

In Case 36/74

Reference to the Court under [Article 267 TFEU] by the Arrondissementsrechtbank (District Court) Utrecht, for a preliminary ruling in the action pending before that court between

1. BRUNO NILS OLAF WALRAVE
 2. LONGINUS JOHANNES NORBERT KOCH
- and
3. ASSOCIATION UNION CYCLISTE INTERNATIONALE
 4. KONINKLIJKE NEDERLANDSCHE WIELREN UNIE
 5. FEDERACION ESPAÑOLA CICLISMO

on the interpretation of [Articles 18, 45 and 56 TFEU] and the provisions of Regulation (EEC) No 1612/68 on freedom of movement for workers within the [Union] (OJ L 257 of 19. 10. 1968, p. 2),

THE COURT

composed of: R. Lecourt, President, C. O Dalaigh and A. J. Mackenzie Stuart, Presidents of Chamber, A. M. Donner, R. Monaco, J. Mertens de Wilmars (Rapporteur), P. Pescatore, H. Kutscher and M. Sorensen, Judges,

Advocate-General: J. P. Warner,

Registrar: A. Van Houtte,

gives the following

JUDGMENT

Law

- 1 By order dated 15 May 1974 filed at the Court Registry on 24 May 1974, the Arrondissementsrechtbank Utrecht referred under [Article 267 TFEU] various questions relating to the interpretation of the first paragraph of [Article 18 TFEU], [Article 45 TFEU] and the first paragraph of [Article 56 TFEU] and of Regulation No 1612/68 of the Council of 15 October 1968 (OJ L 257, p. 2) on freedom of movement for workers within the [Union].

- 2 The basic question is whether these Articles and Regulation must be interpreted in such a way that the provision in the rules of the Union Cycliste Internationale relating to medium-distance world cycling championships behind motorcycles, according to which 'L'entraîneur doit être de la nationalité de coureur' (the pacemaker must be of the same nationality as the stayer) is incompatible with them.
- 3 These questions were raised in an action directed against the Union Cycliste Internationale and the Dutch and Spanish cycling federations by two Dutch nationals who normally take part as pacemakers in races of the said type and who regard the aforementioned provision of the rules of UCI as discriminatory.
- 4 Having regard to the objectives of the [Union], the practice of sport is subject to [Union] law only in so far as it constitutes an economic activity within the meaning of [Article 3 TEU].
- 5 When such activity has the character of gainful employment or remunerated service it comes more particularly within the scope, according to the case, of [Articles 45 to 48 TFEU] or [Articles 56 to 62 TFEU].
- 6 These provisions, which give effect to the general rule of [Article 18 TFEU], prohibit any discrimination based on nationality in the performance of the activity to which they refer.
- 7 In this respect the exact nature of the legal relationship under which such services are performed is of no importance since the rule of non-discrimination covers in identical terms all work or services.
- 8 This prohibition however does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity.
- 9 This restriction on the scope of the provisions in question must however remain limited to its proper objective.
- 10 Having regard to the above, it is for the national court to determine the nature of the activity submitted to its judgment and to decide in particular whether in the sport in question the pacemaker and stayer do or do not constitute a team.

- 11 The answers are given within the limits defined above of the scope of [Union] law.
- 12 The questions raised relate to the interpretation of [Articles 45 and 56 TFEU] and to a lesser extent of [Article 18 TFEU].
- 13 Basically they relate to the applicability of the said provisions to legal relationships which do not come under public law, the determination of their territorial scope in the light of rules of sport emanating from a world-wide federation and the direct applicability of certain of those provisions.
- 14 The main question in respect of all the Articles referred to is whether the rules of an international sporting federation can be regarded as incompatible with the Treaty.
- 15 It has been alleged that the prohibitions in these Articles refer only to restrictions which have their origin in acts of an authority and not to those resulting from legal acts of persons or associations who do not come under public law.
- 16 [Articles 18, 45 and 56 TFEU] have in common the prohibition, in their respective spheres of application, of any discrimination on grounds of nationality.
- 17 Prohibition of such discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.
- 18 The abolition as between Member States of obstacles to freedom of movement for persons and to freedom to provide services, which are fundamental objectives of the [Union] contained in [Article 3 TEU], would be compromised if the abolition of barriers of national origin could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations which do not come under public law.
- 19 Since, moreover, working conditions in the various Member States are governed sometimes by means of provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons, to limit the prohibitions in question to acts of a public authority would risk creating inequality in their application.
- 20 Although the third paragraph of [Article 57 TFEU], and Articles 62

[repealed] and [Article 60 TFEU], specifically relate, as regards the provision of services, to the abolition of measures by the State, this fact does not defeat the general nature of the terms of [Article 56 TFEU], which makes no distinction between the source of the restrictions to be abolished.

