

JUDGMENT OF THE COURT (Sixth Chamber)

13 April 2000 *

In Case C-176/96,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal de Première Instance, Brussels, for a preliminary ruling in the proceedings pending before that court between

Jyri Lehtonen,

Castors Canada Dry Namur-Braine ASBL

and

Fédération Royale Belge des Sociétés de Basket-ball ASBL (FRBSB),

intervener:

Ligue Belge — Belgische Liga ASBL,

* Language of the case: French.

on the interpretation of Articles 6, 48 of the EC Treaty (now, after amendment, Articles 12 EC and 39 EC), 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC),

THE COURT (Sixth Chamber),

composed of: R. Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, G. Hirsch and H. Ragnemalm (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Mr Lehtonen and Castors Canada Dry Namur-Braine ASBL, by L. Misson and B. Borbouse, of the Liège Bar,

- Fédération Royale Belge des Sociétés de Basket-ball ASBL (FRBSB), by J.-P. Lacomble and G. Tuts, of the Liège Bar,

- Ligue Belge — Belgische Liga ASBL, by F. Tilkin, of the Liège Bar,

- the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Sabine Maass, Regierungsrätin in that ministry, acting as Agents,

- the Greek Government, by V. Kontolaimos, Deputy Legal Adviser in the State Legal Service, and P. Mylonopoulos, Deputy Legal Adviser in the Special Legal Service, European Law Section, Ministry of Foreign Affairs, acting as Agents,

- the French Government, by M. Perrin de Brichambaut, Director of Legal Affairs in the Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in the Legal Department of that ministry, acting as Agents,

- the Italian Government, by Professor U. Leanza, Head of the Legal Service in the Ministry of Foreign Affairs, acting as Agent, assisted by D. Del Gaizo, Avvocato dello Stato,

- the Austrian Government, by M. Potacs, of the Federal Chancellor's Office, acting as Agent,

- the Commission of the European Communities, by M. Wolfcarius and F.E. González-Díaz, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Lehtonen and Castors Canada Dry Namur-Braine ASBL, represented by L. Misson and B. Borbouse; Fédération Royale Belge des Sociétés de Basket-ball ASBL (FRBSB), represented by J.-P. Lacomble and F. Herbert, of the Brussels Bar; the Danish Government, represented by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent; the Greek Government, represented by M. Apessos, Legal Agent in the State Legal Council, acting as Agent; the Spanish Government, represented by N. Díaz Abad, Abogado del Estado, acting as Agent; the French Government, represented by C. Chavance, Foreign Affairs Adviser in the Legal Department of the Ministry of Foreign Affairs, and C. Bergeot, stagiaire in that department, acting as Agents; the Italian Government, represented by D. Del Gaizo; and the Commission, represented by M. Wolfcarius and E. Gippini-Fournier, of its Legal Service, acting as Agent, at the hearing on 29 April 1999,

after hearing the Opinion of the Advocate General at the sitting on 22 June 1999,

gives the following

Judgment

- 1 By order of 23 April 1996, received at the Court on 22 May 1996, the Tribunal de Première Instance (Court of First Instance), Brussels, hearing an application for interim relief, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Articles 6, 48 of the EC Treaty (now, after amendment, Articles 12 EC and 39 EC), 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC).
- 2 That question was raised in proceedings between Mr Lehtonen and Castors Canada Dry Namur-Braine ASBL (hereinafter 'Castors Braine') and Fédération Royale Belge des Sociétés de Basket-ball ASBL (hereinafter 'the FRBSB') and Ligue Belge — Belgische Liga ASBL (hereinafter 'the BLB') concerning the right of Castors Braine to field Mr Lehtonen in matches in the first division of the Belgian national basketball championship.

Rules on the organisation of basketball and on transfer periods

- 3 Basketball is organised at world level by the International Basketball Federation (FIBA). The Belgian federation is the FRBSB, which governs both amateur and professional basketball. The BLB, which consisted on 1 January 1996 of eleven of the twelve basketball clubs in the first division of the Belgian national championship, has the objective of promoting basketball at the highest level

and representing top-grade Belgian basketball at national level, in particular in the FRBSB.

