

European Sports Law and Policy Bulletin

REGULATING EMPLOYMENT RELATIONSHIPS IN PROFESSIONAL FOOTBALL A COMPARATIVE ANALYSIS

Michele Colucci and Frank Hendrickx (eds.)

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**REGULATING EMPLOYMENT RELATIONSHIPS
IN PROFESSIONAL FOOTBALL**

A COMPARATIVE ANALYSIS

Michele Colucci and Frank Hendrickx (eds.)

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CONTENTS

NOTE ON THE AUTHORS	11
INTRODUCTION	
by <i>Michele Colucci</i> and <i>Frank Hendrickx</i>	15
EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL:	
ARGENTINA	
by <i>Javier H. Delfino</i>	19
BELGIUM	
by <i>Frank Hendrickx</i>	39
BRAZIL	
by <i>Leonardo Andreotti Paulo de Oliveira</i>	57
CROATIA	
by <i>Vanja Smokvina</i>	73
CZECH REPUBLIC	
by <i>Marketa Haindlova</i>	101
DENMARK	
by <i>Jens Evald</i>	115
ENGLAND	
by <i>Richard Parrish</i>	129
FRANCE	
by <i>Jean Michel Marmayou</i>	145
GERMANY	
by <i>Jan Sienicki</i>	173

ITALY	
by <i>Michele Colucci</i>	201
JAPAN	
by <i>Takuya Yamazaki</i>	217
MEXICO	
by <i>Ricardo de Buen Rodriguez</i>	233
THE NETHERLANDS	
by <i>Wil Van Megen</i>	249
PORTUGAL	
by <i>Rui Botica Santos</i>	269
ROMANIA	
by <i>Geanina Tatu</i>	289
RUSSIA	
by <i>Olga Rymkevich</i>	309
SLOVAK REPUBLIC	
by <i>Tomáš Gábriš</i>	343
SPAIN	
by <i>Juan de Dios Crespo Pérez</i>	367
SWITZERLAND	
by <i>Lucien W. Valloni</i> and <i>Beat Wicki</i>	389
TURKEY	
by <i>Anil Gürsoy Artan</i> and <i>Murat Artan</i>	413
THE EU SOCIAL DIALOGUE	
by <i>Arnout Geeraert</i>	437
THE COMPARATIVE ANALYSIS	
by <i>Michele Colucci</i> and <i>Frank Hendrickx</i>	455

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INTRODUCTION

Sport performs several functions in society: an educational, a social, a cultural as well as a recreational function. Nevertheless sport is also a business: in economic terms, it is a rapidly growing area accounting for 3% of world trade and is one of the sectors most likely to generate new employment in the near future.

International and national sports associations regulate this business in an autonomous way and adopt private regulations or by-laws, including organisational, disciplinary rules as well as rules of play. However, the trend towards more professionalism in sport and its growing economic and relevance have prompted an increasing reliance on legal rules adopted by governments and international organizations such as the United Nations, the Council of Europe, and the European Union.

Sport is also considered as a “special sector” and could even be seen as a specific ‘labour market’. In a professional sport context, athletes and players can be considered as “special workers” and their clubs and teams as “special employers”. The specific nature of sports, leading to the question of how public regulation and private sport rules relate to each other, is also an issue where employment relationships are concerned. For example, how do employment law rules interrelate with questions of athlete selection, remuneration, discipline or contracting? How do laws and regulation support and implement players’ or athletes’ unionism or collective bargaining that may take place? To what extent are team members seen as regular employees, or individual players as self-employed persons?

In this book, we take stock of the rules and problems that exist when combining the law on employment relations and specific sport contexts, and particular sporting rules. The focus will be on professional football, a field of worldwide economic and social interest, where club-player relations are rather well established and structured through international sporting bodies and a large number of problems and issues have already occurred. Professional football is a field where the interaction between public employment regulation and private sports regulation is most relevant. The aim of this book is to examine the question of how the legal regulation of employment relations are applied or adapted in the context of professional football and to what extent could aspects of sport specificity be identified or established to justify a special legal regime.

The editors would like to thank Antonella Frattini for the editorial assistance and James Carey for the proof reading of the book.

Brussels, 31 October 2014

Michele Colucci *Frank Hendrickx*

**EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL:
ARGENTINA**

by *Javier H. Delfino**

SUMMARY: Introduction – 1. Employment regulation and football structures – 2. Sources of Law and approaches – 3. Individual employment relationship in professional football – 4. Medical and doping issues – 5. Player Transfer – 6. Social security principles (unemployment and pensions) – 7. Labour dispute settlement – Conclusion

Introduction

Argentina applies federal law to labour regulations - both individual and collective ones, as well as to social security protection.

The current professional football player legal employment status is embodied in mandatory rules derived from the State and collective bargaining agreements signed by labour unions and employers. In contrast, amateurism prevents the employment principle. The relationship between sports entities and athletes who play football as a professional activity is governed by a specific law and assisted by general employment law in those aspects that have not been regulated. In addition, collective bargaining agreements are a key factor. Moreover, there are a variety of rules set by the State, the *Asociación del Fútbol Argentino* and FIFA.

As with many other countries, sources of sport law in Argentina are both public and private. Athletes can have amateur or professional status according to the sport discipline. Amateurism is the main rule regarding sport practice in this country and professionalism is the exception.

Despite the increase of economic profits in some sport practices, the legal entity remains as a non-profit organization. Sport governing bodies play a significant role in the thriving business of sports, and their role goes far beyond the adoption of playing rules, yet they are still not commercial entities.

The *Asociación del Fútbol Argentino* (AFA) is the main entity that controls

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the organization and practice of football, including members of all the local clubs. Argentina has five well known clubs: Boca Juniors, River Plate, San Lorenzo, Independiente and Racing, but all the teams around the country have produced world class football talents. Any top club with an international scouting system will seriously consider football players from this country.

