

REFLECTIONS ON EUROPEAN COURT OF JUSTICE JUDGEMENT IN THE CASE OF EUROPEAN SUPERLEAGUE COMPANY V. UEFA AND FIFA

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PROFESSIONAL ARTICLE

Abstract: There is no doubt that the judgment of European Court of Justice (ECJ) from 21 December 2023 is of the great importance to world of football. It could be qualified as real a “tsunami” in the European club competition. It caused reactions of the whole football society including all its relevant subjects: national associations, confederations, players, fans and other stakeholders. Namely, the ECJ decides that International Association Football Federation (FIFA) and Union of European Football Associations (UEFA) supreme body decisions made in order to forbid the forming of European Super League (ESL) are unlawful. The FIFA and UEFA decisions are based on the rules on prior approval of international football competitions and sanctions against the professional clubs intending to create separate association and competitions other than those created and allowed by FIFA and UEFA. The ECJ decide that such conduct is abusing of the dominant position prohibited by Article 102 of the Treaty of Functioning of the European Union (TFEU), as well as Article 101 of the TFEU related to rules on competition. In addition, the ECJ judgment addresses other important issues as free movement of persons, services and capital.

Keywords: European law, FIFA, UEFA, ESL, abusing the dominant position, rules on competition.

INTRODUCTION

On 21 December 2023 European Court of Justice (ECJ) rendered a decision in case of European Super League Company v. FIFA and UEFA presenting all complexity in relation of EU law and sport. The breaking point of EJC judgment is special position of football in world of sport. At the end of the nineteenth century in Europe, sports bodies were generally non-profit organizations (Mavroidis & Neven, 2023). Unlike in the United States, European sport traditionally was not practiced as an overtly economic activity. Instead, these bodies were responsible for organizing competitions and the rules of the game. Today, many features of football activities are similar to activities of other commercial subjects operating in European market (Biliński, 2023). Approaching football to economic activities reflected the ECJ judgment. The ECJ analyzed football activities not only in the light of “pure sport” articles, but also in the light of rules of competition and free movement of persons,

service and capital, that is consequence of decade's raising economic activities in the field of football (García, 2023).

The article refers on circumstances of the case and European law that ECJ analyzed in light of these circumstances.

CIRCUMSTANCES OF THE CASE

The case was triggered by the plan of certain clubs to create ESL, as a new European football competition structure that would be an alternative or competitor to two existing football associations: FIFA and UEFA. ESL is a company governed by private law established in Spain (Rajkiewicz, 2023). It was established on the initiative of a group of professional football clubs: Club Atlético de Madrid, Fútbol Club Barcelona, Real Madrid Club de Fútbol), Associazione Calcio Milan, Football Club Internazionale Milano, Juventus Football Club, Arsenal Football Club, Chelsea Football Club, Liverpool Football Club, Manchester City Football Club, Manchester United Football Club and Tottenham Hotspur Football Club (Houben et al., 2022).

After launching the ESL plan, FIFA and UEFA release the public statements making clear their refusal to authorize that new competition and warning that any player or club participating in it would be expelled from the competitions organized by FIFA and UEFA. First statement was issued on 21 January 2021 (Foster, 2000). The statement was grounded on FIFA and UEFA legal framework, primarily on their Statutes and FIFA Regulation Governing International Matches (Budzinski, 2023). In accordance with FIFA Statute, all members of FIFA association (in presence, more than 200 national associations) have obligation, inter alia, to cause their own members or affiliates to comply with the statutes, regulations, directives and decisions of FIFA, and to ensure that they are observed by all stakeholders in football, in particular by the professional leagues, clubs and players (Vrooman, 2007). According to FIFA Regulation Governing International Matches, all international matches must be authorized by FIFA, by continental confederation concerned and/or by the national football association which are member of FIFA to which the participating team belong and on whose territory the matches are to be played.

The main court proceedings have arisen out of a commercial action brought by ESL before court in Madrid against FIFA and UEFA. The ESL asserted that relevant FIFA Statutes violated EU law (Villanueva, 2023). One of the intervening parties in the dispute was A22 Sports Management SL a company established in Spain aiming to provide services related to the creation and the management of professional football competitions, more specifically ESL project. On 18 April 2021 a new press release was issued by UEFA, the English, Spanish and Italian football associations and by certain professional leagues confirming the statement from 21 of January.