- 4 In Belgium the national men's first division basketball championship is divided into two stages: a first stage in which all clubs take part, and a second stage which includes only the best-placed clubs (play-off matches to decide the national title) and the clubs at the bottom of the league table (play-off matches to decide which clubs will stay in the first division).
- 5 The FIBA rules governing international transfers of players apply in their entirety to all the national federations (Rule 1(b)). For national transfers, the national federations are recommended to take the international rules as guidance and draw up their own rules on transfers of players in the spirit of the FIBA rules (Rule 1(c)). Those rules define a foreign player as a player who does not possess the nationality of the State of the national federation which has issued his licence (Rule 2(a)). A licence is the necessary authorisation given by a national federation to a player to allow him to play basketball for a club which is a member of that federation.
- 6 Rule 3(c) of the FIBA rules prescribes generally that, for national championships, clubs are not allowed, after the deadline fixed for the zone in question as defined by FIBA, to include in their teams players who have already played in another country in the same zone during that season. For the European zone the deadline for the registration of foreign players is 28 February. After that date it is still possible for players from other zones to be transferred.
- 7 Under Rule 4(a) of the FIBA rules, when a national federation receives an application for a licence for a player who has previously been licensed in a

federation of another country, it must, before issuing him with a licence, obtain a letter of release from that federation.

- 8 According to the FRBSB rules, a distinction must be drawn between affiliation, which binds the player to the national federation, registration, which is the link between the player and a particular club, and qualification, which is the necessary condition for a player to be able to take part in official competitions. A transfer is defined as the operation by which an affiliated player obtains a change of registration.
- 9 Rule 140 et seq. of the FRBSB rules concern transfers between Belgian clubs of players affiliated to the FRBSB, which may take place during a defined period in each year, which in 1995 ran from 15 April to 15 May and in 1996 from 1 to 31 May of the year preceding the championship in which the club in question takes part. No player may be registered with more than one Belgian club in any one season.
- 10 In the version applicable at the material time, Rule 244 of the FRBSB rules stated:

‘Players who are not registered with the club or who are suspended may not be fielded. This prohibition also applies to friendly matches and tournaments.

...

Any contravention will be punished by [a] fine...

Foreign or professional players (Law of 24 February 1978) who join after 31 March of the current season will no longer be qualified to play in competition, cup, and play-off matches of the current season.'

11 Rule 245(4) stated:

'Players of foreign nationality, including EU nationals, are qualified only if they have completed the formalities relating to affiliation, registration and qualification. They must in addition comply with the FIBA rules to obtain a licence...'

The main proceedings

12 Mr Lehtonen is a basketball player of Finnish nationality. During the 1995/1996 season he played in a team which took part in the Finnish championship, and after that was over he was engaged by Castors Braine, a club affiliated to the FRBSB, to take part in the final stage of the 1995/1996 Belgian championship. To that end the parties on 3 April 1996 concluded a contract of employment for a remunerated sportsman, under which Mr Lehtonen was to receive BEF 50 000 net per month as fixed remuneration and an additional BEF 15 000 for each match won by the club. That engagement had been registered with the FRBSB on 30 March 1996, the player's letter of release having been issued on 29 March 1996 by the federation of origin. On 5 April 1996 the FRBSB informed Castors

Braine that if FIBA did not issue the licence the club might be penalised and that if it fielded Mr Lehtonen it would do so at its own risk.

- 13 Despite that warning Castors Braine fielded Mr Lehtonen in the match of 6 April 1996 against Belgacom Quaregnon. The match was won by Castors Braine. On 11 April 1996, following a complaint by Belgacom Quaregnon, the competition department of the FRBSB penalised Castors Braine by awarding to the other club by 20-0 the match in which Mr Lehtonen had taken part in breach of the FIBA rules on transfers of players within the European zone. In the following match, against Pepinster, Castors Braine included Mr Lehtonen on the team sheet but in the end did not field him. The club was again penalised by the award of the match to the other club. As it ran the risk of being penalised again each time it included Mr Lehtonen on the team sheet, or even of being relegated to the lower division in the event of a third default, Castors Braine dispensed with the services of Mr Lehtonen for the play-off matches.
- 14 On 16 April 1996 Mr Lehtonen and Castors Braine brought proceedings against the FRBSB in the Tribunal de Première Instance, Brussels, sitting to hear applications for interim relief. They sought essentially for the FRBSB to be ordered to lift the penalty imposed on Castors Braine for the match of 6 April 1996 against Belgacom Quaregnon, and to be prohibited from imposing any penalty whatever on the club preventing it from fielding Mr Lehtonen in the 1995/1996 Belgian championship, on pain of a monetary penalty of BEF 100 000 per day of delay in complying with the order.
- 15 By agreement of 17 April 1996, the parties to the main proceedings agreed to submit 'agreed submissions' by which they would seek a reference to the Court of Justice for a preliminary ruling, the dispute between them being frozen pending