1. *Employment regulation and football structures*

1.1 *Employment regulation*

There is no federal code of laws regarding employment such as there is in civil, commercial or penal law. However, there are many laws in force, enacted by the federal government and effective nation-wide. Employment relationships, in their most general perspective, are governed by Law 20744 (LCT) enacted by the Federal Congress in 1974, and its terms have been amended several times throughout the years.

LCT governs employment relationships, from hiring to termination, with mandatory rules. A vast majority of concerns regarding the rights and duties of employees and employers have been covered by this statute.

The statutory coverage includes every person in the lawful service of another who has the right to manage the work produced, where there is a payment in compensation for it, and under any form of employment contract, be it express or implied. This employment relationship is defined as salaried work (in contrast with an independent contractor) and will be regulated by the LCT and the corresponding collective bargaining agreement. There are some activities that are excluded and some others that have particular statutes.

There is an *iuris tantum* presumption in favour of the existence of salaried work in the case of services provided to a third party. Therefore, anyone wishing to maintain the contrary will have to produce evidence to support such position.

The following matters are to be considered when determining whether the employee is a salaried worker or an independent contractor: i) the extent of control over or management of the work; ii) the power to discipline; and iii) the extent of the economic position. Nevertheless, there is no agreement between scholars or courts about which of these is the controlling factor.

LCT provides four alternatives for hiring employees: (a) permanent contract, (b) part-time scheme, (c) fixed term contract or (d) contract for a specific activity.

(a) *A permanent contract* is presumed to be on full time basis and has an indefinite term, no written contract is required and the first 3 months are defined as a trial period.

(b) *A part-time contract* is when the daily activity is less than 2/3 of the customary working hours within the corresponding activity. In such instances the compensation may not be lower than the proportional compensation for an employee performing services on a full-time basis. The cap for the number of

EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL: BELGIUM

by *Frank Hendrickx**

SUMMARY: Introduction – 1. Employment regulation and football structures – 2. Individual employment relations in professional football – 3. Medical and doping issues – 4. Transfer of players – 5. Social security – 6. Labour dispute settlement

Introduction

In Belgium, football is one of the major sports in the country. Not only from the broad public, but also from the perspective of the legal system, football attracts a lot of attention. The famous *Bosman*-case originates from a Belgian legal dispute, like other European sports cases.

Football is practiced at amateur level as well as at professional level. The law follows this distinction to a certain extent. While labour law applies to the employment relationship between club and player in a professional context, there is specific sport legislation, such as the Act of 24 February 1978 concerning the employment contract for sports professionals (the Sports Professionals Act). In the federal system of Belgium, the regions (Communities) are competent for sports. In the Flemish Community, there is a Decree of 24 July 1996 with regard to the status of the non-professional athlete. It applies to athletes who do not qualify as professionals under the Sports Professionals Act. It includes amateur-level football players, even those who obtain remuneration, to the extent that the annual gross remuneration is lower than the threshold referred to in the Sports Professionals Act and which will be discussed below.

1. Employment regulation and football structures

Employment in professional football in Belgium is mainly undertaken in the framework of an employment contract. It means that football contracts are largely dominated by provisions of employment law. A central piece of legislation is the Act of 3 July 1978 on employment contracts (the Employment Contracts Act).

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Furthermore, as has been mentioned above, there is the Act of 24 February 1978 concerning the employment contract for sports professionals (the Sports Professionals Act). By sports professionals is meant those persons who undertake to prepare themselves for, or take part in, a competition or sports spectator event under the authority of another person in return for remuneration exceeding a certain level or threshold.¹ The Sports Professionals Act applies to professional football players whose annual gross remuneration is higher than a certain threshold, as determined by Royal Decree on a yearly basis. With the Royal Decree of 27 May 2014 this threshold is set at a remuneration of 9.400 Euro gross per year for the period of 1 July 2014 until and including 30 June 2015.²

Next to this legislation, there is a practice of concluding collective agreements on football employment in the sectorial Joint Labour Committee n° 223 competent for sports.³ At the time of writing, the collective agreement of 2 July 2013 governs the contract of professional football players and their clubs to the extent that they are regulated by the Sports Professionals Act. This ‘football collective agreement’ is concluded for a limited duration of time and expires after 30 June 2015. It succeeds and replaces previous football collective agreements which are usually concluded for a fixed-term. Since the football agreement is concluded in a Joint Committee which has a national competence in the sports sector, it is applicable in the whole country.

Finally, specific regulations within the football associations apply concerning the status of players and clubs. Professional (but also amateur) football in Belgium is organised by the Royal Belgian Football Association (the RBFA), who was founded in 1895. By adhering to the Royal Belgian Football Association, clubs and players agree to respect the RBFA regulations.⁴ Furthermore, international football regulations, such as the FIFA Regulations, similarly intervene.

It is obvious that labour law provisions interfere with the various specific internal football rules and regulations concerning clubs and players to the extent that they affect the employment relationship or employment rights. It makes the employment contract between club and player, often indicated as the ‘football contract’, a hybrid or double-layered construct. On the one hand, the contract is governed by employment law provisions, while on the other hand it is ruled by the football regulations of the respective national and international football organisation. The general rule, however, is that employment law provisions are of a mandatory nature and hierarchically of a higher rank. Therefore, football regulations governing the contract between club and player, can only apply in so far as they are in accordance with the applicable employment legislation or other mandatory legal provisions.

¹ Article 2 Sports Professionals Act.

² Royal Decree 27 May 2014, *Off. Gaz.* 20 June 2014.

³ This Joint Labour Committee was established by the Royal Decree of 10 August 1978, *Off. Gaz.* 17 October 1978.

