JUDGMENT OF THE COURT

11 April 2000 *

In Joined Cases C-51/96 and C-191/97,

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

Christelle Deliège

and

Ligue Francophone de Judo et Disciplines Associées ASBL,

Ligue Belge de Judo ASBL,

Union Européenne de Judo (C-51/96)

and between

Christelle Deliège

* Language of the case: French.

and

Ligue Francophone de Judo et Disciplines Associées ASBL,

Ligue Belge de Judo ASBL,

François Pacquée (C-191/97),

on the interpretation of Articles 59 of the EC Treaty (now, after amendment, Article 49 EC), 60, 66, 85 and 86 of the EC Treaty (now Articles 50 EC, 55 EC, 81 EC and 82 EC),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward and L. Sevón (Presidents of Chambers), P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch, P. Jann and H. Ragnemalm (Rapporteur), Judges,

Advocate General: G. Cosmas,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Ms Deliège, by L. Misson and B. Borbouse, of the Liège Bar,

— Ligue Francophone de Judo et Disciplines Associées ASBL, by C. Dabin-Serlez and B. Lietar, of the Wavre Bar,

— Ligue Belge de Judo ASBL, by G. de Smedt and L. Carle, of the Lokeren Bar, and by H. van Houtte and F. Louis, of the Brussels Bar; Ligue Belge de Judo and Mr Pacquée, by G. de Smedt (C-191/97),

— the Belgian Government, by J. Devadder, General Adviser in the Legal Service of the Ministry of Foreign Affairs, External Trade and Development Cooperation (C-51/96 and C-191/97), and by R. Foucart, Director General in the Legal Service of the same ministry (C-191/97), acting as Agents,

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of the Economy, and S. Maass, Regierungsrätin in the same ministry (C-51/96), and by E. Röder and C.-D. Quassowski, Regierungsdirektor in the same ministry (C-191/97), acting as Agents,

— the Greek Government, by G. Kanellopoulos, Member of the State Legal Service, and P. Mylonopoulos, Assistant Legal Adviser in the Special Legal Service, European Law Section, Ministry of Foreign Affairs, acting as Agents,

— the Spanish Government, by L. Pérez de Ayala Becerril, Abogado del Estado, acting as Agent (C-191/97),

— the French Government, by C. de Salins, Head of Subdirectorate in the Legal Directorate of the Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in the same directorate, acting as Agents,

— the Italian Government, by Professor U. Leanza, Head of the Legal Affairs Department, Ministry of Foreign Affairs, acting as Agent, assisted by D. Del Gaizo, Avvocato dello Stato (C-51/96),

— the Netherlands Government, by A. Bos, Legal Adviser, Ministry of Foreign Affairs (C-51/96), and J.G. Lammers, Acting Legal Adviser in the same ministry (C-191/97), acting as Agents,

— the Austrian Government, by W. Okresek, Ministerialrat in the Ministry of Foreign Affairs (C-51/96), and C. Stix-Hackl, Gesandte in the same ministry (C-191/97), acting as Agents,

— the Finnish Government, by T. Pynnä, Valtionasiamies, acting as Agent,

— the Swedish Government, by E. Brattgård, Departementsråd in the Department of Foreign Trade of the Ministry of Foreign Affairs (C-51/96), and L. Nordling, Rättschef in the same department (C-191/97), acting as Agents,

— the Norwegian Government, by B.B. Ekeberg, Acting Head of Service in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by A. Caeiro, Legal Adviser, and W. Wils, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Deliège, represented by L. Misson and B. Borbouse, of Ligue Francophone de Judo et Disciplines Associées ASBL, represented by B. Lietar, of Ligue Belge de Judo ASBL and Mr Pacquée, represented by L. Carle, F. Louis and T. Geurts, of the Termonde Bar, of the Belgian Government, represented by A. Snoecx, Adviser, Directorate General for Legal Affairs of the Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent, of the Danish Government, represented by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent, of the Greek Government, represented by G. Kanellopoulos, of the Spanish Government, represented by N. Díaz Abad, Abogado del Estado, acting as Agent, of the French Government, represented by A. de Bourgoing, of the Italian Government, represented by D. Del Gaizo, of the Netherlands Government, represented by M.A. Fierstra, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, of the Finnish Government, represented by T. Pynnä, of the Swedish Government, represented by A. Kruse, Departementsråd in the Ministry of Foreign Affairs, acting as Agent, and of the Commission, represented by W. Wils, at the hearing on 23 February 1999,

after hearing the Opinion of the Advocate General at the sitting on 18 May 1999,

gives the following

Judgment

1 By order of 16 February 1996 (C-51/96), received at the Court on 21 February 1996, and by judgment of 14 May 1997 (C-191/97), received at the Court on 20 May 1997, the Tribunal de Première Instance (Court of First Instance), Namur, hearing an application for interim measures in the first case and dealing with the substance in the second, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Articles 59 (now, after amendment, Article 49 EC), 60, 66, 85 and 86 of the EC Treaty (now Articles 50 EC, 55 EC, 81 EC and 82 EC).

