

SPORTS LAW

RESEARCH PAPER¹

COMPARISON BETWEEN

THE EUROPEAN COURT OF JUSTICE'S (ECJ's) RULING (in BOSMAN CASE²),

AND THE FOOTBALL'S ROZELLE RULE³ IN THE USA

WITH THEIR PREVIOUS AND SUBSEQUENT DEVELOPMENTS

IN RESPECT OF THE MOVEMENT OF PLAYERS

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¹ This research paper includes a comparison between an ECJ's decision changing the transfer systems in Europe, and the Football's Rozelle Rule challenging the Baseball's Reserve System in the USA with their previous and subsequent developments.

² This is the ECJ's judgment (Case C-415/93, [1995] ECR I-4921), widely known Bosman case, providing free movement of the professional players in Europe and in other regions.

³ This is the Football's Rozelle Rule, named after the National Football League's (NFL's) commissioner, Pete Rozelle, challenged the baseball's reserve clause and laid the groundwork for "free agents."

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I. INTRODUCTION

a. Scope

In this study, first, I will introduce two different landmark developments changing the previous movement of player's principles in two different regions of the world in Sports Law. I will also point out the reactions coming right after these developments. In addition to that, some sport leagues and sport associations will take place in this study. Finally, I will compare them in accordance with their effects to movement of players.

b. General Remarks

The owners of the clubs firmly applied a lot of restrictions against movement of players in all regions of the world. According to Prof. Champion, from Texas Southern University School of Law, "*the owners of the clubs historically acted as if the players were their children and the teams their personal and private fiefdoms*⁴." I believe that this expression gives us a clue about what happened before the struggle against restrictions.

On the one hand, Rozelle's Rule and the other amendatory developments such as free agencies provided more freedom to the players in the USA; on the other hand, the ECJ's ruling in Bosman case caused free movement of players in Europe and in some other regions.

First I will introduce the Bosman case and the related associations.

⁴ WALTER T. CHAMPION, JR., *Sports Law Cases, Documents, and Materials*, pp. 123-124 (Aspen Publishers 2004)

II. BOSMAN CASE

Since the ECJ's ruling in Bosman case changed and affected several applications of some associations such as FIFA, UEFA, and URBSFA, before going through the case, I will introduce these associations to provide advance information.

a. FIFA, UEFA and URBSFA

The Federation of International Football Association (FIFA) is an association governed by Swiss law founded in 1904 and based in Zurich⁵. It has 208 member associations⁶ and its goal, enshrined in its Statutes, is the constant improvement of football⁷. FIFA employs some 280 people from over 30 nations and is composed of a Congress (legislative body), Executive Committee (executive body), General Secretariat (administrative body) and committees (assisting the Executive Committee)⁸.

The FIFA Statutes and the accompanying regulations governing their implementation form the Constitution of football's international governing body⁹. They provide the “*basic laws for world football*”, on which countless rules are set for competitions, transfers, doping issues and a host of other concerns¹⁰.

On the other hand, the Union of European Football Associations (UEFA) is the governing body of football on the continent of Europe¹¹. UEFA's core mission is to promote, protect and develop European football at every level of the game, to promote the principles of unity and solidarity, and to deal with all questions relating to European

⁵ FIFA's Official Web Site, *available at* <http://www.fifa.com/aboutfifa/federation/index.html>

⁶ See the current member list, *available at* <http://www.fifa.com/aboutfifa/federation/associations.html>

⁷ FIFA's Official Web Site, *available at* <http://www.fifa.com/aboutfifa/federation/index.html>

⁸ *Id.*

⁹ See the FIFA Statutes, *available at* <http://www.fifa.com/aboutfifa/federation/statutes.html>

¹⁰ *Id.*

¹¹ UEFA's Official Web Site, *available at* <http://www.uefa.com/uefa/aboutuefa/index.html>

football¹². Currently, it has 53 member associations¹³ and URBSFA¹⁴ (Belgian Football Association) is one of them. URBSFA is an association officially representing football in Belgium. In Bosman case, URBSFA was one of the parties not allowing the Belgian national player, Jean Marc Bosman, without a fee, even his contract ended.

b. ECJ (European Court of Justice)

The Court of Justice of the European Communities¹⁵, whose seat is in Luxembourg, is dealt with extensively in the constitutive treaties¹⁶. Article 220 of the EC Treaty¹⁷ gives the Court responsibility for “*ensuring that in the interpretation and application of this Treaty the law is observed.*”

Through some ECJ’s actions (such as, to render “preliminary rulings” under EC Treaty Article 234 on the interpretation and validity of Community acts at the request of Member State Courts), the Court’s vital role in securing a Community legal order that is both effective and respectful of the rule of law and individual rights¹⁸.

