implement a "National programme" for sport. This approach seems to indicate a centralised approach to sports policy included in the new legislation. The government through the national budget currently supports sports activities. The new legislation defines the responsibilities for sport of the national and local authorities. In 1993 the Law on Local Communities was adopted. It reorganised local government intervention in the sports sector. The Law on Local Community Financing from 1994 is of particular importance for sport. The law envisages financial subsidies from the central budget in the event that local authorities fail to provide sufficient funds for basic sports programmes. This provision indicates the relative importance of the central government in the sport affairs. Only the larger communities are able to implement and fund an independent sport programmes. The political division of the country into a higher number of communities may have increased the need for intervention from central government. Smaller communities may not have the critical mass necessary to promote and implement Slovenia's national sports programme.

#### **4.4. Consolidation of the national sports movement**

Consolidated sports movements are deemed to be those that include the National Olympic Committee and the national sports confederation under one umbrella. All other sports movements are deemed to be non-consolidated. According to this definition, Slovenia has a consolidated sports movement. The Olympic Committee of Slovenia and the Association of Sports Federations merged in 1994. The aims and objectives of this consolidated organisation are mostly to develop competitive and elite sports activities. The Slovenian Sports Union, which promotes exclusively sport for all activities at national and local level, is not a member of the consolidated umbrella organisation.

The new Slovenian sports law defines terms such as “professional athlete” and “private sport worker”. This new terminology allows for greater recognition of sport professionals within the country’s legal and administrative system.

#### **4.5 Financing**

The Slovenian law on sport defines the financial guidelines applicable to state funding of the national sports movement. In particular, the new law provides for state funding for the National Olympic Committee. The goal of Slovenian government is to attain a balanced level of sport development. The public administration’s policy is to put the country in a similar position to other developed European countries, where 2-4 % of the GNP is attributable to sports activities.

### **2.3.3. Conference report (Ljubljana 25 March 2004)**

#### *Set-up of the meeting*

This meeting was intended to cover Slovenia, Hungary and Croatia. The location of Slovenian capital was chosen due to the following reasons: firstly, the established support for the projects from the Slovenian Association of the 1<sup>st</sup> League Football Clubs (*Zdruzenje klubov 1 Slovenske nogometne lige*) and secondly, previously established contacts with Slovenian Football Players' Union.

For the meeting we had been able to use the Round Table Session model, as provided in the Work Program in the Application for a grant under budget heading B3-4000. The number of invitations sent out was 163, from which we have received 22 registrations for participation. The cooperation with the President of the Players' Union as well as with the President of the Committee on the Status of players within the Association of the 1<sup>st</sup> League Clubs has helped significantly to inform and attract the football world at large about the project.

#### *Participants*

**Olympic Committee of Slovenia** - Mr. Tone Jagodic

**Olympic Committee of Slovenia** (President) - Mr. Janez Kocjancic

**Football Association of Slovenia** (Vice-President) - Dr. Marko Ilesic

**Association of the Football Clubs, Committee on the Status of the Players** - Ms. Maja Dimkovski

**Association of the 1<sup>st</sup> League Football Clubs** (Vice-President) - Mr. Andrej Zalar

**Players' Union - SPINS** - (President) - Mr. Dejan Stefanovic

**University of Ljubljana, Faculty of Law** (Labour Law Professor) - Dr. Polonca Koncar

**FC CMC Publikum** - Tone Ambrozic

**FC CMC Publikum** - B. Hendrickx

**FC OLIMPIJA** - Miro Gavez

**Law Office Simic & Partners** - Simica Mitrovic

**Players Agent** - Zlatko Tkalec

**ISM d.o.o.** - M. Mlakar

Nikola Tomac

Tone Hrovatic

**Sport Agency:** Aleksander Gasser

**Sport Journal EKIPA** - J. Zavrsnik

**T.M.C. Asser Institute:** Ms. Dovile Vaigauskaite (EU law expert), Ms. Tina Drolec (subcontracted expert)

**EFFC:** Mr. Roberto Branco Martins (General Manager)

**Edge Hill College:** Dr. Richard Parrish

**CHAIR: Dr. Richard Parrish**

Chairman of the Session, Mr. Richard Parrish, welcomes participants and introduces the organizing team of the conference. He briefly explains the purpose and history of the Social Dialogue II project, emphasizing it is a follow-up to the Social Dialogue I project undertaken by EFFC. The chairman thanks the attendees for the participation and introduces the speakers. The first part of the conference, Mr. Richard Parrish presents his speech<sup>63</sup>, followed by the presentation of Mr. Roberto Branco Martins on the “Results of the comparative legal study on labour relations and contracts in professional football in Europe and the promotion of professional football clubs’ interests at the European Level”.

Ms. Tina Drolec, who presented the conclusions of the initial comparative research of regulation of professional football and sport in general in Slovenia and Hungary, followed Mr. Martins.<sup>64</sup> Pilot Studies for Slovenia and Hungary were also included in the informational packages distributed among the attendees of the Session.

After the coffee break the following guest speakers were invited by the Chairman to present their ideas, comments, perspectives on the above outlined presentations.

*List of the guest speakers:*

- **Dr. Marko Ilesic**, Vice president of Football Association of Slovenia, Vice-president of Olympic Committee of Slovenia, Dean of Ljubljana Law School;
- **Dejan Stefanovic**, The president of the Union of professional football players of Slovenia (SPINS - Sindikat profesionalnih igralcev nogometa Slovenije);
- **Maja Dimkovski**, The president of the Committee on the status of the players within Association of 1<sup>st</sup> League of Slovenian Football clubs (Zdruzenje 1. SNL)

**Dr. Marko Ilesic**, Vice president of Football Association of Slovenia, Vice-president of Olympic Committee of Slovenia, Dean of Ljubljana Law School

“The question I pose first is whether we can talk about two speed Europe in sports? In sports we have a great deal of autonomy, and also a field that is cogently regulated. On one side we are facing the sporting rules defined by the sports organization and also legal rules regulated, defined by the state itself. We cannot say that sport is not within the law. Jurisprudence shows

<sup>63</sup> The contents of his presentation can be found in part 2 of the Final Report “Speakers”

<sup>64</sup> The in-dept results of the study can be found in the Country Final Report (See Slovenia and Hungary Final Reports).

that there are some legal principles that have to be applied in sports, however, there exist a great area that has to be left to the sports organizations that are international, hence, not only European, but on the international, world level. The conflict between national rules of the respective state and regional (European) rules is present. Hence, we are dealing with a dualism of relationships. In Bosman, FIFA tried to find a solution that would correspond with both, European rules and rules existing in the rest of the world.

The fact that sport enjoys its autonomy is positive. Personally I am strictly against over regulating sport through some form of law, especially since general legal principles are sufficient to regulate those relationships in sports. I believe that we should leave sport itself to freely regulate relations as long as it stays within the framework of general legal principles.

As far as the social dialogue is concerned, I leave aside who could be the potential partners in the social dialogue; it is a useful tool to find solutions for many arising difficulties. Things are a little bit sensitive on this matter, though, due to the fact that national and international, regional sport associations have functioned under the preposition that they represent all the interests, both of clubs and players, also general football public, like fans, etc. I believe that a dialogue should be achieved here.

As far as problems in professional sports are concerned, the question arises what is professional football, what professional player is and what a professional club is. I believe people do not know what they mean by that. Legal order does not define those terms on purpose. In Slovenia, the Law on Sport Activities avoids defining a term “professional”, “amateur” sportsmen. This has been done intentionally, because fitting relationships between a player and a club in some kind of patterns that are set in advance would only limit the possibility of creating different kind of relationships. When I say that, I do not only have professional football in mind, but also other sports. Slovenia is a typical state where many different kinds of sports are being promoted and exercised. Why should we offer recipes in advance if different sports require different regulation and if for skiers different relationships suit better than for football players, for instance.

Regarding commercial professionalism, we need to keep in mind that relations in individual sports can be totally different than in collective. Legal relationships are completely different in golf than in formula 1, for instance. Autonomous football regulations, rules of FIFA and UEFA, only define categories of non-amateur and amateur players with specific consequences regarding transfers, transfer fees, etc. Players are separated between categories; the same is not true for clubs. To talk about professional clubs and professional leagues in Slovenia is legally incorrect, since these terms are not defined. We suppose that clubs in the 1<sup>st</sup> league are professional; maybe they are, maybe they are not. No one requires that from them. Personally, I do not know what a term “professional” would mean and therefore I do not dare to give a certain definition of that term. What does it mean, a professional league? Maybe only professional players, who have working relationships with their respective clubs, can play in it? Legal regulation in Slovenia does not require the establishment of a certain professional relationship between a player and a club. The relationship can be of any nature. The only requirement is the registration of the player and some kind of contractual base, if the player is not a non-amateur. No matter how the club is organized, no matter what the nature of the relationship that club enters with its respective players is, even if the club has no contractual engaged players, it can still be a 1<sup>st</sup> league club and vice versa. Generalizing increases the danger of legal traps. In Slovenia there is no such thing as professional club or professional league in football.

Contractual relations between clubs and players are not regulated in Slovenian legislation; hence they could be of any nature. The rules of certain sports association can propose different kinds of contracts, these, however are only samples of different contracts. Contractual relations

in Slovenia, as in the rest of the world are a part of the principle of contractual freedom, autonomy of the parties. Parties can agree for any kind of relationship that best suits their specific relationship; hence, a club and a player enjoy the same kind of freedom. When we look at the practical part, good and bad contracts exist, some can be drafted mainly for the benefit of the clubs since players usually sign whatever is brought before them, without even reading the contract much less finding a legal advice before putting a signature down on a contract presented to them by the club. There is no doubt, however, that a player enjoys a certain level of legal protection. I want to let alone the question whether this protection would be better achieved if offered by civil courts, sports courts or arbitration. Legal protection on the basis of general legal principles that is present in a certain legal order by no doubt does exist. In the practical matters, players in Slovenia enter into different contracts with the clubs, these kinds of contracts are usually called “contract of work”, but in any case they are not called contracts of employment. This alone, however, does not mean that legally they are not really employment contracts. Following the legal principle *falsa demonstracia non nocet*, the nature of any legal relationship is not judged by the terms used or the name of the contract, but by its context. If there can be concluded from the contract that it is a non-temporal relationship with all the elements of the employment relationship, any court or tax authority can regard such a relationship of employment nature and such a contract as employment contract. What is important here is to be aware that general legal rules, also the non-written ones, can and should be used in sports in general, also in football.”

**Dejan Stefanovic**, The president of the Union of professional football players of Slovenia (SPINS - Sindikat profesionalnih igralcev nogometa Slovenije)

“The Union of professional football players of Slovenia was established in October 2003, when it was agreed only to be a representative body for the 1st League players. The Law on the Representativeness details that a Union to be representative it needs to have minimum 15% members from a certain industry sector. At the moment we already satisfy this criterion since we have 70 full members at this point (out of 300 professional players, we would need at least 50 so as to satisfy the representativeness criterion).

However, I would like to emphasize that our objective in the future is to represent all football players in Slovenia. By October 2004 we will become a full member of the FIFPro. The main objective of the Union is to change, modify the Rules of the Football Association of Slovenia in a direction of establishing an independent tribunal (arbitrage) in line with FIFA rules. Also FIFA rules on assuring stability of the contract, rules on preliminary breach of the contract should be implemented into the Rules of the Association (NZS: Nogometna Zveza Slovenije). Another objective of the Union is to draft a standard contract for players who are amateurs and non-amateurs. Players usually do not even read their contracts before signing them, most of the times contracts are full with provisions unfavorable to the players. To draft one sample of the contract that would include variables, such as the amount of payment, transfer fees, etc. The amateurs do not sign contracts in Slovenia, what they sign in practice is a registration form, hence they do not have any legal base to turn to in case the club is not fulfilling its obligations. An amateur player in Slovenia is a player who is only entitled to get costs of playing football refunded by the club and does not receive any salary for exercising his activity. On the other hand, the club can require the transfer fee in case of a player’s transfer. Another objective of the Union is to provide for tax exemptions by establishing a retirement fund into which players would be allowed to invest up to 50% of their income each month and this investment would not be taxable until the player would end his career and decides to end

his savings. In line with that, the Union is proposing an amendment to the Law on a personal income. We have based our proposal on the Dutch example.

Following objective is to adapt the status of the non-amateurs in line of entering into relationship for indefinite period of time. Personally I see a professional sportsman is a person who is so actively involved into exercising certain activity that this unables him to get engaged into any other regular employment activity. Employment contracts in Slovenian football League do not exist any more. All of the clubs moved towards the status of professional athletes, where a professional football player (or any other professional athlete) is practically equalized with a status of a single-man company. The burden of payment of social contributions has shifted from the club to the player.

Also an amendment to the Law on Sports activity should be made, so as the law also regulates employment relationships in sports. The law should offer certain basic rights of players and some basic support. This should be regulated for all sports, not only for footballers. All sportsmen should get equally get a certain basic level of rights within the law.

A unified system of legal protection should be awarded to all sportsmen by introducing an independent arbitrage-like system. The civil courts do not offer enough legal security, especially not in a system where you have to wait for four years to get a decision that in the end cannot be enforced anyway.

The situation in Slovenia at this moment is as follows:

- Clubs are facing severe financial difficulties and as a consequence of this many 1st league players receive social aid from the state;
- The current committee for the status of the players within the League is incapable of enforcing the fulfillment of obligations from the clubs to players. If the club preliminary terminates the contract, players do not have rights for compensation. As a consequence, high-quality footballers are choosing to quit playing football, and Slovenia is loosing valuable players due to that;
- Inappropriate contracts between players and clubs: the blame is not only on the club, also players should be held responsible to a certain extend. Players are and stay unfamiliar with their rights, obligations, etc.
- Players are forced to sign a statement, denouncing their rights of previous salaries that clubs were not able to pay: blackmailing, abuse;
- Contracts posses clauses of abuse: for instance in cases of permanent incapability of performing the activity, the contract will be unilaterally terminated by the club; in cases of injury that lasts more than one month, player's salary will decrease for 50%; the club is able to unilaterally breach the contract if the coach feels that the player is not performing well enough or is not satisfying all criteria set by the coach (criteria for that conclusion are not decided in advance and approved upfront by the player);
- Sanctions are defined after entering into a contractual relationship; they are determined without consenting the player (they could be up to 6 months payment of the player, sometimes the sanction can be higher than a player's total income);

These kind of clauses were incorporated in the sample contract that the League was distributing among all the clubs.”

**Maja Dimkovski**, The president of the Committee on the status of the players within Association of 1<sup>st</sup> League of Slovenian Football clubs (Zdruzenje 1. SNL)

“The committee on the status of players within the League is an independent committee. The competences of the Committee are defined by the Rules of the Football Association of Slovenia. The committee tries to solve disputes arising before the committee independently. However, the committee is not competent to decide that clubs should fulfill the obligations they have towards the players. This kind of protection is not afforded to players with this committee.

Contracts that players enter into are more favourable towards the club’s interests than to the interests of the players. Also clubs have expressed some initiative to draft some kind of a standard contract. However, we need to keep in mind that contractual freedom gives parties complete freedom to regulate their relationships the way they wish to. If players believe that a standard contract would increase their legal protection, also the League would be willing to settle for such a solution.

The question whether a social dialogue is possible in Slovenian football sector remains unanswered. Formally and legally speaking, all contractual relations in Slovenian football are of employment nature. According to statistics, only one player is an employee and, hence, only one club in Slovenia is an employer (out of 12 1st league clubs). The rest are either: professional sportsmen, organized as a one-men company, students, and some of them don’t even have any proper status whatsoever.

Theoretically, a social dialogue is possible in Slovenia between social partners. Sooner or later, some compromise and/or some social rights will have to be granted to players in order for Slovenian football to survive. Finally, as a EU member state since May 1st 2004 onwards, we will also have to comply with the European rules regarding sport regulation.”

The above outlined presentations were followed by discussion and questions and answers by participants. To conclude, the chair Mr. Richard Parrish summarized the findings of the conference and thanked the speakers and the participants for the constructive discussion.

## 2.4. Poland

### 2.4.1. Country report

The following report consists of four sections. In section 1 the legal basis for the relationship between a player and a club is detailed. The basic legal act that regulates the issue of the grounds for the employment of professional athletes in Poland (Act on Physical Culture) is presented. Relevant provisions of the Labour Code as well as the Civil Code are detailed in this section. The distinctive nature of the professional athlete's legal status in comparison with the legal status of an unprofessional athlete is outlined. Another point of the report is to single out the differences between the legal status of professional athletes employed on the ground of a contract of employment and the legal status of those who are employed on the ground of a civil law contract.

**Section 2 draws the conclusion whether Poland has implemented correctly the revised Directive 1999/70/EC and details what measures has the member state introduced in order to prevent the abuse from the use of successive fixed-term contracts.**

Section 3 examines the possibility of entering into a Social Dialogue in the professional football sector in Poland. Potential social partners in the football sector are revised. Section 4 outlines the individual labour dispute resolution mechanism in Poland.

#### 1. What is the legal basis for the relationship between a player and a club?

In Poland - professional sportsmen can enter into a relationship with a club on the ground of **labour law** contracts (in this situation - common labor law regulates relationships between players and clubs) or **civil law** contracts. To breach any of the specified types contracts the internal regulation of PZPN (Polish Football Federation) should firstly be applied for. In the main regulations - internal law of PZPN is the same as Polish labour law. Hence, the Labour Code's articles specifying breach of contract are applied in case of preliminary breach of the labor contract (employment contract).

The very basic legal act regulating the issue of the grounds for employment of professional athletes in Poland is the Act on Physical Culture. The authors of the document give two legal grounds for employing professional athletes: a contract of employment and a civil law contract. The Act on Physical Culture does not explain in which cases contracts of employment or civil law contracts should be chosen. This means that parties concerned are free to choose the ground for employment in professional sports. However, this freedom is not unlimited. In relation to the professional athletes, just like in relation to everybody else, Article 22, Paragraph 1 of the Labour Code is applied. It states that by the establishment of an employment relationship the employee shall oblige himself to perform specified work for the employer on request and the employer shall oblige himself to employ the employee for remuneration.

Paragraph 2 of Article 22 of the Labor Code continues that employment on the conditions specified in Paragraph 1 shall be considered employment within the scope of an employment relationship regardless the name of the contract made between the parties.

The rule has been established to prevent employers from circumventing the duties that result from the Labor Code. Simultaneously, the rule gives a labour status to the athletes employed on the ground of civil law contracts, under the circumstances corresponding to the definition of employment relationship.

The problem of choosing appropriate grounds for the employment of a professional athlete is fairly complex. On the one hand, employment contracts provide professional athletes with full

social rights' protection. On the other hand, unusual duties of athletes with their specific workout and competitions' schedules, differ much from ordinary employees' duties described in the Labour Code. The regulations of the Labour Code including working time, place of work and salary cannot be applied to the real situation of a professional athlete and his or her rights and duties. It does not mean that the contract of employment is useless for the ground for employment of professional athletes. However, it implies that because of the lack of a particular act regulating the labour status of a professional athlete, the application of the rules of the Labour Code proves to be difficult and doubtful.

**Article 25 of the Labour Code** in paragraph 1 details different types of employment relationship. It specifies that employment contracts can be concluded for indefinite periods of time, for specified periods of time or for the time of performing specific task. Therefore, this represents the legal base if the employment contract is concluded.

**Article 734 of the XXI Chapter of the Civil Code** regulates the commission contract. Paragraph 1 states that by concluding the commission contract commissioner undertakes to effect specified legal transaction for principal. According to Article 735, a commissioner is entitled to remuneration for having performed the commissioned task, unless it seems from the contract or circumstances that he undertook to perform the commissioned task free of charge.

**Article 627 of the Civil Code** further details that by concluding the contract of task, the party accepting the order undertakes to complete a specific task or specific work and the party giving the order undertakes to pay remuneration.

According to the **Act on Physical Culture**, Polish Sporting Unions are entitled to regulate their effective operation and the effective operation of the athletic clubs. Unfortunately, these regulations are rather scarce. Thus, the rules and regulations of Sporting Unions were the main source used in conducting this research, as well as other documents, including various contracts of employment and law courts' decisions.

One of the researching points is to present the distinctive nature of a professional athlete's legal status in comparison with the legal status of an unprofessional athlete. Another point study is to single out differences between the legal status of professional athletes employed on the ground of an employment contract and the legal status of those who are employed on the ground of civil law contracts. A part of the research focuses on seeking the answer to the question on the degree of attractiveness of these two grounds for the employment of professional athletes from the point of view of both sporting clubs and athletes.

In the legal systems of the majority of European countries, as well as in the USA, legal regulations concerning professional sports are limited to the general conditions of practicing professional sports and the grounds for the employment of professional athletes. The establishment of more detailed regulations, including the conditions of employing professional athletes, has been left to Sporting Unions.