2 Those questions were raised in proceedings between Christelle Deliège and Ligue Francophone de Judo et Disciplines Associées ASBL (hereinafter 'LFJ'), Ligue Belge de Judo ASBL (hereinafter 'LBJ') and the president of the latter, Mr Pacquée, concerning the refusal to select her to participate in the Paris International Judo Tournament in the under-52 kg category.

Judo organisation and selection rules

3 Judo, a martial art, is organised at world level by the International Judo Federation ('the IJF'). At European level, the membership of the European Judo Union ('the EJU') comprises the various national federations. The Belgian federation is the LBJ, which deals essentially with international competitions and is responsible for the selection of athletes with a view to participation in international tournaments. The LBJ is made up of two regional leagues, the Vlaamse Judofederatie ('the VJF') and the LFJ. The members of the LFJ are the

two regional leagues and the clubs affiliated to them. Judokas are members of a club which is itself a member of the regional league, and the latter issues licences to members enabling them to take part in courses or competitions. The holder of a licence is required to accept all the obligations imposed by the regional league under its statutes and regulations.

4 Traditionally, these athletes are classified according to sex and seven weight categories, giving a total of 14 different categories. At its Technical and Sports Meeting in Amsterdam on 5 February 1994 and its Ordinary Congress in Nicosia on 9 April 1994 the Directing Committee of the EJU adopted rules concerning participation in European 'Category A' tournaments. Those tournaments, like the May 1996 European Championships, provided an opportunity for points to be awarded for classification on European lists as a possible basis for qualifying for the 1996 Atlanta Olympic Games. It was stipulated that only the national federations could enter their athletes and that, for each European federation, seven judokas of each sex could be entered on those lists, which meant in principle that there would be one judoka for each category. However, if no athlete was nominated in a particular category, two could be entered in another category, provided that the limit of seven men and seven women was never exceeded. As stated by the LFJ at the hearing before the Court, the judoka's nationality was irrelevant for that purpose, the only consideration being membership of the national federation.

5 In accordance with the selection criteria for the Atlanta Olympic Games adopted by the IJF on 19 October 1993 in Madrid, those qualifying for those games included, in each category, the first eight in the most recent world championships and a number of judokas for each continent (for Europe, nine men and five women in each category), to be selected on the basis of the results obtained by each judoka in a specified number of tournaments during the run-up to the Olympics. For that purpose, the EJU stated, at the abovementioned Amsterdam meeting and Nicosia congress, that account would be taken of the best three results achieved at Category A tournaments and senior European championships

over the period extending from the 1995 World Championships to the 1996 European Championships. It also directed that it would be the federations which qualified, not judokas individually.

The main proceedings and the questions submitted

6 Ms Deliège has practised judo since 1983 and, since 1987, has achieved excellent results in the under-52 kg category, having been declared Belgian champion on several occasions, European champion once and under-19 world champion once, as well as winning and being highly placed in international tournaments. The parties to the main proceedings disagree as to Ms Deliège's status: she claims to practise judo professionally or semi-professionally whilst the LBJ and the LFJ contend that judo is a sport which, in Europe and in Belgium in particular, is practised by amateurs.

7 Ms Deliège maintains that, since 1992, the officers of the LFJ and the LBJ have improperly frustrated her career development. She complains in particular that she was prevented from taking part in the 1992 Barcelona Olympics, that she was not selected for the 1993 World Championships or for the European Championships in 1994. In March 1995 Ms Deliège was informed that she had not been pre-selected for the Atlanta Olympics. In April 1995, when preparing for participation in the European Championships to be held in May, she was excluded from the Belgian team in favour of an athlete affiliated to the VJF. In December 1995 she was prevented from taking part in the Basel Category A International Tournament.