⁴ Article 504.1 Regulations Royal Belgian Football Association, http://extranet.e-kickoff.com/project/publiek/reglement/reglement_nl.pdf, consulted on 19 October 2011.

**EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL:
BRAZIL**

by *Leonardo Andreotti Paulo de Oliveira**

SUMMARY: Introduction – 1. Employment regulation and football structures – 2. The professional athlete and professional sport – 3. Individual employment relations in professional football – 4. Medical and doping issues – 5. Transfer of players – 6. Insurance – 7. Settlement of employment disputes – Conclusion

Introduction

Sports Law, as part of so-called “new rights”, quickly achieved a global dimension. Perhaps due to the very dynamic nature of sport itself, the standardization of its rules has become one of the most international of international activities. In this respect, Professor João Leal Amado has described the “*sportification of the planet*”, in highlighting the presence of this activity around the world, and asserted that “*its absence in contemporary life is simply unimaginable*”.¹

This internationalization was in some respects responsible for the growth of Sports Law globally, since each country regulates sport in its own way, in accordance with the laws and constitutional principles of the nation. The interesting thing about this phenomenon is that it has created an abundance of comparative allowing national legal systems to assist those of other countries, especially in the area of integration and interpretation of the rules, because sport is an activity that is largely equal in all corners of the world, regardless of location.

Considering the importance of comparative study, it is our task to explore and comment on the quirks and nuances of Sports Law and Sports Employment in

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¹ Melo Filho, Álvaro. *Nova Lei Pelé: avanços e impactos*. Rio de Janeiro: Maquinária, 2011, 28.

Brazil, in order that, where appropriate, it may become an object of study and even a model for building an innovative system in territories where this branch of law is not present and to aid in the integration and interpretation of the rules where it is in the process of developing.

1. *Employment regulation and football structures*

Sport, with the passage of time, ceased to remain a leisure activity, and instead, was transformed into a “business”. Thanks to enormous popular interest in the sporting spectacle, the amateur and comparatively innocent practice of sport as a pastime has evolved, even to the point where the Olympic Movement, which for so long acted as a defender of “amateurism”, could not avoid imminent “professionalism”.

In discussing the Olympic Games of the modern era, Portuguese scholar, Alexandre Miguel Mestre (2008),² said “*there was long a discussion around the concept of amateur athletics, a quality required for an athlete to be considered eligible to participate in the Olympic Games.*” However, as Mestre goes on to state, the situation would clearly change some time later, but even back in 1976, it was heralded as a new era in sport, especially when pitted as Amateurism versus Professionalism.³

What is certain is that the interest in and popularity of sports activities led to the inevitable professionalization and with it, the prevalence of the business aspect over all other aspects of sport so that it “*progressively involved more variables related to business, so that 3% of world trade is now related to sport and it has become one of the most valued consumer products in the world, with state and international regulations increasingly focussed thereon*”.⁴

Thereafter national and international standards, respectively characterized as Normative Laws and Acts issued by the State, and private Statutes and Regulations issued by international sports bodies, represented mostly by the International Federations, were enacted, especially those aimed at the protection of performance artists and workers who take part in competition whilst at work and work whilst competing, rather than just taking part in activities socially.

Moreover, the protection of the right to employment and particularly the free movement of workers, initially within the framework of the European Union, was brought to the fore with the European Court of Justice’s decision in the case of the Belgian professional footballer Jean Marc Bosman, in 1995. The Bosman ruling, a famous decision which shook private sports clubs in Europe, drew attention to a

² Mestre, Alexandre Miguel. *Direito e Jogos Olímpicos*. Coimbra: Almedina, 2008, 117.

³ From 1976, the legislature began to be less restrictive in relation to the notion of “amateur athlete”. Indeed, even if Rule 26 of the International Olympic Committee Eligibility Rules continued to demand that the athlete could not receive any benefit or payment in kind, under threat of being ineligible, the legislature made an exception, annexing a list of situations in which the athlete could still be considered as an amateur, despite being paid.

⁴ Melo Filho, Álvaro. *Nova Lei Pelé: avanços e impactos*. Rio de Janeiro: Maquinária, 2011, 29.

EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL: ENGLAND

by *Richard Parrish**

SUMMARY: 1. Introduction – 2. Historical perspectives – 3. The structure of English football – 4. Employment relations in English professional football – 5. Transfer rules and the standard contract of employment – 6. Anti-Doping – 7. Conclusions

1. Introduction

A professional footballer's employment relationship with his club is complex. Not only is it informed by general employment and contract laws, he is also bound contractually by the rules of the English Football Association (FA), the rules of the Premier League or Football League, and UEFA and FIFA regulations. This chapter confines itself to a discussion of how the employment relationship is regulated under national law and by the regulations of the English football authorities. It begins with an historical overview of employment relations in professional football before examining the structure of English football, modern employment relations in English football, transfer rules and the standard contract of employment, and anti-doping rules.

2. Historical perspectives

In England, the 'professional' footballer emerged following the decision of the Football Association (FA) to sanction the payment of players by clubs in 1885. By 1888 the establishment of the Football League brought order to the haphazard organisation of the game by offering clubs guaranteed fixtures, regular revenues and the stability of a set of rules and regulations.¹ The new structure concurrently

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¹ HARDING, J. (2009), *Behind the Glory: 100 Years of the PFA*, Derby: Breedon Books, 12.

offered the professional player the actual means of securing a living from the game. However, from the outset, the League was concerned that balanced competition on the pitch required coordinated action off it. Without it, public interest in the game would wane as clubs in large cities would dominate at the expense of those clubs from smaller markets. In a debate surprisingly still relevant today, the League was faced with having to decide between intervening either in the product market (such as enacting revenue sharing arrangements between clubs) or in the labour market (such as placing restrictions on the migration of the best talent to the larger clubs). The absence of a players' union, combined with the strength of employer interests, settled the issue. Two regulatory interventions in the labour market followed.

