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# European Sports Law and Policy Bulletin

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## THE BERNARD CASE SPORTS AND TRAINING COMPENSATION

SPORTS LAW AND POLICY CENTRE

Edited by Michele Colucci







# THE BERNARD CASE

## SPORTS AND TRAINING COMPENSATION



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## **EDITORIAL**

*by Michele Colucci*

The *European Sports Law and Policy Bulletin* («ESLPB») aims to foster the debate on the future of sport and the law at European level. In fact, after the entry into force of the Lisbon Treaty, for the first time in the history of the European Union the «specificity» of sport has been recognized in a primary source of EU law.

In this context the ESLPB aims to increase the knowledge of sports law and related policies and, at the same time, it wants to better identify the role of the EU institutions on one hand and the expectations of all Sports stakeholders on the other.

On this basis, the ESLPB will deal with both EU and national rules as well as with the regulations of sports associations and it will focus on the legal, economic, and political issues which affect sport at international, European, and at national level.

The ESLPB is designed for anyone who wants to learn and/or is willing to share with colleagues his/her analysis or opinion on the major issues concerning Sport and the European Union, their relationship, and, of course, their core values.

Finally, the *European Sports Law and Policy Bulletin* is addressed to sports law practitioners, policy makers, and sports enthusiasts, for whom, we hope, the ESLPB will represent an important source of information and inspiration in this dynamic and fascinating field.

*Brussels, 1 September 2010*

*Michele Colucci*



## INTRODUCTORY REMARKS

by Roger Blanpain – Michele Colucci – Frank Hendrickx

The Bernard case, again confronts us with the relationship of sports to the law. The question runs as follows: is the compensation that football clubs ask for the training of players, at the occasion of a transfer of a player (amateur) to another club – in a European context - contrary to the free movement of workers? In the *Bosman* case (1995), where the player was at the end of his contract, the European Court ruled that a transfer fee was contrary to that freedom. Fifteen years later (2010), the Court decided in the *Bernard* case that training compensation was compatible with EU law. The Court ruled:

*«In considering whether a system which restricts the freedom of movement of such players is suitable to ensure that the said objective is attained and does not go beyond what is necessary to attain it, account must be taken of the specific characteristics of sport in general, and football in particular, and of their social and educational function.*

*The Court's view, the prospect of receiving training fees is likely to encourage football clubs to seek new talent and train young players.*

*The Court stated that: a scheme providing for the payment of compensation for training where a young player, at the end of his training, signs a professional contract with a club other than the one which trained him can, in principle, be justified by the objective of encouraging the recruitment and training of young players. However, such a scheme must be capable of actually attaining that objective and be proportionate to it, taking due account of the costs borne by the clubs in training both future professional players and those who will never play professionally.*

*It follows that the principle of freedom of movement for workers does not preclude a scheme which, in order to attain the objective of encouraging the recruitment and training of young players, guarantees compensation to the club which provided the training if, at the end of his training period, a young player signs a professional contract with a club in another Member State, provided that the scheme is suitable to ensure the attainment of that objective and does not go beyond what is necessary to attain it».*

This is a very significant judgement for many reasons. First of all, sports have an increasingly social importance with regard to recreation, social inclusion, health, economic, and employment. This is not only the case locally, but also nationally, across Europe (regional), and even worldwide.

Secondly, sports organisations, being part of our democracies are «autonomous», enjoying freedom of association, in the real spirit of autonomy. The organisers are free to go their way and to do things as they see fit. But this does not take away from the fact that sports organisations are part of society at large and must, like any other institutions or citizens, follow and take existing legislation into account, especially fundamental human-social rights (freedom of association, the principle that labour is not a commodity, freedom of expression, privacy and the like); the same goes for mandatory law.

Furthermore, and above all, the specificity of sport is recognised by EU case law and now explicitly by the Treaty on the Functioning of the European Union (art. 165). Specific rules have to be proportionate and objective. The Bernard judgement is a case in point.

So quite a number of questions arise:

- Is the reasoning of the Court regarding the importance of training and its consequent compensation payment also valid for vocational training of youngsters and workers in general, or is it only limited to sports?
- The judgment of the Court is rather vague:
  - Which training costs are intended to be covered by the judgement?
  - How should they be calculated?
  - Is a lump sum per category of club in line with the judgment or does each club have to prove its costs?
  - Should the amount be the same for all players, including the ones who are not «stars?»
  - Is it acceptable that a player cannot become a professional in another club because the compensation asked for is too high (e.g. 90.000 Euro per year of training)?
- Does the Bernard judgment apply to national transfers?
- What about the «home grown players»?
- Does the «specificity of sports» also apply to the (FIFA) solidarity payments in case of a transfer for a player?
- Does the «specificity of sports» also apply to the (FIFA) contractual stability rules for professional players?
- After the entry into force of the Lisbon Treaty what is the EU competence regarding sports?

These and other points are addressed in the articles that follow. A major point, which comes to the forefront, concerns the principle that payment of compensation should be organised in such a way that it does not infringe upon the individual freedom of movement of the players. Should payment not be made through a mutual fund, which is financed by clubs and gives drawing rights to clubs, whose players move on?

These and other questions were discussed during the occasion of the Conference organised by The European Sports Law and Policy Initiative (ESLPI) – Institute for Labour Law (University of Leuven) in Brussels ([www.eslpi.eu](http://www.eslpi.eu)) in co-operation with the Sports Law and Policy Centre ([www.slpc.eu](http://www.slpc.eu)) in Brussels, 29 April 2010.

The program was as follows:

*Introduction*

**Prof. Dr. Roger Blanpain**

Tilburg University, Member of the Royal Flemish Academy of Belgium

*The Bernard Case: a brief overview*

**Prof. Dr. Michele Colucci**

Tilburg University, Lessius & K.U. Leuven

*Bosman and Bernard compared*

**Prof. Dr. Frank Hendrickx**

K.U. Leuven, Tilburg University

*The International Sports Associations' viewpoints*

**Mr. Omar Ongaro**

FIFA Players' Status and Governance

**Mr. Julien Zylberstein**

UEFA Professional Football Services

**Mr. Wil Van Megen**

FIFPRO Legal Department

*Round table: Training compensations in a European and national perspective*

**Mr. Ivo Belet**

Member of the European Parliament

**Mr. Gianluca Monte**

European Commission, DG EAC, Sport Unit

**Mr. Frans Van Daele**

European Council, Head of Cabinet of the President

This book contains the reports and the discussion of this very interesting conference as well as some relevant contributions.

*Brussels, 1 September 2010*

*Roger Blanpain, Michele Colucci & Frank Hendrickx*

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