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Antoine Duval · Ben Van Rompuy  
Editors

# The Legacy of *Bosman*

Revisiting the Relationship between  
EU Law and Sport



*Editors*

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## Series Information

Books in the *ASSER International Sports Law Series* comprehensively chart and analyse legal and policy developments in the emerging field of European and international sports law. Within scholarly publishing, the series is the most cited in its area and uniquely features contributions from the leading sports law scholars. It is a valuable resource for practitioners, academics, sports officials, and anyone interested in or impacted by sports and the law.

The series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre's mission is to provide a centre of excellence in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organizations and federations, the professional sports industry, etc.) on both a national and an international basis. As a pioneer in the field of European and international sports law, the Centre has established a worldwide network of academics and practitioners and co-operation agreements with various sports law institutes and centres in Europe and beyond.

Apart from the Series, the Centre edits and publishes *The International Sports Law Journal*

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# Foreword

The first thing to do for the Court of Justice of the European Union with an incoming case is to choose the judge rapporteur and the Advocate General responsible for the opinion. The date of registration determines the President of the Court, responsible for the nomination of the judge rapporteur, and the First Advocate General, responsible for the nomination of the advocate general competent for the case. In the *Bosman* case the date of registration was 6 October 1993. The next day, a partial replacement of the Court took place. So the outgoing President took no decision on the *Bosman* case. The nomination of the judge rapporteur took place after that date. Ole Due was the Court's President, and Marc Darmon the First Advocate General. Together, they nominated the same persons originally nominated for the first *Bosman* case C-340/90, registered 15 November 1990. The President (already Ole Due) had then nominated as judge rapporteur Federico Mancini, and the then First Advocate General Francis Jacobs had nominated myself as competent Advocate General. In the second *Bosman* case C-269/92, registered on 15 June 1992, these nominations had been maintained. On proposition of the judge rapporteur and the Advocate General the full assembly of the Court decided to keep the case before the full court. Mancini was a football fan and reader of the 'Gazetta dello Sport'. His *référéndaire* Vittorio Di Bucci<sup>1</sup> was in charge of the case. I had a *référéndaire* named Gerhard Grill,<sup>2</sup> who was also very knowledgeable about football. He was charged with the preparation of the case.

The parties to the case, the European Commission and the French and Italian governments, handed in briefs and participated in the hearing on 20 June 1995. The Italian Prime Minister at that time was Silvio Berlusconi. The French minister for culture and justice, Jaques Toubon, even assisted at the hearing. For their part, the Danish and German governments participated only in the hearing. Originally, the German (Kohl) government had not intended to join the procedure. But at the

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<sup>1</sup>Now director and principal legal advisor, legal service of the European Commission.

<sup>2</sup>Now director at the European Ombudsman.

demand of the State government of Baden-Württemberg it acted at the hearing on the side of the football associations, like France and Italy. Indeed, the finance minister of Baden-Württemberg at the time was Gerhard Mayer-Vorfelder, who was also presiding the VfB Stuttgart, a prominent German Bundesliga club. The only government that sided with Bosman was the Danish government. The best pleadings in my mind were made by the agent for the Commission, Ms. Wolfcarius who, different from the earlier written submissions of the Commission, pleaded in favour of Bosman. After the hearing there was a dinner of the Court in honour of the French minister. Returning home that evening I watched the late edition of the German first TV news programme, which gave a rather positive report of the hearing.

My opinion in this case was scheduled immediately after the summer recess of the Court. So it had to be prepared during the summer vacation. But before we could start, the opinion for another case (C-101/94) had to be finished. Its presentation was scheduled for July 13 1995. After that I had planned a trip to the 'Châteaux de la Loire'. Before leaving I discussed the line to be followed in the opinion with Gerhard Grill. He drafted the opinion and faxed chapter after chapter of the draft to the various 'châteaux' of the Loire Valley. I studied them and returned them to Mr. Grill with my comments. There were few comments.

Much attention was given to the question of admissibility of the preliminary questions raised by the national court. Both questions (on the transfer system and especially the nationality clause) were considered to be inadmissible by several governments and by the Commission in its written submissions. We considered the arguments against admissibility on more than 12 pages and refuted them. We saw no reason for the Court not to give the preliminary ruling and the Court followed us.

During the preparation of the opinion I received several phone calls from the German political world offering more information on the subject. I thanked them for the offer, but told them I could only use information that was also in the hand of the judges and that the occasion for sharing such information had been the hearing. So there was no use in giving me now such information. In no other case in my career of almost 14 years at the Court have I been exposed to such efforts to take influence on a case. The political influence and power of football cannot be overestimated. Another example illustrates this fact. After the judgement I was invited to participate in a broadcast of the second German TV channel (ZDF)—'Das aktuelle Sportstudio'—together with a representative of the football associations to talk about the consequences of the judgment. A few days before the event I got a fax from the moderator that the discussion would not take place because the representative of the football associations was unavailable. If you switched on the broadcast that Saturday you could however see the representative of the football associations criticizing the judgment and nobody contradicted him.