The considerations being the subject matter of this research lead to the following conclusions: both an employment contract of and a contract for the provision of sporting services should be sustained. The responsible authorities should only place restrictions on the employers' common practice to replace employment contracts by sporting contracts. This can be achieved by introducing effective methods of applying corresponding provisions of the Labour Code, since they describe fundamental labour rights of athletes employed on the ground of a contract for the provision of sporting services. This seems to be the way to eliminate all differences in the area of social security that now exist between athletes treated as employees and athletes employed on the ground of sporting contracts.

Employing an athlete on the ground of a sporting contract should be allowed when the conditions of the contract clearly point out that it does not worsen his or her social, economic

or legal status. All these elements have to be equally taken into consideration. A sporting contract usually makes an athlete share the costs of practicing the sport, restricts his or her social security rights and makes an athlete responsible for the occupational risk connected with practicing the sport. There certainly are compensations for having only a sporting contract instead of a contract of employment and a higher salary is one of them. The negative after-effects of being employed on the ground of a sporting contract are usually diminished by additional warranty clauses concerning an athlete's insurance or by granting some social rights, such as the right to a holiday leave. A sporting contract grants an athlete much more extensive privileges related to doing his or her duties than a contract of employment. A contract of employment can be more attractive for professional athletes only when a special bill on the legal status of athletes employed on this ground is adopted. The distinctive features connected with employing a professional athlete should be clearly set off in this document. The possibility of introducing a separate regulation of professional athletes' legal status is allowed by the contents of **Article 5** of the Labour Code, which regulates that when an employment relationship of a particular group of employees is regulated by special provisions, the regulations of the Labour Code can be applied only to the cases not regulated by them. The special bill on the legal status of athletes employed on the ground of a contract of employment proposed above should contain all conditions on employing professional athletes within an employment relationship. Such a solution could help successful efforts of those professional athletes who try to lay down their employment within the employment relationship when the titles of their contracts are inconsistent with the employing conditions of a professional athlete. Summing up, the scope of the binding force of law regulating the legal status of professional athletes by internal corporate regulations should be similar to the regulations applied for other professions, such as doctors, nurses and legal counsels. The bill should regulate the most important elements of their legal status. The sporting federations internal acts would then primarily regulate the main conditions of athletes' participation in competitions as well as its organization.

### **1.1. Internal regulation with regard to redemption fees of contracts for specific periods of time / transfer fees?**

One opinion: internal regulation of the Polish Football Association should apply along with Article 471 of the Civil Law. They serve as a basis for fees or damages to be paid to the club when a player is preliminary breaking his fixed-term contract. The transfer fee is calculated according to internal regulation of the Polish Football Association. Hence, we have association's rules regulating the transfer system. The other opinion: the Act of Physical Culture and the Civil Code represent the legal basis for fees or damages to be paid for preliminary breach of the contract. There are no rules governing the calculation of transfer fees for players older than 23. For those between 12 and 23 all rules from **FIFA new transfer system** apply.

### **2. What did the candidate state already do to implement Directive 1999/70/EC?**

To prevent abuse arising from the use of successive fixed-term contracts or relationships, Member States shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors one or more of the following measures:

- (g) objective reasons justifying the renewal of such contracts or relationships;
- (h) the maximum total duration of successive fixed-term employment contracts or relationships;
- (i) the number of renewals of such contracts or relationships.

Member States shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

- (d) shall be regarded as successive;
- (e) shall be deemed to be contracts or relationships of indefinite duration.

The Polish legislator decided to introduce the following measure in order to prevent abuse arising from the use of successive fixed-term contracts:

Article 25 of the Labour Code details that entering into subsequent employment contract for a definite period shall have **legal effect** identical to entering into an employment contract for an **indefinite period**, provided that the parties have previously entered into an employment contract for a definite period **twice** for periods immediately following each other and if the interval between the termination of one employment contract and entering into the subsequent one was not longer than one month.

### **3. Social partners in professional football in Poland, the possibility of entering into social dialogue in Poland?**

In Poland PALP (Polska Autonomiczna Liga Pi<sup>3</sup>karska - Polish Independent Football League - PFL) was the organization that represented all Polish Football Clubs (in practice this means only 1<sup>st</sup> and 2<sup>nd</sup> division clubs) until March 2003, when a new body **PLP, Piłkarska Liga Polska- Polish Football League** was established and the PALP became history. This body has signed an agreement for cooperation with PZPN, Polish Football Federation and will be organizing the Polish Professional Football League from June 2005 on. This body will remain independent from Polish Football Association, PZPN.

On the employees' side we can find an organization representing the players in a dialogue with clubs and the Polish Football Federation (PZPN). This is **OZZP (Ogólnopolski Zwi<sup>1</sup>zek Zawodowy Pi<sup>3</sup>karzy - Nationwide Polish Trade Union of Professional Footballers)**. The OZZP has the same rights as normal workers unions. OZZP have right to represent all players (not only members of the OZZP) in dialogue with clubs and Polish Football Federation (PZPN).

The possibility to enter into collective bargaining agreement is therefore still on uncertain grounds in Poland. The newly formed body PLP could represent club's interests in a potential collective bargaining agreement with the employee's representative OZZP. Those two organizations on both, employers and employees side, could potentially be the social partners in entering into social dialogue. Polish Football League, PLP, is a body independent from the Polish Football Association and therefore represents a separate entity appropriate to represent clubs and enter into collective bargaining agreement on the independent basis. Still, the status of the PLP has to be revised to be able to make a conclusion about the legal and statutory power of PLP and its possibility to be a social partner in a social dialogue.

#### **4. Individual labour/ employment law disputes in Poland**

Individual disputes over claims rooted in employment relationships are governed by section 12 of the Labour Code, while the provisions of the Civil Process Code lay down a simplified judicial procedure. The procedures aim to: ensure that employees' interests receive special protection; place the two parties to a dispute on a more or less equal footing; facilitate the enforcement of employee claims; and simplify bureaucracy.

Individual labour/employment dispute cases are dealt with in first instance by the labour division of the district courts, and in the second instance by the labour division (or, occasionally, the labour and social insurance division) of the circuit courts. The courts' labour divisions deal with:

- (1) all claims arising from the employment relationship or associated with it. These involve claims that one of the parties to an employment relationship, either the employer or the employee, has violated employment/labour laws or the provisions of other statutes and/or executive instruments defining the rights and mutual duties of employers and employees, or of collective agreements and other collective bargaining arrangements rooted in labour law. Typical claims by employees relate to termination of employment, reinstatement of the employment relationship, remuneration, severance payments, benefits paid to employees preparing for retirement and claims following an employee's death pursued by their heirs. Employers, for their part, might seek compensation for damage caused by the employee or for the return of irregularly collected benefits;
- (2) claims that an employment relationship in fact exists, although there is no contract or a contract provides that no such relationship exists; and
- (3) claims for damages from the employer on the basis of laws regulating compensation with respect to accidents at work and work-related illnesses.

Various 'social organisations', including trade unions, are entitled to bring cases against employers on behalf of employees. The State Labour Inspection (Państwowa Inspekcja Pracy, PIP) is also authorised to take the employer to court in cases of termination of employment, as well as to represent employees in the course of such proceedings.

Employees lodging labour law cases with courts are not obliged to pay a registration fee, and only in exceptional circumstances can employees be asked to cover the cost of such proceedings

The law requires that both the employer and the employee should make efforts to resolve any disputes in connection with employment in an amicable manner. Before going to court, employees thus have the right to demand that a special conciliation committee hears their case, provided that such a committee exists at the workplace. The employer and the trade union organisations present in its operations convene the conciliation committee jointly. If there is no union present at the workplace, the employer convenes the committee by itself, with the approval of the employees. The employer consults with the unions on the principles and procedures for the establishment of the committee, the number of its members, and its period of office (or alternately defines itself with the prior approval of the employees). The following are barred from being members of the conciliation committee: people managing the employing operation on behalf of the employer; the organisation's chief financial officer and in-house lawyer; and people charged with personnel, employment and payroll matters. In conciliation proceedings, the general rule is that trade unions may represent the interests only of their members

The conciliation committee considers disputes at the request of the employee. It endeavours to resolve the dispute by way of amicable agreement within 14 days of the request's submission. Where no such agreement can be reached, the committee refers the matter to the labour division of the relevant court.

There are at least two aspects of court proceedings in labour/employment dispute cases that currently give rise to controversy.

The first perceived problem concerns the duration of the proceedings. Although the simplified rules for civil procedures apply to labour disputes, a proliferation of new cases has been engendering fears that such disputes can not be addressed with the expediency that they merit. The reality is that, quite often, a ruling handed down in such a case after several months' delay may be difficult to implement, for instance due to the fact that the employer has been liquidated in the meantime.

Secondly, employers have also been complaining about some elements of the system, taking exception to what they consider to be the privileged position of employees. Employers point to the low cost to employees of bringing cases to court (see above under 'Number of cases/disputes and costs') and state that employees are thus not reluctant to take their claims before the courts, even in cases where their chances of effectively enforcing them are slim.

## 2.4.2. Conference report (Warsaw, 2 April 2004)

### *Set-up of the meeting*

Due to the size of the country, the event held in Poland was exclusively intended for the Polish sport sector, without including any other neighboring regions. Additionally, what made this event exceptional was the involvement of the Polish Sports Confederation and Polish Sports Law Association. This at the end resulted in a considerably great number of participants; for the conference there were 80 registrations.

The type of the event intended to use was the Round Table Session, which eventually became the Conference, mainly because of the great number of the people that attended the event.

The speakers invited to present the papers at the conference were:

- Dr Andrzej J. Szwarc - President of the Polish Sports Law Association
- Mr Andrzej Krasnicki - President of Polish Sports Law Association
- Dr Richard Parrish - Senior Lecturer in Law at Edge Hill College, United Kingdom
- Mr Roberto Branco Martins - General Manager of the EFFC Project and researcher at Asser Institute
- Mr Marian Rudnik - Polish Sports Confederation
- Dr Andrzej Wach - Polish Football Association

### *Participants*

**Parliamentary Physical Education and Sport Committee** - Baczewski Andrzej, Pietrzyk Kazimierz, Kulej Jerzy

**Polish Sport Association** - Bujnarowski Piotr, Cajselski Wiktor, Dobrowolski Marek, Duda Marcin, Elzbieciak Piotr, Fengler Daniel, Futoma Dariusz, Hauser Jacek, Goik Henryk, Golaszewski Jerzy, Góra Jerzy, Górka Ryszard, Grudzień Roman, Heleniak Mariusz, Jaczynowski Lech, Kaziewicz Roman, Lój Edmund, Paluch Piotr, Pawlicki Adam, Rymar Stanisław, Ryszkowska Ewa, Sawicki Waldemar, Siewert Halina, Sikorski Piotr, Smoleń Andrzej, Szwarc Andrzej J., Troicka-Sosinska Romana, Wach Andrzej, Zuchowicz Maria, Zak Ewa, Zysko Jolanta

**Polish Football League (Joint Stock Company)** - Dmoszyński Krzysztof, Janicki Marek, Miklas Leszek, Milewski Jacek, Jaworski Grzegorz

**Licensed Players' Agents** - Flisnik Kazimierz, Kaczmarczyk Tomasz, Kildanowicz Robert, Klimas Arkadiusz, Kolakowski Jarosław, Kopa Jerzy

**Ministry of Education and Sport** - Giersz Adam (Minister), Wolwicz Bogusław

**Polish Automobile and Motorcycle Federation** - Grodzki Andrzej

**Footballers' Trade Union** - Pięta Marek

**EVICO** - Tomaszewska Jadwiga (Legal Department)

**Law Firm** - Basiński Hubert

**Institute for International Law** - Foks Jacek

**National court** - Wisniewska - Drobny Krystyna (Judge)

**Professional League of Volleyball (Joint Stock Company)** - Zaremba Jan

**University of A. Mickiewicz (Law Faculty)** - Zurowska Renata

**Polish Olympic Committee** - Ronikier Aleksander, Lasocki Andrzej

**Polish Sports Confederation** - Krasnicki Andrzej (President), Maj Jan, Szlendak Grazyna, Rudnik Marian, Marcinkowski Tomasz, Pajdala Bozena, Jankowska Urszula, Skorupski Marek, Kowalczyk Kazimierz, Wojcieszak Marcin

**Journalists** - Miller Zbigniew, Pac - Pomarnacki Andrzej, Petruczenko Maciej

**Academy of Physical Education** - Ryszkowski Wojciech, Sozański Henryk

**Others** - Balaziński Maciej, Rapkiewicz Maciej, Starosta Lech, Szczypiorski Marcin, Wilkowicz Pawel, Zakrzewski Antoni, Zakrzewski Mateusz

*Opening and introduction:*

The conference was chaired by prof. dr. hab. A. Szwarc and Mr. Roberto Branco Martins. In his opening, prof. Szwarc said that in general the Polish athletes do not really know a lot about national law, not to mention European rules in any way connected to their status in the eyes of law. That is why the publication of a book is very much desirable, delivering the finding of today's session.

A representative of the Polish Olympic Committee, Mr. A. Ronikier, was invited to say a few words to the participants of the conference:

“Last week I participated in a conference on sports and law in Strasbourg, where everyone present (including representatives of current 15 EU member states) agreed that there is a need to regulate sports and law issues. They also agreed that 10 new countries need the help of the EU specialists in this field. From our Committee perspective, I have to say, that we encountered many legal problems. And we also noticed that only 33 national committees out of 200 have statutes that don't contradict the national law.”

After the welcoming and the introductions, the chairman invited first speaker, **Dr Richard Parrish**, to present his paper “EU, sport and law”. After this time was allocated for questions and answers.

*First questions was asked my Mr. A. Wach (legal advisor of the Polish Football Association), which was the following:*

“What concerns the question about the Constitution of the EU, it seems that the placing of sport there will not be solved properly, and whose fault do you think it is? Is it because of the

so-called war started between the sport organizations after the Bosman case? Social Dialogue is necessary, but I think that the matter of sport will not be properly regulated in the Constitution and this will negatively affect sport itself. Sport is regulated differently in every country. Was everything possible done in order to correct the situation that exists now?"

*Prof. Roniker asked another question:*

"Do you believe that because of the fight of these sport organizations about the inclusion or not of the sport clause in the Constitution, will deprive sport from the benefits of the economic development of sport in the EU? There were cases that certain projects were not possible because of the lack of funds, which resulted from the lack of competence of EU under the Treaty."

*Answers by Dr. Parrish:*

"The Amsterdam Treaty was a chance to include sports into the treaty, but it was too early for that. The reason behind such omissions in sport is the presence of many contradicting opinions among the states towards the position of sport. The reasons why states want sport to be included into the treaty are different from those that sport organizations have. States want it to be included because of the political reasons, integration issues, while sport wants to be included mainly due to the wish to safeguard its autonomy. And even within the world of sport, not all participants agree upon that. Some of them want sport to be included in the treaty because of the bigger chance to receive funding. The process of agreeing or not on the addition of a new article on sport was good opportunity for FIFA and UEFA to demonstrate cohesive policy together, but when the transfer rules change process was coming to an end, all three organizations came to different conclusions. That does not really communicate a cohesive voice of sport, as the Commission has asked it to.

The budgetary line for sport was a very difficult one for the EU. But the rules are strict: no spending on the area, which is not provided for in the Treaty, is allowed. If there will be an article on sport in the Constitution, then EU will have a budgetary power to allocate funds to sport. Lately, EC used education policy in order to somehow fund sport, i.e. this year was named a year of education through sport."

Following the discussion, **Mr. Branco Martins** was asked to deliver his speech on the "Results of the comparative legal study on labour relations and contracts in professional football in Europe and The promotion of professional football clubs' interests at the European level".

Mr. Martins was followed by **Mr Marian Rudnik** (Polish Sports Confederation) with his paper "Professional sport in Poland", which is summarized below:

"Practice indicates several activities that currently are going on in the national sports scene: there are professional sportsmen that undertake sporting activities for a certain pay, there is also a certain commercial activity going on from the side of sports organizations, leagues and confederations, plus economic entities that undertake various marketing sport activities. Certain factors influence the dynamics of Polish sport, such as legal regulations. By the end of 1995, there was no legal regulation concerning professional sport in Poland, although certain types of professional sporting activities had already been conducted for a number of years. The Law of 18 January of 1996 concerning the physical culture contains a whole chapter (Chapter 5), which refers to professional sport. Here Article 3.5 defines professional sport as a sporting activity having a purpose to earn money. Article 6 - sport joint stock companies are defined as being sport clubs constituting a basic entity in physical culture, which are able to participate in sport competitions. Art. 31 - 36 provide special tasks and requirements pertaining to such joint stock companies. In Article 22 (2) a professional player is defined as being a person who

practices sport on the basis of an agreement of employment and receives remuneration for that. Art. 25 (2) grants the right to define more specific rights and duties of such professional players to relevant Polish sport unions. According to Art. 29, two units can practice a professional sports activity: the Polish sport union and sport joint stock companies. The Polish sports union was granted a right to organize professional sports competitions, establish a professional league. Article 36 states a sport union, which receives a permit to practice a professional sports activity, has the right to establish a professional league, although law, thus leaving space for future legal regulation, did not provide for the legal and organisational form of such entity. The professional league includes only sports joint stock companies. In exceptional situations, the Polish sports confederation can allow a physical culture association to participate in the league. Such exemption was intended to guarantee that all professional sport entities have a right to participate in sport activities. The form of sport joint stock company provides certain financial guarantees and security. Just like in the Western states, the form and regulation of professional leagues are provided for in the agreement between the relevant Polish sport union and sport joint stock companies. Agreements should guarantee the fulfillment of rules to relevant sports unions, legal national and international obligations. Some important areas in professional sport have been supervised by the president of Polish sports confederation who gives permission to sport unions to organize leagues or to transfer this right to some other entity.

As you can see from the analysis above, the national legislator has not provided for binding regulation of individual professional sports. The activity of an individual sportsman consists of certain physical activity on the basis of a sport contract for certain remuneration. A contract means a certain legal relationship between players and entities, which organize the sporting activities. There are big differences in the definition of what the contract should include. Partly these regulations are based on the rules set by the international sport federations. The national sport federations, e.g. Polish football association, have defined more detailed regulations. Contracts for cyclists have been also regulated more specifically, but mostly based on the rules of international cycling union rules.

Professional sport contracts are based on a model contract, and cover obligations resulting from being a member of a national team. There also are contracts concluded in boxing, which are mainly based on civil law. A boxer has to have a license, which is valid for one year. Sport contracts do function, respecting the rules of sport associations and respecting the special character of every sport. However there is a need to discuss an existing outline of the necessary components of such contracts, such as a possibility to participate in the international teams or matters of insurance. A common situation is that a sportsman provides his services on the basis of civil law, i.e. he is being self-employed. Such situations for example happen in the activities of motor unions. Competitors cover the cost of the organization of sport events as part of their business activity on the basis of invoices. Practice shows that the form of Joint Stock Company is a well-tested form for the participation of professional teams in competitions. In terms of organizations and finance, it can be easily adjusted to certain specificities of sport. The form of company guarantees smooth running of business and provides for the necessary obligations and security. Although bearing in mind the rigorous requirements imposed by national company law for the establishment of companies, it is difficult to establish such entities. Practice demonstrates that maintaining the group of entities, which have a right to organize sport competitions, do not meet the real sports world needs. It would be much easier if the equity of such companies is decreased through a *lex specialis* and also other entities should be allowed to participate in the activity of professional sport. Currently in Poland we have 33 sport joint stock companies in 5 team sport disciplines (football 16, basketball 14, hockey 2).

We can talk of three sports unions that organize professional competitions: the Polish Boxing Union, the Polish Basketball and Volleyball Leagues. A special competition committee organizes boxing competitions.

Functioning of professional leagues and partly their organization are provided for in the Act on Physical Culture. Their activity is based on agreements with the Polish Sports Union and they are established by this Union. Although law does not regulate the legal status of such entity, still it is a very popular form of organization of competition. However, Polish legislation also gives a right to participate only to joint stock companies in such a league. Important aspect is the contract signed between the Polish Sport Union and business entities participating in the league, which also defines implementation of national and international obligations.

The variety of organizations participating in sport is still very big, mainly due to the lack of regulation of sport in Poland. Thus we have problems of legal status of such organizations. In cycling, the sponsor's name just unites the individuals with contracts for services. In individual disciplines, some of them draw large amounts of profits from their activities, which by itself create another business activity. Football lacks legal regulation in order to develop more and gain more funds. Rules that regulate the question who can organize a given sporting events currently do not exist and they are needed.

We see that the amendment of current Act provisions is needed, especially in professional sports in individual disciplines. Practice shows that qualifications of professional players should be changed. Often restricting the circle of professional players to simply persons who sign a contract of employment or civil contract is wrong, because very often sportsmen act as employees or civil service providers even though they don't have a contract. An option to become a professional with regard to remuneration, if one moves to a professional, field is not solved. Rights and obligations of representatives of national team members need to be specified as well. There is also a need to specify sanctions in Article 27 when somebody does not allow a player to take part in national games.