The first originated in 1891. The so-called retain-and-transfer system sanctioned a restrictive labour practice through which a club retained a player's 'registration' even though contractual relations between the club and player had ended. At the end of the season a player could be retained by his club, even at a wage lower than his previous terms. If retained, the player remained a registered player of the retaining club and so could not take up employment with another club, even though he was not re-employed by the retaining club until he had signed his contract. Players not retained were placed on a transfer list and were not free to sign for a new club, except to those willing to match the transfer fee demanded by the transferee. The objectives pursued by the system were to introduce contractual stability to the profession and limit the concentration of talent within a few clubs thus promoting competitive balance within the league. The practical effect provided the club with a 'virtual monopoly over the player's services... effectively tying him to his club until, and if, the club gave the player permission to move elsewhere'² with players being 'mere chattels to be bought and sold by clubs'.³ The second labour market intervention devised in 1900 saw the establishment of the maximum wage. According to this measure, a player, no matter how talented, could earn no more than £4 a week, although some benefitted from unauthorised 'boot-money'.

The combined effect of the retain-and-transfer system and the maximum wage saw the prospect of commercial freedom offered by professionalism and the formation of the League quickly denied to players. Clubs even attempted to deny player's employee status in order to limit their statutory employment related liabilities.⁴ In *Walker v Crystal Palace Football Club* [1910], the Court of Appeal applied a new 'control test' as a common law means of distinguishing an employee subject to the control of the employer from a self-employed contractor who is not.⁵

² Thomas, D., (2006), *The retain and transfer system*, in: Andreff, W & Szymanski, S. Handbook on the Economics of Sport, Cheltenham: Edward Elgar, 630.

³ Dabscheck, B., (1986), *Beating the off-side trap: the case of the PFA*, *Industrial Relations Journal*, 17(4), 353.

⁴ The Workman's Compensation Act (1906) established the right for employees to receive compensation for injuries sustained at work.

⁵ *Walker v Crystal Palace Football Club* [1910] 1 KB 87.

**EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL:
FRANCE**

by *Jean-Michel Marmayou* *

SUMMARY: Introduction – 1. Employment regulation and football structures – 2. Individual employment relations in professional football – 3. Medical and doping issues – 4. Transfer of players – 5. Social security and taxation – 6. Labour dispute settlement

Abstract:

An insight into the legal mechanisms governing employment issues in French football. This article provides an overview of how the French football regulations treat professional footballers, and also, but to a lesser extent, amateur footballers. It covers the contents and prerequisites of a valid employment contract, the duties and obligations of clubs and players, the professional ethics and conduct rules to which footballers are subject, termination of contracts and the consequences and disciplinary issues, including dispute resolution mechanisms.

Introduction

A professional footballer's employment relationship with his club is complex. If professional football player is a worker just like any other worker, as *Bosman* case said, ordinary labor law applies although there is some specificity that might complicate. The relationship is subject to the ordinary labor law and ordinary contract law and it's also bound by the rules of a special collective agreement (Charte du

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football professionnel) and, further, contractually by the rules of the French Football Federation (FFF) and UEFA and FIFA regulations.

This article should provide a general overview of provisions in French labor law and its related fields of different collective rules that are relevant for professional football players. It confines itself to a discussion of how the employment relationship is regulated under national law and by the regulations of the French football authorities. For the sake of clarity, it is restricted to the statutory sources of the French football authorities. Moreover, the sources of law of international associations like the FIFA or the UEFA are intentionally excluded, least because the French labor rules are considered public order issues.

1. *Employment regulations and football structures*

A. *Sources of French employment law*

Multiple sources - French employment laws applicable to the footballers contain certain very specific measures. Although French law is based on the Romano-Germanic legal system and is broken down into a variety of specialist legal fields, it does not offer employed footballers the security of a well-defined branch of law specifically applicable to them. In practice, within the various structures formed by the different sources of French law, those that actually apply to footballers have to be sought out. Moreover, the French legal system assigns an important role to an extremely disruptive element: the so-called “*principe de faveur*” [principle of favour]” according to which an employee may benefit from certain privileges over and above those accorded by the laws and regulations.

The main principles of EU law apply to the employment of footballers in France, that is to say freedom of movement, freedom to establish companies, freedom to offer services. EU secondary laws also apply, notably on issues concerning the information of workers, the organisation of work time, health and safety at work, fixed-term employment, employee protection in cases of employer insolvency, etc.

In France, the main principles are contained in a body of constitutional law and especially the preamble to the 1946 Constitution which proclaims the “economic and employment rights that are particularly relevant to our era”, including the right to obtain employment and duty to work, freedom of association, right to strike, prohibition on discrimination against workers, etc.

Most of these rules are to be found in the *Code de Travail* [employment laws]. However, these laws do not encompass all the rules and regulations relating to employment. Indeed, the general rules set out in the Civil Code on the so-called “law of obligations” (such as contract law) continue to govern employment contracts despite the existence of very specific employment rules and regulations, such as those contained in the French 1978 data protection laws, the *Code de la Propriété Intellectuelle* [intellectual property and patent laws], the *Code de Commerce* [business

EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL: GERMANY

by *Jan Sienicki**

SUMMARY: 1. Employment regulation and football structures – 2. Individual employment relations in professional football – 3. Medical and doping issues – 4. Transfer of players – 5. Social security principles – 6. Labour Dispute settlement – 7. Conclusions

Abstract:

In the wording of the national football association's statutes and ordinances Professional football players in Germany are literally referred to as "employees of a special kind"¹ and "contractual partners of a special kind".² In order to detect the background for this terminology, this article elaborates on the interaction of statutory labour law, the contractual relationship between the athlete and his club and the conflict arising out of this.³

1. Employment regulation and football structures

1.1 Sources of law and approaches

In all of German labour legislation, whether of individual or collective nature, the

* German-Polish Sports Lawyer, LL.M. International Sports Law, resident and practicing in Berlin, Germany.