8 The LFJ alleges that Ms Deliège has had numerous differences of opinion with the trainers, selectors and officers of the LFJ and the LBJ and that she lacks discipline,

having in one instance been penalised by temporary suspension from all federation activities. Moreover, she encountered difficulties relating to the sport itself in that in Belgium there are at least four high-ranking judokas in the under-52 kg category. The LBJ states that decisions on the selection of athletes to participate in the various tournaments and championships are taken by its national sports committee, a body with joint VJF and LFJ membership.

9 The events directly giving rise to the main proceedings concern participation in the Paris Category A International Tournament of 10 and 11 February 1996. Because the LBJ had selected two other athletes who, in Ms Deliège's view, had achieved less outstanding results than her own, on 26 January 1996 Ms Deliège made an application for interim measures to the Tribunal de Première Instance, Namur.

Case C-51/96

10 Ms Deliège asked the Tribunal de Première Instance, Namur, to make an interim order directing the LFJ and the LBJ to complete all the necessary formalities for her participation in the Paris Tournament and that the Court of Justice be requested to give a preliminary ruling on the question of the possible illegality of the rules laid down by the EJU regarding the limited number of athletes from each national federation and the authorisations issued by the federations for participation in individual Category A tournaments, having regard to Articles 59, 60, 66, 85 and 86 of the Treaty. By a writ of 9 February 1996, Ms Deliège sought to have the EJU joined as a party to the proceedings and asked the court to order all Category A tournament organisers to accept on a provisional basis any registration on her part, whether or not she had been selected by her national federation.

11 By order of 6 February 1996 the judge of the Tribunal de Première Instance, Namur, hearing applications for interim measures dismissed Ms Deliège's application as regards her participation in the Paris tournament but made an order restraining the LBJ and the LFJ from taking any decision involving non-selection of the defendant for any forthcoming competition until the parties had been given a further hearing on the other heads of claim.

12 By order of 16 February 1996 the same judge declared inadmissible the application for an order requiring the EJU to become a party to the proceedings.

13 The national court also stated that, by virtue of the case-law of the Court, sport is subject to Community law only in so far as it may constitute an economic activity within the meaning of Article 2 of the EC Treaty (now, after amendment, Article 2 EC). As a result of recent developments in the way sports operate, the distinction between amateur and professional athletes had become less clear. Leading sports personalities could receive, in addition to grants and other assistance, higher levels of income because of their celebrity status, with the result that they provided services of an economic nature.

14 According to the national court, Ms Deliège claims, on what seems, *prima facie*, to be an adequate legal basis, that she must be regarded as a provider of services within the meaning of Articles 59, 60 and 66 of the Treaty. The systematic requirement of a quota and selection at national level would appear to constitute a barrier to the freedom to pursue an activity of an economic nature. Moreover, it cannot reasonably be contended that the access to competitions sought by Ms Deliège would mean that anybody would be allowed to participate in any tournament, since permission to compete could be open to anyone satisfying objective requirements in terms of sporting skills, as demonstrated by experience in other comparable sports.

15 Taking account *inter alia* of the imminence of the Atlanta Olympics and the relative brevity of sports careers at a high level, the national court therefore considered that Ms Deliège's request that a question be referred for a preliminary ruling was 'ostensibly appropriate'. The fact that no proceedings had been commenced on the substance did not preclude a reference being made. The question could be seen as contributing to the outcome of the proceedings for interim measures or as a measure of inquiry to expedite the proceedings on the substance, the initiation of which appeared to be being contemplated by the plaintiff.

16 Consequently, the judge of the Tribunal de Première Instance, Namur, hearing applications for interim measures sought from the Court a preliminary ruling as to:

'Whether or not rules requiring professional or semi-professional sportsmen or persons aspiring to such status to have been authorised or selected by their national federation in order to be able to compete in an international competition and laying down national entry quotas for similar competitions are contrary to the Treaty of Rome, in particular Articles 59 to 66 and Articles 85 and 86.'

17 Finally, as regards the adoption of a delaying measure, the national court held that the claims made by Ms Deliège against the LBJ and the LFJ could not be upheld. However, he considered that it was appropriate to afford the plaintiff protection against serious harm by adopting a delaying measure which would not adversely affect the interests of other athletes.

