Walrave and Koch v. Association Union Cycliste Internationale

(Case 36/74)

Before the Court of Justice of the European Communities

ECJ

(The President, Judge R. Lecourt; Judges C. O Dalaigh, Lord Mackenzie Stuart, A. M. Donner, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher and M. Sorensen.) Mr. Jean-Pierre Warner, Advocate General.

12 December 1974

Reference from the Arrondissementsrechtbank (District Court), Utrecht under Article 177.

Sport.

The practice of sport is subject to Community Law only in so far as it constitutes an economic activity within the meaning of Article 2 EEC. The prohibition of discrimination based on nationality does not affect the composition of sports 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. [4] & [8]

Discrimination. Nationality.

The prohibition of discrimination on grounds of nationality set out in Articles 7, 48 and 59 EEC applies not only to acts of public authorities but also to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services. [17]

Sport. International rules. Nationality restriction.

The provisions of **Article 7, 48** and **59** EEC (which prohibit discrimination on

grounds of nationality) may be taken into account by a national court in judging the validity or the effects of a provision inserted in the rules of a sporting organisation. Where the sporting organisation is international the nondiscrimination rule will apply to all legal relationships in so far as they can be located within the territory of the EEC, by reason either of the place where they are entered into or of the place where they take effect. It is for the national court to determine whether they can be so located. [25], [28] & [29]

Discrimination. Nationality. Supply of services. Self-executing effect.

As from the end of the transitional period, Article 59 (1) EEC, 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. [34]
Van Binsbergen v. Bestuur Van de Bedrijfsvereniging voor de Metaalninjverheid (33/74), [1975] 1 C.M.L.R. 298, followed.
*321 The Court interpreted Articles 7, 48 and 59 EEC regarding nationality discrimination in the context of the world championship rules for motor-paced bicycle racing.

Representation

J. L. Janssen van Raad *for the plaintiff.*
J. Cl. Seche, assisted by H. Bronkhorst, for the E.C. Commission as amicus curiae.

Written briefs were also submitted on behalf of the first and second defendants, and of the United Kingdom Government as amicus curiae.

The following cases were referred to by the Advocate General in his submissions:
1. Re French Merchant Seamen: E.C. Commission v. France (167/73), 4 April 1974: [1974] 2 C.M.L.R. 216, [1974] E.C.R. 359.
2. Van Binsbergen v. Bestuur Van de Bedrijfsvereniging voor de Metaalnijverheid (33/74), 3 December 1974: [1975] 1 C.M.L.R. 298.
3. Reyners v. Belgian State (2/74), 21 June 1974: [1974] 2 C.M.L.R. 305, [1974] E.C.R. 631.
4. Sotgiu v. Deutsche Bundespost (152/73), 12 February 1974: [1974] E.C.R. 153.

The following additional cases were cited in argument:
5. Costa v. Enel (6/64), 15 July 1964: [1964] C.M.L.R. 425, 10 Recueil 1141, [1964] E.C.R. 585.
6. Wilhelm v. Bundeskartellamt (14/68), 13 February 1969: [1969] C.M.L.R. 100, 15 Recueil 1.

7. Re Electric Refrigerators: Italy v. EEC Commission (13/63), 13 July 1963: [1963] C.M.L.R. 289, 9 Recueil 335, [1963] E.C.R. 165.
8. J. R. Geigy v. E.C. Commission (52/69), 14 July 1972: [1972] C.M.L.R. 557, 18 Recueil 787.
9. Europemballage Corp. and Continental Can Co. Inc. v. E.C. Commission (6/72), 21 February 1973: [1973] C.M.L.R. 199, [1973] E.C.R. 215.
10. Salgoil SpA v. Foreign Trade Ministry of the Italian Republic (13/68), 19 December 1968: [1969] C.M.L.R. 181, 14 Recueil 661.