¹ § 10 statutes for licence-players (old edition, prior to 2002)

² Recitals of the LOS (*vide* footnote 13)

³ With respect to all the other distinguished and comprehensive contributions from various countries in this book and considering the title and the defined scope of this chapter, the following analysis is made under the assumption that the player(s) referred to is of German nationality.

point of reference is the existence of an employment relationship - hence the appearance of the term “employee”.

Pursuant to labour jurisdiction, an employee is someone who is bound by instructions and as a service provider is integrated into the work-organisation of the recipient of such services.⁴

A person’s qualification as an employee does have a significant impact on the application of law, e.g. the competence of labour courts together with the procedural particularities in relation to a civil case (procuration, costs etc.), the application of § 623 BGB⁵ and labour protection acts, particularly the Law on the Protection Against Unfair Dismissal (*Kündigungsschutzgesetz* - KSchG), the Act on Continued Remuneration During Illness (*Entgeltfortzahlungsgesetz* - EFZG) and the Works Constitution Act (*Betriebsverfassungsgesetz* - BetrVG).⁶

Contractually stipulated obligations as to the time and place of a training session or competition, especially the participation in a league-competition or duties pertaining to conduct on and off the pitch (e.g. attendance at club’s or sponsor’s appointments/events) do in fact support the notion of professional football players being qualified as employees. However, in order to mark out the legal framework a *Bundesliga*-player is subject to, it is indispensable to take closer look at the football structures in Germany and the regulations deriving from these.

1.2 Football structures

As with basically every Sport in Germany, football is categorised by the pyramidal structure comprised of federation(s) and clubs. Moreover, it is distinguished by a dualism between licensed (professional) football and amateur-football.⁷

While the organisation of football on the amateur-level is incumbent to the *DFB*⁸ exclusively, the professional pillar of Germany’s no. 1 sport is governed by both the *DFB* and the *Ligaverband*,⁹ which is an association constituted of the 36 clubs of the 1. and 2. *Bundesliga* and, as an ordinary member of the *DFB*, is in charge of managing the operational business of these top two divisions.¹⁰ To achieve the latter, the *Ligaverband* founded the *DFL Deutsche Fußball Liga GmbH* (*DFL*

⁴ Cf. BAG from 16.07.1997 – 5 AZR 312/96.

⁵ BGB: Bürgerliches Gesetzbuch (German Civil Code); § 623 BGB states: *Termination of employment by notice of termination or separation agreement requires written form to be effective; electronic form is excluded.*

⁶ J.M. Menke, *Profisportler zwischen Arbeitsrecht und Unternehmertum - Ein Beitrag zum Arbeitnehmerbegriff am Beispiel des Berufsfußballers*, Hamburg, Dr. Kovac, 2006, 20.

⁷ F. Holzhäuser, *Der strukturelle Aufbau professioneller deutscher Sportligen nach Ausgliederung aus Bundesfachsportverbänden*, SpuRt 2004, 145.

⁸ DFB: Deutscher-Fußball-Bund e.V. (German Football Federation).

⁹ Ligaverband: Die Liga - Fußballverband e.V. (League Association); Ordinary member of DFB as per § 16-16 d) DFB-statutes.

¹⁰ The Bundesliga and the 2. Bundesliga remain DFB facilities but are being allocated for use to the Ligaverband (as their operator); § 4 No 1 a) Ligaverband-statutes.

**EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL:
JAPAN**

by *Takuya Yamazaki**

SUMMARY: Introduction – 1. Employment regulation and football structures – 2. Individual employment relations in professional football – 3. Doping issues – 4. Transfer of players – 5. Social security principles – 6. Labour dispute settlement

Introduction

The Japan Professional Football League was established in 1993 (“J-League”)¹, so its history is still relatively young. However, the J-League has expanded rapidly in a very short time – from a mere 10 team one division format at its inception to a 51 team three division format in 2014 (1st division (“J1”) – 18 teams; 2nd division (“J2”) – 22 teams; and 3rd division, established in 2014 (“J3”) – 11 teams) – to become Asia’s most high-profile, developed league. The J-League constitutes a relatively large labour market, with over 1,000 Japanese players registered plus a number of foreign players. In principle, J1 and J2 clubs are subject to a foreign player quota, under which they may register three foreign players plus an Asian player – who is a citizen of a country in the Asian Football Confederation (“AFC”)². (J3 is subject to a stricter foreign player quota. Please refer to 1.1.6 below.)

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Further information about Takuya, his lectures and achievements can be found at: www.field-r.com/en/people.

¹ The J-League website in English is available at: www.j-league.or.jp/eng.

² The AFC website in English is available at: www.the-afc.com/en.

1. *Employment regulation and football structures*

1.1 *Sources of law and approaches (including public law, private law, and employment law)*

1.1.1 *Introduction*

In Japan there are no special laws, such as labour law regulations, for professional sports people like footballers. In fact even as the law has expanded to the sports world with the enactment of Japan's Basic Act on Sport ("BAS")³ in 2011, there are no regulations therein that mention the legal status of professional sports people. As a result, there has long been controversy in the law about how professional sports players, like footballers, should be treated in relation to Japan's general labour law regulations.

1.1.2 *Professional footballers as 'workers'*

One thing that has long been debated in Japanese professional sport, is whether it can be said that professional athletes, like footballers, are 'workers' under the related Japanese labour law and legislation?