More and more often players and organizations have problems in using this right whenever application of it collides with the contractual obligations of a player. We believe that Article 6 of the Act should be amended as well, so it does not constitute barriers for a professional sport being exercised by a club even though it is not established as a joint stock company, but just as an association. This provision leads to many practical problems, especially in individual sports where there is no competition amongst clubs and there is no need of establishing a club.

Changes should be introduced also in relation to the organization and status of the leagues, which can be members, who can establish it. The role of the Polish sport organisation in holding international sports events is questionable: are they really prepared to properly organize them? The professional league has all the characteristics of an economic activity. Are those unions ready to organize those events and bear all business activities, which are inherent to it? These regulations will have to be adapted to laws of free economic activities. And we also have to decide which sport areas are to be regulated by free economic activities principles. What is also determinative is the interest of national teams, which are most certainly important. Professional competitions organisations should be based on transparent criteria.”

*Both presentations triggered questions:*

Mr. Leszek Miklas, from Polish Football League: “Football clubs in Poland are being forced to form joint stock companies, requirements for which are strict criteria though at the same time this possibility provides for tax relieves. What are the chances for clubs to receive aid from state after they reform themselves into companies then? Are there any legal basis for the Polish football companies to receive tax relieves?”

Another question: we understand the criteria, but how far should regulations go? And when will amendment to current law be introduced?"

*The answers presented:*

Marian Rudnik: "Regulations should go as deep as necessary to protect certain interests. And those interests in sport should be the interest of national teams, players. Economic activity of sport should not be regulated by a sport act, so that they can be exercised freely. But I also believe that sport activities cannot be left to act entirely free. What concerns the amendment to the Act, the works are under way in the committee in the Parliament. Next session is planned for 14 April coming. I believe the work will progress, and I believe the part, which is already prepared, will be presented to the Parliament. More work needs to be done in relation to law on economic activities. This will not be completed soon."

*Question:*

Jadwiga Tomaszewska: "Disciplinary liability of players within the context of sports. Is there anything underway that could result in setting out the roles in executing the decisions of the arbitration decisions in sport, which are final. I see the gap between those rules and national law; national law does not say anything about how the rulings of arbitrary bodies should be executed."

*Answer:*

Marian Rudnik: "The amendment proposal also includes certain proposals referring to the arbitration process. Though it is not yet clear how it will be changed there is a common agreement about the presence of a provision about enforcement of court rulings. We want it to be guarded by the president of the Polish Sports Confederation."

*Comment:*

Andrzej Szwarz: "In Poland we still don't have regulations which would clearly regulate the option of taking the disciplinary decisions to national courts. There is an opinion, that such decisions are not the competence of national administrative courts. Some argue it should be more relevant to a criminal court or civil court. Otherwise, absence of such appeal option could be seen as a violation of constitution. This must be changed as soon as possible. In other countries the national judiciary can revise disciplinary decisions of arbitration bodies. The question will arise in the future, which courts should be appointed as competent to decide on such matters."

Maria Suchovich, President of Arbitration Tribunal at the Polish Olympic Committee: "Three issues I would like to mention. First, what is the legal framework within which the professional sports can be practiced? Practically there are no subject matter arguments among professionals about the fact that professional sport should be practiced only within the framework of the sport joint stock companies. This is a business activity and for that kind of activity several legal instruments are available providing various legal forms of such organizations. Second issue is what is the difference between the professional and amateur player. Currently the difference of gaining money as a criterion is not existent. The only difference is the amount of income. In practice this difference became blurred. The third issue is the implementation of decisions of tribunals. There are certain regulations in this respect. Article 16 of the Act on Physical Culture specifies that there are certain actions available to enforce these decisions."

After the coffee break, **Dr Andrzej Wach** was asked to deliver his speech "Current Problems in Professional Football":

"First I would like to start by discussing the problems which are common not only to football but to all sport community. Blurring between the borders of amateur and professional sport

results in a dynamic force behind the sport, but also causes certain deformations in it, which lead to numerous conflicts and disputes. Institutionalization of sport means the replacement of non-formalized sport detailed regulations, by-laws with an increasing number of legal regulations of civil, administrative and penal law. Demonstration of that is the recent transformation of many sport associations into legal companies beginning from 1996. These joint stock companies participate in sport competitions to a large extent in basketball, football and volleyball only. Process of professionalisation is accompanied the process of institutionalization. For some players sport constitutes the only source of income. Sport may constitute a barrier to be either employed or run a business activity somewhere else. We must not identify professional sport with an activity, which is used to earn one's living. We have to remember that there are certain sport disciplines, which do not offer any financial benefits. But it does not mean that people practicing such sports must not be treated as professionals. A financial contract is not the basis for differentiation. The process of professionalisation, which results in higher standards, is shaped by a set of factors of organization of sports competition. Determination whether a sportsman is a professional relates to the structure of a sports club, its management, the licensing system, and equipment supplies etc. Sport is also subject to phenomena of industrialization and mediation. These conditions fully apply to Polish football. We should defend the thesis that in the centre of the sports activity the player leads. The status of such a player is defined in the Transfer Regulations of FIFA and the resolutions of the Polish Football Association (19 May 2002). Football players can be employed on the basis of an employment contracts or contracts for the performance of a specific task. Services can be provided in accordance with Article 50 of the Civil Code. This solution is the most efficient in the case of professional players. It can be more successfully used in the sphere of individual sport rather than team sport. Agreements subject to civil law are burdened with insurance obligations and high income tax rates. Hence, certain clubs encourage their players to conduct their own business activity. This also pertains to coaches and arbiters.

We realize that Poland's accession to the EU will trigger a new approach towards this issue, and so we have to stick to the reality of Polish law. From this point of view, there are no conditions for players to have their own business. The resolution of the court of the 6 December 1969 defines the business activity and talks about the requirements of reputability and professionalism of actions taken. Additional conditions are that the entrepreneur has to be self-employed and has to bear his own risks. It seems that such economic activity cannot include practicing sport. Of course, we could stop here, if not for the fact that in Polish sport practice including football, there are many postulates proposing giving the status of entrepreneur for a sportsman. From this point of view, you could say that actions undertaken by players are of repeatable nature and they are profit oriented as stated in Article 3.5 of the Act on Physical Culture. Relations between the clubs and the players were determined by the corporate structure of the federation, within which sports competitions takes place. Such competition has to be of permanent nature. Today it would be hard to talk about the possibility for a player to conduct a business activity. Players do not want to incur the risks in relation to the competitions and they do not want to share the losses suffered by the club. And hence players are not willing to register their own businesses and they want to treat clubs as their employers. This is also supported by another decision of the Supreme Court, which stipulates that activity carried out by an employee through the employment relation is not business. Services are provided to the club, and the related profits and revenues belong to the club. Since 2000 the Polish Football Association provides legal protection to professional players' contracts, and in case of lack of implementation of a contract within a period of 3 months, a player can ask the Association to dissolve the contract. This makes it possible for the players to change their club outside of the transfer window. The football tribunal worked out the rule that

a player cannot receive remuneration from an old club if he already receives it from a new club. The Polish Football Association undertakes activities to improve the situation of football clubs and players. On 27 September 2003 Management of PFA passed two regulations concerning extraordinary change of economic relations. This was triggered by the sports media crisis, when Canal Plus lowered contractual amounts for football clubs. As a result of that, the clubs were authorized to re-negotiate the contracts with players and coaches. Clubs were authorized to negotiate new contracts also for other reasons, such as a general principle that a club may re-negotiate the contract with a player due to extraordinary changes in economic relations. But it cannot be lowered more than 50% of a previously agreed amount. Training department and coaches' opinion should be taken into consideration. The players did not welcome this new change. They started to protest, but during winter break certain clubs renegotiated contracts.

Recently, a number of players that used to play for foreign teams came back to play for the national clubs, which may indicate that our football community is becoming more stable. The Polish reconciliation court is one of the most experienced courts in Europe. Last year in 55 cases an agreement was achieved. This indicates the willingness of the football world actors to settle their disputes in an informal way. In 22 cases the disputes were withdrawn by one of the parties. Football clubs had to pay to transfer sums to other clubs. We also have to remember that league clubs construct their contracts in better ways. According to 712 of the Civil Code, the dissatisfied party may appeal to decisions of the reconciliation court to the national civil court. This happened in 7 cases. A court in Poznan did not accept the appeals.

Professionalisation of Polish football must also be viewed through another development - a new licensing system, which has been in effect from 1 April 2004. As part of the system the clubs will have to meet certain criteria related to infrastructure, finance etc. Participation in international games is also made possible by the licensing system. Most of 1<sup>st</sup> league clubs are joint stock companies; some are also established in 2<sup>nd</sup> league. There are other models for such professional clubs as well; multi-personal management of clubs, so only a small amount of people are obliged to run the club, and it is not simply enough to operate the club. All clubs have big tax liabilities, and at the same time they have to secure big infrastructures and in many cases clubs are on the verge of bankruptcy. Because of today's legal regulations, states or municipalities cannot support them financially, and these clubs are in big financial trouble. Many requests are directed to football association. Football associations try to explain to creditors that these money funds if they are exactly specified, may help, but, as we have adopted new restructuring rules, some third persons try to transfer their responsibility to a union or the association. Some clubs struggle for some smaller financial funds from our media partners. The problem of being advanced to the 1<sup>st</sup> league is solved, because from season 2005-2006 the 1st league is expected to expand. Another problem is how to solve the extra matches for the relegation to another league.

On 19 December 2003 rulings of the arbitration courts were constructed in such a manner that they were based on the Lausanne resolutions. The model for this arbitration court is the administration court at the IOC court based on Swiss law. The court in Lausanne works in compliance with Swiss law, so its decisions are applied there without any violations or objections from national law. In Poland the ruling of arbitration court in POC is not applied immediately. First we have to have proceedings to give it an enforcement status, whether the decision is legal, since only these decisions can it be enforced. 712 Article (Civil Law), this decision can be appealed to before a civil court. The Warsaw court refused to examine one of those appeals, although in many countries this is allowed. An arbitration tribunal produced other rulings although in the sphere of biathlon, which were accepted by the Warsaw court. In the biathlon case it was possible, and in football it is not? Our case now is sent to the appeal

court, and we still wait for the outcome. Article 170 of Swiss law states that every ruling of Lausanne court can be appealed under national law. But in Poland this is not possible. The licensing system is the right system, and the clubs are only gaining from it, new stadiums are being built, fewer cases are being sent to the courts. We want to establish a strong professional league; we have an agreement with it. And when the clubs all get licenses, we will transfer the league to the clubs' association."

The presentation was followed by questions, asked by several participants:

*Question:*

Prof. Goik: "My suggestion is also a question; it is commonly perceived that sport and its structure are somehow different from any other field. Polish law does not see the joint stock companies in sport as usual stock companies. And we see that sport contract is not a typical employment contract. Why in some kinds of sport we should not really exclude this professional activity from this economic activity? Why should we not agree with this?"

Maria Sukovich: "The position of trainers, they are self-established paying their own taxes and VAT. Do you see any obstacles that would make this more difficult?"

Savicky, Legal Advisor, Lex Sport: "If in the EU there are no legal regulations on sport, how deeply should legislation interfere with professional sport? How should legal regulations go into life of sports? In my opinion, when we prepare new amendments, we have to remember that it is difficult to have a uniform form, which would be acceptable for all sport disciplines. Tomasewska, Attorney, representing a club in a dispute with the Federation: my Question is about the appeal from the final decisions of arbitration bodies. Only in property cases and only when both parties have stipulations in the contract about the property liability, the civil law will apply to enforce arbitrational decisions. When a player is penalized and not able to play or to work, he cannot appeal to the decision. And when the club is not allowed to play in the match, it can appeal. I ask, how have such cases occurred in the EU, and how do players secure their rights to return to their vocational performance?"

*Comment:*

A. Szwarc: "In Germany, such decisions can be appealed to before national courts. And if it was repealed, a party can go to civil law to demand compensation."

Answer:

Dr Wach: "There is no country where administrative entities would enforce a court's decision. Reconciliation is a court, and therefore, I am not going to agree that court decisions could be enforced under administrative procedure.

According to Article 41, the court considers matters but has never issued any decision related to property. In Lausanne, the court decides cases also on economic matters.

In PFA we have different legal relations and we introduced the licensing system, which does not exist in any other sport system in Poland. The clubs are protected from third parties. There is no rule for business activity. Coaches and players contracts are subject to protection. Of course, what I was talking about can be implemented in individual sports. Team sports in western countries employment relation are fundamental. We are facing a challenge how to reconcile this issue. How to introduce a concept of business activity in team sports? I still believe that it would be difficult under current conditions to make an individual economic activity in team sports than it is in individual sports."

*Question:*

Licensed club manager:” Service providing contracts of players - are they valid under current system?

Today’s regulations follow FIFA regulations, which decided that the basis for the player club relationship is the employment or civil law contract. We have not encountered any situation where a player would be an entrepreneur, conducting his own economic activity. It may happen, that such cases will arise. In such a case, the contract will not be protected under the rules of the Polish Football Federation, as it would be if the contract were of an employment nature. If an employment contract was not executed in 3 months, the Federation can dissolve it. Which is not possible with the civil service contract.”

*Comment:*

Mr. Adam Giersz, Minister of Sport: “Polish sports requires changes, the current law is not acceptable for current sports. Whether sports should be treated as any other economic activity? I believe that sports joint stock companies would be the most transparent form for conducting business in sport. Disciplinary matter should be solved in sports system; they should not be taken to courts. In amateur sport it is not difficult. Instead of a license to conduct business activity, we might have a general registration into the registry of companies. Act on sports is currently being worked on.”

To conclude, prof. Swarc summarized the findings of the conference and thanked the speakers and the participants for the fruitful discussion.

## 2.5. Czech Republic and Slovakia

### 2.5.1. Czech Republic: country report

#### 1. What is the legal basis for the relationship between a player and a club?

In the Czech republic the *Civil Code* (Act no. 40/1964 Sb., as amended) regulates the relationship between player and club. The *Civil Code* (Article 2) states that participants of civil law relations are in equal position. It governs all relations among physical and legal persons, mainly property and other relations arising from the protection of persons, unless other laws don't apply. Regarding the relationship between club and the player Article 51 of The *Civil Code* applies. It states:

*“The contractual parties can conclude an agreement (contract), which isn't specified by any provisions (articles) of The Civil Code and doesn't contradict the content and objective of The Civil Code.”*

This Article provides quite a wide range for contractual parties when concluding an agreement (innominate contract). Their contractual freedom is only limited to the objects and content of the *Civil Code*. In addition The *Regulation on registration for contracts of professional and non-amateur players*, adopted by The Czech Football Association, doesn't stipulate the legal basis for conclusion of a contract. Therefore players in the 1<sup>st</sup> league usually enter into relationships under the abovementioned article<sup>65</sup>, as it is in conformity with the rules of the Czech Football Association. The *Civil Code* does not state other specific provisions, which may apply to this contract. In fact the circumvention of employment relationships takes place in the Czech Republic and the *Civil Code* is the tool for the formation of legal relations among natural and legal persons. This is due the fact that under provisions of the *Civil Code* the contractual parties enjoy more freedom. The Labour code is more rigid and the majority of provisions are rather peremptory (mandatory) then non-mandatory. Therefore the contractual parties cannot specify the duties, obligations and rights in different way as stated in the Labour Code. In contrast under the provisions of the *Civil Code* the parties may conclude the contract which is not precisely defined by law (innominate contract) and still not breach the law as would be the case of the Labour Code when concluding the employment contract other then stated in it.

Under Article 51 of the *Civil Code* the players conclude the ***Contract on cooperation in performance of sport activity***. The legal status of the player is **self-employed (self earner)** person. There aren't any contracts concluded under The Labor Code in the football sector (first league) and therefore none of the players of the 1<sup>st</sup> league is in employment relationship with his club. Due to this fact the players do not enjoy social rights deriving from the employment relationship. They are responsible for paying the contributions to social funds (health insurance, pension fund insurance) etc.

#### 1.1. Association Law

Under the *Regulation on registration of contracts for professional and non-amateur players*, adopted by the Czech Football Association, there are two kinds of contracts in the football sector.

#### Ad 1: Contracts for professional players

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65 Information provided by the football player' agent in Czech Republic.

The contract for professional players might be concluded only with clubs of first and second league. Under this contract the players are performing their sport activity as a daily occupation. The basic limits are stated by the *FIFA regulation*, which was transposed into the rules of the Czech Football Association. The contract is of written form and is concluded for a minimum period of 1 year and maximum of 5 years. Players under the age of 18 years can conclude only contracts for maximum period of time 3 years.

A professional contract can only be concluded with players above the age of 15 years.

Under the rules of Czech Football Association the legal base of relationship between player and club is irrelevant for qualification of professional contracts. This means that the legal base might be found in employment law or in other laws, i.e. civil law.

Due to this fact the contracts between players and clubs in first league are concluded under the provision of the *Civil Code* (40/1964 Sb.) Article 51.

The contract for professional players, above age of 15 years and below the age of 18 years, who are registered with particular clubs, may only be concluded with this club. In the case the player rejects to enter into contract with his mother club he may not transfer nor be hosted in other clubs till the age of 18 without the approval of the club. The contract for professional players may be concluded with some other club provided that the mother club hasn't submitted a proposal for concluding the contract.

The registration section of the Czech Football Association provides the registration of contracts for professional and non-amateur players. The player may conclude only one of these contracts; otherwise he is subject to disciplinary proceedings.

To be valid as professional the contract has to contain the following provisions:

- a provision about a basic salary per month, which can't be lower than the wage floor set by law;
- rights and duties between club and player and provisions about sanctions in case of the breach of contract;
- provisions issued by the Czech Football Association (for example the authority of Czech Football Association to settle the disputes);
- the date of contracting, signatures of player and two representatives of club. It also has to contain data with regard to the agent, if there is one. Express condition about the fact that the player had used the service of agent when concluding the contract.

In practice professional contract according to, Art. 51 of *Civil Code* consists of following parts:

- The contract is for determined time (1-5 years). In practice the player can enter into 5 successive contracts, each for one year;
- Profit of the player is one as of independent self earner;
- Duties of the player (the sporting ones, summarized, do his job well in the club, follow the rules of the club and the football association and being subject of their disciplinary proceedings jurisdiction etc):
- Rights to the player (TV rights, pictures, advertising etc);
- Duties of the club;
- Position of a player concerning insurance;
- Termination of the contract, including reference to FIFA, UEFA and Czech football association transfer and registration rules;
- Possible option clause.

## **Ad 2: Contracts for non-amateur players**

This contract, concluded between club and player, contains the obligatory part concerning the payment for player. It has to be stated that the player's salary is minimum of 1000 CZK (approximately € 33). It also has to be in written form and for minimum of 1 and maximum of 5 years. Under this contract the player doesn't provide its sport activity as a daily occupation ("full-time").

### **1.2. The League Assembly**

The League assembly is the body of 1<sup>st</sup> and 2<sup>nd</sup> leagues. One statutory representative, who has one vote, represents every club. It is not a separate legal entity but an organ of the Czech Football Association.

As there isn't any statute concerning the legal base of first league, except of statute of League's assembly, the provisions of rules of Czech Football Association apply also to first (Gambrinus) league.

The purpose and competences of the *Czech Football Association* are:

- a) Education of youth football players;
- b) providing and organising football competitions;
- c) adopting the statutes and legal acts and orders concerning the functioning of the bodies of Association;
- d) providing training and education of trainers, referees;
- e) enforcement, safeguarding and representing the interests and rights of member clubs in Czech Republic and abroad (outside the republic);
- f) ensuring the representation of the Czech Republic in FIFA and UEFA competition;
- g) may set up the endowment funds and other non-profit institutions for humanitarian purposes;
- h) providing the publication of literature in order to promote the development of football;
- i) ensuring the propagation of football in mass media.

The competences of *League Assembly* are:

- a) To adopt the Rules of Procedure;
- b) To adopt the Statute of the License Committee;
- c) To adopt the Statute of Conciliation Committee;
- d) To adopt the Code of Conduct of professional competition;
- e) To adopt the Code of conduct for selling the audiovisual and advertisement rights of competitions of 1<sup>st</sup> and 2<sup>nd</sup> Leagues;
- f) To decide upon the distribution of the profit of audiovisual and advertisement rights;
- g) To elect the chairman and members of the executive committee
- h) To adopt the formal provisions of the application form for competition participation;
- i) To adopt the tables of "Fair Play" competition;
- j) To adopt the resolution of the session;
- k) To adopt the protocol of the session;
- l) To adopt other issues if decided and not contrary to FIFA, UEFA and Czech Football Association rules.

### 1.3. Sport law in Czech Republic

The sport law doesn't exist as a distinct legal area in the Czech Republic and no additional or specific acts in the field of sport are in force. The only one, adopted in January 2002, is *Act on Promotion of Sport*. The purpose of it is to define the position of sport in society and the role of ministries and other administrative bodies, such as municipalities in promotion of sport. No provisions concerning the contracts issues or other relationships between players and club can be found in it, therefore this act is irrelevant for more detailed specification of relations between players and clubs.