On 19 and 20 April 2021, the court in Madrid successively held that ESL's action was admissible and raised a request for preliminary ruling before ECJ.

The question

The request for a preliminary ruling concerns the interpretation of Articles 101 and 102 of Treaty of Functioning of European Union (TFEU). Article 101 refers

to Rules on competition. Article 102 regulates Abuse of a dominant position. On the one other hand, the request concerns the interpretation of Articles 45, 49, 56 and 63 of TFEU: Art. 45 refers free movement of workers enjoyed by the players; Art. 49 refers free movement of business; Art. 56 refer on free movement of services, and Art. 63 free movement of capital. Supporting the request for a preliminary ruling the Court stressed that FIFA and UEFA, for a long time, are not held just an economic and commercial monopoly, but also regulatory, control and decision-making powers, as well as the power to impose the sanctions. There were six questions addressed to ECJ.

By first five questions, the referring court asks the ECJ to interpret Articles 101 and 102 of TFEU, under which anticompetitive agreements and abuse of a dominant position are prohibited, with a view to ruling on the compatibility of a set of rules adopted by FIFA and UEFA with those two articles.

By sixth question, that court asks the ECJ about the interpretation of Articles 45, 49, 56 and 63 TFEU, relating to freedoms of movement guaranteed under EU law, for the purpose of ruling in parallel on the compatibility of those same rules with those four articles. The fact is that FIFA and UEFA has regulatory, control and decision-making powers which leads to the view that they have held an economic and commercial monopoly.

FIFA Regulations provide that all tier 1 international matches (featuring 'A' teams of the relevant national football associations) must be authorized by FIFA, the relevant continental confederation (in the case of the ESL, UEFA) and the national football associations the participating teams belong to and on whose territory the matches are to be played.

UEFA Statute similarly states that international matches which are not organized by UEFA but are played on UEFA's territory (Europe) shall require the prior approval of FIFA, UEFA and the relevant associations in accordance with the FIFA Regulations.

EUROPEAN LAW

All EU member states are obliged to respect the EU law. The EU law is a network of different rules delivered by European institutions and members states itself. The new about the EU and distinguishes it from earlier attempts to unite Europe is the fact that it works not by means of force or subjugation but simply by means of law. For only unity based on a freely made decision can be expected to last: unity founded on the fundamental values such as freedom and equality, and protected and translated into reality by law. That is the insight underlying the treaties that created the European Union.

EU law is consisted of primarily and secondary sources of law, as well as of international agreements concluded between member states and those concluded between EU and third countries or international organisations. Primarily sources of law are fundamental founding treaties, with the various annexes, appendices and protocols attached to them, and later additions and amendments (Guillermo, 2024). Historically, there were different contracts: from Paris, Rome, Maastricht, Amsterdam, Nice. The last one is signed in 2007 in Lisbon, entered into force 2009.

Lisbon treaty is consisted of two separate treaties: Treaty on the Functioning of the European Union' (TFEU) and Treaty on European Union (TEU).

The secondary sources of law are those made by EU institutions exercising their powers defined by founding treaties. It consists of: legislative acts (regulations, directives and decisions); non-legislative acts (simple legal instruments, delegated acts and implementing acts); non-binding instruments (recommendations and opinions), and acts that are not legal acts (inter-institutional agreements, resolutions, declarations and action programs).

ECJ is in charge for interpretation of the EU law and other subjects are obliged to respect its decisions. The main aim of ECJ is to secure uniform application of EU law. In case of *ESL v. FIFA and UEFA* ECJ interpreted articles 101 and 102 of TFEU, as well as other mentioned articles in light of FIFA and UEFA conduct. The ECJ found that FIFA and UEFA rules come within the scope of the TFEU and that they have to be in compliance with general principles of EU law. The verdict recalls the previous case-law related to the sport area (among those the most famous judgment of 15 December 1995, *Bosman*, C-415/93, EU: C: 1995: 463).