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Facts

It is the practice of the plaintiffs in the main action, both of whom are Dutch, to offer their services for remuneration to act as pacemakers on motorcycles in medium distance bicycle races with so-called stayers, who cycle in the lee of the motorcycle. They*322 provide these services under agreements with the stayers or the cycling associations or with organisations outside the sport (sponsors). These competitions include the world championships, the rules of which, made by the first defendant, include a provision that 'as from 1973 the pacemaker must be of the same nationality as the stayer'. The plaintiffs consider that this provision is incompatible with the Treaty of Rome in so far as it prevents a pacemaker of one member-State from offering his services to a stayer of another member-State and have brought an action against the three defendants for a declaration that the rule is void and an order that the defendants allow teams made up of the plaintiffs and stayers who are not of Dutch nationality to take part in the world championships provided that such stayers are nationals of another member-State.
The Arrondissenmentsrechtbank, Utrecht, has taken the view that questions of the interpretation of Community law arise and by judgment dated 15 May 1974 has referred the following questions to this Court for a preliminary ruling:
I. Assuming that the agreement between a pacemaker on the one hand and a stayer, a cycling association and/or sponsor on on the other hand, is to be regarded as a contract of employment, are Article 48 EEC Treaty and the provisions of EEC Regulation 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading '2es l'annee 1973 l'entraineur doit etre de la nationalite du coureur' (from the year 1973 the pacemaker must be of the same nationality as the stayer) can be regarded as incompatible with them?
1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?
2. If sub-question (1) is answered in the affirmative, does it make any difference

whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?
3. Does it also matter whether the world championships in question are held on the territory of a member-State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level?
II. Assuming that the agreement between a pacemaker on the one hand and a stayer, a cycling association and/or a sponsor on the other hand, is to be regarded as a contract for the provision of individual services, is Article 59 EEC Treaty to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading '2es l'annee*323 1973 l'entraineur doit etre de la nationalite du coureur' can be regarded as incompatible with it?
1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?
2. If sub-question (1) is answered in the affirmative, does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?
3. Does it also matter whether the world championships in question are held on the territory of a member-State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level?
4. Does Article 59 EEC Treaty by reason of its nature have direct effect within the legal orders of the member-States of the EEC?
III. If either of the two questions above is answered in the negative:
Is Article 7 EEC Treaty to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading '2es l'annee 1973 l'entraineur doit etre de la nationalite du coureur' can be regarded as incompatible with it?
1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?
2. If sub-question (1) is answered in the affirmative, does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?
3. Does it also matter whether the world championships in question are held on the territory of a member-State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions on the national level?

4. Does Article 7 of the EEC Treaty by reason of its nature have direct effect within the legal orders of the member-States of the EEC?

Submissions of the Advocate General (Mr. Jean-Pierre Warner)

Strictly this case is about the impact of Community law on a particular sport, namely motor-paced bicycle racing. But your Lordships'*324 judgment in it will be of general importance in the world of professional sport.

The case comes to this Court by way of a reference for a preliminary ruling by the Arrondissementsrechtbank of Utrecht, and one of the difficulties I find in reminding your Lordships of the facts of it is that one cannot readily describe what a motor-paced bicycle race is without seeming to prejudge a crucial issue of fact which, in my view, it will be for that court to decide. On the one hand one can describe such a race as one between teams each consisting of a man on a motorcycle, known as a 'pacemaker' or 'pacer', followed by one on a bicycle, known as the 'stayer'; or one can describe it as a race between men on bicycles ('stayers') each of which is preceded by a man on a motorcycle (the 'pacemaker' or 'pacer'). What is undoubted is that the function of the pacemaker or pacer, who wears special clothing, is to create a moving vacuum for the stayer, who can thus achieve speeds--of up to 100 k.p.h.--that a man alone on a bicycle could never attain. Nor is it in doubt that both men require considerable skill.

Most, if not all, pacers are professionals. A professional pacer serves, or provides his services, under a contract with the stayer, or with a cycling association, or with a sponsor. Stayers may be either professional or amateur.

In 1900 there was founded in Paris the Union Cycliste Internationale (UCI), an association of national bodies concerned with cycling as a sport. In 1967 the offices of the UCI were moved to Geneva.

Under the auspices of the UCI, there are held annual World Cycling Championships, which include motor-paced races. These Championships are held in a different country each year. Thus they were held in Spain in 1973 and in Canada in 1974. They are to be held in Belgium in 1975. They are in general run by the national association of the country in which they are held, the UCI having only a supervisory role.