### 1.4. Employment Law

In the Czech Republic the *Labour Code* regulates employment law. Fixed-term contracts between players and clubs may be based upon it.

Article 30 of the Labour Code regulates **fixed-term** employment contracts. It states that the employment contract is concluded for an undefined period of time unless it is concluded for limited period of time. The fixed-term employment contract may be concluded or prolonged by the mutual agreement for maximum period of **two years** (dating from the beginning of the previous contract); the same also applies for contracts with no longer breaks then six months. Therefore the next (further) contract for a specific period of time with the same employee can be concluded only after the period of six months **except** of certain cases:

- a) If stated in special act (*lex specialis*) or when a special act stipulates the fixed-term employment contract as a legal base (ground) of the claim (e.g. working pensioners);
- b) For temporary replacement;
- c) For serious employer's operative reasons or due to the specific nature of the work performed. Because of the diversity of such activities the act doesn't specify them. The employer shall specify them in the written agreement concluded with the social partners. The employer may specify them alone only if no social partner exists.

The employment contract concluded for the specific period of time not fulfilling the conditions stated in previous articles is considered an employment contract for an undefined period of time provided that the employee (issues a petition) submits the written notice to the employer, before the specified period has expired, declaring to remain in the employment relationship (for undefined period of time).

The collective bargaining agreement might define the specific categories of employees who **cannot** enter into fixed-term employment contracts.

There isn't any provision which states how many times the employer is allowed to enter into fixed-term employment contract with the same employee or for the same kind of activity. To prevent the abuse arising from the use of successive fixed-term contracts the maximum total duration is stated for two years. The same applies also for the contracts with breaks of no more then six months to avoid possible abuse (mistreatment).

Under the Article 42 paragraph 2 of the Labour Code a termination of the fixed-term employment contract will occur when the period specified in the contract is over.

The termination of the fixed-term contract is defined under Article 56 of the Labour Code as follows:

- (1) the termination of contract will occur when the time period specified in contract expires or when the work is done.

- (2) the fixed-term contract will be converted into a contract for undefined period of time once the employee continues to perform his/her work and the employer is aware of it.

Article 57 provides (states) also other forms of termination of the fixed-term contract, prior to the expiration of the agreed period, by the reference to the Article 42, par.1 of the Labour Code. It might be terminated:

1. by mutual agreement or
2. by submission of notice or
3. by immediate termination or
4. by termination during the probation period

These forms also apply for the termination of contracts for undefined period.

### **1.5. Labour Code and Regulation for registration of contracts of professional players**

Regarding the fact that the Labour Code does not mention any obstacles for the conclusion of the fixed-term contract, in particular none objective reasons to justify entering into such a contract are required, the player may enter into employment relationship with the club. As was mentioned above the Labour Code doesn't state how many times the renewal of the contract with the same employee is admissible. Furthermore Article 30, paragraph 3 of the Labour Code stipulates the exemption list that allows the contract to be concluded for the period of time longer than 2 years. Having a look at football, none of the reasons stated can represent the legal ground for renewal of the employment contract.

Under the *Regulation for registration of contracts of professional players* a professional contract shall be concluded for the minimum period of 12 months and a maximum of 5 years. If the player is younger than 18 years the maximum period is then 3 years. This is where the rules of Czech Football Association collude with the national law. The Labour Code implies that after expiration of the period stated in fixed-term, which cannot be longer than two years, the contract is converted into a contract for an undefined period of time (unless one of the reasons mentioned in exemption list isn't justified, which is not the case for football).

## **2. Internal regulation with regard to redemption fees of contracts for specific periods of time / transfer fees**

Under Czech civil law, which applies to relationship between club and the player, a preliminary breach of contract is only possible after mutual agreement or under the denounce of contract due to non-performance. The contract usually contains provisions concerning this issue including reference to FIFA, UEFA and Czech Football Association transfer and registration rules. The provisions state that the only objective reason for which the contract can be terminated before the end of original contract period is the infringement of the contract (e.g. the club doesn't pay salary to the player, the player doesn't participate in competition matches). After the notice is issued the player remains with the club till the end of the canceling term. During this period the clubs (the former and prospective new) usually decide the amount to be paid as redemption fee in case of possible transfer of that player. There are not any rules regulating the amount of redemption fee to be paid if the player is transferred to another club. *The transfer order for professional players* (adopted by the

Association) states only a minimum redemption fee to be paid when the amateur is transferred to the 1<sup>st</sup> league or 2<sup>nd</sup> league (450 000 Kc, 350 000 Kc which is Euro 14.500,=, Euro 11.300,= respectively). If there is a conflict on this issue the committee of conciliation will decide. Article 2 of *Statute of Conciliation Committee* states that the League Assembly elects the chairman and other members. Under the Article 9 the decision taken by the committee is final, no appeal is allowed. In case of termination of contract due to the club's infringement of the contract (the club doesn't fulfill the obligations deriving from the contract) the redemption fee will be decreased to one half for that club. The committee of conciliation hasn't any internal rules to set the proper amount of redemption fee. When deciding the amount, the committee takes into account the age and number of official league's matches played. In practice the redemption fee is within the limits of 200 000 - 500 000 Kc, that is €6.500 - €16 100. The national civil law does not regulate these redemption fees. When a player (above age of 23 years) is transferred to club abroad there isn't any legal basis for transfer fees.

In the case of transfer of player under 23 years there are legal basis for payment of training compensation under the new FIFA regulations.

The player may request for a transfer to another club only after 12 months from his previous transfer. To standardize the procedure and to preserve the principle of fair competition, the FIFA transfer regulation states that there are now only two transfer periods per season, restricting the players to a maximum of one transfer per season. Therefore, the application form for transfer is possible to issue (feasible) from 1<sup>st</sup> January till 31<sup>st</sup> January and from 1<sup>st</sup> July till 31<sup>st</sup> July. The first request for transfer can be done only after the first day that the contract for professional players has come into force. From that day (day of issuing the application form) the player cannot play for his parent club. Otherwise it would be contrary to the disciplinary rules of Association.

The application is rejected:

- If not issued in the proper period;
- If one of the formal terms required under the transfer order for professional players is missing or is incomplete;
- If transfer to club where the prohibition for that particular player is in force;
- If the hosting period has not been finished yet.

None of the national civil laws regulates the system of redemption fees. There are only the Association rules, which deal just partly with this issue.

None of the national civil laws regulate the system of redemption fees. There are only the Association rules, which just partly deal with this issue.

### **2.1. Training and educational compensation**

The rules of the Czech Football Association do not regulate the training and educational compensation for young players at all. They also do not transpose FIFA rules nor does the reference to FIFA rules in Czech Football association legislature exist. Therefore there is not any legal basis for payment of such a fee. The legal ground for training and educational compensation is possible only if international transfers of young players take place. Despite this fact, in reality (practice) the payments are provided according to FIFA rules whenever the transfer within the Czech Republic is in question.

### **3. The possibility of entering into social dialogue in the Czech Republic? The existence of a separate entity, independent from a national football federation to enter into collective bargaining agreement**

Professional football players do not enter into employment relationships and therefore they do not enjoy the social rights derived from a labour relationship. Their legal status is of self-employed persons, which means that it is their own duty to pay particular contributions for health, social, pension and others funds.

It is obvious from the abovementioned that there is not any organization representing players in collective bargaining issues as far as they are not employees. There is not any Trade Union type of organ concerning social affairs. The League Assembly where the clubs of 1<sup>st</sup> and 2<sup>nd</sup> league are represented does not deal with Social Dialogue issues. Furthermore, no legal entity and no organization representing players exists.

### **4. Directive 1999/70/EC and the national law**

The Council Directive 1999/70/EC came into effect on June 28 2000. Every Member state is obliged to implement it (including the Acceding Countries). The main purpose is the application of the non-discrimination principle and the prevention of abuse arising from use of successive fixed-term employment contracts or relationships. Have the Czech Republic maintained this purpose by adopting the novel of the Labour Code?

Under clause 5 of the Directive 1999/70/EC, the Member state shall introduce one or more of the following measures:

- objective reasons justifying the renewal of such contracts or relationships;
- the maximum total duration of successive fixed-term employment contracts or relationships;
- the number of renewals of such contracts or relationships.

The Czech Republic adopted the first two measures. The Labour Code stipulates the **exemption list** for possible renewal of fixed-term contract. It implies three reasons, particularly:

1. if stated in special act or when other act stipulates the fixed-term employment contract as the legal base for claim;
2. for temporary replacement;
3. for serious employer's operative reasons or due to the specific nature of the work performed.

Because of the diversity of such activities the Labour Code allows the employers to conclude with social partners such a scope.

The Labour Code states the maximum total duration of successive fixed-term contract is **2 years**. The Labour Code does not stipulate how many times an employer is allowed to enter into successive employment contracts for specific period of time with the same employee or for the same kind of activity.

Moreover the novel allows social partners to conclude collective bargaining agreements to define the specific categories of employees who **cannot** enter into fixed-term employment contracts

If one of the conditions isn't fulfilled, fiction of law arises (occurs), under which the contract is concluded for an undefined period of time, provided that the employer submits the notice to employee stating he/she is willing to remain in such an employment relationship (for an undefined period of time).

The Czech Republic implemented the directive 1999/70/EC in a proper way. The novel contains all requirements, which the Council laid down.

## 2.5.2. Slovakia: country report

### 1. What is the legal basis for the relationship between a player and a club?

In Slovakia, there are two legal bases for establishing relationships between players and clubs. If The Labour Code establishes it, it obtains the nature of employment relationship. An employment contract for a specific period of time is then signed by a club as well as by a player. This kind of contract established under The Labour Code is more advantageous for a player because he gains all social and economic rights and obligations from it. The relationship between a club and a player can be also based upon **The Civil Code**. This kind of contract between a player and a club is hence regulated by Part One of The Civil Code in Chapter IV. Article 51 states as follows: "Participants could also conclude a contract that is not individually regulated, however the contract must not contravene to the content or purpose of this act." The Civil Code does not imply any other specific provisions that could apply to this kind of contract. Based on the fact that contracts is regulated by the Civil Code a player does not gain social and economic rights that would be derived from an employment contract concluded under The Labour Code.

There is no specific legislation on sport in force nowadays although there is a draft proposal to be submitted to parliament. If no obstacles appear, the draft could be adopted by the end of 2004 or at the beginning of the 2005. In reality Article 51 of The Civil Code governs the relationship between a player and a club.

#### 1.1. Labour Code

The Fixed-term contract between a player and a club can be based upon **The Labour Code**. Pursuant to article 11 of the Labour Code an employee is a natural person who in labour relations and, if specified by a special regulation, in similar labour relations, performs dependent work for the employer pursuant to his/her instructions, for a wage or for remuneration. Based on the Article 7 an employer shall be a legal or natural person employing at least one natural person in labour relations and, if so stipulated by a special regulation, also in similar labour relations. According to this Act or other labour-law regulations a contract shall be deemed concluded immediately upon agreement of the parties on the contents thereof. The Labour Code does not mention any objective reason that justifies entering into an employment contract for a specific period of time.

According to the Article 48 (2) of the Employment Law, a fixed term employment may be agreed, prolonged or concluded anew for the maximum of three years. The Labour Code does not stipulate how many times an employer is allowed to enter into successive employment contracts for a specific period of time with the same employee or for the same kind of activity. A new concluded fixed term employment is an agreement concluded within a period of 6 months from the termination of earlier fixed term employment between the same parties. Based on the Article 48 (3) of the Employment Law, a fixed term employment may be prolonged or concluded anew for the period longer than 3 years only in case (of):

- a) representation of employees,
- b) work requiring substantial increase of the number of employees for a transient period not exceeding eight months in a calendar year,
- c) fulfillment of a task determined by the result,
- d) a collective agreement.

An objective reason justifying prolongation or successive conclusion of a fixed term employment shall be included in the employment contract.

According to the Article 48(5) of the Labour Code a fixed term employment for a period of time longer than three years may also be prolonged or agreed anew in the absence of reasons stipulated in Article 48 (3):

- a) with the head of the employee who is in the direct control force of statutory body,
- b) with a creative employee in the area of science, research, development,
- c) with employees for performance of work for which art education is prescribed,
- d) with an employee who provides tutelary service based on special regulation,
- e) with an employee who receiving a retirement pension, a disability pension and other types of pensions,
- f) with employees of an employer with the maximum of 20 employees,
- g) with an employee stipulated by law or by an international treaty,
- h) with an academical professor.

An employment relationship concluded for a fixed period shall terminate upon expiration of such a period. Where, to the knowledge of the employer, an employee keeps performing work after an agreed period expired, it shall apply that such employment relationship has changed to employment relationship concluded for an indefinite period, unless the employer agrees with the employee otherwise. That means that a contract for a specific period of time will automatically be converted into a contract for an unlimited period of time.

Prior to the expiration of the agreed period, a fixed-term employment may be terminated

- a) by agreement,
- b) by a submission of notice,
- c) by an immediate termination,
- d) by termination within a probationary period

The employer can also immediately terminate fixed-term employment, without giving a reason. In this case an employee is entitled for remuneration of income equal to the monthly income for the period for which the employment should have lasted.

On the basis of the above mentioned, there are no obstacles for conclusion of a fixed-term contract regulated by the Labour Code between a player and a club based on the fact that the Labour Code does not mention any objective reason that justifies entering into employment contract for a specific period of time.

### **1.2. Labour Code and the Council Directive 1999/70/EC**

The Council Directive 1999/70/EC concerning the framework agreement on fixed-term work came into effect on 28 June 1999. Its main purpose is to establish an equal treatment for fixed-term workers to not be treated in a less favourable manner than comparable permanent workers. Based on the clause 5 of the Directive, in order to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, the Acceding states as well as Member States are obliged to implement one or more of the following measures:

- a) objective reasons justifying the renewal of fixed-term employment contract;
- b) determining the maximum allowed total duration of successive employment contract;

- c) determining the total number of times that such agreements are allowed to be renewed.

Based on the above mentioned, the Slovak republic has transposed the Directive 1999/70/EC by adopting the first measure introduced by the Directive 1999/70/EC in order to avoid such an abuse. The Article 48 of the Labour Code determines objective reasons that justify a renewal of a fixed-term employment contract.

Pursuant to the Article 48(6) and 48(7) of the Labour Code an employee in an employment relationship agreed for a fixed-term, must neither be advantaged nor constrained, in particular concerning working conditions with respect to safety and health protection at work, in comparison to an employee in employment relationship agreed for an indefinite duration. An employer is obliged to inform employees in a fixed-term employment in an appropriate manner and the representative of the employees about a workstation for an indefinite duration that becomes available.

Based on the clause 2 of the above-mentioned Directive defining the scope of the Directive itself, the employment contract between a player and a club falls under this frame.

### **1.3. Civil Code and Regulation for registration of contracts of professional players**

As was mentioned before in reality a contract between a player and a club is regulated by the **Civil Code** based on the Article 51 that states as follows: “Participants could also conclude contract that is not individually regulated, however the contract must not be contrary to the content or purpose of this act.” The Civil Code does not imply any other specific provisions that could apply to this kind of contract.

The player and club enter into a *contract for performance of sporting activity* where the legal status of the player is self-employed person. Pursuant to the Statute of the Slovak Football Association, the legal status of a club could be civil association, football unit or commercial corporation. Based on the Article 1 of the **Transfer regulation for professional players**, professional player is such non-amateur who concluded a contract with all appropriate provisions stated by the Regulation for registration of the contracts of professional players. In 1993, a special conference of The Slovak Football Association adopted the **Regulation for registration of contracts of professional players** that contains provisions that more specifically regulate the contracts of professional players and their registration. Based on the Article 2 (1) of the Regulation the character (labour, civil, commercial or servient relation) of the contract is not the determining factor for qualification of a professional contract. Based on Article 1 of the Regulation a professional contract is a contract between a player and a club which includes that a player is paid (a certain amount of) money or another type of benefit that can be expressed in money for his performance of sporting activity. A professional contract should be concluded in written form for a fixed term, for a minimum of 12 months and maximum of 5 years if the player is up to the age of 18. Based on Article 2 of the Regulation a professional contract could also be concluded with a player younger than 14 years of age, but if he is less than 18 at the date of conclusion of contract the contract can not be concluded for a time period longer than 3 years.

Based on Article 3 of the Regulation, apart from provisions mention in Article 1 and 2 a professional contract should also fulfil these conditions:

- a) basic monthly income of player should not be less than 6.000 SK (ca Euro 147), basic monthly income of a player younger than 18 should not be less than 4.000 SK (ca Euro 98),
- b) a professional contract should include rights and obligations of a player and a club, provision on sanctions for breach or violation of conditions agreed upon, reasons of submission of notice from the part of player as well as club,
- c) professional contract should imply the date of execution, an autograph of the player, signatures of two club representatives and a stamp of the club,
- d) concerning a minor player, the contract should also include signatures of his parents or a legitimate agent, in case it is not labour relation.

Player's duties included in the professional contract are inter alia:

- a) to perform sporting activity on a highly professional level, to reach a highly professional sporting achievement,
- b) to participate in training, football matches, regeneration and other activities according to the decision of club,
- c) to safeguard possessions of the club including the sporting equipment and return it on the request of the appropriate worker of club,
- d) to keep secretiveness about the internal matters that are the club's secret and about the information that is not intended for public.

Club's duties included in the professional contract are inter alia:

- a) to supply the player with appropriate sporting equipment for training and matches, to secure accommodating training and playing area,
- b) to maintain secretiveness about the internal matters that are club's secret,
- c) to give a player time for recovery and relaxation.

Rights and obligations of a player and a club, reasons for a submission of notice from the part of a player as well as a club and a period of notice are agreed individually between the parties. A contract usually includes provisions that contractual parties are bound by Slovak norms and regulations, regulations of the Slovak Football Association as well as the FIFA and the UEFA. A professional contract between a player and a club should be registered in the Register of the Slovak Football Association. The registration is performed by the Register Office of The Slovak Football Association. One of the conditions for the registration of the professional contract of a player is the fact that a club asking for a registration of professional contract must, except for other conditions set up in this Regulation, deposit 1000 000 SK (appr. Euro 23 809). This sum of money will be deposited on the subaccount of the Slovak Football Association. Both parties clubs as well as a player are allowed to ask for a registration. Based on Article 7 of the above mentioned Regulation the Register Office of Slovak Football Association will refuse to register a professional contract if:

- a) the professional contract does not contain respective provisions. In this case the Register Office points these out and asks the contractual parties to correct them,
- b) the operation of the submitted professional contract intervenes the time-limit of the operation of an other already registered contract
- c) the home club of a player does not know about the intent of a new club to enter into a professional contract with a player.

According to the Article 9 of the above-mentioned Regulation, when a professional contract is terminated before an agreed period, one of the contractual parties is asked for the cancellation of the registration of the contract. Together with a request, the party encloses evidence about pre-mature termination of the professional contract (for example termination contract, lapse of period of notice). The request can be submitted together with a request for registration of a new professional contract.

Workers of the Register Office are to verify whether evidence about pre-mature termination of a professional contract is plausible.

According to Article 10 of the above-mentioned regulation, if two or more professional contracts are concluded with the same player, for the purpose of the transfer process, a professional contract that has been registered first has the priority. The rest of the concluded professional contracts are not taken into account.

On the ground of the Article 11(1) a person that submitted materials, i.e. a player, is responsible for the legitimacy of the facts included in the transfer's materials as well as in the professional contracts.

Violation of the provisions of this Regulation is considered to be a disciplinary misdemeanour that is discussed by the Disciplinary Commission of the Slovak Football Association.

Based on the Article 11(3) of the Regulation, the request for the discussion of a conflict is submitted to the Executive Committee of the Slovak Football Association. There is a further possibility to appeal against the decision of the Executive Committee to the Committee of the Council for review of the decision. The decision of this Committee is final.

#### **1.4. Labour Code and Regulation for registration of contracts of professional players**

On the basis of the above mentioned, there are no obstacles for conclusion of a fixed-term contract regulated by the **Labour Code** between a player and a club based on the fact that the Labour Code does not mention any objective reason that justifies entering into employment contract for a specific period of time. Furthermore The Labour Code does not stipulate how many times an employer is allowed to enter into successive employment contracts for specific period of time with the same employee or for the same kind of activity. According to the Article 48(2) of the Labour Code a fixed term contract may be agreed, prolonged or concluded anew for the maximum of three years. The objective reasons mentioned in the Article 48(3) of the Labour Code that allows for a fixed term contract to be prolonged or concluded anew for the period longer than 3 years does not cover the employment contract between a player and a club. Only the 4<sup>th</sup> listed objective reason that could potentially justify prolongation of a fixed term contract or its conclusion anew, between a player and a club for the period longer than 3 years. It is based on the reason agreed by collective agreement but since nowadays, there is neither an independent organization in Slovakia that could represent professional players nor an independent organization that could represent professional Slovak clubs of 1<sup>st</sup> and 2<sup>nd</sup> national league. Therefore there are no parties capable of conclusion of such a collective agreement, so the 4<sup>th</sup> objective reason is not applicable to fixed-term contracts between a player and a club. Article 48(5) of the Labour Code lists the cases based on which the fixed-term contract may be prolonged or concluded anew for a period longer than 3 years without objective reasons stipulated in the Article 48(3). In this case the only possibility that could justify prolongation or a conclusion of a fixed-term contract between a player and a club for the period longer than 3 years anew is that a contract will be concluded with an employee stipulated by law or by an international treaty. Whereas in Slovakia there is no specific



61 and more up to 100 %.