The Court presumably has jurisdiction to determine the meaning and validity of all Community law norms, wherever they may be found in the Community Treaties or in the Community’s secondary legislation or international agreements¹⁹. Therefore, in Bosman case, after Belgian Court asked ECJ, it held its binding decision by relying on its authority stemming from the Treaty.

¹² *Id.*

¹³ See the recent member list, *available at* <http://www.uefa.com/uefa/index.html> (at the end of the page)

¹⁴ Union Royale Belge des Sociétés de Football Association.

¹⁵ As a term, today “European Community” became “European Union.”

¹⁶ GEORGE A. BERMANN, ROGER J. GOEBEL, WILLIAM J. DAVEY, ELEANOR M. FOX, *Cases and Materials on European Union Law*, 58 (West Group 2002)

¹⁷ Treaty Establishing the European Community, see the full text, *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:PDF>

¹⁸ BERMAN, GOEBEL, DAVEY, FOX, pp. 59.

¹⁹ *Id.* at 66.

c. Prior to ECJ's Ruling in Bosman Case

Before the ECJ's ruling in Bosman case, every association had its own rules regarding the "movement of the players" when their contracts finish and these rules had to be consistent with the UEFA and the FIFA rules.

Generally speaking, before the ECJ's ruling in Bosman case, soccer players had very "limited mobility" even their contract finish. Supposing that A plays in one of the European leagues for club X and he wants to be transferred by another European club Y when his contract finishes with X. He agrees with Y; however, X and Y do not agree with the "transfer fee". Before the ECJ's ruling, the player would not be able to be transferred by another club; however, ECJ's ruling helped the aggrieved players and changed this unfair situation.

d. Principles of the European Union concerning the Bosman Case and Prior debates:

i) Background: As one of the biggest goal of EC Treaty²⁰, EU has to provide four fundamental freedoms: 1) free movement of goods, 2) free movement of persons²¹, 3) free movement of services, and 4) free movement of capital. Since the ECJ's ruling behalf of Bosman is related to free movement of persons, I will be focusing on this freedom.

Like other three fundamental freedoms mentioned above, "free movement of persons" is an indispensable and a mandatory type of freedom in whole EU. "*Freedom of movement of workers shall be secured within the Community*" (Art. 39 of the EC Treaty). It also states that: "*Such freedom of movement shall entail the abolition of any*

²⁰ See the footnote "17" again.

²¹ In the course of time, "free movement of workers" was expanded as "free movement of persons."

discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment” (Art. 39/2). It also specifies the exceptions of the freedom: “public policy”, “public security” and “public health”. Free movement of persons shall be entailed, subject to limitations on grounds of these exceptions (Art. 39/3). ECJ is very careful, observant and accurate about these freedoms.

Free movement of persons actually stems from this basic European Coal and Steel Community Treaty (ECSCT²²). According to the Treaty, “*member states had to remove all nationality-based barriers of working in the coal and steel industry.*” This was the first version of today’s “free movement of persons” right. Later, some directives and regulations followed and developed the very early version of this right as mentioned above.

ii) Prior debates²³: Many European sport teams (e.g., soccer, football, basketball, hockey) represent their cities or countries in various leagues or national or international competitive events. Understandably, the people of Liverpool tend to expect that their soccer team will be made up of British nationals, as the people of Milan expect their team to consist of Italians, and so on. The rules of many national or international sports federations require teams to be exclusively composed of a state’s nationals, or limit the number of non-nationals.

There are some questions were asked at this point:

-Should Article 39 be applied to set aside these rules and prevent sports team owners from discriminating in hiring any Community nationals?