18 Pending the outcome of proceedings on the substance, he therefore ordered the LBJ and the LFJ not to take any measure liable to restrict or prevent the free

exercise by the plaintiff of her activity as a judoka, in particular in national or international competitions, which was not objectively justified either by reference to her physical ability or conduct or by a comparative assessment of her merits as against those of competing athletes. That measure would cease to be effective one month after the order was made unless an action on the substance was brought by Ms Deliège.

Case C-191/97

19 By writs of 27 February and 1 March 1996 Ms Deliège brought an action against the LFJ, the LBJ and Mr Pacquée before the Tribunal de Première Instance, Namur. She sought, first, a ruling that the system of selecting judokas for international tournaments, as established by the rules of the two abovementioned federations, was illegal in that it empowers them to act in a way which might encroach upon the right of judokas freely to provide services and upon their professional freedom, second, a reference to the Court of Justice for a preliminary ruling, third, the adoption of a delaying measure in the event of such a ruling being sought, and, lastly, an order that the LFJ and the LBJ pay her damages of BEF 30 million.

20 In its judgment, the national court considered that there was a clear risk that the Court of Justice might declare inadmissible the question submitted in Case C-51/96 on the ground that the judge hearing the application for interim measures had disposed of all outstanding matters. It therefore decided that it would be inappropriate to await the judgment of the Court of Justice in the first case and that, since the answer to the question raised in the proceedings before it was uncertain, it should seek a preliminary ruling from the Court of Justice.

21 As regards Ms Deliège's application for a delaying measure, the national court considered that it would be very difficult, or even impossible, in practice to impose such a measure whilst safeguarding the interests of all parties, and the plaintiff had not made any specific suggestion in that regard.

22 In those circumstances, the Tribunal de Première Instance, Namur, stayed proceedings pending a preliminary ruling from the Court of Justice as to:

'Whether or not it is contrary to the Treaty of Rome, in particular Articles 59, 85 and 86 of the Treaty, to require professional or semi-professional athletes or persons aspiring to professional or semi-professional activity to be authorised by their federation in order to be able to compete in an international competition which does not involve national teams competing against each other.'

The jurisdiction of the Court to answer the questions referred to it and their admissibility

23 The LFJ, the LBJ, Mr Pacquée, the Belgian, Greek and Italian Governments and the Commission have submitted, on various grounds, that the Court has no jurisdiction to answer the question submitted in Case C-51/96 and that all or part of that question is inadmissible.

24 First, it is submitted that the national court dealt with all the heads of claim put forward by the plaintiff and thus ceased to be seised of the case. Since the main

proceedings had come to an end when the matter was referred to the Court of Justice, the latter's ruling would be of no relevance for the national court. In such circumstances, it is clear from Case 338/85 *Pardini* v *Ministero del Commercio con l'Estero* [1988] ECR 2041 and Case C-159/90 *Society for the Protection of Unborn Children Ireland* [1991] ECR I-4685 that the Court has no jurisdiction to give a ruling.

25 Next, the question is of a hypothetical nature and concerns a matter — amateur sport — which is not subject to Community law.

26 Finally, the national court did not give adequate details of the factual and legislative context of the question, a requirement which is of particular importance in the field of competition, which is characterised by complex factual and legal situations (Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo* and others [1993] ECR I-393).

27 The jurisdiction of the Court to answer all or part of the question referred in Case C-191/97 and the admissibility of that question are also contested by the LFJ, the LBJ and Mr Pacquée and by the Greek Government and the Commission. The latter submit in particular that the national court did not give sufficient details of the factual and legislative background, that the question concerns a matter unconnected with Community law, that the rights of defence of the EJU and the IJF have been infringed and that the question is hypothetical in so far as it relates to events other than those involving competition between national teams.

28 The Court would observe, first, that the issue whether the questions submitted by the national court concern a matter unconnected with Community law, either because amateur sport falls outside the scope of the Treaty or because the events referred to by that court involve national teams, relates to the substance of the questions submitted, not to their admissibility.

29 Second, as regards the alleged breach of the rights of defence of the IJF and the EJU, it is not for the Court to determine whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure (see, in particular, Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 24, and Case C-105/94 *Celestini* v *Saar-Sektkellerei Faber* [1997] ECR I-2971, paragraph 20). It follows that it is unnecessary for the Court to address the question whether the IJF and the EJU should have been joined as parties to the main proceedings.

30 Third, 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 *Telemarsicabruzzo*, cited above, paragraphs 6 and 7, Case C-67/96 *Albany* [1999] ECR I-5751, paragraph 39, and Joined Cases C-115/97 to C-117/97 *Brentjens'* [1999] ECR I-6025, paragraph 38).