According to **the Statute of the Conciliation Committee of the Slovak Football Association**, the committee holds discussions about the conflict with main goal to find out real state of affairs and lead the conflicting parties to the reconciliation. If reconciliation does not occur the committee will rule as follows:

- a) it determines the amount of redemption fees,
- b) it states the parties' obligations and periods for their fulfilment,
- c) it establishes the sanctions in case of not fulfilment of its decision.

There is no possibility to appeal against the decision of the Conciliation Committee. If the new club does not submit evidence to the Register of the Slovak Football Association that determined sum of redemption fees was paid within a time limit of 10 days after decision of Conciliation Committee, the Register of the Slovak Football Association will dismiss the request for transfer and a player will be still registered at the home club. In this case, the new club will pay 10% of the sum determined by the Conciliation Committee to the home club. The Transfer regulation for professional players establishes that a player can conclude a contract with a new club of another national football association only if:

- a) the validity of the contract expired or will expire in the following 6 months,
- b) the contract between a player and his home club was terminated by one of the parties in a manner stated in the contract,
- c) the contract between a player and his home club was terminated by mutual agreement.

On the ground of Article 19 of the **Transfer regulation for professional players**, the home club and foreign clubs are obliged to agree on a redemption fee. This agreement between clubs should be concluded in written. In case both clubs cannot agree upon the sum of the redemption fee within 30 days after the player was released, the conflict will be submitted to the FIFA through a competent national football association and a redemption fee will be determined according to FIFA Regulations. Clubs whose national associations are members of the UEFA, can turn to this organ as well through a competent national football association. Decision of both organs is final and binding for all parties.

The second possibility of termination of a contract before the agreed period is submitting a notice by one of the parties. Based on the **Regulation for registration of the contracts of professional players**, a professional contract should also include reasons for submission of notice from the part of players as well as clubs. A club agrees upon the reasons as well as upon period of notice individually with a player. So a professional contract will terminate after expiration of such period. In case a player submits a notice based on the reason stipulated in his professional contract and he concludes a professional contract with another Slovak club, his home club is entitled to ask the latter for a redemption fee. Both clubs should agree on a sum of redemption fees. If they do not reach an agreement, a Conciliation Committee based on the Rules for determination of sum of redemption fees for professional players will determine a redemption fee. If a player submitted a notice based on the reason stipulated in his contract and concludes a professional contract with a club in a foreign country, his home club is again entitled to a redemption fee. A redemption fee will be determined by agreement between both clubs. If parties do not come to an agreement a sum of redemption fees will be determined based on the FIFA Regulation.

In case a club submits a notice, a player is also entitled to a redemption fee. A redemption fee will be determined by agreement between both parties or in case parties do not agree, a Conciliation Committee will set it.

National employment law as well as national civil law does not regulate redemption fees in the Slovak republic. The only system in force nowadays dealing with redemption fees in football is the internal regulation adopted by the Slovak Football Association and the FIFA Regulations. Therefore the system dealing with redemption fees in professional football should be created on a level of national law and not on a level of the regulations of the Slovak Football Association.

### **3. Training and educational compensation**

According to Article 15 of the **FIFA Regulation for the Status and Transfer of Players**, training and educational compensation shall be paid each time a player changes from one club to another up to the time his training and education is complete, which, as a general rule, occurs when the player reaches 23 years of age.

Concerning a Slovak players younger than 23 years who move to another Slovak club, training and educational compensation will be set by the agreement between his home club and a new club. If parties do not reach to the agreement, the Conciliation Committee of the Slovak Football Association will determine compensation.

If a player younger than 23 moves to a foreign club, training and educational compensation will be set according to the FIFA Regulation.

In case a player older than 23 moves to a foreign club, no training and educational compensation will occur. His home club does not have legal basis for such compensation. However, if a player older than 23 moves from one club to another within the Slovak republic, training and educational compensation will be set based on the agreement of both clubs. If parties does not come to the agreement compensation will be determined by Conciliation Committee of the Slovak Football Association.

### **4. Arbitration committee of the Slovak Football Association**

At the beginning of the October 2003 the Executive Committee of the Slovak Football Association agreed on proposal for establishment of Arbitration Committee of Slovak Football Association. This committee will start its meetings from 1<sup>st</sup> January 2004. It will become the supreme body concerning cases in the area of professional contracts concluded between players, clubs and representatives.

## **5. The possibility of the entering into a social dialogue in Slovakia? The existence of a separate entity, independent from the national football federation to enter into collective bargaining agreement ?**

### **5.1. League committee of Slovak Football Association**

The Council of the Slovak Football Association for organizational representation and sport-technical control of the 1st football league in the Slovak republic established the League Committee of Slovak Football Association.

The League Committee consists of a president, a secretary and one representative from each 1<sup>st</sup> league club. The Committee itself elects a president and a secretary. 1st league clubs appoint the rest of the members where every club appoints one member.

Pursuant to Article 2 of **the Statute of the League Committee of the Slovak Football Association** the main tasks of the Committee are:

- a) to provide sport-technical control of the 1<sup>st</sup> league,
- b) to regularly evaluate individual rounds of the 1<sup>st</sup> league and to adopt measures based on the results,
- c) to issue the sport agenda, schedule list, set the dates of matches, beginning of the matches and other issues concerning the organization of the 1<sup>st</sup> league,
- d) to prepare records for the declaration of winners of long-run master competition of fair play, the best shooter,
- e) to give an opinion on the proposal of the nomination paper for referees in the 1<sup>st</sup> league made by the Committee of Referee, on proposal of nomination paper of representative of the 1<sup>st</sup> league made by Committee of Representatives, to suggest the sum of reward for referees and representatives for leading the matches of the 1<sup>st</sup> league to the Executive Committee of Slovak Football Association,
- f) to propose financial conditions for taking part in the 1<sup>st</sup> league, other financial issues regarding this competition,
- g) to maintain fair-play competition,
- h) to prepare the football norms concerning the sport-technical area governed by the League Committee,
- i) to negotiate transmissions and publicity of the 1<sup>st</sup> league with TV companies and other mass communication media,
- j) to work closely with the Council, the Executive Committee, the Secretary of Slovak Football Association and with other Committee of the Slovak Football Association,
- k) to propose its own representatives to the Committees and other bodies of Slovak Football Association.

The League Committee is not a separate entity, it is a part of the Slovak Football Association therefore it can not be considered a party capable of representing professional clubs of the 1<sup>st</sup> and 2<sup>nd</sup> national leagues in Social Dialogue.

## **5.2. Social partners in professional football in Slovakia**

Nowadays there is neither an independent organization that could represent the professional Slovak players nor an independent organization that could represent the professional Slovak clubs of the 1<sup>st</sup> and 2<sup>nd</sup> national leagues. Although the Statute of the National Football Association declares that one of the objectives of the activity of the National Football Association is to represent the interest of the Slovak football activities and Slovak football clubs, the National Football Association can not be considered an independent organization representing professional Slovak clubs of the 1<sup>st</sup> and 2<sup>nd</sup> national leagues, because it represents professional Slovak clubs of the 1<sup>st</sup> and 2<sup>nd</sup> national leagues as well as junior clubs and amateurs. Furthermore, as I have mentioned before the League Committee cannot be considered an independent organization representing professional Slovak club of the 1<sup>st</sup> and 2<sup>nd</sup> national leagues because it is not a separate entity but a part of the Slovak Football Association. Therefore entering into a social Dialogue will be impossible until such organizations will be established.

### **2.5.3. Conference report (Prague, 22 april 2004)**

#### *Set-up of meeting*

The meeting was intended to cover the Czech Republic and Slovakia. The location of the Czech Republic capital was chosen due to several reasons: firstly, the Asser Institute's previously established connections and collaboration with the Legal Department of the Faculty of Law of the Western Bohemian University in Pilsen; secondly due to a greater organization structure of professional football in the Czech Republic.

For this meeting we were able to use the Round Table Session model, as provided in the Work Program in the Application for a grant under budget heading B3-4000. The number of invitations sent out was 198, from which we have received 19 registrations for participation.

#### *Participants:*

**University of Pilzen** - Dr. Pavel Hamernik

**Czech Football Association** - Peter Dolezal

**Ministry of Education, Youth and Sport** - (General Secretary)

**Ministry of Education, Youth and Sport** - Dr. Jan Prerovsky

**Czech Sport Association** - Mr. Jan Bohac

**FIFA Players Agent** - Peter Zidovsky

**FIFA Players Agent** - Jozef Tokos

**Czech Olympic Committee** - Zdenek Sestak

**Nehoda Sport Agency** - Mgr. David Nehoda

**Czech Basketball Federation** - Pavel Burda

**Radio IMPULS** - Stanislav Sigmund

**Soccon Sport Agency** - Mr. Emil Kovarovic

**Soccon Sport Agency** - Mr. Zdeno Roman

**Dedak & Partners Law Firm** - Boris Brhlivic

**FC Marila Pribram** - Mr. Jozef Chovanec

**Kriz & Belina, Attorney at Law Office** - Martin Belina

**FC Chmel Blsany** - Dr. Jindrich Rajchl

**AC Sparta Praha** - Jana Franova

**Meyes Law Office** - Jiri Mazl

**EFFC** - Mr. Roberto Branco Martins (General Manager)

**T.M.C. Asser Institute** - Ms. Dovile Vaigauskaite (EU Law Expert), Ms. Tina Drolec (Subcontracted Expert)

**Edge Hill College** - Dr. Richard Parrish

Chairman of the Session, Mr. Richard Parrish, welcomes participants and introduces the organizing team of the conference. He briefly explains the purpose and history of the Social Dialogue II project, emphasizing it is a follow-up to the Social Dialogue I project undertaken by EFFC. The chairman thanks the attendees for the participation and introduces the speakers. The first part of the conference, Mr. Richard Parrish presents his speech<sup>66</sup>, followed by the presentation of Mr. Roberto Branco Martins on the “Results of the comparative legal study on labour relations and contracts in professional football in Europe and the promotion of professional football clubs’ interests at the European Level”.

After the coffee break the following guest speakers were invited by the Chairman to present their ideas, comments, perspectives on the above outlined presentations.

**List of the guest speakers:**

- **JUDr. Pavel Hamernik**, Lecturer of European Union Law, Constitutional Law Department, Faculty of Law, Westbohemian University in Pilsen;
- **JUDr. Milan Valasik**, Advokatska Kancelarija, Bratislava, Slovakia, President of Sparta Praha, Member of the Supervisory Board;
- **Petr Dolezal**, Deputy General Secretary, Director of Law and Legal Department of the Football Association of the Czech Republic;
- **Jozef Tokos**, Legal advisor of the Ministry of Education of Slovak Republic.

**JUDr. Pavel Hamernik**, Lecturer of European Union Law, Constitutional Law Department, Faculty of Law Western Bohemian University in Pilsen:

“If we are talking of internal market economic activity, sport will be a subject of EU Law, only if there is no economic activity involved, than relationships will be regulated by Czech Law and EU will not be interested. As long as the rules have no economic dimension and are mainly sporting rules, they will be in hands of national regulators. When sport associations regulate employment relations, they can be subject of an action before a national court for violation of EU Law.

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<sup>66</sup> The contents of his presentation can be found in part 2 of the Final Report “Speakers”.

Relationships in football should be purely employment one. Under the EU law a player may not be a freelance player. In a cycling case the Court in Czech Republic was not interested whether relationship was based on employment law or whether he was a freelance player. The court was only interested on discrimination elements on the base of nationality. The court ruled that a clearly economic aspect is entailed in such a relationship. The Court was not interested whatsoever in the status of the employee or in a nature of the contract. There exists no evidence for argumentation that sportsmen must have employment contracts.”

**JUDr. Milan Valasik**, advokatska kancelaria, Bratislava

President of Sparta Praha, member of supervisory board, established companies in sport:

“We have to recognize a certain amount of autonomy to sport. Since 1989 single sport associations managed sport in Central and Eastern Europe. Autonomy was merely theoretical, since sport had to be financed by states. In 1989 we were faced by the transformation of the institutions managed by the state to civil associations. Many clubs were created as civic associations, as business entities. Some of them are small, some rather big. As for their property it is still nuclear, due to the fact that Articles of these Associations are drafted in vague. According to my opinion clubs should be organized as non-profitable organizations, which can benefit from tax exemptions, and all this is currently not defined or defined unclearly.

I believe proceeding in this direction is dangerous; hence these associations should be released in Slovakia and should function as business entities. The New Sports Act is being drafted now in Slovakia that accepts the existence of football clubs only if they are organized as business entities. However, this kind of transformation is hard (from civic societies to establish business entities). Criteria that apply to business entities vary. Club as a business entity can only involve in the League if it has settled all its obligations towards the players and towards the state. This requirement is extremely difficult one for any club to meet. Due to the fact that almost all of the clubs in Slovakia are currently lacking finances (lack of funds), we need a clear legal framework that addresses all the issues (also issues dealing with clubs obligations to pay large fees for transfer of properties, etc.). Since it has proved to be difficult for all the clubs to function as a professional club, a clear legal framework is required to address labour relationships as well as other legal issues, such as transfers, etc.

The position of the associations will change in the future. Once they transfer from civic associations to business entities, the whole new set of rules will apply to them. We accept a high degree of autonomy in sport; however, it cannot be absolute. Traditionally any person active in sport could only be subject to sports regulations.

Sports autonomy is a very sensitive area, difficult for sports manager to manage. There are certain acts and regulations that cannot be invalidated. The Constitution of Slovakia entails certain imperative provisions for the Parliament to impose certain obligations. What is difficult is a dichotomy between legal provisions and sports.

Yet, the main problem is the funding of the football clubs. Legal regulation does not reflect efforts to join EU. Trend to move towards more commercial sports, such as sale of broadcasting rights, will result in more comprehensive legal regulation, in order to define sports itself. As a second step, after the legal regulation will be put in place, an implementation will be a next challenge.”

**Petr Dolezal**

Deputy general secretary, director of law and legal department of the football association of the Czech Republic:

“Football economic activity is different from a normal economic activity, hence certain exemptions are necessary. Supra-national football bodies provide orientations for national football bodies (for example: combating football hooliganism, recognition of coach licenses or agents’ licenses, fighting against monopolies in ticket sales, the equipment in stadiums, etc.). We are transposing EU *aquis* in sport. The Labour Code had incorporated certain provisions, transposing EU law; however it still shows some legacy of the past. It lacks, however, more room for flexibility that relationships between employer and employee require. There is not enough room for arrangements to go beyond current regulations. We have to proceed jointly to address those gaps and problematic issues arising. Final result should be alignment of national environment to environment in EU.”

The discussion was followed by questions and answers.

**Mr Gaihov**, Lawyer in legal office of Pakiss and Partners:

“There exist a certain discrepancy between a legal environment on one side and labour relationships between clubs and players on another. We are not required to make this clearly employment relationship, since the Labour Code does not even address this clearly. A modification is required. If all of them should have employment contracts and should pay social security contributions, the majority of clubs in the Czech Republic will go bankrupt. Another thing I would like to emphasize is the discrepancy between the statute of the Arbitration Panel and national legal provisions. The panel Works according to its own statute. There exists a legal insecurity for all the actors that turn to arbitration panel. For the sufficient functioning of the panel, a much more restricted legal framework is required so as to avoid legal gaps, legal insecurity.

Licensing system is now in place in Czech Republic. One of the conditions for the license to be granted is a settlement of all the obligations by the club. This in my opinion is too strict due to the fact that cash flow in sports clubs is different than from any other business entity. Their income is mostly based on sponsorships and transfers of their players, national and international. If you look at transfer windows it means in practice that the club can live on that income for 2 years and after that it can sell another player. Significant income only comes later. There is a time gap. Even if the club would be able to fulfill all its obligations later (after the transfer) it is not able to fulfill them before.”

**Petr Dolezal**, The Football Association of the Czech Republic:

“Why should Employment Law govern relationships? This is a EU perspective. The position of the Czech Football Association (CFA) is that this view cannot be applied and CFA will try and maintain the current nature of relationships as long as possible. After all, it is not a matter of EU to decide, but of the competent national (Czech) authorities. Such decision bears tax related consequences.

At this moment Czech Act on Sport Activity is a mere declaration. Parliament has to declare sport as merely beneficial. One of the main priorities is to make all the clubs understand how essential it is to have a body that will be able to lobby for the interests of the clubs, not only on the EU but also in the national level. This kind of body could ensure that the best interests of the clubs are being reflected in national legislation. This platform should be seen as a first step.”

**Jozef Tokos**, Legal advisor of the Ministry of Education of Slovak Republic:

“I believe that taking into account the specificity of sport, football players enter into labour relations, therefore should be regarded as employers and their relations regulated by the Labour Law. Why is it a labour law based relationship? Activity they perform is a result of specific instructions of the coach of the manager of the club. They cannot perform the activity on their own (all this is concerning collective sports, not individual). This conclusion also results from the ECJ judgments in *Bosman* and *Kolpak* case. If we were to discuss an individual sports, Article 43 of the EC Treaty applies, and activities are treated as services. However, in collective sports, Article 39 implies they can be treated as employers. The new Sports Law in The Czech Republic is in a preparatory phase. There exist a players association that in January 2004 consisted of 140 football players, meaning 70 per cent of all 1st division clubs’ players. However, we are facing serious human right violations due to the fact that players are prohibited to seek for legal protection in civil courts. A solution that would offer this protection could be found in a creation of a special arbitrary body (committee), set up according to the principles and requirements of the ECHR.”

**Dr. Jan Prerovsky**, Ministry of Education, Youth and Sports of the Czech Republic, Department of Sports:

“Last year on the meeting of sports ministries, we have presented an article on sport. This should also be discussed in the intergovernmental conference. We support the Venice Declaration and the wording of IOC and European Sport Federation that has been sent to the European Commission.”

**Pavel Hamernik**

“The Directive on the fixed term work does not intervene much into national legislations. There is no exemption that would focus on sport that leaves Member States the power to regulate these issues; hence more space is left for Member States’ activities.”

**Jan Prerovsky**

“In the Czech Republic the Labour Code should be amended, since it is the worst law we have; if all the employers would follow it, they would all go bankrupt. Following the current Labour Law would mean a total collapse for all Czech football clubs. 5% of international transfer fees should be allocated to clubs where player played between 12 and 23 of age. This is still not finalized yet and hence, brings problems.”

**Petr Dolezal**

“It is a pity the Rome Treaty has not covered sport. It is just an illusion that FIFA Regulations basic rules regulating relationship between a player and a club is in accordance with national law. It is impossible to harmonize FIFA Regulations with the Czech Labour Code. International transfer regulations were created as a compromise between EU and International Football Associations. They are not ideal. Even though the regulations are not changing, FIFA has been changing its interpretation.

Arbitration commissions were formed according to Art 91 of FIFA Regulation. Slovaks did not have arbitration committee until last year. The difference between arbitration commissions in Czech Republic and Slovakia lies in the legacy of the past. CFA (Czech Football Association) established them earlier. The tax regime in the Czech Republic is much better. In 1996 the Executive Committee has adopted a decision that 1st and 2nd division clubs must be established as civic associations. Sport is rooted in a national culture, the social system of a

nation; hence, it is very difficult to see this as an economic activity. We should try to establish sport as a separate specific area.”

To conclude, the chair Mr. Richard Parrish summarized the findings of the conference and thanked the speakers and the participants for the fruitful discussion.

## 2.6. Bulgaria and Romania

### 2.6.1. Bulgaria: country report

Bulgaria is not yet a member of the European Union. We have included it into our project because of its future membership of the Union, scheduled for 2007. For this reason, Romania has also been covered.

Bulgaria was one of the most challenging countries to do research on. First, all the targeted sources of information (Bulgarian Football Union, Bulgarian Olympic Committee, professional football clubs and academic institutions) have not submitted any relevant information to us at the initial stage of the research. Secondly, all data, which were available to our team, were in the Bulgarian language. No English translations were available. And finally, no representatives have attended the conference held for this region (i.e. Romania and Bulgaria), held in Bucharest on 21 June 2004. Therefore, the report on Bulgaria is limited in its depth, and is based on the data, which were obtained by our researchers independently.

#### 1. Structure of Bulgarian football

Currently there are 534 football clubs in Bulgaria, 32 of which are professional. All the clubs are members of the Bulgarian Football Union (BFU), which was founded on June 27, 1985. It is the main body, governing football in the country. The Professional Football League organizes football competitions, which is an alliance of the Bulgarian professional football clubs. This organization was established in 1991, and is responsible for the organization and control of two series of competitions: the Supreme Group and the Second Professional Group. Besides these organizations, a football club is another important element in the football industry. According to the rules of the BFU on the status of the football clubs - members of the BFU, a club is a legal person, established under the Law on Legal Persons or the Trade Law of Bulgaria. Therefore, clubs are companies, which main activity is football.