the Court's judgment. In those circumstances, the penalties imposed would be maintained, fines would not be imposed on Castors Braine, and Castors Braine would not field Mr Lehtonen in the play-off matches, all rights of the parties being otherwise reserved.

- 16 At the hearing on 19 April 1996, the BLB applied for leave to intervene in support of the FRBSB and the parties lodged their agreed submissions.

The question referred for a preliminary ruling

- 17 In her order of 23 April 1996, the judge of the Tribunal de Première Instance, Brussels, hearing applications for interim relief considered first that there was nothing to prevent her from referring a question to the Court of Justice. She then found that, at the date on which the proceedings were brought, the condition of urgency was indisputably satisfied, since Castors Braine wished to field Mr Lehtonen in forthcoming championship matches. Finally, she took note of the agreement between the parties to enable a reference to be made to the Court, under the terms of which Castors Braine would not field Mr Lehtonen during the current championship, while the FRBSB undertook for its part to suspend all penalties.
- 18 In those circumstances the Tribunal de Première Instance, Brussels, after allowing the BLB's application to intervene, stayed proceedings and referred the following question to the Court for a preliminary ruling:

'Are the rules of a sports federation which prohibit a club from playing a player in the competition for the first time if he has been engaged after a specified date

contrary to the Treaty of Rome (in particular Articles 6, 48, 85 and 86) in the case of a professional player who is a national of a Member State of the European Union, notwithstanding the sporting reasons put forward by the federations to justify those rules, namely the need to prevent distortion of the competitions?’

Jurisdiction of the Court to answer the question and admissibility of the question

- 19 It may be noted to begin with that, as the Court held in Case 338/85 *Pardini v Ministero del Commercio con l'Estero* [1988] ECR 2041, paragraph 11, and Case C-159/90 *Society for the Protection of Unborn Children Ireland v Grogan* [1991] ECR I-4685, paragraph 12, a national court is empowered to make a reference to the Court for a preliminary ruling under Article 177 of the Treaty only if a dispute is pending before it in the context of which it is called on to give a decision which could take into account the preliminary ruling. Conversely, the Court has no jurisdiction to hear a reference for a preliminary ruling when at the time it is made the procedure before the court making it has already been concluded.
- 20 In the present case, after the Tribunal de Première Instance had taken note of the agreement between the parties, it decided to refer a question to the Court for a preliminary ruling, while reserving its decision on the remainder of the case. It follows that it will still have to rule on the lawfulness from the point of view of Community law of the penalties imposed on Castors Braine and on the possible consequences of those penalties. On that occasion it will be called on to give a decision in which the Court's ruling will necessarily have to be taken into

account. Consequently, it cannot be argued that that court, in the context of the procedure for applications for interim relief, is not entitled to refer a question to the Court for a preliminary ruling and that the Court has no jurisdiction to answer it.

- 21 The Italian Government and the Commission contest the admissibility of the question, on the ground that the order for reference does not contain a sufficient account of the legal and factual context of the main proceedings.
- 22 According to settled case-law, the need to provide an interpretation of Community law which will be of use to the national court makes it necessary that the national court define the factual and legal context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based. Those requirements are of particular importance in certain areas, such as that of competition, where the factual and legal situations are often complex (see, in particular, Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraphs 6 and 7, Case C-67/96 *Albany International v Stichting Bedrijfspensioenfonds Textielindustrie* [1999] ECR I-5751, paragraph 39, and Joined Cases C-115/97 to C-117/97 *Brentjens' Handelsonderneming v Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen* [1999] ECR I-6025, paragraph 38).
- 23 The information provided in decisions making references must not only enable the Court to reply usefully but also give the governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 20 of the EC Statute of the Court of Justice. It is the Court's duty to ensure that that opportunity is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the decisions making references are notified to the interested parties (see *inter alia* the order in Case C-458/93 *Saddik* [1995]

ECR I-511, paragraph 13, and the judgments in *Albany International*, paragraph 40, and *Brentjens' Handelsonderneming*, paragraph 39).

