
PREFACE

The Sporting Exception in European Union Law is the most recent addition to the nascent monograph literature exploring the interface between sport and European Union law. One of the first monographs, Parrish's, *Sports Law and Policy in the European Union*, was published in 2003 by Manchester University Press. In 2004 Halgreen's *European Sports Law* was published by Forlaget Thomson in which the author presented a comparative analysis of the European and American sports models. In 2005 Kluwer published Van den Bogaert's *Regulation of the Mobility of Sportsmen in the EU Post Bosman*, a book which investigated the application of free movement law to sporting contexts. These books were the first generation of EU sports law monographs, all being inspired by the 1995 European Court of Justice judgment, *Bosman*,¹ and all being the product of PhD research. In addition to these monographs, professor Weatherill's influential work on the subject was collected in *European Sports Law: Collected Papers*, published in 2007 in the Asser International Sports Law Series. Three developments justify the need to begin a second generation of monograph literature. First, the Court's 2006 judgment in *Meca-Medina*² is arguably as significant as *Bosman* as it establishes a new methodology for the application of competition law to sport. Second, the 2007 European Commission White Paper on Sport signals a major political impetus for the EU to intervene more directly in sport and makes a plea for further research to inform future debates. Third, this involvement will become constitutionalised in the form of an express competence if the Reform Treaty, unlike the 2005 Treaty establishing a Constitution for Europe, navigates the ratification process.

The 1974 judgment of the European Court of Justice in *Walrave*³ established the 'sporting exception', a principle by which rules of 'purely sporting interest' were removed from the scope of the EC Treaty. This encouraged sports governing bodies to argue that sporting practices that could otherwise constitute infringements of Community law were 'purely sporting rules' and beyond the scope of Community law. The Court's 1995 *Bosman* judgment clarified that economic activities were governed by Community law even when they were located in the regulatory ambit of sports governing bodies, and established firmly that economic sporting practices did fall within the scope of Community rules on labour mobility. In its 2006 *Meca-Medina* judgment, the Court made explicit that the presence of some 'purely sporting' phenomena in the context of economic sporting activity did not altogether exclude sports governing bodies from the scope of competition law.

¹ Case C-415/93 *Union Royale Belge Sociétés de Football Association and others v. Bosman*, [1995] ECR I-4921.

² Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission* [2006] ECR I-6991.

³ Case 36/74 *Walrave and Koch v. Association Union Cycliste Internationale* [1974] ECR 1405.

Engagement with the justificatory processes of Community law is therefore of critical importance for the governing bodies. Whilst modern Community law prohibits undertakings adopting restrictive practices, it places great emphasis on the strength of justificatory arguments. In free movement law restrictions can be objectively justified with reference to the attainment of proportionately pursued legitimate objectives. In competition law, the decision on whether a restriction is to be condemned must take account of the context in which the restriction was imposed. This analysis can render certain practices incapable of being defined as a restriction. Even if a practice that constitutes ‘a restriction’, the party imposing the restriction has recourse to the exemption criteria which provide opportunities to justify the existence of a restriction.

This book seeks to establish the definitive analytical toolkit explaining how ‘specificity of sport’ arguments can find expression within Community free movement and competition law. Chapter one explores the intellectual foundations of the specificity of sport argument by interrogating claims that sport is special from the perspective of its activities, rules and structures. Chapter two explores the articulation of these specificities within the emergent EU sports policy. Chapters three, four and five present an analytical framework on how specificity arguments may find expression within the Community legal framework. Chapter six explores the elaboration of specificity arguments within the context of sports broadcasting and chapters seven and eight do likewise in relation to the rules of the governing bodies affecting the rights of players and those rules pertaining to the organisation of sport in Europe. Chapter nine draws upon this analysis and presents an overview of the present state of the legal framework. It also draws some conclusions as to the questions which the Union’s fledgling sports policy will need to consider in the future.

Some technical questions remain to be addressed. After some agonizing, the authors have settled for ‘Community’ rather than Union law, whilst retaining the terminology of ‘Union’ where the context so requires. The distinction will become anachronistic following the entry into force of the Reform Treaty. Some Commission documents already reflect a preference for ‘EU law’. This book also admittedly has an emphasis on football. With few exceptions, only football is sufficiently commercialized to regularly raise issues in the context of Commission enforcement powers. UEFA is also active as a lobby group, and has raised the profile of many of the sporting-related issues considered here.

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