As a general practice, the football clubs in Bulgaria are distinguished between two types: amateur and professional. A professional club is considered to be the one, which has contracts with both professional and amateur football players, and which participates in the professional competition of the BFU system. An amateur club, at the same time, has only non-professional players.<sup>67</sup>

#### 2. Status of the football player

Similarly to the clubs, the players are divided into two groups: amateurs and professionals. According to the BFU rules, an amateur receives only compensation for his medical treatment, trips and stay during the competitions, insurance and any other expenses related to the preparation for and participation in the football competitions. A professional player, on the other hand, receives remuneration for his play, which exceeds his expenses connected with the preparation for and participation in the football matches. In addition, the rules require each professional footballer to have a signed contract with a football club, in order to be considered a professional.<sup>68</sup>

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67 More extensive rules on the establishment and functioning of the football clubs can be found in the *Statute of the Professional Football Club (2003)*, the *Statute of the Amateur Football Club (2003)*. Bulgarian text only, available at <<http://www.bfunion.bg/bfs/Root/index.php?magic=0.31.18.0.1>>.

68 *Regulations of the BFU on the Status and Transfer of the Football Player (2003)*, Bulgarian text only, available at <<http://www.bfunion.bg/bfs/Root/index.php?magic=0.31.18.0.1>>.

A professional footballer is allowed to conclude two types of contracts: 1) a contract, which outlines his relationship with a professional football club, and 2) a license agreement with the BFU, which establishes his professional status. The contract with the club must be concluded in a written form, following the sample of the BFU. The minimum term of such an agreement is set to be 1 sport season, and maximum - 5 seasons, in accordance with the FIFA Rules on the Status and Transfer of the Player and the laws of the Republic of Bulgaria. In addition, each contract can contain different annexes, with condition that they do not include clauses worsening the situation of the player, defined in the contract.

The contract between a player and a club can be terminated in the following instances:

- by mutual agreement of the parties
- due to a sport reason or another serious reason
- due to a non-sport reason but when the player's fault is present
- when the work permit is revoked (foreign player)

The right to participate in the competitions is automatically revoked together with the termination of the contract. All the following disputes, arising out of the termination, are the sole competence of the Arbitration Commission of the BFU.

From the rules of the BFU, it is not clear whether the player is seen as an employee or an individual service provider. The rules, at the same time requiring a contract being concluded between the club and the player, do not explicitly state what kind of contract must be used. Few hints may exist, though. First, the Regulations of BFU on the Status and Transfer of the Football Player sets an obligation of the clubs to grant paid and unpaid vacation to the players. This must be done in accordance with the Labour Code. In addition to this, rules on the Status of the Professional Football Clubs lay down the requirement that the clubs insure their players against the accidents at work place and against illnesses. Therefore, players are guaranteed certain social benefits, like vacation and sickness benefits.

### **3. Compensation for training and education:**

Football education and training takes place from the age of 12 till 23. Therefore, the general rule is that the compensation for education and training of a football player is paid until he turns 23 years old. When a young player signs his first professional contract, between 18 and 23 years, the clubs that participated in his education are entitled to compensation. The rules on calculation and the size of such payment are set by the rules of the BFU, annexed to the regulations on the player status. If no link between a young player and any club, entitled to compensation, is established, or no club claims such right in 2 years, the amount must be paid to BFU, which will allocate it to the fund for the development of youth football.

### **4. Regulation of employment relationship in Bulgaria**

Since general labour law governs certain aspects of club-player relationships (according to the rules of BFU - vacation and illness insurance), it would be useful to provide a short summary of the relevant norms of the Bulgarian labour legislation.

The legal source setting the rules for all employment relations is the Labour Code, which was adopted 1986, and amended by the numerous decrees.<sup>69</sup> According to it, all employment

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<sup>69</sup> *Labour Code of the Republic of Bulgaria*, promulgated in State Gazette, Nos. 26&27/1986. English text available at <http://www.mlsp.government.bg/en/docs/labour/index.htm>.

agreements must be concluded in writing, and can be either for indefinite or fixed period of time. The general rule, of course, is that all employment contracts are concluded for a not-defined duration. Article 68 sets out certain restrictions on the use of the fixed term contracts. The expiry of a contract can be defined by the duration of it or by the occurrence of a certain circumstance. A fixed-term contract may be concluded for:

- 1) The execution of temporary, seasonal or short term tasks, as well as the ones performed by newly-hired employees in the enterprises which are being declared bankrupt or in liquidation;
- 2) Until the completion of certain specified task;
- 3) Until an employee is being substituted;
- 4) Fulfilling the tasks of a position, for which a competitive examination must be taken, until such examination takes place;
- 5) Or for a certain mandate.

When the length of a fixed-term agreement is defined by its duration, as it would be case in point 1), it cannot exceed 3 years. Otherwise, the contract is valid until a determined circumstance arises, i.e. a certain task is completed (as would be the case in point 2). Article 68 provides for an exception: a fixed-term contract can be concluded for any type of work (even not temporary), if its duration is not shorter than 1 year. If there is a written request by an employee, such contract could be concluded for a non-temporary job for a shorter than 1 year period. Anyhow, this cannot be used more than once a year.

If the fixed term contract is made in violation of the above rules, it will be re-qualified into an agreement for indefinite time.

The formulation of the Article on the fixed term contract is very complex, which clearly is the result of numerous amendments. One is clear - fixed-term contracts can still very liberally be used in the labour market of Bulgaria. Restrictions of the job being of temporary or short-term nature seem to be quite vague, and could be easily interpreted in a very wide manner. In general, fixed term contracts can be concluded under certain circumstance, defined in the Article. Nevertheless, the exception creates a gap that allows the conclusion of pre-determined duration agreements for any type of work, even not temporary, if its duration is not shorter than 1 year. And if there is a request of employee, contract for any type of tasks (temporary or not) are allowed by law, although it could only be done once a year.

Despite the very confusing wording of the Article, it is clear that the EC Directive 1999/70 has not been implemented into the Bulgarian employment law. First, there are not objective reasons, which would justify the conclusion and renewal of the fixed-term contracts. And second, the maximum total duration or the number of renewals is not restricted in any way.

## **5. Social Dialogue in Bulgaria**

Currently there are no social partners in the football sector in Bulgaria. Despite this, the future social dialogue between the industry sides is possible.

Social Dialogue, as such, is established in Article 2 of the Labour Code. According to which, the state should decide the questions of labour relations, social security and living standards after consultation and through the dialogue with the employees, employers and their organizations. And if professional sportsmen are considered as employees under the national labour law, they have a right to establish their trade union. According to Article 4, trade unions represent employees in collective bargaining and tripartite cooperation procedure, etc.

Moreover, football clubs, if seen as employers, are allowed to enjoy their right to form their own representatives, which would represent their interests through collective bargaining and tripartite consultation.

Social partners, through means available, can conclude collective bargaining agreements, which according to Article 50 shall regulate the issues of the labour and social security relations, which are not dealt with by mandatory provisions of the law.

## **6. Conclusions**

The lack of information limits the content and findings of the research into the Bulgarian football sector. What is clear, though, is that a football player is entitled to certain employee benefits - paid and unpaid annual leave, and social insurance from illness and accidents. The rules of the BFU do not explicitly confer an employee status on the professional football player. Anyhow, BFU tries to ensure some level of certainty, by laying down the requirement of contractual club-player relationship.

In addition, the insight into Bulgarian labour law demonstrated that the *acquis* on the use of fixed term contracts has not been implemented into the national legal system. Employers, even for a job, can still easily use contracts of limited duration, which is not of temporary nature. If Bulgaria wishes to avoid future disputes with the EU, it should endeavour to adopt the necessary changes to its Labour Code.

## 2.6.2. Romania: country report

The following report consists of five sections. In Section 1 the legal basis for the relationship between a player and a club is detailed. In Romania football players do sign individual employment contracts. Hence, relevant provisions of the Labour Code governing the conclusion of contracts for fixed-periods of time are detailed in this section.

Section 2 draws the conclusion whether the Candidate State has implemented the revised Directive 1999/70/EC and details what measures has the member state introduced in order to prevent the abuse from the use of successive fixed-term contract. Section 3 examines the possibility of entering into a Social Dialogue in the professional football sector. The legal framework is discussed, detailing The Trade Unions Law No. 54/2003 as well as the new Law No. 143/1997 concerning the collective agreements.

Section 4 outlines the current situation and problems facing the Romanian football sector.

Section 5 outlines the individual labour dispute resolution mechanism in Romania.

### 1. What is the legal base for the contract concluded between a player and a club (what is the nature of the relationship between the player and a club)?

#### 1.1. Legal Framework: the labour code

The old Labour Code had been in force since 1972 and its obsolescence, and the need for fresh regulations, had become more and more apparent. The proposals for a new Code were subject to lengthy debates and consultation between the social partners and it was finally adopted by parliament on 24 January 2003. The new **Labour Code** provides notably for a considerable degree of harmonisation of Romanian employment law with the ‘acquis communautaire’.

A new Labour Code came into effect on 1 March 2003, following the introduction of Law No. 53 of 2003 (the ‘Labour Code law’). It aims to replace Romania’s previous industrial relations rules, which were dominated by the assumptions of the former ‘command economy’ based on centralised planning. The new Code - made up of 13 titles, 37 chapters, 17 sections and 298 articles - governs collective labour relations as a whole, involving employees (defined as Romanian citizens working inside or outside the country, and foreign citizens working for a Romanian employer in the country, including refugees), employers (individuals or companies with legal personality), trade unions and employers’ organisations.

Among others, the following modifications were adopted: for the first time, special types of employment contract are regulated by the new Labour Code, including temporary agency work, part-time employment, employment on fixed-term contracts and home-based work, while employment performed under a ‘civil contract’ (as a way of avoiding social security contributions) has been abolished.

#### 1.2. Legal Base for the contract concluded between a player and a club

In Romania football players sign individual employment contracts, which the Labour Code governs. The following provisions of the Labor Code constitute a legal base for conclusion of such contracts.

According to the provisions of the **Labour Code (Law no. 53/2003)**, the general rule is the conclusion of labor contracts with unlimited period of time (art. 12 paragraph 1 of the Labor Code). There is an exception instituted by the Labor Code to this rule, allowing the employers to also conclude labor **contracts with specific (fixed) period of time (Art. 80 of the Labor Code)**. The individual labor contract with fixed period of time is concluded only in writing (if

it hasn't been concluded in a written form, it is assumed that it has been concluded on an unlimited period of time), with the express specification of the period for which it is concluded. The law stipulates when an individual labor contract with fixed period of time can be concluded. Thus according to **Art. 81 of the Labor Code** the individual labor contract with specific period of time can be concluded only in the following cases:

- a) the replacement of an employee in case of the its labour contract's suspension, save for the situation when the respective employee is on strike;
- b) the temporary increase of employer's activity;
- c) while performing some activities with a seasonal character;
- d) in the situation where the contract is concluded on the ground of some legal provisions issued with the purpose of granting temporary favors to certain unemployed category of persons;
- e) in other cases expressly provided for by the law.

Following the above outlined list of objective reasons that justify the conclusion of a fixed-term contract, we can conclude that "performing some activities with a seasonal character" represents the legal base for sportsmen to enter into fixed-term employment contracts with the respective club.

The Labor Code specifies that the contract with a specific period of time can be concluded **for a maximum period of 18 months** (art. 82 of the Labor Code). After this period of time, a contract for a specific period of time will automatically convert into a contract for unlimited period of time.

Still, if the contract with a fixed period of time is concluded in order to replace an employee the individual labor contract of which is suspended, the period of the contract will expire upon the cessation of the reasons determining the suspension of the individual labor contract of the respective employee.

The contract with fixed period of time **may be prolonged** after the expiration of the initial term, with the parties' written agreement, **two times** consecutively at most, and only within the period above mentioned (art. 80 of the Labor Code).

According to the provisions of art. 84 of the Labor Code, upon the expiration of the individual labor contract with fixed period of time, an employee with a labour contract for an unlimited period of time will occupy the respective office.

These provisions are not applicable in the following cases (exemptions):

- in case the labor contract with determined period of time is concluded to temporarily replace an absent employee, if a new cause for the suspension of the latter's contract occurs;
- in case a new labor contract with determined period of time is concluded in order to execute some urgent works, with an exceptional character;
- in case the conclusion of a new labor contract with determined period of time is imposed through a special law;
- in case the individual labor contract with determined period of time ceased out of the employee or employer's initiative, for a severe violation of for repeated violations of the employee.

Hence, the **Labor Code (Law no. 53/2003)** in Article 81 gives the ground for a fixed-term employment contract that is concluded between a player and a club.

Players in Bulgaria sign either collective or individual **employment contract**. Individual contracts are usually set up under very bad conditions. Even though the EU provided for a model (framework) contract, it is not used in Romania. In general the players are signing contracts in blank. The clubs take advantage of players' naivety and lack of experience in legal matters. Most of the players ignore the significance of that contract and majority of them have no knowledge of what they sign.

The Players' Union AFAN has been so far and also continues to communicate with the players and inform them about the legal issues. Their objective is to create the awareness among players about the importance and the meaning of the contract they sign. According to the Players' Union, these contracts are disregarding any legal rules and are usually signed according to the clubs' good will. These are some examples of the clubs' bad faith and of the fact that football authorities protect exclusively the clubs' interests;

- a player can be sanctioned if the trainer or the club manager says only that the player has not respected the strategy/the tactics;
- *Petrolul-Ploiesti Football Club*, at the end of the football season, even though they have not received their incomes/their pay from the beginning of the "return"/season they have been penalized by their club (and the decision was endorsed by the Legal commission of the LPF), with the same amount of money they were in right to receive as an income.

## **2. What has the candidate state already done to implement the Directive 1999/70/EC?**

To prevent abuse arising from the use of successive fixed-term contracts or relationships, Member States shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors one or more of the following measures:

- (j) objective reasons justifying the renewal of such contracts or relationships;
- (k) the maximum total duration of successive fixed-term employment contracts or relationships;
- (l) the number of renewals of such contracts or relationships.

Member States shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

- (f) shall be regarded as successive;
- (b) shall be deemed to be contracts or relationships of indefinite duration.

Romanian legislator introduced the following measures in order to prevent the abuse arising from the use of successive fixed-term contracts:

- 1) The Labor Code specifies that the contract with a specific period of time can be concluded **for maximum period of 18 months** (art. 82 of the Labor Code). After this period of time, a contract for a specific period of time will automatically convert into a contract for unlimited period of time.

- 2) The contract with a fixed period of time **may be prolonged** after the expiration of the initial term, with the parties' written agreement, **two times** consecutively at most, and only within the period above mentioned (art. 80 of the Labor Code).

### **3. Social partners in Romanian professional football sector and collective bargaining agreement**

#### **3.1. Legal Framework**

##### **3.1.1. Trade Unions Law**

Prior to 2003, the existing regulations on trade union organisations were established in 1991. During 2001, a proposal for new legislation was discussed in the tripartite Economic and Social Council (Consiliul Economic și Social, CES), which issued a favourable opinion. However, it was only in January 2003 that parliament adopted the **new Trade Unions Law (Law no. 54/2003)**.

Under the new law, trade unions may be set up in order to protect the rights regulated by national legislation, by the international pacts, treaties and conventions to which Romania is party, and by collective agreements, and also to uphold the professional interests of their members (social, economic, sporting and cultural).

The establishment, organisation and functioning of trade unions are ruled by their statutes. According to the law, unions are independent organisations, comprising at least 15 individuals working in the same field or industry, but not necessarily for the same employer. This last provision was introduced as a response to criticisms of the former law for restricting trade unions in the emerging private sector, which mainly consists of small and medium-sized enterprises. Other new provisions include the following:

- trade unions' rights include the right to bring a court action to defend the interests of any of their members, even without power of attorney;
- elected trade union representatives cannot be dismissed during their term of office and for a period of two years beyond the end of their term; and
- employers are under an obligation to invite trade union representatives to board meetings. Resolutions carried by the board of directors must be notified to the trade unions within 48 hours of being passed.

##### **3.1.2. Law concerning Collective Agreements**

Law No. 130/1996, amended by Law No. 143/1997 concerning collective agreements, regulates the representativeness of employers' organisations. Among other provisions, the latter sets out the conditions for employers' organisations to be considered as nationally representative. These organisations must:

- have organisational and financial independence;
- represent employers which operate in at least half of the country's 42 counties; and
- represent employers which operate in at least 25% of economic branches (a minimum of eight) and employ at least 10% of all workers.

This law also lays down two representativeness conditions concerning the branch level. As a result of economic restructuring, over the period 1990-2002, the total number of employees in Romania fell from 8.1 million to 4.6 million. Given the representativeness criteria, in theory any employers' organisations representing employers with at least 460,000 employees could thus be considered a national 'peak' employers' association (see the table below)

As regards the membership of employers' organisations, Law No. 356/2001 stipulates that they should be set up in relation to the activity performed by member employers and organised at the section, division, and branch and economy level. At least 15 authorised legal and natural persons may set up an employers' organisation in accordance with the law. An employers' organisation may be formed by at least five companies in branches where they represent 70% of total production. Two or more employers' organisations may set up a union or a federation. Several unions or federations may associate to set up confederations, and the nationally representative confederations may set up, in accordance with the law, a single representation body at national or international level.

By law, no employers' organisation may receive financial support from the government.

The adoption and modification of some important laws in 2003 helped to ensure the 'institution-building' which may allow wide-ranging tripartite social dialogue and well-constructed industrial relations in Romania, and also provided harmonisation with EU regulations. Nevertheless, both employers' organisations and trade unions criticise current social dialogue as being merely formal and wish to gain more bargaining power.

The legal framework for industrial relations is not yet complete and may still be subject to further changes and extensions. A number of framework regulations contained in the Labour Code are to be subsequently detailed by special laws, such as a law on collective labour conflicts, or rules on the setting up of a 'wage guarantee fund' in order to guarantee workers' pay in the event of their employer's bankruptcy. In order to meet employers' demands, the government made many attempts to modify some articles of the new Labour Code, but they all failed as they were rejected by the CES during 2003. Such amendments might, however, prove to be bargaining chips in future trade-offs between the social partners.

Trade unions would like some further amendments in the new law that rules their own activities, eg by allowing magistrates to join a trade union organisation, while some political parties are alarmed by a lack of explicit provisions in law which, in their view, may allow too much freedom for trade union involvement in political life.

### **3.2. potential social partners in Romanian professional football sector**

In Romania the following three associations represent the main actors in the professional football arena: Romanian Football Federation (*Federatia Romana de Fotbal / FRF*), Professional Football League (*Liga Profesionista de Fotbal / LPF*) and the Players' Union A.F.A.N.

**Professional Football League (*Liga Profesionista de Fotbal / LPF*)** represents sixteen 1<sup>st</sup> Division Clubs. Since they do not possess the mandate to represent all the clubs in Romania, it is argued by the Players' Union that they are not employers' organisation; hence, they are not competent to sign a collective bargaining agreement that would be valid for all the football clubs. However, the clubs themselves are associates of the League, so theoretically the League could be their representative body. The agreement could be made that they possess the mandate to represent clubs in their social and economical matters, hence, the League could be an employers' organisation, presenting the social and economical interests of the clubs, and play a role of the counterpart to the Players' Union in entering into a collective bargaining agreement. As their counterpart, Players' Union A.F.A.N. represents 95% of all professional football players in Romania and is an active member of the FIFPro. Hence, interests of the players in their social and economic matters are represented and protected by the A.F.A.N. not only on the local, but also on the European level. A.F.A.N. can be regarded as a potential social partner

in concluding collective bargaining agreement with its counterpart. In the following section the current situation is outlined. It shows that practice is somewhat different. In 1999 the collective bargaining agreement has been concluded between the **Players Union, A.F.A.N.** and the **Professional Football League (*Liga Profesionista de Fotbal / LPF*)**. It lasted until the end of 2003 when LPF refused to extend it. According to the president of the **Players' Union, A.F.A.N.**, Mr. Alexandru Radulescu, the agreement had not been respected even while still in force.

In 2003 Romanian football was facing a serious problem. The Romanian Football Federation (FRF) and the Professional Football League (LPF) had - together with some club leaders - established a new footballers union. Players of the current players union AFAN have been threatened by club leaders to join the new union if they want to remain in the respective club. Problems started in December 2002 when Romanian footballers participated in an AFAN meeting, aiming to protest in front of LPF and FRF against the clubs failure in paying the salaries and the violation of individual contracts. After the meeting LPF suspended AFAN vice-president, the international Florin Prunea, for a 9 months period, for statements formulated at that meeting. After FIFPro asked FIFA and UEFA to intervene in this matter, the sanction against Florin Prunea has been cancelled by the Executive Committee of FRF. The LPF and the FRF, disturbed by AFAN acting as an independent union fighting for its members rights, have been involved in establishing a new footballers union, the **Romanian Footballers Association (AFR)**.