- 24 In the main proceedings, it appears, first, from the observations submitted by the parties, the Governments of the Member States and the Commission pursuant to Article 20 of the EC Statute of the Court of Justice that the information in the order for reference enabled them properly to state their position on the question put to the Court, in so far as it concerns the Treaty rules on freedom of movement for workers.
- 25 Furthermore, although the Italian Government may have considered that the information provided by the national court did not enable it to take a position on whether, in the main proceedings, Mr Lehtonen is to be regarded as a worker within the meaning of Article 48 of the Treaty, it must be observed that that Government and the other interested parties were able to submit observations of the basis of that court's statements of fact.
- 26 Moreover, the information in the order for reference was supplemented by the material in the case-file forwarded by the national court and the written observations submitted to the Court. All that material, which was included in the Report for the Hearing, was brought to the notice of the Governments of the Member States and the other interested parties for the purposes of the hearing, at which they had an opportunity, if necessary, to amplify their observations (see also, to that effect, *Albany International*, paragraph 43, and *Brentjens' Handelsonderneming*, paragraph 42).
- 27 Second, the information provided by the national court, supplemented as far as necessary by the above material, gives the Court sufficient knowledge of the

factual and legal context of the main proceedings to enable it to interpret the Treaty rules relating to the principle of the prohibition of discrimination on grounds of nationality and on freedom of movement for workers with respect to the situation which is the subject of those proceedings.

- 28 In so far as the question put concerns the competition rules applicable to undertakings, on the other hand, the Court considers that it does not have enough information to give guidance as to the definition of the market or markets at issue in the main proceedings. Nor does the order for reference show clearly the character and number of undertakings operating on that market or markets. In addition, the information provided by the national court does not enable the Court to make meaningful findings as to the existence and volume of trade between Member States or as to the possibility of that trade being affected by the rules on transfers of players.
- 29 The order for reference therefore does not contain sufficient information to satisfy the requirements described in paragraphs 22 and 23 above, as far as the competition rules are concerned.
- 30 Accordingly, the Court should answer the question referred in so far as it relates to the interpretation of the Treaty rules on the principle of the prohibition of discrimination on grounds of nationality and on freedom of movement for workers. The question is inadmissible, however, in so far as it relates to the interpretation of the competition rules applicable to undertakings.

Substance

- 31 In the light of the above, the national court's question must be understood as essentially asking whether Articles 6 and 48 of the Treaty preclude the application of rules laid down in a Member State by sporting associations which prohibit a basketball club from fielding players from other Member States in matches in the national championship, where the transfer has taken place after a specified date.

Scope of the Treaty

- 32 It should be noted, as a preliminary point, that, having regard to the objectives of the Community, sport is subject to Community law in so far as it constitutes an economic activity within the meaning of Article 2 of the EC Treaty (now, after amendment, Article 2 EC) (see Case 36/74 *Walrave v Union Cycliste Internationale* [1974] ECR 1405, paragraph 4, and Case C-415/93 *Union Royale Belge des Sociétés de Football Association and Others v Bosman and Others* [1995] ECR I-4921, paragraph 73). The Court has also acknowledged that sport has considerable social importance in the Community (see *Bosman*, paragraph 106).
- 33 That case-law is also supported by Declaration No 29 on sport annexed to the Final Act of the conference which adopted the text of the Treaty of Amsterdam, which emphasises the social importance of sport and calls on the institutions of the European Union *inter alia* to give special consideration to the particular characteristics of amateur sport. In particular, that declaration is consistent with

the above case-law, in that it concerns situations where sport constitutes an economic activity.