In November 1970 the UCI resolved to amend its rules about the conduct of the World Championships in so far as they related to motor-paced races, so as to provide that, in those races, as from 1973, a pacer should be of the same nationality as his stayer. The reason for the amendment, states the UCI, was that the World Championships are intended to be competitions between national teams.

Mr. Walrave and Mr. Koch, the plaintiffs in the proceedings before the Arrondissementsrechtbank of Utrecht, are professional pacers. They are stated by the UCI to be among the best, and perhaps the best, in the world. Both are Dutch nationals and, there being, or so they say, a paucity of good Dutch stayers, they have been wont to act as pacers for stayers of other nationalities, in particular Belgians and Germans.

*325 The plaintiffs thus saw in the new rule adopted by the UCI a threat to their livelihood, or at all events a severe constriction of the market in which they could

sell their skill. Early in 1973, having failed to secure the repeal of that rule, they initiated the proceedings in question, in which they joined as defendants the UCI, the Dutch national cycling association and, because it was to be responsible for running the 1973 World Championships, the Spanish national association. The Spanish association, which never entered an appearance, has been dismissed from the suit. So the defendants are now the UCI and the Dutch national association.

The substantive relief claimed by the plaintiffs is:

(1) a declaration that the amendment to the rules of the UCI is void so far as regards pacers and stayers who are nationals of any of the countries of the EEC and

(2) an injunction requiring the UCI to allow the plaintiffs to take part in races as pacers for stayers of other than Dutch nationality so long as they are nationals of a country of the EEC.

On 11 May 1973 the President of the Arrondissementsrechtbank granted the plaintiffs an interim injunction to that effect. He came to the provisional conclusion that the contracts under which the plaintiffs acted as pacers were contracts of service in relation to which the provisions of Community law concerning the free movement of workers applied. The defendants had argued that, even if that were so, there was no discrimination in the sense of those provisions in requiring national teams to be composed of persons of the same nationality. The President rejected this argument, holding that, in a motor-paced race, the true competitor was the stayer, the pacer being, despite the skill he was called upon to exert, no more than an auxiliary, comparable to a manager or masseur. The President pointed out that, in a race for amateurs, it was the amateur status of the stayer that mattered, the fact that the pacer might be a professional being regarded as immaterial. The defendants had also argued that, in any case, the provisions of Community law could not govern events that were to take place in Spain. The President rejected this argument too, on the ground that stayers tended to choose for the preliminary heats organised at national level the pacers they would have in the World Championships, so that the rules for the World Championships affected events on Community territory.

Subsequently the Gerechtshof of Amsterdam allowed an appeal by the defendants against the President's decision and discharged his order. It seems that it did so on the ground that the World Championships were to take place outside Community territory. An appeal and cross-appeal against the order of the Gerechtshof are now pending in the Hoge Raad of the Netherlands.

In the meantime the Arrondissementsrechtbank has referred a*326 number of questions to this Court. These are set out verbatim in the Report for the Hearing, where they take up some 2 1/2 pages. I do not think, my Lords, that it is necessary for me to read them. I think it better to seek to distil from them and from the observations, both written and oral, that have been submitted to the Court, the essential points to which the case gives rise.

A point that clearly exercises the mind of the Arrondissementsrechtbank is whether the contracts into which the plaintiffs enter, to act as pacers, are contracts of service or contracts for services. The Arrondissementsrechtbank

conceives, in my opinion rightly, that, if they are contracts of service, the relevant Article of the EEC Treaty is Article 48 whereas, if they are contracts for services, it is Article 59. [FN1]

FN1 **Article 48** provides: '1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest. 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. 3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (*a*) to accept offers of employment actually made; (*b*) to move freely within the territory of Member States for this purpose; (*c*) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (*d*) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission. 4. The provisions of this Article shall not apply to employment in the public service.' Article 59 provides: 'Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. The Council may, acting unanimously on a proposal from the Commission, extend the provisions of this Chapter to nationals of a third country who provide services and who are established within the Community.'