According to the Romanian and European Labour laws the employers (clubs) representatives have no right to interfere in establishing unions. The newly created footballers union AFR had an illegal leadership, as no general assembly took place to nominate it. According to AFAN, the AFR had been forcing players to join the new union, to boycott AFAN activities and to undermine the footballers' interests. The present AFAN leadership had been nominated by the vote of the union general assembly and is represented besides Alexandru Radulescu (president), by actual and former football players, which are well respected persons for both, the Romanian footballers and the media: (1) Ionut Lupescu (honourific president), former player of Bayer Leverkusen and Borussia Mönchengladbach, 80 times Romanian international; (2) Daniel Prodon (vice-president), former player of Atletico Madrid and Glasgow Rangers, 60 times Romanian international; (3) Florin Prunea (vice-president), 57 times Romanian international, participant in two European Championships and two World Cups.

The current situation in Romanian football is still worrying and the players' rights and interests are endangered in this country. FIFPro proved to be a reliable supporter to AFAN in its struggle against the illegal union AFR. In March 2004, the executive board of F.I.F.Pro decided to keep the present Players' Union as full members. There is no dialogue present at the moment in the Romanian football arena due to the fact that neither of the sides, nor representatives of the players nor of the clubs have been able to overcome the conflict of interest there exist and find a common language.

Hence, the dialogue between the Professional Football League (*Liga Profesionista de Fotbal / LPF*) and the Syndicate is almost inexistent, because it is not in the interest of either side. The same is true for the dialogue between the Romanian Football Federation (*Federatia Romana de Fotbal / FRF*) and the Syndicate.

#### **4. Current situation and problems within Romanian football sector**

Romanian legislation regulating football is in accordance with the European Union law. The **Law 356 of the Body of the Employers (*Legea 356 a Patronatelor*)** and the **Law 51 of the**

**Syndicates (*Legea 51 a Sindicatelor*)** both contain all the necessary conditions and framework for the development of the professional sport in Romania. But, unfortunately and the most importantly, these laws are neither respected nor implemented.

According to AFAN, the Romanian Football Federation fails to observe the FIFA regulation and refuses to set up the arbitration commission. It invents a federal commission with people nominated by them. They do not respect the arbitration commission. Commission that works for litigations solving between clubs and players always resolves conflicts in favour to clubs. One of the problems is the fact that these commissions operate within the Professional League, but now the federation wants to take them over so as to operate within the federation.

Regulation of Romanian football as a rule is rather well designed but not observed.

Independent committee was established within the football federation that is composed as the judicial court in Romania. The committee has their own rules, based on FIFA rules, but they do not obey them. They have some regulations that are not published. Cases never go to civil courts, but to the committee. Not clear what taxes are necessary to be able to put a claim to committee.

The legal right to go to the civil court exists for the players; however players choose not to bring their claim in front of the courts. FIFA Regulation states that a player should not be deprived a right to go to civil court. Problems in knowing the procedures, the terms when they need to go to the court, the taxes need to be paid; all those organs are not established by the law, but by the regulations. The only legal courts are civil courts. All football players in Romania have individual labour contracts. So this is under competence of civil court.

However, the players prefer the alternative organs, so as to come as fast as possible to FIFA.

These committees have in their composition employees of the mentioned institution.

According to the Players' Union, FRF does not respect the FIFA rules and does not want to create an arbitration commission. A federal commission was established and there is no creation of an arbitration commission. The same thing happens with the commissions dealing with the disputes between the players and the clubs. They are fully in favor of the clubs. There is also no consent between the FRF and LPF on these commissions.

Almost all players have **individual labour contracts** and the labour contract is under the jurisdiction of civil courts. The players do not go to civil courts since they first chose to go the federation because they are easier to be recognized by FIFA and they want to get as soon as possible to FIFA. According to the Players' Union the FRF and LPF commissions are not legally created. Moreover, they are composed of employees of those two institutions.

According to the Players' Union also another improvement has been made. The players in Romania now have the possibility to go to civil court to defend their rights. This right was also confirmed by the FRF. Until now, the President of the Players' Union argues they didn't do it, because they were blocked by the clubs regulations.

However, the regulation of the FRF has to be in accordance with the law, since it is not in the same level in the legal hierarchy as the law. Therefore, the labour law regulates that the employment contract belongs to the civil court. So basically this right had existed even before, since the law creates this opportunity. The recognition of these kinds of judgment is another thing, though. It has to be recognised, though, that if a football player chooses to defend his rights in front of the civil court, the club will immediately sanction him.

## **5. Individual labour disputes and the courts in Romania**

This section revises how individual labour/employment disputes are handled through the courts in Romania. As defined by the Law no. 168/1999 concerning the settlement of labour disputes,

labour or employment disputes are disputes between employees and their employers concerning their professional, social or economic interests or their rights resulting from labour or employment relations. Two kinds of dispute are envisaged, and their legal treatment is different: ‘disputes of interests’ (conflicte de interese) concern only disputes that may appear during collective bargaining; and ‘disputes of rights’ (conflicte de drepturi) are essentially individual labour/employment disputes. The latter category includes disputes concerning:

- (1) the conclusion, implementation, change, suspension and termination of individual employment contracts;
- (2) the implementation of collective agreements;
- (3) the payment of damages to cover the losses to parties caused by the non-fulfilment or poor fulfilment of the obligations set out in individual employment contracts; and
- (4) the annulment or cessation of application of individual employment contracts or collective agreements, wholly or in part.

According to the law, the parties involved should settle individual labour/employment disputes, if possible. If the parties cannot come to an amicable agreement, the cases may be referred to the courts.

Law no. 92/1992 on the organisation of courts originally stipulated that labour dispute cases should be dealt with in the first instance by the local courts (judecătoria) where they involved claims for damages worth less than ROL 100,000 and could be settled, in accordance with the law, by one judge. Local court decisions may be appealed to the county courts (tribunale) and further to the territorial courts of appeal (curte de apel). However, in 2000, the task of dealing in the first instance with labour disputes of rights was transferred from the local courts to the county courts, except for cases that are by law within the competence of other courts. The law makes no distinction between different categories of workers in terms of how their individual employment/labour dispute cases are handled in the courts. At the request of their members, trade unions may represent or support them in labour disputes or support them. Since 2003, under the new Trade Unions Law, trade unions now have the right to bring a court action to defend the interests of any of their members, even without power of attorney or the worker’s consent. The 2003 ‘national single collective agreement’ provides that bringing a court case may not be the reason for terminating/canceling an employee’s employment contract. With regard to costs, all legal procedures concerning the labour dispute cases are exempt from payment of the ‘judicial stamp’ duty. The only payments consist of the arbitration fees and lawyer’s fees, which vary with the type of dispute, level of judgment etc. As indicated above, Law no. 168/1999 on the settlement of labour disputes provides that employees and employers “shall settle labour disputes amicably or in accordance with the legal procedures”.

Negotiation/mediation between the parties is the first stage of dispute settlement before any reference to the courts.

All social partner organisations have for some years been in favour of the establishment of specialised courts to deal with labour and social disputes, which they consider would be a major step in the development of Romanian industrial relations.

The 2002 national ‘social agreement’ provided that a law on the establishment of labour tribunals should be completed by the fourth quarter of 2002, but this didn’t happen yet. In 2003, the creation of labour tribunals was discussed again as a priority in drafting secondary legislation concerning labour relations, as well as an important part of the progress towards Romania’s accession to the European Union. At present, according to the Ministry of Justice, a draft law on reorganisation of the judiciary envisages the establishment of eight labour and

social insurance tribunals in the districts of Argeş, Băila, Caraş-Severin, Dolj, Gorj, Hunedoara, Mehedinţi and Bucharest. Their creation is currently expected by late 2005.

### **2.6.3. Conference report (Bucharest, 21 June 2004)**

#### *Set-up of the meeting*

This meeting was intended to cover Romania and Bulgaria. The location of the Romanian capital was chosen due to the existence of the Players' Union in Romania, hence the organisational structure in Romania in professional football sector is more advanced than in the neighbouring Bulgaria. Both, participants of the Romanian and Bulgarian sport arena were invited to participate at the conference.

For the meeting we decided to use the Expert Meeting model due to the lower number of participants as in our previously organised events in other countries. The number of invitations sent out was 206, from which we have received 10 registrations for participation.

#### *Participants*

**Studio Legale Tonucci** - Ms. D. Vilaia

**S.C.P.A. Popescu & Asociatii** - Anghel, A.

**Cobuz Si Asociatii, Avocati, Memberii ai I.C.C. Ropmania** - Alina Cobuz, Managing Partner

**C.S. FC Farul Constanta** - Ms. P. Valentina

**C.S. FC Farul Constanta** - M. Diaconescu

**Stoica & Asociati** - Mr. Stocia

**Voicu & Filipescu** - Pop, C.

**Vilau & Mitel SOA** - Mitel S.

**Bostina & Associates Firm** - C. Glodeann

**Federation Romania Baschet** - I. Dobrescu

**Nestor Diculescu Kingston Peterse** - Culic, R.

**T.M.C. Asser Institute** - Ms. Dovile Vaigauskaite (EU law expert), Ms. Tina Drolec (subcontracted expert)

**EFFC** - Mr. Roberto Branco Martins (General Manager)

**Edge Hill College -Dr. Richard Parrish**

**Chair - Dr. Richard Parrish**

Chairman of the Session, Mr. Richard Parrish, welcomes participants and introduces the organizing team of the conference. He briefly explains the purpose and history of the Social Dialogue II project, emphasizing it is a follow-up to the Social Dialogue I project undertaken by the EFFC. The chairman thanks the attendees for the participation and introduces the speakers.

The first part of the conference, Mr. Richard Parrish presents his speech.

**Richard Parrish:**

“The fundamental issue regarding sports relationship to EU.

The fear expressed among sports organisations the sports governing bodies within the EU is that European law does not recognise the unique characteristics of sports. Sport operates under different market conditions to other industries and EU law should respect this. EU could be seen as a forum for solutions to the problem of where does sport find itself within the legal architecture of the EU. There is no reference in the European treaty on sport. This is meant that EU has tended to treat sport like a business and not recognised the specific characteristic of sport, sport is a social activity, more like a game rather than a pure business activity.

This has led to the EU pursue in an indirect sports policy. General laws of EU are applied to sport irrespective of the nature, the social and cultural dimension of sport. The 2 main areas that have been applied to sport have been free movement of persons and the competition policy.

The main legal area that has been applied to sport is the law on free movement of persons. The European treaty has three provisions, article 39 on free movement of labour article 43 on freedom to provide services and article 49 on freedom of establishment. Provision of article 39 applies to employment relationship between employer and employee, where art 43 and 49 relate to relationship between employer and self-employed individuals (sports men and women).

If we look at the ECJ case law and extract the main points, we can conclude ECJ has developed the following line of reasoning:

- (1) first, sport is subject to European law whenever it is practiced as an economic activity, if sport is practiced as a business than it is subject to European law (most sport will be covered by European law), even sport that is not for profit can still be considered as EC activity;
- (2) second, nationality restrictions are prohibited, except in composition of national teams (it is still permissible under EU law to discriminate in composition of national team);
- (3) third, certain restrictions on player ability may be justified if sports govern bodies justified them as being inherent to the game, these employment rights may extend to non EU nationals.

The competition law is the second area that applies to sports. The case law is more developed in this area. The exploitation sports market is where sports act as a business. The European Commission has investigated broadcasting contracts (the use of exclusivity and joint selling, ticketing arrangements and merchandising agreements to see if they are unduly restricted agreements.).

Due to the Amsterdam declaration on sport and Helsinki report on sport, EU's current thinking is that certain sport rules should be located within certain judicial territories. This is an attempt by the commission and the court to define more clearly the territories of judicial intervention in sport:

First territory is a zone of sporting autonomy, here EU will not interfere, these are the rules inherent to the game, non-commercial rules, EU judicial bodies will not intervene,

Second is the zone of supervised autonomy. These are rules that sport-governing bodies may employ, but EU acknowledges that they are necessary for the proper functioning of the game.

Third is a territory of judicial intervention. This is something the EU will not tolerate.

Nationality restrictions cannot be re-imposed on clubs.

The current debate in Europe is the signing in the new European constitutional treaty. Sport has no place in the European treaty, but for the first time should the constitution be accepted there will be a legal base for sports in the treaty. Article 16 and article 182 represent the legal base for sports. Nowhere in art 182 is specificity mentioned, nowhere is exemption mentioned, so sport will not be exempted from European law. What art 182 does is places legal obligation on the Commission and ECJ to recognise that sport is different from other economic sector and perhaps European law should recognised this. The question is do we have sufficient flexibility within the current EU legal framework to do this? Yes, in particularly if we look at the provisions on the European social dialogue.”

Mr Parrish' speech is later followed by Mr. Roberto Branco Martins' presentation on the “Results of the comparative legal study on labour relations and contracts in professional football in Europe and the promotion of professional football clubs' interests at the European Level”.

**Alexandru Radulescu**, the President of the Romanian Players' Union AFAN is then invited to present his view and his perspective on the current situation of the professional football sector in Romania:

“First, I would like to express my thanks to our guests and I hope they can help us because we really need them.

I would like to start briefly with short presentation/ information about the football situation in Romania. I would like to say that the Romanian legislation is very good. It is in accordance with the European Union football laws. The Law 356 of the Body of the Employers (*Legea 356 a Patronator*) and the Law 51 of the Syndicates (*Legea 51 a Sindicatelor*) both contain all the necessary conditions and framework for the development of professional sport in Romania.

But, unfortunately and the most important these laws are not respected! We all know that FIFA, as you have mentioned before, has its own regulations made by its associates members, I mean the General Assemblies (GA) of FIFA, as well as UEFA, and in this case it is very difficult for national Romanian legislation to prevail before FIFA rules.

Moreover, in Romania we can find the football federations' regulations voted in the same way by the General Assemblies (GA) of the associates, namely the football clubs, which should be/ are supposed to be in accordance with FIFA and UEFA legislation. And here, actually we can find rules made-up/invented with the only intention to ensure the protection of the clubs. The dialogue between the Professional Football League (*Liga Profesionista de Fotbal / LPF*) and the Syndicate is inexistent, because it is not wanted. The same is going on within the Romanian Football Federation (*Federatia Romana de Fotbal / FRF*). That's why we hope that your help shall be one beneficial for us and especially for Romanian professional football.

If you want, I can get into further details, but I will continue my previous idea about development. The national labor law is applied/ followed only in a few cases, although FIFA regulations mention very clearly that national labor law must be taken into account. As I have mentioned before, in our country nobody cares about it.

Another very important thing; we all know that in football in general, all affiliated members of FIFA have their own laws but those are not controlled on a national level. Neither the government nor any other authority has the right to control them. The authorities have control in the exclusive area of the State budget, whereas the FRF receives money from the State. The government cannot control any other amounts of money. But, this is a FIFA decision and the football world shall follow it.

Concerning the collective labor contract/bargain in Romania, it was concluded with the LPF in 1999. It lasted until the end of the last year when LPF decided not to extend it. But, nevertheless this contract was never respected. Not even 2% of its provisions were respected, although it was a very well defined contract in conformity with many others European collective contracts. Due to some problems, that I will not mention here and owing to a football players' protest march organized by our association in December 2002, the LPF has created a parallel syndicate trying to stop us, although our intentions were those allowed by the laws and by the democratic law in general. As a result, LPF did not extend the collective labor contract/bargain because they said that FIFPro would maybe recognize the new syndicate created. We had been full rights' members of FIFPro for the last 10 years! It would have been difficult to believe that FIFPRO would exclude us; they had no reasons to do so. Indeed, a FIFPro Commission, headed by its general secretary was in Romania to discuss with us, the FRF and LPF. And the Executive Committee of FIFPro decided on the 19<sup>th</sup> of March, that our association would continue as an associate member with full rights of FIFPro.

Therefore, we overcame this difficult moment and they didn't succeed to stop us, in the same time our actions were slowed down. We cannot make much progress as the FRF and LPF have no interest in it and they cover in fact/actually the football clubs abuses against the football players, in order to ensure themselves the votes. Indeed, the presidents of the two associations, the FRF and the LPF are elected by the GA of the members (the Clubs) and indeed, you cannot find ever, a better "electoral capital."

I think you understood me and I have to tell you also, relating to the collective labor contract we have some promises that it will be signed by the LPF in July.

And I almost forgot to tell you something very important: we have difficulties with the LPF, who is in fact the representative of the 16 First Division Professional Football Clubs. They sometimes say that they are not "the employers" and have no right to sign a collective labor contract. Although we had one, signed by them, because the clubs empowered them, as they are the associates of the LPF. Therefore, the LPF has to represent the "employers". Sometimes they are employers but only when this suits them, and they are not, when again this suit them. I believe we must find an answer to this problem, as we cannot continue like this if we want to be part of the European Community.

The same problems are found in the field of individual labour contracts. I have to tell you it is a disaster. And I am not exaggerating! These contracts are made in a way; I cannot even tell you how. There is no framework contract, although we are proposing one from 5 or 6 years by now. We had models from other EU countries and even FIFpro provided one. But they don't agree and don't want it. The players sign these contracts in blank. Don't be surprised; it is unbelievable! Because the clubs take advantage of the ignorance of the players, of their naivety, lack of legal knowledge and unawareness of the real contract signification/meaning/implication. Usually the football players don't know what they sign. And we, the syndicate, we have difficulties to communicate/be in touch/to be in contact. We

have a big country and the Romanian territory is hard to cover with information. The press is reluctant and unwilling to publish this information. We had our own publication and we tried to make clear all this problems. But, well, finally it is very difficult to be in touch with all the players. Also, because they move from one club to another quite often and we loose contact sometimes. But, we will continue to make our best efforts to communicate and inform them about these legal issues in order to make everything possible for the players to understand the importance and meaning of their contracts.

So, this contract is usually made without taking the slightest notice of the legal rules. It is signed according to the clubs good will. If sometimes, in very few cases, the contract is signed according to legislation, automatically generates a General Order / standing order (allowed by the national labor law), which will modify all provisions of the previous labor contract. And here you can find all type of outrageous and illogical clauses that make no sense.

For example, the players can be sanctioned/punished if the trainer or the club manager says only that the player has not respected the strategy/the tactics. In my opinion, it is difficult to establish if a player has respected 100% of the strategy or any other trainer advices. Or if he could have run faster in order to catch/get the ball. We had this case and I was suspended for 6 months by the FRF because I have protested against the wrongful/illegal suspension of two football players accused that they were not able to catch the ball. Afterwards, the FRF commissions concluded they were unjustly/ unlawfully sanctioned.

These are some examples of the clubs' bad faith and of the fact that the football authorities protect exclusively the clubs interests.

Another example: *Petrolul-Ploiesti Football Club*; at the end of the football season, even though the players did not receive their incomes/their pay from the beginning of the "return"/season on, they were fined by the club (and the decision was endorsed by the Legal commission of the LPF), the same amount of money they were in right to receive as an income. I don't understand why and don't understand how this can happen. But, the commissions validate all clubs' actions and decisions. It is absolutely unbelievable! We don't think that in the system of a civilized football because a football team has been changed down to another division/retrograded it means that the team should loose all its professional rights and the contracts should be not honored any more.

Ok, I will try to be brief and give you some more concrete cases. The important thing is that the FRF does not respect the FIFA rules and does not want to create the Arbitration Commission. We don't understand how the FRF invents something that does not exist in the football world. A federal commission was established and there is no creation of an arbitration commission. The same thing happens with the commissions dealing with the disputes between the players and the clubs. They are fully in favour of the clubs. Another big quarrel exists between the FRF and LPF (and may be you can help us with some advices) about commissions. Presently they have functioned in Romanian Federation. 40 players are heard by this commission every week. In one year we will see about 80% of the football players getting here. This probably says a lot. Something does not work properly. And fact is the FRF and LPF cover all abuses.

If you need more information we can discuss later. Ok?"

After his presentation, the discussion started along with questions and answers, as follows:

**Roberto Branco Martins (RBM):** "And I have some good basis for discussions on FIFA and even national association level. I brought a press release about the Danish Players' Union who started a court case against FIFA regulations about training and education costs, but also about the Danish Football Association not respecting the employment contracts and the collective bargaining agreement of the players with the clubs. This illustrates what we have heard today.

You have a collective contract from 1999 but it is not respected. The main point is that national labour law prevails over an association law.”

**Alexandru Radulescu (AR):** ”May I speak? It is true that what happened in Denmark could happen in Romania. But again I would like to give you an example, which for you may be inconceivable and unbelievable. And I am very sorry to tell you this because I am Romanian also and I am a patriot and Romania does and did extraordinary efforts for integration, but in football nothing is done.

So, you should know that in the framework of the Romanian Football Federation (Federatia Romana de Fotbal / FRF), an independent commission is composed of all presidents and vice-presidents of all Romanian Courts of Justice. Don’t you think that this was done to protect the FRF? All our claims are blocked, because there is a big corrupt practice. But, we will finally get there and take action into court.”