- 34 The Treaty provisions concerning freedom of movement for persons do not preclude rules or practices excluding foreign players from certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, as in the case of matches between national teams from different countries. The Court has, however, stated that that restriction on the scope of the Treaty must remain limited to its proper objective, and may not be relied on to exclude therefrom the whole of a sporting activity (see Case 13/76 *Donà v Mantero* [1976] ECR 1333, paragraphs 14 and 15, and *Bosman*, paragraphs 76 and 127).
- 35 As to the character of the rules at issue in the main proceedings, it follows from *Walrave*, paragraphs 17 and 18, and *Bosman*, paragraphs 82 and 83, that the Community provisions on freedom of movement for persons and freedom to provide services not only apply to the action of public authorities but extend also to rules of any other nature aimed at regulating gainful employment and the provision of services in a collective manner. The abolition as between Member States of obstacles to freedom of movement for persons and freedom to provide services would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise of their legal autonomy by associations or organisations not governed by public law.
- 36 In those circumstances, it must be stated that the Treaty, in particular Articles 6 and 48, may apply to sporting activities and to rules laid down by sports associations, such as those at issue in the main proceedings.

The principle of prohibition of discrimination on grounds of nationality

- 37 According to settled case-law, Article 6 of the Treaty, which lays down as a general principle that there shall be no discrimination on grounds of nationality, applies independently only to situations governed by Community law for which the Treaty lays down no specific rules prohibiting discrimination (see, *inter alia*, Case C-179/90 *Merci Convenzionali Porto di Genova v Siderurgica Gabrielli* [1991] ECR I-5889, paragraph 11, and Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 18).
- 38 As regards workers, that principle has been implemented and specifically applied by Article 48 of the Treaty.

Existence of an economic activity and whether Mr Lehtonen is a worker

- 39 In the light of the foregoing and of the arguments presented at the hearing, it must be ascertained whether a basketball player such as Mr Lehtonen may carry on an economic activity within the meaning of Article 2 of the Treaty, and, more particularly, whether he may be regarded as a worker within the meaning of Article 48 of the Treaty.
- 40 In the context of the judicial cooperation between national courts and the Court of Justice in connection with references for a preliminary ruling, it is for the national court to establish and evaluate the facts of the case (see, *inter alia*, Case

139/85 *Kempf v Staatssecretaris van Justitie* [1986] ECR 1741, paragraph 12) and for the Court of Justice to provide the national court with such interpretative information as may be necessary to enable it to decide the dispute (Case C-332/88 *Alimenta v Doux* [1990] ECR I-2077, paragraph 9).

- 41 It must be pointed out, first, that the order for reference describes Mr Lehtonen as a professional basketball player. He and Castors Braine produced to the Court the contract of employment as a remunerated sportsman, mentioned in paragraph 12 above, under which he was to be paid a fixed monthly remuneration and bonuses.
- 42 Next, with respect to the concepts of economic activity within the meaning of Article 2 and worker within the meaning of Article 48 of the Treaty, it must be observed that these concepts define the scope of one of the fundamental freedoms guaranteed by the Treaty and, as such, may not be interpreted restrictively (see, to that effect, Case 53/81 *Levin v Staatssecretaris van Justitie* [1982] ECR 1035, paragraph 13).
- 43 With respect more specifically to the former concept, it is settled case-law (*Donà*, paragraph 12, and Case 196/87 *Steymann v Staatssecretaris van Justitie* [1988] ECR 6159, paragraph 10) that work as a paid employee or the provision of services for remuneration must be regarded as an economic activity within the meaning of Article 2 of the Treaty.
- 44 However, as the Court held *inter alia* in *Levin*, paragraph 17, and *Steymann*, paragraph 13, those activities must be effective and genuine activities and not such as to be regarded as purely marginal and ancillary.
- 45 As to the concept of worker, it must be borne in mind that, according to settled case-law, it may not be interpreted differently according to each national law but

has a Community meaning. It must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person, in return for which he receives remuneration (see, in particular, Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, paragraphs 16 and 17).

- 46 It appears from the findings of fact made by the national court and from the documents produced to the Court that Mr Lehtonen had entered into a contract of employment with a club in another Member State with a view to exercising gainful employment in that State. As he has rightly submitted, he thereby accepted an offer of employment actually made, within the meaning of Article 48(3)(a) of the Treaty.