For instance, it is not doubted that parties such as professional golfers and athletes, who are independent and lead professional lives based on revenue from prize money and sponsorship, are 'sole-proprietors'. However, what is the situation when professional athletes, such as baseball and football players that belong to professional clubs and provide services under the orders of these clubs (including for training and match participation)?

Are the contracts between these players and clubs not considered 'employment contracts' under the Civil Code (articles 623–631)⁴ or 'labour contracts' under the Labour Contracts Act ("LCA")?⁵ In other words the issue is whether the legal status of these professional athletes is that of 'workers'?

The merit of debating this issue is the following point: does labour law in Japan (including, the Labour Standards Act ("LSA"),⁶ the Labour Union Act ("LUA")⁷ and Industrial Accident Compensation Insurance Act ("IACIA")⁸ apply to professional baseball and football players?

In relation to this point, there have been arguments among sports law experts about whether, in general, such a professional player contract is an

³ *Basic Act on Sports*, law no. 78 of 2011.

⁴ *Civil Code*, law no. 89 of 1896 and amendment law no. 78 of 2006.

⁵ *Labour Contracts Act*, law no. 128 of 2007.

⁶ *Labour Standards Act*, law no. 49 of 1947 and amendment law no. 147 of 2004.

⁷ *Labour Union Act*, law no. 174 of 1949 and amendment law no. 87 of 2005.

⁸ *Industrial Accident Compensation Insurance Act*, law no. 50 of 1947 and amendment law no. 111 of 2007.

**EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL:
SPAIN**

by *Juan de Dios Crespo Pérez**

SUMMARY: 1. Introduction – 2. Employment regulation – 3. Contents of the relationship – 4. Labour dispute

1. Introduction

The relationship between athletes and their clubs has for a long time been separated from employment legislation in Spain. Footballers have no specific legislation but are into the one for the rest of the professional sportsmen. It has to be said that there are only footballers, basketball players and cyclists who are officially considered as professional sportsmen in Spain, despite the fact that other sports have a clear professional standing.

This is a clear evidence of the fact that “professional” does not mean the same that “under employment contract” as it should be, but the administrative wording is somehow different that the labour one.

Thus, labour Courts will always take into consideration the “employment contract” of the employees and not the “professional” consideration by a club or a Federation.

This conception of sport as pure entertainment or physical activity and not as work was reflected in the rules which tried to discipline the sport. Indeed, these rules seek not only to exclude the qualification as professional of the relationship between athletes and their sport entities, but expressly excluded the possibility to appeal to the labor courts to resolve the disputes that may arise between athletes and sports organizations.

It was eventually included in the Employees’ Statute in article 2.1.d) as a special employment relationship, and the Government legislated on the special labor relationship of professional athletes through Royal Decree 1006/1985, dated 26th June.

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In the sport sector, we can distinguish two different kinds of employment relationships:

- Special employees: Those who professionally practice a sport activity under the direction of someone else maintain a special employment relationship with their employers (clubs, sport associations, etc.). The special employment relationship or special employment contract is a legal concept of the Spanish law, meaning that the relationship is of an employment nature but with a number of peculiarities. Thus, the special contract is regulated by a special regulation: the Royal Decree 1006/1985. In absence of specific provision in this regulation the general employment laws apply (non-peremptory legislation), among them the Employees' Statute of 1995.
Employees of this type are sportsmen and-women themselves but also trainers or coaches; case-law shows some doubts whether or not a physical or athletic trainer belongs in the special relationship.
- Common employees: on the other hand, these same clubs, federations, sport associations, etc. may establish general or common employment relationships with sport workers whose functions are not the practice of a sport activity. These other employment relationships are not regulated by the Royal Decree 1006/1985, but by the general employment laws (Employees' Statute of 1995 and other enactments).
Employees of this other kind are, for example, administrative staff, medical and sanitary staff and auxiliary and blue-collar employees not directly involved in the professional practice of sport.

1.1 *Collective bargaining agreements in Football*

Collective agreements are very important both for special and common employees. Nowadays many aspects of the employment relationship are given over by the laws and regulations to the collective autonomy of employers' and employees' associations.

In the Royal Decree 1006/1985, regulating professional athletes' special relationship, collective agreements are mentioned at least 11 times in just 21 articles.

In this regard we can highlight the football collective agreements in Spanish professional sport as one of the most important and which have had a lot of problematic.

- Collective Bargaining Agreement (CBA) for professional football activities signed between the National Professional Football League (LNFP) and the Spanish Footballers Association (AFE) on 25 July 2014. Its functional sphere is referred (art. 1) to "*the Professional Footballers who render services in the teams of the Football Clubs and Sports Incorporated Companies affiliated to the National Professional Football League*".
This CBA has been approved for the following two seasons, i.e. 2014/2015 and 2015/2016.

EMPLOYMENT RELATIONSHIPS AT NATIONAL LEVEL: SWITZERLAND

by *Lucien W. Valloni** and *Beat Wicki***

SUMMARY: 1. Introduction – 2. Employment regulation and football structures – 3. Individual employment relations in professional football – 4. Doping issues – 5. Transfer of players – 6. Social security principles – 7. Labor dispute settlement

1. Introduction

Sport may be one of the greatest pastimes in the world, but it does not remain undisturbed from commercialization, professionalization, globalization and juridification, especially when it comes to football. The football club's monopoly position and the specificity of sport in general take effect on employment relationships between football clubs and their players. This article should provide a general overview of provisions in Swiss labor law and its related fields of law that are relevant for professional football players. The article cannot deal with individual questions. It rather makes available to the reader a first orientation on the areas and sources of law that have to be considered in connection with the employment relationship with a professional football player in Switzerland. Provided that the authors refer to the terms "employee" and "employer", the relevant explanations also regard employment relationships between football players and their clubs. For the sake of clarity, this article is restricted to the statutory sources of the Swiss Football Association and the Swiss Football League when it comes to regulations within the associations. The sources of law of international associations like the FIFA or the UEFA as well as of subordinated national leagues are intentionally excluded to a large extent. They are only mentioned if such regulations play a crucial role for the employment relationship.