No one doubts that Article 48 has effect in the legal systems of the member-States. The Court has so decided: see E.C. Commission v. French Republic (167/73). [FN2] Nor does anyone doubt that that **Article** is binding, not only on the member-States and on public authorities in the member-States, but also on private persons within the Community. The defendants and the Commission seem to suggest that this is because of the terms of Article 7 (4) of Regulation 1612/68 of the Council. But that, in my opinion, cannot be so: a regulation cannot widen the scope of the provisions of the Treaty that it is adopted to implement. The reason why Article 48 binds everyone is that its provisions are in general terms.

FN2 Re French Merchant Seamen: [1974] 2 C.M.L.R. 216, [1974] E.C.R. 359, 371.

*327 But the Court has never yet had to decide whether Article 59 has direct effect or whom it binds. The Arrondissementsrechtbank expressly asks the first question and implicitly asks the second.
My Lords, I have no doubt that **Article 59** has direct effect. Everyone agrees upon that who has submitted observations in this case, namely the plaintiffs, the

defendants, the Commission and the United Kingdom (the last by reference to its observations in Case 33/74, the Binsbergen case). [FN3] Moreover the reasoning that led Mayras A.G. and your Lordships to hold in the Reyners case (2/74) [FN4] that Article 52 has direct effect leads, in my opinion, inevitably to the conclusion that the same must be true of Article 59. Despite some observations to the contrary submitted by Ireland in the Binsbergen case, I do not think that any valid distinction can be drawn between the two **Articles.**

FN3 Van Binsbergen v. Bestuur Van de Bedrijfsvereniging voor de Metaalnijverheid [1975] 1 C.M.L.R. 311.

FN4 Reyners v. Belgian State [1974] 2 C.M.L.R. 305.

The defendants however query whether **Article 59** binds private persons, and the Commission submits that it does not. Counsel for the Commission explained at the hearing, in answer to a question of mine, that this submission rested on two grounds, first, the terms themselves of the Treaty and second, the way in which the Treaty had generally been interpreted, in particular by the authors of the General Programme adopted by the Council on 18 December 1961 pursuant to Article 63 (1) of the Treaty.
My Lords, I would reject that submission.
I can find nothing in the terms of the Treaty that compels the conclusion that **Article 59** is binding only on member-States and on public authorities in member-States. It is true that there are in some of the **Articles** that follow it references to restrictions imposed by member-States. But Articles 59 and 63 are in general terms, apt to relate to restrictions imposed by anyone. Moreover, as the Commission itself points out, Article 59 is, by virtue of the definition in Article 60, a residuary provision, designed to apply to all services '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'. It would be odd indeed if such a residuary provision bound a narrower category of persons than one of the specific provisions, Article 48, that it follows.
Nor am I impressed by the reference to the General Programme. It did not lie within the power of the Council, by the General Programme, to narrow the scope of **Article 59**--any more than it lay within its power to widen it. In any case, the Council did not purport to do any such thing. The General Programme was on any view incomplete: it dealt only with restrictions imposed by a member-State on nationals of other member-States and did not, for instance, deal with the abolition of restrictions imposed by a member-State on its own nationals established in another member-State.
*328 I conclude that Articles 48 and 59 are, in every material respect, parallel and that, Article 59 being residuary, if the plaintiffs' contracts are not of a kind to which Article 48 relates, they must be of a kind to which **Article 59** relates. That being so, the question whether they are contracts of service or contracts for services loses, to my mind, much of its importance. At all events, the Arrondissementsrechtbank, quite properly, does not ask this Court to decide it.

The next point is one expressly raised by the defendants and implicitly raised by the Arrondissementsrechtbank. It is whether **Articles 48** and **59** can invalidate a provision contained in the rules of an international association covering many countries that are not member-States of the Community. To explain their point, the defendants state that the UCI is now composed of two international federations, one amateur and the other professional, to which the national associations are in turn affiliated. There are 108 national associations affiliated to the amateur federation and 18 affiliated to the professional federation. How, ask the defendants, can a provision of Community law invalidate a rule that is applicable in over 100 countries? The answer, I think, is that any sovereign State is entitled to enact that a particular type of provision in the rules of an international association of private persons shall be deemed unlawful in its territory and shall not be applied there. One is familiar with enactments of that sort in the field of competition law. In my opinion what is true for a sovereign State is true also for the Community. If the argument of the defendants were right, an international association of traders, who thought it in their interests to agree not to 'poach' each other's staff, would be free, despite Article 48, to adopt, and to enforce within the Community, a rule (say) that no member should employ anyone who was not a national of the country where that member was established.

