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Special Release

European Court Victory for 'Overseas' Players a boost for Premiership Clubs

Many sports impose quota systems on the number of overseas players that a side can field in its leagues. County cricket allows only two overseas players to be picked for a match, Rugby League has a limit of five non-European Union players and Rugby Union limits its Premiership sides to one non-European Union player in a match.

The absence of any quota system in the Premier or Football league contrasts with the continent where in Spain, for example, only three non-EU players can take the field in La Liga and a club can only have four on its books. Both FIFA and UEFA would like to see a similar quota system introduced throughout Europe. The FA have in the past called for a system imposing a limit of two non-European Union players in the Premier League and one in the First Division. These calls, designed to encourage clubs to develop 'home grown' players, have had considerable effect on some clubs' buying policies.

Historically, quota systems existed in many national football leagues and also in UEFA club competitions prior to the Bosman case which was decided by the European Court of Justice in 1996. The quota systems meant that only a limited number of foreign players could play in a particular match. For example, in UEFA club competitions only 3 foreign players (plus 2 "assimilated" foreign players) could play for a team. This particularly affected clubs such as Manchester United playing in the Champions League who on occasion had to choose between leaving out such talent as Eric Cantona and Peter Schmeichel.

The Bosman case ruled that such quota systems were illegal in so far as they restricted access of players from EU countries to competitions in the EU. It did not however affect quota systems in respect of players from non-EU countries.

This position now appears to have been changed by the case of Maros Kolpak, at least in respect of players from countries that have agreements with the EU containing provisions prohibiting discrimination in employment.

Mr Kolpak is a Slovakian goalkeeper for a German handball team. He complained about the effect on him of a German quota system prohibiting more than two players from non-EU states playing in certain league and cup matches. On 8 May 2003, the European Court of Justice held that as Mr Kolpak was lawfully employed by a club established in an EU country he was entitled, under the Association Agreement between Slovakia and the EU, not to be discriminated against in respect of his working conditions. Therefore because he should have the same rights as EU nationals the quota system should not apply to him.

If the European Court's judgment is taken to its natural conclusion, the effect of this

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decision is that sporting organisations in the EU must treat nationals of countries with agreements with the EU containing similar non-discrimination provisions the same way as they treat EU nationals. Any new quota system introduced in respect of foreign players should not therefore apply to players from those countries. There are about 100 countries affected that have appropriate Association, Co-operation or Partnership agreements with the EU.

The countries that have Association Agreements with the EU containing similar non-discrimination provisions are: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic and Slovenia which have all applied to become members of the EU. With the exception of Bulgaria and Romania, which hope to join in 2007, these countries have applied to join the EU from 1 May 2004.

Algeria, Morocco and Tunisia have Co-operation Agreements with the EU that also contain similar non-discrimination provisions.

The EU also has a single Partnership Agreement with over 75 African, Caribbean and Pacific countries which contains similar non-discrimination provisions. The countries affected include Cameroon, Ghana, Jamaica, Senegal, Trinidad and Tobago, Nigeria and South Africa.

In summary the effect of the various agreements with the EU is that players in the UK such as Berger, Smicer, Dudek, Diouf, Pahars, Kachloul, El-Khalej, Kanu, Okocha, Djemba-Djemba, Yorke, Radebe and Fortune should not be treated as foreign players for the purpose of any quota that is introduced.

In fact of 643 players registered to play in the Premiership, even though 232 are not from the UK, only 49 are from countries such as Brazil, Argentina, the USA and Australia whose players could currently be subject legitimately to a foreign player quota.

It should be noted that the Kolpak case does not change the position on work permits. Players who are not from the EU countries of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Netherlands, Portugal, Spain and Sweden or from Iceland, Liechtenstein, Norway or Switzerland still require work permits to play in England or Scotland.

The Sports Group at Davenport Lyons has, through its contacts on the continent, been involved in a number of player transfer negotiations over the summer. In this context they have already advised a number of Premiership, Italian and Spanish clubs on the impact of the Kolpak case.



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This Special Release is designed to provide a summary of the subject matter. It does not purport to be comprehensive or a substitute for specialist legal advice in individual circumstances.

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