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2. Employment regulations and football structures

2.1 Sources of law

In Swiss law, there are no special statutory sources to regulate an employment relationship for football players and other athletes. Therefore, employment contracts with athletes have to be assessed on the basis of the employment contract between the athlete and the sports club, the general rules provided by Swiss labor law according to art. 319 et. sqq. of the Swiss Code of Obligations (CO) and the Federal Act on Labor in Manufacturing, Business and Trade (Labor Act). Furthermore, regulations of the respective sports clubs and of associations that the club is a member of or that athletes submit themselves to have to be considered.¹ In this context, the Swiss Football League (SFL), which enacts the regulations that are relevant for professional football in Switzerland, should especially be highlighted.² Such regulations have yet to be considered only, if they do not violate mandatory law.³

Swiss law does not provide for special statutory sources that are applicable on athletes and their employment relationships. On the one hand, this could be due to the fact that Swiss labor law is structured liberally *per se*. On the other hand, professional athletes in Switzerland are faced with the fact that their activity is still not always accepted as a conventional profession.⁴ This situation occasionally leads to unsatisfying results. For example, professional football players with employment contracts are governed by the Labor Act's protection provisions.⁵ This law and its safeguarding provisions are geared to standard weekly hours. For athletes, who – in many cases – work on weekends or in the evening (training and competition), this is in many respects not appropriate (see also chapter 3.2.5).⁶ Art. 27 Labor Act contains a solution for this problem. The provision allows certain groups of businesses or employees to be excluded from certain safeguarding provisions entirely or partially and to be governed by special provisions. Yet, this possibility has not been exercised in Switzerland so far. This could – among other things – be due to the fact that flexible working hours for athletes are generally accepted.⁷

2.2 Applicable law

The question, whether a legal dispute between an athlete and his sports club is

¹ See L. W. Valloni/T. Pachmann, *Sports Law in Switzerland*, Alphen aan den Rijn, Wolters Kluwer, 2014, n 227.

² See J. Kleiner, *Der Spielervertrag im Berufsfussball*, Zürich/Basel/Genf, Schulthess, 2013, 33.

³ See L. W. Valloni/T. Pachmann, *Sports Law in Switzerland*, Alphen aan den Rijn, Wolters Kluwer, 2014, n 227.

⁴ See L. W. Valloni/T. Pachmann, *Sportrecht in a nutshell*, Zürich/St. Gallen, Dike, 2012, 76.

⁵ See J. Kleiner, *Der Spielervertrag im Berufsfussball*, Zürich/Basel/Genf, Schulthess, 2013, 129.

⁶ See L. W. Valloni/T. Pachmann, *Sports Law in Switzerland*, Alphen aan den Rijn, Wolters Kluwer, 2014, n 228.

⁷ See L. W. Valloni/T. Pachmann, *Sports Law in Switzerland*, Alphen aan den Rijn, Wolters Kluwer, 2014, n 228.

EMPLOYMENT RELATIONSHIP IN FOOTBALL: A COMPARATIVE ANALYSIS

by *Michele Colucci* and *Frank Hendricks*

SUMMARY: 1. The (sometimes difficult) reception of football employment in labour law – 2. Addressing the specific sport or football issues in labour law – 3. Specific sports acts or football acts – 4. Collective bargaining – 5. Transfer rules – 6. Dispute settlement

The survey of the employment relationship regulations of professional football activities in different legal systems, delivers a variety of views and insights. We have divided them into various headings hereafter, taking the peculiarities of each country into account.

1. *The (sometimes difficult) reception of football employment in labour law*

A first major issue is how to address football employment from a legislative point of view. Many legal systems depart from the idea that general employment law governs the football employment relationship. The integration of football employment into the broader concepts and mechanisms of employment law aims for a better legal protection of both football players and their employers. This is the case in **The Netherlands** where specific sports activities fit well within the ordinary labour law rules.

In Argentina players are workers and have mandatory protection based on general employment laws first, and then, on special regulations for professional players' activity.

Even in countries where the government usually abstains from regulating sport, such as the **United Kingdom**, employment law covers football employment. For example, in the case *Walker v Crystal Palace Football Club* [1910], the Court of Appeal applied a new 'control test' as a common law means of distinguishing an employee subject to the control of the employer from a self-employed contractor who is not. The Court ruled that the employee status of professional footballers comes from their obligation to abide by the club's rules and practices, training regime and general instructions.

In Germany contractually stipulated obligations as to the time and place of a training session or sporting competition, especially the participation in a league-competition, or duties pertaining to conduct on and off the pitch (e.g. attendance at club's or sponsor's appointments/events) qualify professional football players as employees.

However, for some other countries the application of ordinary employment law to football employment is either excluded or limited and conditioned.

For example, in the **Czech Republic** system professional players fall outside the scope of labour law. Players have to sign into a civil law contract and have recognized a self-employed legal status. Therefore, they deal with tax and social security contributions by themselves. It is reported that this implies, in practice, a player-club relationship that is unbalanced in favor of the employer. In the Czech Republic, players are seen as the weaker party since they are not duly protected.

The Czech stakeholders are negotiating the national implementation of the "Autonomous Agreement regarding the Minimum Requirements for Standard Player Contracts", as negotiated between UEFA, ECA, FIFPro and EPFL at European level. The Football Association of the Czech Republic together with the Czech Association of Football Players and the League Football Association have been working on changes to the Czech (football) legislation in order to meet the requirements of professional player contracts. The implementation of the Autonomous Agreement is expected to lead to one of the most important changes in the sporting activity of professional players within the past ten years.