²² See the ECSCT, available at EU’s Official Website http://europa.eu/scadplus/treaties/ecsc_en.htm

²³ BERMAN, GOEBEL, DAVEY, FOX, at 622. (The debate under this heading was taken from the discussion on the book).

-Are professional sports team players to be considered “workers” in terms of Article 39?

-How can a sports federation or a specific sports team considered to be bound by article 39 when they are part of the private sector and the discriminatory rules are not set by State law?

All these issues had to be confronted.

Initially, in *Walrave v. Union Cycliste Internationale*, Case 36/64, [1974] ECR 1405, the ECJ held that Article 39 applied to limit not only public authorities, but also any national or international body’s rules “aimed at collectively regulating gainful employment and services.” The Court went on to hold that rules of an international bicycle riding sports federation could not discriminate against Community nationals in the hiring of employees of bicycle riders. The Court did allow a federation to have rules which allow only nationals as competitors for “sports teams, in particular national teams, the formation of which is a question of purely sporting interest,” but did not define “purely sporting interest.”

The ECJ applied the same principle in *Dona v. Montero*, Case 13/76, [1976] ECR 1333, invalidating Italian football federation rules forbidding Italian teams from having non-Italian players. Advocate General Trabucchi observed that this should not prevent a State from restricting participation in amateur competitions of an international character (e.g. Olympics) to team members who are nationals of that State.

Not surprisingly, sport federations resisted compliance with this case law. The Commission attempted for years to enforce the non-discrimination principle in direct

discussions with certain federations, but with little success. Then came a 1995 judgment (Bosman case) that attracted more media attention than any other that year.

e) Bosman Case²⁴ and the ECJ's ruling

URBSFA (Belgian Football Association) v. BOSMAN

[Case C-415/93, [1995] ECR I-4921]

Bosman, a Belgian football player, wanted to sign a contract with a French football club at the end of his two-year contract with the Belgian Liege club. However, the Belgian Football Association rules required his prospective French club employer to pay a substantial transfer fee to the Belgian club. The fee is calculated in function of a player's prior annual salary and may attain 14 times the annual salary. If agreement can not reach on paying the transfer fee, a player must enter into a new contract with his prior club; if not, he is suspended from professional play. In Bosman case, the proposed transfer fee was 4.8 million Belgian francs (ca. \$150.000), and the Liege club declined agreement out of concern that the French club's economic condition did not assure payment. Bosman refused a new contract for lower pay with the Liege club, was suspended, and sued for damages and enjoin interference with his transfer.

The Liege tribunal asked the ECJ not only whether the transfer fee system violated article 39 (free movement of persons), but also whether the national (URBSFA) and international sport federations (UEFA and FIFA) rules limiting the number of non-national players violated it as well. The Belgian federation belongs to both the FIFA, and the UEFA, and the Belgian rules in question were set after discussion with the

²⁴ *Id.* at 623-626 (The text of the case was taken from the book).

The text of the Bosman case is also *available at* European Union Law's Official Web Site "*Eur-Lex*" <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61993J0415:EN:HTML>

Comission, essentially limited the number of non-national active professional players to five per club.

The first important issue was whether Article 39 governed rules of private federations in the field of sports. The sports federations, supported by Germany, argued “the autonomy of sport”, claiming that Liege and most clubs “carry on an economic activity only to a negligible extent,” so that Germany also argued that sport formed a part of national culture which should be respected. The Court rejected this view and held the following:

In response to those arguments, it is to be remembered 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.

Application of Article 39 of the Treaty is not precluded by the fact that the transfer rules govern the business relationships between clubs rather than the employment relationships between clubs and players. The fact that the employing clubs must pay fees on recruiting a player from another club “*affects the players’ opportunities for finding employment and the terms under which such employment is offered.*”

As regards the difficulty of severing the economic aspects from the sporting aspects of football, the Court has held (*in Dona*) that the provisions of Community law concerning freedom of movement of persons and of provision of services do not preclude rules or practices justified on non-economic grounds which relate to the particular nature and context of certain matches. It stressed, however, that such a restriction on the scope of the provisions in question must remain limited to its proper objective. “*It can not,*

therefore, be relied upon to exclude the whole of a sporting activity from the scope of the Treaty.”