31 The information provided in orders for reference must not only be such as to enable the Court to reply usefully but must also give the Governments of the Member States and other interested parties an opportunity to submit observa-

tions pursuant to Article 20 of the EC Statute of the Court of Justice. It is the Court's duty to ensure that the opportunity to submit observations is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the orders for reference are notified to the interested parties (see, in particular, the order in Case C-458/93 *Saddik* [1995] ECR I-511, paragraph 13, and the judgments cited above in *Albany*, paragraph 40, and *Brentjens'*, paragraph 39).

32 As regards Case C-191/97, which it is appropriate to consider first, it is clear from the observations of the parties to the main proceedings, the Governments of the Member States, the Norwegian Government and the Commission, submitted pursuant to the abovementioned provision of the EC Statute of the Court of Justice, that the information contained in the order for reference duly enabled them to take a position on the question referred to the Court in so far as it relates to the Treaty rules on the freedom to provide services.

33 Furthermore, even though the Greek, Spanish and Italian Governments may have taken the view in this case that the information provided by the national court was not sufficient to enable them to take a position on the question whether the plaintiff in the main proceedings pursues an economic activity within the meaning of the Treaty, it must be emphasised that those Governments and the other interested parties were able to submit their observations on the basis of the account of the facts given by that court.

34 Moreover, the information contained in the judgment making the reference was supplemented by that contained in the file forwarded by the national court and the written observations submitted to the Court. All that information, set out in the Report for the Hearing, was brought to the notice of the Governments of the Member States and other interested parties for the purposes of the hearing, in the course of which they were able, where appropriate, to supplement their observations (see also, to that effect, *Albany*, cited above, paragraph 43, and *Brentjens'*, also cited above, paragraph 42).

35 The information supplied by the national court, supplemented as necessary by the abovementioned details also sufficiently apprises the Court of the factual and legislative background to the main proceedings to enable it to interpret the Treaty rules on freedom to provide services in the light of the circumstances of those proceedings.

36 On the other hand, in so far as the question submitted relates to competition rules applicable to undertakings, the Court does not consider that it has sufficient information to enable it to give any guidance as to definition of the relevant market or markets involved in the main proceedings. The judgment making the reference likewise does not clearly disclose the nature and the number of the undertakings operating in the said market or markets. Furthermore, the information supplied by the national court does not enable the Court to give an informed ruling as to the existence and extent of trade between Member States or as to the possibility of such trade being affected by the rules for the selection of judokas.

37 It must therefore be held that the judgment making the reference does not contain sufficient information to meet the requirements referred to in paragraphs 30 and 31 of this judgment regarding the competition rules.

38 As far as the question submitted in Case C-51/96 is concerned, the order for reference likewise does not contain sufficient details to enable the Court to give an informed ruling on the interpretation of the competition rules applicable to undertakings. On the other hand, the information set out in that order, supplemented as necessary by the details contained in the written observations submitted pursuant to Article 20 of the EC Statute of the Court of Justice and set out in the Report for the Hearing, together with the information contained in the

judgment making the reference in Case C-191/97, enabled the interested parties to take a position as to the interpretation of the rules on freedom to provide services and sufficiently apprised the Court of the factual and legislative background to enable it to reply usefully on that issue.

39 Notwithstanding their slightly different wording, the questions submitted in both cases are essentially the same and, accordingly, it is unnecessary to give further consideration to the arguments specifically challenging the admissibility of the question in Case C-51/96.

40 It follows that the Court should answer the questions submitted to the extent to which they relate to interpretation of the Treaty rules on freedom to provide services. The questions are inadmissible, however, in so far as they concern interpretation of the competition rules applicable to undertakings.

Interpretation of Article 59 of the Treaty

41 It is to be remembered at the outset that, having regard to the objectives of the Community, sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty (see Case 36/74 *Walrave and Koch* 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* [1995] ECR I-4921, paragraph 73). The Court has also recognised that sporting activities are of considerable social importance in the Community (*Bosman*, paragraph 106).

42 That case-law is also supported by the Declaration on Sport (Declaration 29) annexed to the final act of the Conference which adopted the text of the Amsterdam Treaty, which emphasises the social significance of sport and calls on the bodies of the European Union to give special consideration to the particular characteristics of amateur sport. In particular, that declaration is consistent with the abovementioned case-law in so far as it relates to situations in which sport constitutes an economic activity.