In **Slovakia** the labour code defines dependent work. Such a notion covers the professional athletes' employment relationship. Notwithstanding this general principle, in practice labour law does not apply to footballers.

In fact, atypical contracts based on the Civil Code or the Commercial Code govern the players' agreements. This is due to the rigid nature of the Slovakian Labour Code and the failure of the Slovak Republic to enact specific laws on the employment status of players, taking into account the specificities of the sports sector. As a consequence, once again, football players as self-employed persons have to deal with tax and social security systems.

A similar issue arises in **Croatia** where the Croatian Football Federation defines the terms of the self-employed status of professional players. Like in the Czech Republic, footballers are excluded from protection under national labour law and need to pay by tax and social security contributions themselves. This has been highlighted as a problem, considering that clubs fall short of complying with their contractual obligations, such as remuneration, towards the players. Nowadays more than 60 professional players are reported to have debts towards the national tax authorities and bank accounts and property have been blocked.

Therefore, the noticeable trend is for changing the legal status of professional players into an employment contract recognised under regular labour law. A working group of the Croatian Ministry of Science, Education and Sport is dealing with a new Sports Act bill of law. As for the Czech Republic, the

“Autonomous Agreement regarding the Minimum Requirements for Standard Player’s Contract” should integrate the legal status of professional football players into a labour law.

When you move to the Far East, **Japan** raises a similar issue. There are no special laws, such as labour law regulations, for professional footballers. In fact, even in a situation where the legislator has covered sports through the enactment of Japan’s Basic Act on Sport in 2011, there are no regulations therein that address the legal status of professional sports people. Footballers are thus generally not workers under Japanese labour law. In general, whether a professional football player might qualify as an employee depends on the interpretation of every single rule of law applicable to that case.

In **Turkey**, the Labour Code clearly excludes athletes from its scope. Therefore, the Civil Code, the Code of Obligations and the sports federation’s regulations govern the football players’ employment relationship.

In **Russia**, the State plays a significant regulatory role together with sports associations. In particular, the Russian Federal Law 13-FZ of 28 February 2008 has added an entire section to the Russian Labour Code RF (2001) regulating the employment of professional sportsmen and women.

2. *Addressing the specific sport or football issues in labour law*

In **Italy**, ordinary law takes into account the specificity of sport, so derogating from labour legislation, which applies to employees’ relationships. In particular, it waives the application of the relevant legislation on the protection of the freedom and dignity of workers and of trade union freedom and union activity in the workplace. Moreover the rules regarding the public employment service and those on fixed term contracts do not apply to professional sport players.

In **Portugal**, the football players are subject to the same general rights and obligations as any other employee. However, there are certain laws which exclusively address the football players’ status because they have peculiar working times and conditions. Moreover, unlike all other employees, they can be transferred to another employer [club] in exchange for a fee. Unique to these laws is also the fact that players and clubs have their own dispute resolution bodies and systems, although they are also entitled to their constitutional rights to seek redress before the ordinary courts.

In **Swiss** law, there are no special statutory sources to regulate employment relationships with football players and other athletes. The Swiss labour law rules cover the athletes’ employment agreements. This legal system is more liberal and relatively less protective for workers. Nevertheless, Swiss law provides a sophisticated social security system to which all professional athletes can contribute and benefit from.

The **French Code du Sport** provides a certain number of basic provisions on the employment relationship.

However, the status of professional footballers is also covered by collective bargaining agreements. In particular, the Professional Football Charter, together with the French national collective agreement on Sport, is the main collective bargaining agreement in football. As a consequence, professional footballers have a hybrid status subject to the Code de Travail and certain provisions which are very specific to their profession.

The **Spanish** legal system defines the athletes as being “special employees” who professionally practice a sporting activity under the direction of their employers (clubs, sport associations, etc.) and the specificity of their employment relationship is regulated by the Royal Decree 1006/1985.

Equally in **Mexico**, players fall into a category of special employment in the labour law. The labour code has a chapter on “Professional Athletes”, which nevertheless must comply with the general principles of the labour law.

3. *Specific sports acts or football acts*

A number of countries have adopted acts focused on sports professionals or, more specifically, on football. Due to the needs of the sector, specific rules and regulations have been adopted to address either the sports professional issues in general or the football situation in particular.

Noteworthy is the so-called Pelé Law (1998) of **Brazil**. The Pelé Law (Law n° 9.615/98, amended by the Law n° 12.395/11) applies exclusively to football, which is the only professional sport in Brazil.

For **Portugal**, we should mention the “Law on Professional Sports Employment Contracts”, which establishes the legal framework governing the employment contracts of professional sports people as well as training contracts for the education and training of young sportsmen (amateurs and/or minors). It also establishes the maximum and minimum terms of contracts, the rights and obligations of the contracting parties, includes disciplinary issues, and makes provision regarding loans and transfers, termination of contracts and compensation criteria. There is also a Law of Physical Activity and Sport, which contains provisions for the resolution of sporting matters in the strict sense, meaning that they are based on technical or disciplinary rules of the game.

In **Belgium**, there is something similar. There is the Act of 24 February 1978 concerning employment contracts for sports professionals (the Sports Professionals Act). Sports professionals are defined as those persons who undertake to prepare themselves for, or take part in, a competition or sports spectator event under the authority of another person in return for remuneration exceeding a certain level or threshold. The Sports Professionals Act applies to professional football players whose annual gross remuneration is higher than a certain threshold, as determined by Royal Decree on a yearly basis. It should be noted that, the so-called *Dahmane* case has triggered quite some debate in the football world and the public media. It concerns a case of the Labour Court of Antwerp, who decided on

