

SHADOW OF BREXIT LOOMS ON BRITISH SPORTS

Kiran Raveendran

*Associate Professor, School of Management Studies, Chinmaya Institute of Technology,
Kannur, Kerala, India.
Email: knrkiran@gmail.com*

Abstract Ever since the United Kingdom has decided to exit the European Union, after its June 2016 referendum results, all sectors of business which involve movement of resources across EU borders are pondering with the grave uncertainties that accompany this decision. Recently, British PM Theresa May has decided to trigger Article 50 that will enable UK to leave the EU by March 2019, through the removal of European Communities Act 1972. Amidst the plethora of issues that need to be managed, far down below in the list of priorities for UK will be how they will deal with the impact of British Exit from EU (Brexit) on the non-EU players who come under the Kolpak, Bosman, and Cotonou agreements. This article deals with a detailed literature review of existing rulings and the potential impact of Brexit on the sportsmen plying their trade in UK under the relaxed conditions of the above agreements and how things will be different once Brexit is implemented by 2019.

Keywords: *Brexit, Kolpak Agreement, Bosman Ruling, Cotonou Agreement*

THE BACKGROUND - BREXIT

After the World War II, the aim of reduction of customs duties and a possible establishment of a customs union and framing of common policies for transport and agriculture led to the Treaty of Rome in 1957 and the establishment of European Economic Committee (EEC). The United Kingdom (UK) had applied twice in 1963 and 1967 to join EEC but the attempt was foiled by the veto power used by the then French President, General Charles de Gaulle. A new bid was made by UK after de Gaulle went out of power, and it was accepted. The European Communities Act 1972 was enacted with PM Edward Heath at the helm and eventually UK joined EEC on January 1, 1973.

As promised by the next PM Harold Wilson in his election campaign, UK held a referendum to check whether to remain in the EEC. 67.2% voted in favour of staying in the EEC. Amidst many wrangling on this issue over the years, UK opted out of the European Exchange Rate Mechanism (ERM) and later in 1990, UK joined the ERM and later again in 1992, UK left the ERM.

The EEC, which was a political union evolved into an economic union called European Union on November 1, 1993 as a consequence of the Maastricht Treaty. Despite repeated indications of wanting to continue under EU, PM James Cameron in 2013 announced that a referendum would again be held before 2017. This was partly also due to the

rise in the influence of the UKIP Party which was against Britain remaining in the EU. On being voted back to power in the next election, PM James Cameron kept his word and announced a referendum date of 23 June 2016.

Brexit was a word first used arguably by Peter Wilding in 2012 which was a combination of two words, Britain and Exit and had its genesis in the word Grexit which referred to a possible exit from Eurozone of Greece. When the results were announced on 24 June 2016, 51.9% of UK had voted in favour of leaving the EU and Brexit was a reality.

The result declared on 24 June 2016 showed that 51.9% voted in favour of leaving the European Union and 48.1% voted in favour of remaining a member of the European Union.

IMPORTANT LEGISLATIONS OVER THE YEARS WHICH HAD AN IMPACT ON BRITISH SPORTS

There had been three major legislations which had a serious impact on player transfers and use of overseas and non EU players in the field of sports in United Kingdom over the years. They are the Bosman Ruling, the Kolpak Ruling and the Cotonou Agreement. A lot of players of non-British origin had used these rulings to ply their skills on the fields of Britain and to earn a livelihood over the past many years.

The Bosman Ruling

Jean-Marc Bosman was a Belgian First Division football player for the club, RFC Liege. After his contract expired in 1990, he decided to move to a French club, Dunkerque. But RFC Liege refused to let him go as Dunkerque club did not meet the demand for the transfer fee. Bosman's wages were reduced subsequently. He filed a case in the European Court of Justice and sued for trade restraint. Bosman got a favourable at the end of the trials as a result of three separate legal cases, against Belgian Football Association, RFC Liege and UEFA. This ruling also had a serious impact on the free movement of labour within European Union. The ruling of the case that came out in 1995 is known as Bosman Ruling. It concerns freedom of movement of workers and resulted in allowing of movement of foreign EU players between football clubs at the end of a contract term without payment of a transfer fee.

Before the Bosman Ruling, some European clubs had placed restrictions on certain players joining a club in another country after expiration of their contract. Bosman Ruling ensured that players could now move on to a new club on a free transfer. The ruling also helped players of EU states escape the quota restriction on foreign players in clubs of EU teams. After the ruling, the quota was applicable only to restrict the number of non-EU players on the teams. Several famous players like Edgar Davids of Netherlands was able to move to AC Milan from Ajax in 1996 while Steve McManaman of England received the most lucrative contract at that time while moving from Liverpool to Real Madrid. The ruling had a direct impact on the clubs who spent a lot of money on the development of the players and were left with no financial gains when the said player moves on to another EU nation club.

As a sad footnote, the man who eventually helped current footballers from European Union nations earn millions, is fighting depression and alcoholism. The compensation paid to Jean-Marc Bosman would be equivalent to a week's pay of Wayne Rooney, who ironically makes so much money based on the Bosman Ruling.