As you probably know, the opinion pleaded for the admissibility of the case and for the incompatibility of the football rules with the freedom of movement for workers seen as containing a general prohibition of restrictions on the freedom

of movements, a prohibition of discrimination on grounds of nationality, and a prohibition of agreements restricting competition. The echo of the opinion in the media was split in two camps. The general media and especially the UK media were favourable to my views. In fact, it is probably the only case in my career at the Court for which I have been stopped in the streets, clapped on my shoulders and commented: Well done! On the other side, the media close to sport in general and particularly to the national football associations and UEFA were very critical.

Not being satisfied with the opinion, UEFA requested the Court to order a measure of inquiry with a view to obtaining fuller information on the role played by transfer fees in the financing of small or medium-sized football clubs and the consequences of their possible disappearance. After hearing my views on the matter, the Court considered that the application should be dismissed. Indeed, it was made at a time when the oral procedure was closed. The Court held that such an application could be admitted only if it relates to facts which the party concerned could not put forward before the close of the oral procedure. This was not the case here. Moreover, the question was raised whether the aim of maintaining a balance in financial and competitive terms, and in particular that of ensuring the financing of smaller clubs, could be achieved by other means such as a redistribution of a portion of football income from television—in particular by Mr. Bosman in his written observations. Obviously the football associations had been confronted with that issue even before the hearing. The opinion treated this matter under the heading ‘Maintenance of the financial and sporting equilibrium’.<sup>3</sup>

So the stage was set for the rendering of the judgement.

The judgement largely followed the opinion. Thanks to it, for the first time, millions of people learned that in ‘Europe’ they have individual rights and judges who protect them. This book celebrates the importance of the *Bosman* judgement as a fundamental case for the application of EU law to sport and for the dialogue that it fostered between sports governing bodies and the EU institutions. The book, which covers a wide range of subjects, demonstrates the living legacy of the *Bosman* ruling.

Prof. Dr. Carl Otto Lenz  
Advocate General at the Court of Justice in *Bosman*

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<sup>3</sup>(para 218–234).



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**Roger Welch Ph.D., LL.M., LL.B.** was, until 2010, a principal lecturer in employment law in the Business School at the University of Portsmouth, where he is now a visiting research fellow. He has written extensively on collective and individual employment rights, and is the lead author of *Employment Law* (with Caroline Strevens), published by Pearson in its Living Law series. He is an original and ongoing author of *Sports Law*, edited by Simon Gardener and published by Routledge. With Simon Gardiner, he has written extensively on employment contracts in professional sport with particular emphasis on the ongoing legacy of the *Bosman* ruling in the contexts of player mobility, the regulation of transfer systems and the compatibility of player nationality quotas with European Union law.

# Abbreviations

ACP	African, Caribbean and Pacific Group of States
AG	Advocate General
BER	Block Exemption Regulation
CAS	Court of Arbitration for Sport
CJEU	Court of Justice of the European Union
DG	Directorate General
DRC	(FIFA) Dispute Resolution Chamber
ECA	European Club Association
ECB	England and Wales Cricket Board
EEA	European Economic Area
EEC Treaty	Treaty establishing the European Economic Community (Treaty of Rome)
ELPA	Elliniki Leskhi Aftokinitou kai Periigiseon (Greek Automobile and Touring Club)
EP	European Parliament
EPFL	European Professional Football Leagues
EUR	Euros
FFP	Financial Fair Play
FIA	Fédération Internationale de l'Automobile
FIFA	Fédération Internationale de Football Association
FIFPro	Fédération Internationale des Associations de Footballeurs Professionnels
FOA	Formula One Administration Ltd
G14	Group of 14 European football clubs
GBER	General Block Exemption Regulation
INEA	Institute for European Affairs
IOC	International Olympic Committee
ISC	International Sportsworld Communicators
ITC	International Transfer Certificate
MOTOE	Motosykletistiki Omospondia Ellados NPID (Greek Motorcycling Federation)

MRSPC	Minimum Requirements in Standard Player Contracts
NYC	New York Convention
PA	Principal-agent
PFA	Professional Footballers' Association
PFSC	(UEFA) Professional Football Strategy Council
PSC	Players Status Committee
RSTP	(FIFA) Regulations on the Status and Transfer of Players
SGB	Sports Governing Body
SME	Small and Medium-sized Enterprise
TFEU	Treaty on the Functioning of the European Union
UCI	Union Cycliste Internationale
UEFA	Union Européenne de Football Association