With regard to the possible consequences of this judgment on the organization of football as a whole, it has consistently been held that, although the practical consequences of any judicial decision must be weighed carefully, this can not go so far as to diminish the objective character of the law and compromise its application on the ground of the possible repercussions of a judicial decision.

Once the objections concerning the application of Article 39 of the Treaty to supporting activities such as those of professional footballers are out of the way, it is to be remembered that, as the Court held in *Walrave*, cited above, “*Article 39 not only applies to the action of public authorities but extends also to rules of any other nature aimed at regulating gainful employment in a collective manner.*” The Court has held that 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 neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations not governed by public law. (see *Walrave*, cited above).

Working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons. Accordingly, *if the scope of Article 39 of the Treaty were confined to acts of a public authority there would be a risk of creating inequality in its application.* That risk is all the more obvious in a case such as that in the

main proceedings in this case in that the *transfer rules have been laid by different bodies or in different ways in each Member State.*

Article 39 of the Treaty therefore applies to rules laid down by sporting associations such as FIFA, UEFA or URBSFA, which determine the terms on which professional sportsmen can engage in gainful employment. [The Court then concluded that the transfer fee system constituted an “indirect restriction” of free movement.]

Provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore *constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned.*

Since the *transfer rules provide that a professional footballer may not pursue his activity with a new club established in another Member State unless it has paid his former club a transfer fee agreed upon between the two clubs or determined in accordance with the regulations of the sporting associations,* the said rules *constitute an obstacle to freedom of movement for workers.* [The Court rejected arguments made to justify the transfer rules. Then the Court turned to the non-national players restriction, noting first that the article 4 of Regulation 1612/68 forbids any national rules which set quotas on employment by migrant workers.]

The same principle applies to clauses contained in the regulations of sporting associations which restrict the right of nationals of other Member States to take part, as professional players, in football matches.

The fact that those clauses 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. [Then the Court rejected the justifications for the nationality clauses advanced by the sport federations.]

The sport federations and several governments argued that the clauses serve to maintain the traditional link between each club and its country, a factor great importance in enabling the public to identify with its favorite team and ensuring that clubs taking part in international competitions effectively represent their countries.

The nationality clauses can not be deemed to be in accordance with Article 39 of the Treaty, otherwise that article would be deprived of its practical effect and the fundamental right of free access to employment which the Treaty confers individually on each worker in the Community rendered nugatory.

A football club's links with the Member State in which it is established can not be regarded as any more inherent in its sporting activity than its links with its locality, town, region or, in the case of the United Kingdom, the territory covered by each of the four associations.

f. Thoughts after Bosman case

The Bosman decision has profoundly altered the nature of football in Europe, as the Commission has recognized and that ruling established that Article 39 of the EC Treaty (ex Article 48) prohibits the adoption of any rule by sporting associations (including national associations and UEFA) limiting the use by football teams of professional players who are nationals of other Member States²⁵.

²⁵ WRITTEN QUESTION (P-1528/00) by José Ribeiro e Castro (UEN) to the Council, *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:92000E1528:EN:NOT>

Now the result, especially in Europe, is that players are feeling more free their selves when their contract with a team finishes. However, this decision not only affected Europe, but also affected the football industry all around the world.

Another remarkable point is that the decision also enriched ECJ's authority over all related associations being autonomous. I will be particularly analyzing the decision in the final remarks and analyze part.

III. FOOTBALL'S ROZELLE RULE and the SUBSEQUENT DEVELOPMENTS

a. Relevant American Sports (and MLB²⁶ & NFL²⁷)

Since reserve system was restricting baseball players and the football league's Commissioner Rozelle was the counterpart of this system, I will firstly introduce relevant sports and their leagues in the USA.

For years the professional sports that defined American culture was "*baseball*".²⁸ It is a game between two teams of nine players each, under direction of a manager, played on an enclosed field in accordance with these rules, under jurisdiction of one or more umpires (BOR²⁹ 1.01). The objective of each team is to win by scoring more runs than the opponent (BOR 1.02). The winner of the game shall be that team which shall have scored, in accordance with these rules, the greater number of runs at the conclusion of a regulation game (BOR 1.03). Additionally, *MLB* is an unincorporated association of the 30 major league baseball clubs and it is governed by a Constitution adopted in

²⁶ Major League Baseball in the USA.