A related point is one expressly raised by the Arrondissementsrechtbank when it asks:

'Does it ... matter whether the world championships in question are held on the territory of a member-State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level?'

That question is so framed as to contain a finding of fact: that the world championships determine the choice of a pacemaker in competitions held at national level. My Lords, if that be so, it means that the rules of the UCI have an effect on Community territory, even in a year when the world championships are held outside Community territory. Your Lordships cannot of course answer the question directly, for that would be to cross the hedge between the field of interpretation of Community law and the field of its application. But two things are, in my opinion, certain. One is that a*329 restriction on the freedom of movement of workers, to be incompatible with Article 48, or a restriction on the freedom to provide services, to be incompatible with Article 59, need not take the form of an absolute prohibition. It is enough that it should have the effect of placing the nationals of one member-State at a disadvantage compared with those of another. The second is that such a restriction, unless it is the subject of a particular exemption or exception, is incompatible with Community law if it affects events on Community territory.

This leads me to the last of the essential points in this case. Should an exception be made, from the provisions of the Treaty against discrimination on the grounds of nationality, for rules of organisations concerned with sport that are designed to secure that a national team shall consist only of nationals of the country that that

team is intended to represent? My Lords, I would answer that question by saying that such an exception should clearly be made. I have in mind a test that is adopted, in the laws of some of our countries, to ascertain whether a term should be implied into a contract, and which seems to me equally appropriate in the interpretation of the Treaty: the test of the 'officious bystander'. Suppose that an officious bystander, at the time of the signing of the EEC Treaty, or, for that matter, at the time of the signing of the Treaty of Accession, had asked those round the table whether they intended that Articles 48 and 59 should preclude a requirement that, in a particular sport, a national team should consist only of nationals of the country it represented. Common sense dictates that the signatories, with their pens poised, would all have answered impatiently 'Of course not'--and perhaps have added that, in their view, the point was so obvious that it did not need to be stated. I find this test more satisfactory than that proposed by the Commission in its Observations, which is based on the Court's judgment in Sotgiu v. Deutsche Bundespost (152/73). [FN5] It seems to me that the principle laid down there, which permits account to be taken in a proper case of objective differences between the situations of different workers, is not really in point.

FN5 [1974] E.C.R. 153.

A good deal has been said, in the observations submitted to the Court, on the question whether the pacer and the stayer, in a motor-paced race, should or should not be regarded as truly a team. But in my opinion, my Lords, that question also belongs to the field of the application of the Treaty and it will be for the Arrondissementsrechtbank to decide. On the facts that have been adduced before the Court, it looks very much like a borderline one. Conscious of this, the Commission has, as I interpret its Observations, suggested that the Court should help the Arrondissementsrechtbank by giving it an indication of what is involved in the concept of a national team. I think, for my part, that it would be unwise for the Court to attempt*330 to do so. Such help has not been asked for by the Arrondissementsrechtbank and, if the Court were to provide it gratuitously, the Court would in my opinion, not only be probably exceeding its jurisdiction, but, possibly, laying down criteria that turned out to be difficult to apply, or incomplete, or only partly apposite, in the light of the evidence and arguments submitted to the Arrondissementsrechtbank. It were better, I think, to let the Arrondissementsrechtbank, if it finds itself in difficulty in interpreting the concept, make a further order for reference to the Court--even though that must cause more delay in the decision of the case.
The Arrondissementsrechtbank asks, it is true:
'... does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?'
But that is only to ask whether it makes any difference whether the pacemaker and the stayer are to be regarded as a team or the stayer is to be regarded as the only participant in the competition. My answer would be, of course, that it