43 It must be recalled that the Treaty provisions concerning freedom of movement for persons do not prevent the adoption of 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, such as, for example, matches between national teams from different countries. The Court stressed, however, that that restriction on the scope of the provisions in question must remain limited to its proper objective and cannot be relied upon to exclude 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).

44 The selection rules at issue in the main proceedings do not relate to events between teams or selected competitors from different countries comprising only nationals of the State of which the Federation which selected them is a member, such as the Olympic Games or certain world or European championships, but reserve participation, by the national federation, in certain other international events of a high level to athletes who are affiliated to the federation in question, regardless of their nationality. The mere circumstance that the placings achieved by athletes in those competitions are taken into account in determining which countries may enter representatives for the Olympic Games cannot justify

treating those competitions as events between national teams which might fall outside the scope of Community law.

45 The LFJ submits in particular that sports associations and federations are entitled freely to determine the conditions governing access to competitions which concern only amateur sportsmen.

46 In that regard, it is important to note that the mere fact that a sports association or federation unilaterally classifies its members as amateur athletes does not in itself mean that those members do not engage in economic activities within the meaning of Article 2 of the Treaty.

47 As regards the nature of the rules at issue, it is clear from the judgments in *Walrave and Koch* (paragraphs 17 and 18) and *Bosman* (paragraphs 82 and 83), cited above, that the Community provisions on the free movement of persons and 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 to freedom to provide services would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise, by associations or organisations not governed by public law, of their legal autonomy.

48 It follows that the Treaty, and in particular Articles 59, 60 and 66 thereof, may apply to sporting activities and to the rules laid down by sports associations of the kind at issue in the main proceedings.

49 In view of the foregoing considerations and the conflicting views expressed before the Court, it is important to verify whether an activity of the kind engaged in by Ms Deliège is capable of constituting an economic activity within the meaning of

Article 2 of the Treaty and more particularly, the provision of services within the meaning of Article 59 of that Treaty.

50 In the context of judicial cooperation between national courts and the Court of Justice, it is for national courts to establish and to evaluate the facts of the case (see in particular 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 guidance on interpretation as may be necessary to enable it to decide the dispute (Case C-332/88 *Alimenta* [1990] ECR I-2077, paragraph 9).

51 In that connection, it is important to note first that the judgment making the reference in Case C-191/97 refers among other things to grants awarded on the basis of earlier sporting results and to sponsorship contracts directly linked to the results achieved by the athlete. Moreover, Ms Deliège stated to the Court — and produced supporting documents — that she had received, by reason of her sporting achievements, grants from the Belgian French-speaking Community and from the Belgian Inter-Federal and Olympic Committee and that she has been sponsored by a banking institution and a motor-car manufacturer.

52 As regards, next, the concepts of economic activities and the provision of services within the meaning of Articles 2 and 59 of the Treaty respectively, it must be pointed out that those concepts define the field of application 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).

53 As regards more particularly the first of those concepts, according to settled case-law (*Donà*, cited above, paragraph 12, and Case 196/87 *Steymann* v *Staatssecretaris van Justitie* [1988] ECR 6159, paragraph 10), the pursuit of an activity as an employed person or the provision of services for remuneration must be regarded as an economic activity within the meaning of Article 2 of the Treaty.

54 However, as the Court held in particular in *Levin* (paragraph 17) and *Steymann* (paragraph 13), the work performed must be genuine and effective and not such as to be regarded as purely marginal and ancillary.

55 As regards the provision of services, under the first paragraph of Article 60 services are considered to be 'services' within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

56 In that connection, it must be stated that sporting activities and, in particular, a high-ranking athlete's participation in an international competition are capable of involving the provision of a number of separate, but closely related, services which may fall within the scope of Article 59 of the Treaty even if some of those services are not paid for by those for whom they are performed (see Case 352/85 *Bond van Adverteerders and Others* v *Netherlands State* [1988] ECR 2085, paragraph 16).

57 For example, an organiser of such a competition may offer athletes an opportunity of engaging in their sporting activity in competition with others and, at the same time, the athletes, by participating in the competition, enable the organiser to put on a sports event which the public may attend, which television broadcasters may retransmit and which may be of interest to advertisers and sponsors. Moreover, the athletes provide their sponsors with publicity the basis for which is the sporting activity itself.