**RBM:** “Said that also Associations from an objective prospective always have certain persons in their committees who are then members of other organizations to create some influence. What you see in UEFA and the EU of Premiere Leagues intends to be an independent organization, but there is no total independence. EU premiere leagues have made a committee that has been established to talk to FIFA.”

**AR:** “Sorry, but in the framework of FIFA there is an Arbitration Commission and its participants are FIFpro representatives. And FIFA plays a role only for the foreign players. Am I correct? Ok?”

**RBM:** “Exactly, but I mean in the social dialogue you have EUPPFL and there are five people and those must be an independent committee but these same five people sit in the committee of UEFA. FIFA arbitration only deals with international issues and not with national ones. But dealing with economic industry when someone has an employment contract, what kind of suggestions do you have? When somebody has an employment contract in a company, in a business, what you suggest a worker should do? You said that up to 90% of players are in litigation with the clubs, but litigation is done within arbitration. What happens then? Have they been civil cases in front of civil courts?”

**Romanian Labour Lawyer (L):** “From my short experience basically all these case are going to the FRF committees, so almost none of them are going to civil courts. Going to these committees is a bit difficult for employees since they have their own rules, which practically are based on FIFA rules, however they usually do not obey them. They have some regulations that are not necessarily published for everybody that enters these courts, also some taxes that are not published. We had many problems to understand when we have the term to go to the court; this term was not communicated, as it usually is when you go to the court. Also we have had problems knowing what kind of taxes we need to pay.”

**RBM:** “You mean to what court, arbitration court.”

**L:** “This kind of arbitration, well, we don t really understand it. It is a court.

**AR:** “I can explain you. As you have mentioned, starting with this year, because till now the players didn’t have the right to sue and bring their case within the jurisdiction of the civil courts, but due to FIFPro pressures and according to the FIFA legal rules providing that it

cannot be denied the right of the player to bring his claim in front of the civil court, the general assemblies of the FRF allowed the players to sue within the jurisdiction of the civil courts. You, and we really need your help can ask us how to do it. And taxes do not exist.”

**L:** “We pay some taxes.”

**AR:** “ There are no taxes. According to the law there is a department for labour litigation at the Supreme Court and there are no taxes. It is a right obtained by the syndicates. And the players, of course can sign a convention with us or to have them represented. We really need it, because in Romania, unfortunately lawyers did not get involved in these cases. Generally, the only ones involved are the players’ agents, which are nothing more but “money chasers.” They don’t really help the football players.”

**L:** “In fact we pay some taxes, not in the civil courts, because for the civil courts all these employment issues are free of tax. We are not talking about the taxes in the civil courts, but of the taxes that football authorities are asking, FRF and Liga Profesionista and about the cases that are tried directly by them. So with these two organisations we have problems with knowing their procedures, knowing the terms when we need to go to court, knowing the taxes. Everybody only makes steps through these organizations just in order to go to FIFA and have some justice there.”

**RBM:** “But Mr. Radulescu mentioned, is there a possibility to go directly to a civil court?”

**AR:** “Directly!”

**L:** “It is not only possible. It is practically the only correct way, because the organs of the Liga Profesionista de Fotbal Profesionista and FRF are not established by law but by some FIFA regulations. So the only legal courts are the civil courts. There is a conflict of interest between these committees and the decisions made by civil courts.”

**AR:** “This is right!”

**L:** “Almost all players have individual labour contracts and the labour contract is under the jurisdiction of civil courts. In our opinion this is legit.”

**RBM:** “But the players don’t go to civil courts?”

**L:** “The players do not go to civil courts. The players go first to the federation because they are easier to be recognized by FIFA and they want to get as soon as possible to FIFA.”

**AR:** “No, this is not true. Step by step. Indeed, the FRF and LPF commissions are not legally created; moreover they are composed of employees of those 2 institutions. According to the regulations they have the right of 2 “terms”. They have to end the trial/the litigation/the dispute in 2 terms either or not one of the parties is there. The taxes are very high for the football players. For the LPF they are around 3 millions and at the FRF they are around 2,300,000.”

**AR:** “60 millions? Which case? Oh, yes. Therefore, the taxes are very high. In France they are of 15 euros, but talking only about the appeal. For the first instance there are no taxes. For example, a football player division 2 or 3 that goes to Bucharest from Baia Mare needs more

money for his travel expenses (ticket, food, one day accommodation) than the amount he could eventually get if he wins the case. Impossible! So, yes, you are right.”

**RBM:** “But still, not to elaborate too much, you said that they are looking for an arbitration system so as to be easier recognised by FIFA. But the problem is that FIFA arbitration only deals with international issues.”

**L:** “I was talking about a case that we have about an international trainer.”

**RBM:** “Yes but at the national level there is circle. A player always comes in a circle. What I can say now, before I will forget it. There are a lot of difficulties going on, I see the difficulties for the Players Union. FIFPro has recognized FRF and that gives a recognition that it is operating in the right structure because the International Workers Confederation also recognizes FIFPro, which means it has to fulfil some structures. On a national level you have to see who the counterpart to enter into negotiations, agreements is. From the side of the clubs; on one hand they say we are employers, on the other they deny it. The employer side is difficult to organize; it is difficult to find out what is the right structure for employers to be recognized as an organization that is able to enter into agreements with the players.”

**L:** “As far as I seen from Mr. Radulescu presentation it is not a problem of defending the interest of clubs but to defend the interest of the players. So I am not worried for the clubs that are already in alliance with the Romanian authorities in this respect.”

**RBM:** “That’s what I mean. If you are able to bring the clubs together, and make sure they have a mandate to defend the interest of the clubs in relation with to players.”

**L:** “How can you force them to do that? It is not in their interest to do that. It is only in the interest of the players.”

**RBM:** “Exactly. But the problem is, that was the example that I made with the Danish case. If there is a court case in EU that states employment law is more important than association rules and the player goes to the court to apply my labour contract and the clubs will have to obey that. If they would say that collective bargaining agreement is the most powerful piece of law, then every player in Europe has something to point at.”

**AR:** “Now the players have the possibility to go to civil courts. This was confirmed by the FRF. Until now they didn’t do it, because they were blocked by the clubs regulations.”

**L:** “I am talking purely legally: a regulation is not about the law. The law says that the employment contract belongs to the civil court. So basically they had this opportunity forever, since the law creates this opportunity. People do not know who will recognize these judgments.”

**AR:** “I agree and you are right. However, how do you want the football player to go to court if the club sanctions him immediately? Because these regulations are named “special laws.” and there is a big difference between what is happening today with the national law and what happens in football. I would like to offer you, if you are interested in football regulations a collaboration based on a contract, because we are the ones who advice the players what to do and where to go.”

**L:** “But they trust their agents and the agents never tell them to go and see a lawyer. They tell the players that everything will be resolved by an amicable settlement. It’s the mafia way of doing things here. Everything is hushed up/ stifled.”

**AR:** “That’s true!”

**L:** “The players are threatened with sanctions, and the agents don’t want lawyers to give the players any legal advice.”

**AR:** “But what I mean is that the players become more aware.”

**L:** “Yes if they are not penalized and under pressure.”

**AR:** “In Romania there are about a 100,000 football players in all divisions. An agent doesn’t have more than let’s talk about the famous Mr. Vicali.”

**L:** “Oh, if Mr. Vicali is there, you will never see a lawyer around.”

**AR:** “We know this. But how many players does he have? There are enough football players in Romania, who need legal help. And, if we will show them with the right lawyers that something can be done and that there are good results they will not rely any more on their agents because nobody did so until now. Another example; a football player after he had lost in front of the sport’s authorities he brought the case within the jurisdiction of the civil court and the lawyer of the club was in fact the president of the legal Commission of the LPF!”

**L:** “On another side, if the arbitration is created as a technical solution without having necessarily to bring the case to the civil court and where usually the judge doesn’t understand what kind of problem he has to deal with; is it a commercial case, a labour case or a technical problem about internal misunderstandings. As I understand, you have strict rules about the speed, the distance. These are some problems. So why is this arbitration not developed? This is because arbitration is/means something else.”

**AR:** ”Of course it is something else. But the Romanian football authorities do not want arbitration. We are an opponent association and we have big difficulties to make things work and to get them right. It is very difficult. It is very hard. We organized a meeting/protestation and they almost make us disappear. We owe a lot to FIFPro otherwise we would not exist anymore.”

**L:** “But in the same time you are the only one who can take care of an alternative and to take the opportunity to call for specialized services.”

**AR:** “True!”

**RBM:** “I think that it may be a good idea to have some informal discussions with some drinks. I will like to conclude. I’d like to thank you very much for this interesting information. I thank you very much and I suggest that we go over there and maybe speak informally. To conclude, the chair Mr. Richard Parrish summarized the findings of the conference and thanked the speakers and the participants for the fruitful discussion.”

### 3. CONCLUSIONS AND RECOMMENDATIONS

Regarding each country the three following main questions which are relevant in a Social Dialogue context, are dealt with:

1. What is the legal basis for the relationship between a player and the club (comprising aspects concerning the regulation of sport in the country concerned, termination of contracts, compensation for training and education)?
2. What has the candidate country (now EU Member State plus Bulgaria and Romania) already done to implement Council Directive 1990/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC (European Trade Union Confederation), UNICE (Union of Industrial Employers' Confederation of Europe) and CEEP (Centre of Enterprises with Public Participation and Enterprises of General Economic Interest)?
3. Please discuss the possibilities for entering into a social dialogue in professional football.

*Ad 1:* In *Cyprus* the basis for the relationship between the football club and a professional player is an employment contract. Bearing in mind, however, that Cypriot courts have refused to accept that professional basketball players are employees under the terms of general labour law, the status of professional football players is in fact still ambiguous. Regarding *Malta* no information could unfortunately be obtained concerning the situation there. In *Estonia* it is undisputedly accepted that professional football players are employees, whose rights are established under general labour law. In *Latvia* a professional football player is an employee, whose relationship with his club is mainly governed by general labour law, and only to a limited extent by civil law provisions. Despite all the employment relationship elements present, the club/player relationship is not regulated by the Labour Code in *Lithuania*. Professional football players in *Hungary* in practice do not enter into an employment contract and consequently the Labour Code does not apply to their relationship with the clubs. Professional football players enter into commission contracts ("contracts of agency") governed by the Civil Code. In *Slovenia* the relationship between the player and the club can be of two different types. If it is established under the Labour Code it has the nature of an employment contract. The other way of establishing a relationship between a player and a club is under the Civil Code, as a contract for the performance of services. However, in practice clubs are unwilling to offer employment contracts and are thus forcing players to sign civil law contracts. As employers, clubs would have to accept the consequences of the employment relationship, i.e. paying social security contributions. Players are thus responsible for organising social security themselves. In *Poland* professional football players can enter into a relationship with a club either on the basis of an employment contract (governed by labour law) or based on a commission contract (governed by civil law). However, it is common practice amongst employers to replace contracts of employment with "sporting contracts", i.e., contracts for providing sporting services. An accepted practice in Poland is to sign two types of contracts with a player: a contract, which provides only for basic remuneration, and a second, civil law, contract governing the commission for the usage of personal player rights (advertising, etc.). The monetary value of the latter is significantly higher than that of the former. In the *Czech Republic* professional football players do not enter into an employment relationship and therefore do not enjoy the social rights derived from a contract under labour law. They have self-employed status which inter alia implies that they must pay their own

contributions for health insurance, pension schemes, etc. In *Slovakia* contracts between players and clubs are in practice regulated by the Civil Code. The player and the club enter into a “contract for the performance of sporting activity” which implies that the legal status of the player is that of a self-employed person who has no social and economic rights under the contract. In *Bulgaria* a professional football player is allowed to conclude two types of contract: a contract which outlines the relationship with the club (some aspects of the club/player relationship are governed by general labour law), and a license agreement with the Bulgarian Football Union which establishes his professional status. In *Romania* professional football players sign individual employment contracts governed by the Labour Code.

*Conclusions:* Other than the commission contract (a contract for providing football services), the employment contract provides professional football players with full protection as regards social rights. Self-employment makes professional football players responsible for the occupational risk connected with practising sport, although their salary is usually considerably higher. As a result of the Bosman case, the European Commission now requires that the status of professional football players is adapted to the standards of labour law. Generally speaking, in many new Member States the relationship of professional football players with their clubs is still not undisputedly based on labour law. This fact also negatively affects the conditions for starting a social dialogue and the subsequent conclusion of collective bargaining agreements in the respective national professional football sectors. The use of “self-employment” contracts is contradictory, since professional football players operate (train and play) under the authority of a trainer/coach, who can give them instructions, so that in fact we are dealing with an employment relationship. Professional football players are not independently operating “entrepreneurs”; they are not individual service providers like professional tennis players!

*Ad 2:* In *Cyprus* the employment contract is concluded for a fixed term, which cannot exceed five years according to the regulations of the Cypriot Football Federation. Nevertheless, since sport is in no way excluded from the application of general labour law, any fixed-term contract may not exceed the term of 30 months according to the national law implementing Council Directive 1999/70/EC. Regarding *Malta* no information could be obtained. *Estonian* law imposes a requirement of objective justification for the conclusion of a fixed-term contract, but not for its extension. Extending a fixed-term contract can be considered as concluding a new agreement. In that case, the requirement of objective justification also applies. Therefore, it can be argued that Estonian labour legislation is in accordance with Directive 1990/70/EC. *Latvian* Labour Law limits the use of fixed-term employment contracts by imposing the requirements of both objective justification and a maximum total duration of successive contracts. Hereby Latvia complies with the requirements of the Directive.

In *Lithuania* the new Labour Code does not contain any provisions limiting the use of fixed-term employment contracts. The Lithuanian Labour Code only provides that an employee may request that his/her fixed-term contract be transformed into a contract for an indefinite period of time if the interlude between the expiry of the previous contract and the conclusion of the current contract was a month at most. This provision is clearly insufficient to meet the requirements of the Directive. The *Hungarian* legislator has opted for implementation in the Labour Code of the maximum total duration of successive fixed-term employment contracts in order to comply with the Directive and achieve its objectives. In *Slovenia* the new Labour Code is in accordance with the Directive, now that the legislator has introduced specific measures in the Code to prevent abuses arising from the use of successive fixed-term contracts. The same is true in *Poland*. The *Czech Republic* has also implemented the Directive correctly and included all its requirements in the Labour Code. *Slovakia* has transposed the Directive

into its Labour Code. In *Bulgaria* the acquis on the use on fixed-term contracts has not yet been implemented in the national legal system. In *Romania* the legislator had already introduced measures in order to prevent the use of successive fixed-term contracts.

*Conclusions:* It may be observed that most of the new EU Member States have implemented Council Directive 1990/70/EC to the full extent in order that abuses arising from the use of successive fixed-term contracts be prevented in the professional football sector. The Directive aims to counter the use of fixed-term contracts which employers conclude in order to avoid the burdensome regulations applying to firm employment contracts, which affects employees' social rights. Evidently, where no employment contracts are concluded between clubs and players (see ad 1 above), the Directive is not applicable and thus not relevant for the professional football sector.

*Ad 3:* *Cyprus* has a players' union: the Pancypriot Footballers Association. It has been suggested that the Cypriot football league could act as a social partner in collective bargaining. Regarding *Malta* no information could be obtained. In *Estonia* there is no organisation representing clubs or players in respect of social matters. Since it is undisputedly accepted in the football sector that professional football players are employees whose rights are established under general labour law, footballers are entitled to establish a union and the clubs are entitled to form an employers' association. However, no initiatives have as yet been taken. There is no organisation representing football clubs in social matters in *Latvia*. Recently, an Association of Latvian Football Clubs has been established, but it is not yet clear whether it could represent the clubs in collective bargaining. Latvia currently does not have an organisation for the representation of football players either. An attempt was made to establish a trade union, but it failed due to lack of interest. For the time being no collective bargaining agreements are concluded in *Lithuanian* professional football, which is probably due to the absence of formal social partners in the sector. The clubs have only recently established a body representing their collective interests (the Association of National Football Clubs (NFKA)), which is mainly directed at establishing a well-functioning and financially feasible football league. However, absent a players' union, a social dialogue in Lithuanian football seems to be a long way off. In *Hungary* there is a Trade Union of Professional Footballers and a Hungarian Professional League. The players' union is a member of F.I.F.Pro. However, the Hungarian Professional League does not act as an employers' organisation due to the fact that the clubs (members of the League) do not act as employers. An organisation representing the collective of professional football clubs regarding labour issues and social dialogue in *Slovenia* is the Association of football clubs of the First Slovenian Football League. This employers' association is officially independent from the national football association. Clubs of the First Slovenian Football League are not members of the football association. The Association of football clubs of the First Slovenian Football League is an independent entity that could become the social partner representing clubs in a social dialogue and entering into collective bargaining agreements. However, the Association's articles of association do not actually contain any specific provisions which would allow the organisation to enter into a collective agreement. Therefore, it is not clear whether the Association is empowered to represent the clubs as employers in Slovenian professional football. On the employee side, there is the recently (October 2003) established Union of Professional Football Players of Slovenia (SPINS) which now only represents the First League players. SPINS is now a full member of F.I.F.Pro. This makes SPINS a potential partner for possible social dialogue in the professional football sector. In *Poland* the Polish Independent Football League (PALP) represented all professional football clubs until March 2003, when a new body, the Polish Football League

(PLP), was established. PLP will organise the League as from June 2005. It will remain independent from the national football association. On the employee side there is the Nationwide Polish Trade Union of Professional Football Players (OZZP). The newly formed PLP could represent the clubs' interest in a possible collective bargaining agreement with OZZP. Those two organisations could potentially be the partners in a social dialogue. However, the OZZP's articles of association would have to be revised to enable it to become an official partner in a social dialogue. In the *Czech Republic* there is no trade-union-type organisation and no legal entity representing the clubs either. In *Slovakia* this is the same. There is neither an independent organisation representing professional football players nor an independent organisation representing the clubs. In *Bulgaria* there are no social partners in the professional football sector. In *Romania* the Professional Football League (LPF) could be an employers' organisation representing the social and economic interests of the clubs and playing the role of counterpart to the Players' Union (A.F.A.N.) which is a member of F.I.F.Pro. Between 1999-2003 a collective bargaining agreement existed between LPF and A.F.A.N., but it was not applied in practice. In 2003 the Romanian Football Association (FRF) and LPF established a new, but illegal players' union. Given these circumstances, there is currently is no social dialogue in Romanian professional football.

*Conclusions:* Generally speaking, it may be observed that a social dialogue is still absent or almost absent in most of the former socialist states, i.e., eight out of the ten new EU Member States (apart from Cyprus and Malta). The main reason for this is the absence of social partners, and even if they do exist, they are still new and inexperienced. Players have not established representative organisations and the same applies to clubs.

All in all, it can be said that considering all the odds that are stacked against national collective bargaining agreements in the professional football sector, the alternative of a social dialogue at European level becomes more and more appealing. This is also recognised by the local football sector representatives who have participated in the project's conferences. However, in order to realise this opportunity we need formally recognised and well-functioning social partners. The possible establishment and functioning of trade unions in a social dialogue is further complicated by the fact that in many of the ten new EU Member States the players do not have clear employee status under labour law. Professional football in the formerly socialist new Member States is still making the transition from a centrally controlled and state-funded sector to a liberal and commercial industry.

### ***Recommendations***

Based on the above conclusions, the following *general recommendations* are made:

- 1) under the rules and regulations of national football associations, professional football players should be given employee status (i.e. employment contracts) which would considerably strengthen their position towards their clubs by improving their legal position and affording better financial protection;
- 2) where this is not already the case, existing and/or future players' unions should be based upon the membership of professional football players as employees;
- 3) in all new Member States national organisations of management on the one hand and labour on the other should be established in order to create a basis for starting a social dialogue at the national level in the professional football sector. League organisations of clubs should be empowered to operate also in employment matters for this purpose;

- 4) existing and/or future employers' organisations and unions should participate in possible, future efforts at European level to initiate a social dialogue in the EU framework (cf., the proposals made to the European Commission for the reasoning it could adopt when dealing with a joint request from organisations who wish to establish a Social Dialogue Committee in European professional football in Chapter 5 of the Final report on the 2003-2004 EFFC Project regarding the 15 "old" Member States). It is of utmost importance that a serious initiative for a social dialogue at European level is taken in the "old" Member States as soon as possible, since this is expected to have a positive influence on the situation in the "new" Member States. If club representatives from a sufficient number of countries would decide to come to an agreement with F.I.F.Pro, there is the possibility that this partial agreement may eventually be applied in all 25 EU Member States to impact employment relations between clubs and professional football players.

**Table**

	employment contract	commission contract	Management	<i>Labour</i>
Cyprus	x		x	x
Malta	- no information available -			
Estonia	x			
Latvia	x		x	
Lithuania		x	x	
Hungary		x	x	x
Slovenia	x	x	x	x
Poland	x	x	x	x
Czech Republic		x		
Slovakia		x		
Bulgaria	x	x		
Romania	x		x	x

/