The Kolpak Ruling

Maros Kolpak was a Slovakian handball player who was working in Germany and playing 2nd division handball with TSV Ostringen from 1997. The German Handball Association rules prevent its clubs from fielding more than non-EU nation players. Kolpak was booted out by his club in 2000 citing that they had already filled their quota of two non-EU players.

Kolpak filed a case against the German Handball Association, saying that they were treating him different from the Germans

and placed an illegal restriction on him plying his trade. The Association argued that equality applied only for EU nation players and not to non-EU players. The case then went to the European Court of Justice. This was because Slovakia was not part of EU at that time but had an association agreement with the EU.

The Court ruled in favour of Kolpak on May 8, 2003 and declared that citizen of nations which have signed European Union Association agreements have equal rights and freedom to work and move within EU as EU citizens. Any restrictions placed on their right to work are deemed illegal under EU law. This had a wide ranging effect on English County cricket and Rugby Union player compositions, as South Africa, Jamaica and Zimbabwe as well as many countries in the African, Caribbean and Pacific (ACP) group of states had association agreements with EU at that time.

After the Kolpak Ruling, all players in domestic leagues of cricket and rugby from overseas were called Kolpak players. Before the ruling, English and Wales Cricket Board (ECB) allowed only one overseas non-EU player to play for a county. After the Bosman and Kolpak rulings, county clubs started employing players from South Africa, Zimbabwe, West Indies, Netherlands, and Ireland regularly in their teams, besides the overseas player. This lifted the standard of county cricket as well as Football & rugby leagues across Europe. This also resulted in talented players from England waiting in the sidelines to get an entry into the teams due to an influx of Kolpak players. It reached a farcical stage in 2008 when half the players in the Northamptonshire Vs Leicestershire match were from non-EU countries.

To counter the deluge of county clubs using the Kolpak Ruling to strengthen their teams, ECB linked team payments to number of English players in the counties. This supposedly had only negligible difference in Kolpak players recruited by the teams. The same was the case with Rugby Union where lot of players from South Africa, Fiji, Tonga, and Samoa were recruited.

Cotonou Agreement

It is a treaty signed between European Union and the ACP countries. African, Caribbean and Pacific Group of States are known as ACP countries. It was signed by the then 15 members of EU & 78 ACP nations in Jun 2000 in Cotonou, Benin. It came into force in 2003 and was revised twice in 2005 and 2010. The purpose of the Agreement is to integrate the ACP nations into the economy of the world and hence eradicate poverty through sustainable development. In 2008, new rules brought through amendments in the agreement stated that only those players who are from countries covered by Cotonou Agreement and are with valid work permit for four years need to be treated as EU citizens.

Potential Consequences of Brexit on British Sporting Scene

Once the United Kingdom leaves EU, all the players coming under Bosman Ruling will cease to be considered as EU players and will automatically become overseas players. In cricket, each county can have only one overseas player for four-day matches and one-day matches while they can have two overseas players for Twenty20 cricket. A county will think twice before recruiting a Dutch or Irish player as the overseas player and may go for a seasoned international player as their overseas player to get their money's worth. This in turn will relegate the Dutch and Irish cricketers to slowly fade from the first class scene and drop down to the 2nd division league or their own national leagues which are not very lucrative.

The other set of players who will find themselves suddenly as overseas players are the Kolpak players from the Caribbean, South African, and Zimbabwean stables. Even before Brexit, there had been calls to restrict the entry of Kolpak players, who are stifling the chances of raw young British talent. The ones supporting the Kolpak breed are doing so as it makes the leagues competitive. England had Andrew Strauss and Kevin Pietersen, both South Africa born, coming in as Kolpak players and who at some stage have led their teams at the highest levels of the game.

If you take the case of English Premier League football, more than 70 players will lose their status and work permit on account of suddenly becoming overseas players. Once the Brexit happens, a rugby player has to play at least 10 to 15 months as an international to even qualify to get a work permit in United Kingdom. Even English players will find it difficult to travel across Europe as they will also not be treated as EU nationals any more.

A recent survey by CIPD/People Management has revealed astonishing figures that show 36% respondents worried about the security of their employment, and another 36% worried about losing their right to work in the United Kingdom. These results also indicate possible rising work place tension. These reports hold importance in the backdrop of rising hate crimes against non-UK workers and other immigrants. This may also seep into the sporting arena as one of the unwanted consequences of the Brexit saga.

The British Government and the European Union have to arrive at consensus regarding the rights related to employment post-Brexit connected with dismissal, gender, nationality, discrimination at work, coverage of area of employment, all of which may need reworking in the changed scenario. All these have implications to the sporting arena also. Entire team compositions may change similar to the post-Apartheid era of South African sport where reservations to non-whites were made compulsory for all sporting bodies.

All these are going to transform the way, sport is going to be played in England and a lot rests on how the transition from an EU nation to a non-EU one is managed by Theresa May and her team of politicians and diplomats. Sport is a minor issue compared to other major issues involved in Brexit but it also will be changed beyond recognition after 2019. The world is watching.

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