**Donà v Mantero Case 13/76**

**Case Overview**

The case related to an action between two Italian nationals concerning the compatibility of certain provisions of the Rules of the Italian Football Federation with Articles 7, 48 and 49 of the Treaty of the European Economic Community (the EEC). The action was brought before the Giudice Conciliatore, Rovigo, which referred the matter to the European Court of Justice (“the ECJ”) for interpretation of Articles 7, 48 and 59 of that Treaty (“the Treaty provisions”) under Article 177 of the EEC.

**Background Facts**

Gaetano Donà was instructed by Mario Mantero, Chairman of Rovigo Football Club, to seek out players abroad willing to play for the Rovigo team. To that end, Donà placed an advertisement in a Belgian newspaper. However, the Chairman refused to consider the offers submitted in lieu of the advertisement on the basis that the Rules of the Italian Football Federation only permitted players affiliated with that federation to participate in matches as professional or semi-professional players, and that affiliation was in principle only open to players of Italian nationality. The Chairman also refused to pay Mr Dona the expense of the advertisement.

The matter was placed before the Giudice Conciliatore, Rovigo, which referred the matter to the ECJ for clarification on the interpretation of the Treaty provisions at issue. The ECJ was asked to consider: (i) whether Articles 7, 48 and 59 of the Treaty conferred upon all nationals of EU Member States the right to provide a service anywhere within the EU; and (ii) whether this right extended to football players in gainful employment (i.e. players remunerated for their participation in the sport). Subject to the ECJ’s answers to these questions the ECJ was asked (iii) whether these rights would protect nationals of Member States against the application of incompatible rules created by a sporting federation; and (iv) whether these rights would have direct effect in the national courts?

**Outcome**

In relation to the first question the ECJ found that national provisions that restricted the activities covered by Articles 7, 48 and 49 of the Treaty to *“nationals of one Member State alone is incompatible with the Community rule”*. In respect of the second question, the ECJ noted that the practice of sport is subject to Community Law in so far as it constitutes an economic activity, and that this applied to semi-professional and professional players in gainful employment. Treaty provisions would not preclude rules of sporting federations that exclude foreign players from participation in certain matches for reasons that are not of an economic nature, such as selection for the national team. Any such restriction however, must be limited to its proper objective. Finally, the Court determined that the mandatory nature of the provisions at issue would need to be considered by national courts in their assessment of the provisions of a sporting organisation.

The Courts answers to the questions referred to it by the Giudice Conciliatore were as follows:

1. *“ Rules or a national practice, even adopted by a sporting organization, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question, are incompatible with Article 7 and, as the case may be, with Articles 48 to 51 or 59 to 66 of the Treaty, unless such rules or practice exclude foreign players from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only.*
2. *Article 48 on the one hand and the first paragraph of Article 50 and the third paragraph of Article 60 of the Treaty on the other – the last two provisions at least in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or the fact that he resides in a Member State other than that in which the service is to be provided – have a direct effect in the legal orders of the Member States and confer on individuals rights which national courts must protect”.*