The verdict

In December 2023 ECJ has issued a judgment finding that the FIFA and UEFA breached European Union competition law by mandating prior approval for international competitions not organized by them and threatening sanctions against players and clubs involved with the ESL. The court has delivered its verdict in favor of the claimant and against FIFA and UEFA. The Grand Chamber of the ECJ ruled that FIFA and UEFA's regulations requiring prior approval for interclub competitions like the Super League were contrary to EU law. These regulations were deemed to violate competition law and the freedom to provide services. The Court emphasized that FIFA and UEFA's regulations lacked a clear, impartial, non-discriminatory, and reasonable structure.

The ECJ recalled at the outset that the practice of sport is subject to European competition law insofar as it constitutes an economic activity.

In this case there was a separate opinion of Advocate General Rantos. He argued that FIFA's pre-authorization statutes and sanctions regime were not a per se violation of EU competition law. According to his separate opinion EU law is not precluding the existence of FIFA and UEFA's rules in light of Articles 101 and 102 of TFEU. Advocate General Rantos stressed the importance of Article 165 of TFEU considering it a *lex specialis*, giving it nature of "'horizontal' provision". This article confirm the concept of "European Sports Model" that is taking account of the social, educational and cultural functions inherent in sport, in order to preserve its social role. Having in mind the legitimate objectives pursued by UEFA and FIFA which are related to the specific nature of sport, Advocate General Rantos concludes that Articles 101 and 102 TFEU must be interpreted as not precluding FIFA and UEFA regulations in question. According to his opinion only the sanctions involving exclusion targeted at players who have no involvement in the project in question are disproportionate, in particular as regards their exclusion from national teams.

CONCLUSION

The decision does not mean that a breakaway league such as the ESL would necessarily be approved, as the ECJ was not ruling on that specific project in its judgment, but rather more generally regarding the FIFA and UEFA rules.

However, the judgment is having many different implications. They are related to: Legal precedence (by contesting FIFA and UEFA's monopolistic control over football competitions, this case creates a precedence for the law); Club Autonomy (without worrying about repercussions, clubs can now experiment with novel tournament structures); Market Dynamics (the decision may spur more innovation and competitiveness in football leagues, which might be favorable to viewers and media outlets alike), and Regulatory Scrutiny (FIFA and UEFA may need to make revisions to their competition approval procedures and governance frameworks).

The judgment caused contradictory effects. It is still being seen as a blow to FIFA and UEFA, and a boost to backers of the ESL. But in the same time the ESL still faces strong opposition. Obviously the decision is a signal that the balance of power may be shifting away from the governing bodies.

REFERENCES

- Biliński, M. (2023). FOOTBALL SUPER LEAGUE AND THE VALUES OF EUROPEAN SPORT. *Studia Iuridica*, (98), 19-32.
- Budzinski, O. (2023). (Sports) EconomicsUpside Down?–A Comment on the Advocate General Opinion in European Super League versus UEFA/FIFA. *A Comment on the Advocate General Opinion in European Super League versus UEFA/FIFA (February 2023)*.
- Foster, K. (2000). European law and football: Who's in charge?. *Soccer & Society*, 1(1), 39-51.
- García, B. (2023). Down with the politics, up with the law! Reinforcing EU law's supervision of sport autonomy in Europe. *The International Sports Law Journal*, 23(4), 416-421.
- Guillermo, Í. (2024). European Super League Company and the (New) Law of European Football. *European Papers*, 9(1), 1-15.
- Houben, R., Blockx, J., & Nuyts, S. (2022). UEFA and the Super League: who is calling who a cartel?. *The International Sports Law Journal*, 22(3), 205-216.
- Mavroidis, P. C., & Neven, D. J. (2023). Eyes on the Ball. The Super-League Litigation before the CJEU. *The Super-League Litigation before the CJEU (May 28, 2023)*.
- Rajkiewicz, M. (2023). Superliga, FIFA i UEFA przed Trybunałem Sprawiedliwości Unii Europejskiej. Sprawa, która może zmienić przyszłość futbolu i soft power w Europie. *Kwartalnik Prawa Międzynarodowego*, 1(I), 181-197.
- Villanueva, A. (2023). Accounting for the specificities of sport in EU law: Old and new directions in the 21 December 2023 judgments. *The International Sports Law Journal*, 23(4), 422-430.
- Vrooman, J. (2007). Theory of the beautiful game: The unification of European football. *Scottish journal of political economy*, 54(3), 314-354.

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