58 Finally, as regards the objections expressed in the observations submitted to the Court according to which, first, the main proceedings concern a purely internal situation and, second, certain international events fall outside the territorial scope of the Treaty, it must be remembered that the Treaty provisions on the freedom to provide services are not applicable to activities which are confined in all respects within a single Member State (see, most recently, Case C-108/98 *RI.SAN.* [1999] ECR I-5219, paragraph 23, and Case C-97/98 *Jägerskiöld* [1999] ECR I-7319, paragraph 42). However, a degree of extraneity may derive in particular from the fact that an athlete participates in a competition in a Member State other than that in which he is established.

59 It is for the national court to determine, on the basis of those criteria of interpretation, whether Ms Deliège's sporting activities, and in particular her participation in international tournaments, constitutes an economic activity within the meaning of Article 2 of the Treaty and, more particularly, the provision of services within the meaning of Article 59 of the Treaty.

60 If it is assumed that Ms Deliège's activity can be classified as a provision of services, it is necessary to consider whether the selection rules at issue in the main proceedings constitute a restriction on the freedom to provide services within the meaning of Article 59 of the Treaty.

61 It must be pointed out that, in contrast to the rules applicable to the *Bosman* case, the selection rules at issue in the main proceedings do not determine the conditions governing access to the labour market by professional sportsmen and do not contain nationality clauses limiting the number of nationals of other Member States who may participate in a competition.

62 Furthermore, Ms Deliège, a Belgian national, does not contend that the choice made by the LBJ, which did not select her to take part in the tournament, was based on her nationality.

63 In addition, as indicated in paragraph 44 of this judgment, those selection rules relate not to a tournament whose purpose is to set national teams against each other but to a tournament in which, once selected, the athletes compete on their own account.

64 In that context, it need only be observed that, although selection rules like those at issue in the main proceedings inevitably have the effect of limiting the number of participants in a tournament, such a limitation is inherent in the conduct of an

international high-level sports event, which necessarily involves certain selection rules or criteria being adopted. Such rules may not therefore in themselves be regarded as constituting a restriction on the freedom to provide services prohibited by Article 59 of the Treaty.

65 Moreover, the adoption, for the purposes of an international sports tournament, of one system for selecting participants rather than another must be based on a large number of considerations unconnected with the personal situation of any athlete, such as the nature, the organisation and the financing of the sport concerned.

66 Although a selection system may prove more favourable to one category of athletes than another, it cannot be inferred from that fact alone that the adoption of that system constitutes a restriction on the freedom to provide services.

67 Accordingly, it naturally falls to the bodies concerned, such as organisers of tournaments, sports federations or professional athletes' associations, to lay down appropriate rules and to make their selections in accordance with them.

68 In that connection, it must be conceded that the delegation of such a task to the national federations, which normally have the necessary knowledge and

experience, is the arrangement adopted in most sporting disciplines, which is based in principle on the existence of a federation in each country. Moreover, it must be pointed out that the selection rules at issue in the main proceedings apply both to competitions organised within the Community and to those taking place outside it and involve both nationals of Member States and those of non-member countries.

69 The answer to the questions submitted must therefore be that a rule requiring professional or semi-professional athletes or persons aspiring to take part in a professional or semi-professional activity to have been authorised or selected by their federation in order to be able to participate in a high-level international sports competition, which does not involve national teams competing against each other, does not in itself, as long as it derives from a need inherent in the organisation of such a competition, constitute a restriction on the freedom to provide services prohibited by Article 59 of the Treaty.

Costs

70 The costs incurred by the Belgian, Danish, German, Greek, Spanish, French, Italian, Netherlands, Austrian, Finnish, Swedish and Norwegian 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,

in answer to the questions referred to it by the Tribunal de Première Instance de Namur by order of 16 February 1996 and by judgment of 14 May 1997, hereby rules:

A rule requiring professional or semi-professional athletes or persons aspiring to take part in a professional or semi-professional activity to have been authorised or selected by their federation in order to be able to participate in a high-level international sports competition, which does not involve national teams competing against each other, does not in itself, as long as it derives from a need inherent in the organisation of such a competition, constitute a restriction on the freedom to provide services prohibited by Article 59 of the EC Treaty (now, after amendment, Article 49 EC).

Rodríguez Iglesias Moitinho de Almeida

Edward Sevón Kapteyn Puissochet

Hirsch Jann Ragnemalm

Delivered in open court in Luxembourg on 11 April 2000.

R. Grass G.C. Rodríguez Iglesias

Registrar President