²⁷ National Football League in the USA. In this part, the word "*football*" is used in order to determine "*American Football*."

²⁸ CHAMPION, pp.1

²⁹ Baseball Official Rules, see the rules *available at* Official Website of MLB
http://mlb.mlb.com/mlb/official_info/official_rules/objectives_1.jsp

January 2000³⁰ (See *Major League Baseball v. Butterworth*, 181 F.Supp. 2d 1316 (N.D. Fla. 2001)).

On the other hand, “*American football*” is a game which is played between two “11-man” teams. One 11-man team has possession of the football, it is called the offense, and it tries to advance the ball down the field-by running with the ball or throwing it - and score points by crossing the goal line and getting into an area called the end zone³¹. The other team (also with 11 players) is called the defense³². It tries to stop the offensive team and make it give up possession of the ball³³. If the team with the ball does score or is forced to give up possession, the offensive and defensive teams switch roles (the offensive team goes on defense and the defensive team goes on offense³⁴). *NFL* is the league of American football which includes two 16-team conferences, the AFC and NFC, which are subdivided into four four-team divisions (North, South, East, and West³⁵).

b. Baseball’s Reserve System³⁶(Prior to Rozelle’s Rule)

On February 2, 1876, William Hulbert founded the National League of Professional Base Ball Clubs (National League) in New York City. Immediately after forming this league, Hulbert created a form of “baseball indentured servitude, in which the ability of member clubs to raid each other's talent during a season and the player's rights of geographic mobility and choice of employer would be drastically reduced.”

³⁰ CHAMPION, pp. 130

³¹ NFL Rulebook “*Beginner’s Guide to Football*,” available at NFL’s Official Website <http://www.nfl.com/rulebook/beginnersguidetofootball>

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See the details and the full table of the divisions, available at <http://www.nfl.com/teams>

³⁶ JONATHAN B. GOLDBERG, *Player Mobility in Professional Sports: From the Reserve System to Free Agency*, *Sports Lawyers Journal*, pp 22-25, Spring 2008, available at WL 15 SPLAWJ 21 (The discussion on Baseball’s Reserve system was taken from this Law Review).

On September 29, 1879, the National League announced the creation of the “reserve clause.”

Initially, officials declared that each team could henceforth reserve five players off its eleven-man roster for the year following their current contracts, even in the absence of a new signed contract. *For those players affected, the adoption of the reserve clause meant that their ability to change employers between season contracts had been eliminated unless their “owners” agreed to permit a change via release.* The club retained the power to unilaterally terminate a player contract with thirty days' notice or to assign a player to another team. If a reserved player attempted to override the clause by jumping to another team, all other league and alliance clubs were barred from employing him or even from playing a team with him on it upon pain of expulsion. The player would be subject to blacklisting and the threat of permanent banishment. In effect, for reserved players all contracts had now been standardized, and their bargaining rights had been eliminated on all issues except the level of their annual financial compensation. Even on that question, the player no longer had the practical leverage of interclub bidding, but could only resort to holding out from his present club in the hopes that fan clamor for his presence would pressure management into a more generous offer.

When the American Association formed as a rival league and attempted to raid players from National League teams, the National League simply included them in the conspiracy.

On March 12, 1883, the American Association and the National League consented to a “National Agreement,” whereby the leagues agreed to recognize teams' reserve claims upon players. When other baseball leagues formed, the National League

either included them or forced them out of business. *Baseball's reserve system remained intact for almost 100 years.*

As other professional sports leagues emerged, they followed baseball's lead and adopted reserve clauses in their Standard Player Contracts. In (NFL), free agency existed in theory but was curtailed in fact. A player who signed a contract with an NFL team was bound to play for that team for the term of the contract plus an additional year at the option of the team. The player could become a free agent at the end of the option year, but players who chose to play out their options were subject to a ten percent salary cut during the option year. This encouraged players to keep signing new contracts instead of playing out their options, which ended up binding them to one team for their entire playing careers. In addition, NFL teams unilaterally adopted a provision, known as the “Rozelle Rule,” named after NFL Commissioner Pete Rozelle, which further deterred free agents from signing with new teams.