- 21 It is established, moreover, that [Article 45 TFEU], relating to the abolition of any discrimination based on nationality as regards gainful employment, extends likewise to agreements and rules which do not emanate from public authorities.
- 22 Article 7 (4) of Regulation No 1612/68 in consequence provides that the prohibition on discrimination shall apply to agreements and any other collective regulations concerning employment.
- 23 The activities referred to in [Article 56 TFEU] are not to be distinguished by their nature from those in [Article 45 TFEU], but only by the fact that they are performed outside the ties of a contract of employment.
- 24 This single distinction cannot justify a more restrictive interpretation of the scope of the freedom to be ensured.
- 25 It follows that the provisions of [Articles 18, 45 and 56 TFEU] may be taken into account by the national court in judging the validity or the effects of a provision inserted in the rules of a sporting organization.
- 26 The national court then raises the question of the extent to which the rule on non-discrimination may be applied to legal relationships established in the context of the activities of a sporting federation of world-wide proportions.
- 27 The Court is also invited to say whether the legal position may depend on whether the sporting competition is held within or outside the [Union].
- 28 By reason of the fact that it is imperative, the rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or of the place where they take effect, can be located within the territory of the [Union].
- 29 It is for the national judge to decide whether they can be so located, having regard to the facts of each particular case, and, as regards the legal effect of

these relationships, to draw the consequences of any infringement of the rule on non-discrimination.

- 30 Finally, the national court has raised the question whether the first paragraph of [Article 56 TFEU], and possibly the first paragraph of [Article 18 TFEU], of the Treaty have direct effects within the legal orders of the Member States.
- 31 As has been shown above, the objective of [Article 56 TFEU] is to prohibit in the sphere of the provision of services, *inter alia*, any discrimination on the grounds of the nationality of the person providing the services.
- 32 In the sector relating to services, [Article 56 TFEU] constitutes the implementation of the non-discrimination rule formulated by [Article 18 TFEU] for the general application of the Treaty and by [Article 45 TFEU] for gainful employment.
- 33 Thus, as has already been ruled (Judgment of 3 December 1974 in Case 33/74, *Van Binsbergen*) [Article 56 TFEU] comprises, as at the end of the transitional period, an unconditional prohibition preventing, in the legal order of each Member State, as regards the provision of services - and in so far as it is a question of nationals of Member States - the imposition of obstacles or limitations based on the nationality of the person providing the services.
- 34 It is therefore right to reply to the question raised that as from the end of the transitional period the first paragraph of [Article 56 TFEU], in any event in so far as it refers to the abolition of any discrimination based on nationality, create individual rights which national courts must protect.

Costs

- 35 The costs incurred by the Commission of the European [Union], which has submitted observations to the Court, are not recoverable.
- 36 Since these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Arrondissementsrechtbank Utrecht, hereby rules:

1. **Having regard to the objectives of the [Union], the practice of sport is subject to [Union] law only in so far as it constitutes an economic activity within the meaning of [Article 3 TEU].**
2. **The prohibition on discrimination based on nationality contained in [Articles 18, 45 and 56 TFEU] does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity.**
3. **Prohibition on such discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at collectively regulating gainful employment and services.**
4. **The rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or of the place where they take effect, can be located within the territory of the [Union].**
5. **The first paragraph of [Article 56 TFEU], in any event in so far as it refers to the abolition of any discrimination based on nationality, creates individual rights which national courts must protect.**

Lecourt

O Dalaigh

Mackenzie

Donner

Stuart

Monaco

Mertens de Wilmars

Kutscher

Sorensen

Pescatore

Delivered in open court in Luxembourg on 12 December 1974

A. Van Houtte

R. Lecourt

Registrar

President