makes all the difference.
Then the Arrondissementsrechtbank asks:
'Does it matter ... that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?'
I agree with the Commission that this question must be answered 'No'. The crucial test is whether the provision in the rules is aimed at the constitution of national teams. If it is, I do not think that the nature of the event in which they are to compete--whether it be for a world title or for some more local title, for instance the European--matters, provided of course that it is an international event. But even the concept of 'international event' must be interpreted flexibly. Thus I believe that the international rugby championships are between England, France, Ireland (the whole of it), Scotland and Wales.
Lastly, the Arrondissementsrechtbank asks some questions about Article 7 of the Treaty, but makes it clear that it does not need an answer to those questions if the Court's answers to the question about Articles 48 and 59 are such as to render those about **Article 7** irrelevant. My Lords, on the view I take of the scope and effect of **Articles 48** and **59,** the questions about **Article 7** are irrelevant. I accordingly say nothing about them.
I am therefore of the opinion that the questions referred to the Court by the Arrondissementsrechtbank should be answered as follows:
(1) A provision in the rules of an international sporting association whereby a person who is to fulfil a certain function in a sporting event under a contract of service is required to be of a particular nationality is incompatible withArticle 48 of the EEC Treaty*331 unless aimed at the constitution of national teams.
(2) A provision in such rules whereby a person who is to fulfil such a function under a contract for services is required to be of a particular nationality is incompatible with Article 59 of the Treaty unless so aimed.
(3) In neither case does it matter whether the provision in question is or is not concerned with a competition for the world title.
(4) In neither case does it matter whether or not the provision in question is concerned with a competition that is to be held on the territory of a member-State of the EEC if that provision in fact has the effect of placing the nationals of one member-State at a disadvantage as compared with those of another as regards participation in events taking place on such territory.
(5) Since the end of the transitional period **Article 59** of the Treaty has had direct effect in the legal systems of the member-States even in the absence, in a particular sphere, of any such directive as is prescribed by Article 63 (2).

JUDGMENT

(drafting judge, Mertens de Wilmars J.)
[1] By order dated 15 May 1974 filed at the Court Registry on 24 May 1974, the Arrondissementsrechtbank Utrecht referred under Article 177 of the EEC Treaty various questions relating to the interpretation of the first paragraph of Article 7, Article 48 and the first paragraph of Article 59 of the EEC Treaty and of Council Regulation 1612/68 of 15 October 1968 on freedom of movement for workers

within the Community.
[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 "'entra3ineur doit etre de la nationalite du 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 the UCI as discriminatory.
[4] Having regard to the objectives of the Community, the practice of 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.
[5] When such activity has the character of gainful employment or*332 remunerated service it comes more particularly within the scope, according to the case, of Articles 48 to 51 or 59 to 66 of the Treaty.
[6] These provisions, which give effect to the general rule of Article 7 of the Treaty, 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 sports 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 Community law.
[12] The questions raised relate to the interpretation of Articles 48 and 59 and to a lesser extent of Article 7 of the Treaty.
[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 7, 48 and 59 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 Community contained in Article 3 (c) of the Treaty, would be compromised if the abolition of barriers of national origin could be neutralised by obstacles resulting*333 from the exercise of their legal autonomy by associations or organisations 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 60, and Articles 62 and 64, 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 59, which makes no distinction between the source of the restrictions to be abolished.
[21] It is established, moreover, that Article 48, 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 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 59** are not to be distinguished by their nature from those in **Article 48,** 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 7, 48 and 59 of the Treaty 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 organisation.
[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 Community.
[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 Community.
[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 59, and possibly the first paragraph of*334 Article 7, of the Treaty have direct effects within the legal orders of the member-States.
[31] As has been shown above, the objective of Article 59 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 59** constitutes the implementation of the non-discrimination rule formulated by Article 7 for the general application of the Treaty and by Article 48 for gainful employment.
[33] Thus, as has already been ruled (judgment of 3 December 1974 in Case 33/74, Van Binsbergen) Article 59 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 59,** 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.

Costs

[35] The costs incurred by the Commission of the European Communities, 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.

Order

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 Community, the practice of 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.
2. The prohibition of discrimination based on nationality contained in Articles 7, 48 and 59 of the Treaty does not affect the composition of sports 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 of such discrimination does not only apply to the action of public authorities but extends likewise to*335 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 Community.
5. The first paragraph of Article 59, 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.

[1975] 1 C.M.L.R. 320

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