Existence of an obstacle to freedom of movement for workers

- 47 Since a basketball player such as Mr Lehtonen must be regarded as a worker within the meaning of Article 48 of the Treaty, the Court must consider whether the rules on transfer periods referred to in paragraphs 6 and 9 to 11 above constitute an obstacle to freedom of movement for workers, prohibited by that article.
- 48 It is true that stricter transfer deadlines apply to players coming from other Belgian basketball clubs.
- 49 Those rules are nevertheless liable to restrict the freedom of movement of players who wish to pursue their activity in another Member State, by preventing Belgian

clubs from fielding in championship matches basketball players from other Member States where they have been engaged after a specified date. Those rules consequently constitute an obstacle to freedom of movement for workers (see, to that effect, *Bosman*, paragraphs 99 and 100).

- 50 The fact that the rules in question concern not the employment of such players, on which there is no restriction, but the extent to which their clubs may field them in official matches is irrelevant. In so far as participation in such matches is the essential purpose of a professional player's activity, a rule which restricts that participation obviously also restricts the chances of employment of the player concerned (see *Bosman*, paragraph 120).

Existence of justifications

- 51 The existence of an obstacle to freedom of movement for workers having thus been established, it must be ascertained whether that obstacle may be objectively justified.
- 52 The FRBSB, the BLB and all the governments which submitted observations to the Court submit that the rules on transfer periods are justified on non-economic grounds concerning only sport as such.
- 53 On this point, it must be acknowledged that the setting of deadlines for transfers of players may meet the objective of ensuring the regularity of sporting competitions.

- 54 Late transfers might be liable to change substantially the sporting strength of one or other team in the course of the championship, thus calling into question the comparability of results between the teams taking part in that championship, and consequently the proper functioning of the championship as a whole.
- 55 The risk of that happening is especially clear in the case of a sporting competition which follows the rules of the Belgian first division national basketball championship. The teams taking part in the play-offs for the title or for relegation could benefit from late transfers to strengthen their squads for the final stage of the championship, or even for a single decisive match.
- 56 However, measures taken by sports federations with a view to ensuring the proper functioning of competitions may not go beyond what is necessary for achieving the aim pursued (see *Bosman*, paragraph 104).
- 57 In the main proceedings, it appears from the rules on transfer periods that players from a federation outside the European zone are subject to a deadline of 31 March rather than 28 February, which applies only to players from federations in the European zone, which includes the federations of the Member States.
- 58 At first sight, such a rule must be regarded as going beyond what is necessary to achieve the aim pursued. It does not appear from the material in the case-file that a transfer between 28 February and 31 March of a player from a federation in the European zone jeopardises the regularity of the championship more than a transfer in that period of a player from a federation not in that zone.

59 However, it is for the national court to ascertain the extent to which objective reasons, concerning only sport as such or relating to differences between the position of players from a federation in the European zone and that of players from a federation not in that zone, justify such different treatment.

60 In the light of all the foregoing, the answer to the national court's question, as reformulated, must be that Article 48 of the Treaty precludes the application of rules laid down in a Member State by sporting associations which prohibit a basketball club from fielding players from other Member States in matches in the national championship, where they have been transferred after a specified date, if that date is earlier than the date which applies to transfers of players from certain non-member countries, unless objective reasons concerning only sport as such or relating to differences between the position of players from a federation in the European zone and that of players from a federation not in that zone justify such different treatment.

Costs

61 The costs incurred by the Danish, German, Greek, Spanish, French, Italian and Austrian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Tribunal de Première Instance, Brussels, by order of 23 April 1996, hereby rules:

Article 48 of the EC Treaty (now, after amendment, Article 39 EC) precludes the application of rules laid down in a Member State by sporting associations which prohibit a basketball club from fielding players from other Member States in matches in the national championship, where they have been transferred after a specified date, if that date is earlier than the date which applies to transfers of players from certain non-member countries, unless objective reasons concerning only sport as such or relating to differences between the position of players from a federation in the European zone and that of players from a federation not in that zone justify such different treatment.

Schintgen

Hirsch

Ragnemalm

Delivered in open court in Luxembourg on 13 April 2000.

R. Grass

J.C. Moitinho de Almeida

Registrar

President of the Sixth Chamber