Briefly, in the NFL, the clause appeared as a one-time option, but a complex compensation system discouraged teams from signing free agents. In this scenario, the Standard Player Contract allowed teams to control the players' careers.

c. Countering the Reserve System

i) Who is Pete Rozelle and What is His Importance³⁷?

In 1960, Pete Rozelle was elected commissioner of the NFL and he found himself as the thirty-three-year-old leader of a twelve-team league with combined revenues for the league and its franchises totaling less than \$20 million. Big achievements and a wonderful career started. His career impacted not only the NFL, but the entire world of professional sports.

³⁷ JOHN A. FORTUNATO, *The Legacy of Pete Rozelle*, pp. 18-24 (This part was taken from the book).

Named by Time magazine as one of the “100 Most Important People of the 20th Century,” Pete Rozelle is largely given credit for being the visionary who created the business model for modern professional sports. After electing in 1960, in his three decades as NFL Commissioner, Rozelle oversaw the league’s growth from twelve teams to twenty-eight, provided leadership in the battle and eventual merger with the Arena Football League, helped develop of the Super-Bowl into the premier sporting event that it is today and assisted in the creation of “Monday Night Football.” Behind the scenes Rozelle demonstrated a leadership style based on a conviction of doing what was best for the league. He operated with integrity, humility, and a personal touch that fostered the admiration of so many who worked with and knew him.

ii) Rozelle’s Rule & Free Agency

- Rozelle’s Rule:

Football League-first economic philosophy, with owners equally sharing television money and striving for competitive balance, has a dramatic impact on the players and their salaries³⁸. Economic rules that eliminate distinctions between larger-market and smaller-market owners by not allowing wealthier owners to pay whatever they would like to acquire players do help create competitive balance, but they could also place inherent restrictions on player salaries³⁹. If the player movement is restricted and there is no bidding on players by multiple teams with a player’s rights held by only one team, salaries will not grow⁴⁰.

³⁸ *Id.* at 149.

³⁹ *Id.*

⁴⁰ *Id.*

Prior to 1963 there was a gentlemen's agreement among all of the NFL owners not to sign free agents away from other teams⁴¹. Carroll Rosenbloom, then the owner of the Baltimore Colts, would violate this agreement by signing free-agent wide receiver R.C. Owens from the 49ers after Owens had played out the option year of his contract at the end of the 1961 season, a year in which Owens had fifty-five catches for 1,032 yards and five touchdowns⁴². The signing of Owens would be done without any compensation going to his former team, the San Francisco 49ers⁴³. Owens would be the only free agent signed where the former team would not be compensated⁴⁴. With the Owens signing, the league moved to unilaterally adopt what would become known as the "Rozelle Rule"⁴⁵.

Under that rule, *"if a free agent signed with a new team then the new team and the former team had to agree upon some form of compensation owed to the former team: If the two teams could not agree, the Commissioner may name and then award to the former club one or more players, from the Active, Reserve, or Selection List (including future selection choices) of the acquiring club as the Commissioner in his sole discretion deems fair and equitable"*⁴⁶.

- Free Agency⁴⁷:

In 1976, the Eighth Circuit held that the Rozelle Rule was an unreasonable restraint of trade and ordered the NFLPA⁴⁸ and NFL to enter into collective bargaining over the issue of player mobility (See *Mackey v. NFL*, 543 F.2d 606, 623 (8th Cir. 1976).

⁴¹ *Id.* at 151

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ GOLDBERG, pp. 22 available at WL 15 SPLAWJ 21. (The discussion on Free Agency was taken from this Law Review).

⁴⁷ *Id.* at 44-53.

⁴⁸ National Football League Players Association.

In the 1977 Collective Bargaining Agreement, however, the NFLPA agreed to a free agency provision that again required compensation payments for signing free agents. A player whose contract had expired or who played out his option year was eligible for free agency, but his team possessed a right of first refusal, which allowed it to match the offer of the bidding team and retain the player. If the team did not exercise this right, the signing team had to compensate the former team with quality draft choices. Under that system, only six of the more than 500 free agents actually changed teams.

Following this agreement, the NFLPA went back to court, alleging that the post-Mackey Agreement was even more restrictive than the previous one. In *Reynolds v. NFL*, the Eighth Circuit reemphasized, “The subject of player movement restrictions is a proper one for resolution in the collective bargaining context.” Since the players had just collectively bargained with the owners at arm's length in creating the new Agreement, the labor exemption applied. The players won the right to a better system, but the NFLPA squandered that opportunity.

The NFLPA suffered another setback in 1980 when an arbitration award held that, in contrast to MLB players, NFL players did not become free agents at the end of their option year. Instead, the prior club's right to elect first refusal or draft pick compensation applied to any free agent, even one coming off an option year contract. As a result of that holding, player mobility in the NFL continued to stagnate.

In 1982 the players went on a fifty-seven-day strike, which, at that time, made it the longest strike in the history of professional team sports. During the negotiations, however, the NFLPA concentrated on salary scale and gross revenue issues rather than on reforming free agency. In the end, the 1982 Agreement barely modified the system of

free agency. The compensation system remained intact; only the number of draft choices given was reduced. Between 1982 and 1987, of the 1415 veterans who became free agents, just one received an offer from another team. Indeed, between 1977 and 1987 only one NFL player switched teams for compensation.

In 1988, NFL owners unilaterally implemented “Plan B” after reaching a bargaining impasse with the NFLPA. Under Plan B, each team could protect thirty-seven players on its roster. Teams signing a protected player would be subject to a compensation payment and a right of first refusal by the former team. Teams signing unprotected players were not subject to these qualifications or restrictions. During the four years that Plan B existed, many veteran players switched teams, but none were of superstar caliber.

In *McNeil v. NFL*, the NFLPA decertified and eight individual NFL players challenged Plan B as a restraint of trade in violation of section 1 of the Sherman Act. After the jury found in favor of four of those plaintiffs, the NFL was flooded with litigation brought by other NFL players. In 1993, the NFL agreed to pay \$195 million to settle and satisfy the claims of all players who had been affected by Plan B. The new settlement also created a system of free agency that largely remains intact.

Today, articles XVIII and XIX of the NFL Collective Bargaining Agreement discuss veteran free agency in the NFL. Under article XVIII, a player with fewer than three years of experience may not enjoy the benefits of free agency if his team offers him the applicable minimum salary. Under article XIX, players who have three to five years of experience become “restricted” free agents at the expiration of their contracts. This section provides that a team possesses rights of “first refusal” and “draft choice

compensation” if another team wants to sign its restricted free agent. In order to take advantage of these rules, however, the former team must present to the restricted free agent a “Qualifying Offer” of at least a certain amount, according to formulas contained in the Collective Bargaining Agreement. If the former team makes an adequate Qualifying Offer and the restricted free agent subsequently signs with a new team, the signing team must compensate the former team. Like former NFL compensation systems, the amount of compensation owed to the former team depends upon the salary of its restricted free agent. Finally, any player with at least five years of NFL experience may become an “unrestricted” free agent at the expiration of his contract. As such, any club may sign him without penalty or restriction, except as provided in article XX.

Article XX provides that each club may designate one player on its roster, who would otherwise be an unrestricted or a restricted free agent, to be its “Franchise Player.” The player who receives this “honor” may only negotiate with his current team; he may not enter the market as a free agent. In exchange, however, the team must pay this player a guaranteed salary of the greater of the following two options: (1) the average of the highest five salaried players in the league at his position in the prior year or (2) 120% of his prior year's salary. Thus, although the franchise player may not test the free market, his salary is guaranteed to be significant.

In addition, article XX allows each team to designate one player on its roster, who would otherwise be a free agent, as a “Transition Player.” This player is free to negotiate with other clubs, but the former team retains a right of first refusal as if the player were a restricted free agent. In exchange, the team that gives its player this special label must tender to him a guaranteed salary of the greater of the following two options: (1) the

average of the highest ten salaried players in the league at his position in the prior year or (2) 120% of his prior year's salary. Through the “franchise” and “transition” player tags, teams retain some ability to resign valuable veteran players, although they pay a hefty price.

IV. CONCLUSION

In this study, I gather up some essential developments regarding the “movement of players” both in Europe and in the USA. These developments expressly indicate us how many difficulties that the professional players encountered with in the past. Journey starts from “being the children of the clubs” like Prof Champion says; however, these children grew up within the time and now they gained broad mobility under the suitable circumstances both in Europe and in the USA.

This is the frame of the developments mentioned above:

-In Europe: a) “*Prior to Bosman Case,*” b) “*After Bosman Case*”

-In the USA: a) “*Reserve Clause,*” b) “*Rozelle’s Rule,*” c) “*Free Agency.*”

Generally speaking, I found some similarities between “Prior to Bosman case” and “Reserve clause”, and between “After Bosman case” and some points of “Rozelle Rule” with “Free Agency” as well. I believe, Bosman case totally stopped the previous application of the clubs tending to restrict player’s movement even though their contract finishes. Rozelle Rule obviously struggled with the Reserve Clause but the main struggle against restrictions was made in order to provide Free Agency in the USA.

As mentioned above, players encountered with a vital restriction before Bosman case in Europe. They were not free to move another club without a substantial fee. I found that Reserve system in the USA also provided a very similar restriction against the

players. This system essentially bound a player to a team perpetually unless traded or released (*Atlanta National League Baseball Club, Inc. v. Kuhn*, 432 F. Supp 1213 (N.D. Ga. 1977)). In other words, the player was the property of the club/employer for life⁴⁹. The only alternative available to the dissatisfied player was to either request that his contract be traded or to retire from the sport⁵⁰. It is clear to me that these systems both in Europe and the USA at that time made players very weak. I strongly believe that this was an unjust treatment to the players.

On the other hand, ECJ's ruling concerning the football player Bosman appears like the milestone of the transfer systems especially in Europe. As I stated above, not only Europe but also other regions were affected by the ECJ's ruling because of the link between the domestic and the multinational associations. As I also stated above, every association had its own rules regarding the "movement of the players" and these rules had to be consistent with the UEFA and the FIFA. For example, the Belgian Football Federation belongs to both the FIFA, and the UEFA. On the other hand, some countries such as Russia, Turkey, and Norway are also the members of both UEFA and FIFA⁵¹. Belgium is one of the members of the EU⁵²; however, Russia, Turkey and Norway are not. Therefore, beside the domestic associations in European Union, the decision also affected the associations' applications and the rules regarding the movement of players in other countries because of their link to UEFA and FIFA. In other words, "free movement of persons principle" of the EU also affected the countries which are not the members of the EU. In my opinion, even though ECJ has a direct effect on the member countries

⁴⁹ CHAMPION, pp.128.

⁵⁰ *Id.*

⁵¹ See the footnote "6" and "13" again for the members of the associations.

⁵² See the current list of the EU member list, *available at* http://europa.eu/abc/european_countries/index_en.htm

stemming from the Treaties, it also has an indirect affect on the countries that are not the members of the EU.

The other remarkable point that I can emphasize is that the ECJ's ruling concerning Bosman has a very accurate effect on FIFA and UEFA in accordance with the free movement of persons principle, even though they have the "autonomy." As is known and stated above, as the autonomous associations, both FIFA and UEFA have their own Statutes, and rules. For example, their relevant Committees can penalize players regarding these statutes or rules. Therefore, it is clear that they are the autonomous associations. The argument of sport federations in the Bosman case was "the autonomy of sports and the association." However, the Court held that sport is subject to EU law and it constitutes an economic activity within the meaning of the Treaties. Finally, the ECJ stated that the substantial fee which must be paid by employing club affects the players' opportunities for finding employment and the terms under which such employment is offered.

In the USA, on the other hand, the real free movement of players provided with Free Agency, even though Rozelle and his rule opposed the Reserve system. In my opinion, the Rozelle Rule is a rule between the Reserve system and Free Agency. In other words, Rozelle Rule provided some flexibility in awarding free agency to players by compensating the team that lost them; however, it did not provide exact mobility as much as Free Agency. Therefore, it is very important since it was against Reserve system, but it is not successful as free agency. I believe it does not provide mobility as much as ECJ's ruling. Therefore, it was normal in the USA transition to Free Agency.

Even though the Rozelle Rule could not provide the exact free agency in the USA, it still one of the tough challenges to immobility of players in the US's Sports Law history. Finally, exact Free Agency came out as stated above and it provided the exact free movement under the suitable circumstances.