

International Business Law Programme

University of Macau/FLL

*The “Bosman Ruling” and the Regulation of
Football in the People’s Republic of China*

Student Name: Li Hong (Leslie)

Student No.: MA861173

Supervisor: Prof. Dr. Rostam J. Neuwirth

Abstract of Thesis

In 2008, two professional football players named Zhou Haibin and Feng Xiaoting shocked the whole professional football industry of the People's Republic of China (PRC). The reason for the shock was that they had taken advantage of the international transfer rules in a secret transfer. Although their activities obeyed the rules of the Fédération Internationale de Football Association (FIFA), they violated the rules of the Chinese Football Association (CFA). The facts not only exposed the defects in the CFA rules to the wider public, but also recalled memories from the "Bosman Ruling" in the European Union (EU).

Prior to the Bosman case, in Europe, according to the Union des Associations Européennes de Football (UEFA), the professional football clubs had considerable control over the employment of their players. Players were registered with clubs, and it was this registration which was transferred between clubs when a transfer was made. Usually a fee would be demanded for the movement of players from one club to another. Prior to the Bosman case, a quota requirement, which means the minimum number of native players must be above a certain number, was in place in many national leagues. The purpose of this transfer requirement was to limit the players' mobility and wages in a view of avoiding that all the top professional football players ended up in working for the richest clubs.¹ This rule was changed by the case of the professional football player Jean-Marc Bosman. He was a professional football player employed by the Belgian first division club FC Liege. His contract with the FC Liege was set to expire after the 1990 season. At the end of that season Bosman himself wanted to transfer to a club in France. However, his original club, the FC Liege, tried to stop the transfer from taking place by using the cross-border transfer rules, which meant that the club, which he was planning to transfer to, had to agree on a fee before a player was allowed to transfer in. Hence, the FC Liege tried to block the transfer by demanding a very high transfer fee for Bosman's services. Bosman protested against this decision and filed suit against the FC Liege, the Belgian football authorities, and the European football authorities, arguing that the football regulations on payment of transfer fees stopped EU citizens from having the right of freedom of movement in employment as guaranteed by the European Treaties.² On 15 December 1995 the court ruled that the system, as it was constituted, placed a restriction on the free movement of workers and was prohibited by Article 39 of the EC Treaty (now Article 45 of the Treaty on the functioning of the European Union). As a direct consequence of the "Bosman Ruling", the European transfer rules of professional football players and the professional football transfer contracts changed considerably.

After the Bosman case, the European Commission announced that it was taking action against the football authorities because it considered the current international transfer system to be in violation of the right of free movement of persons between EU

¹ University of Leicester, The Bosman Ruling, Football Transfers and Foreign Footballers, available at: <http://www.le.ac.uk/snccfr/resources/factsheets/fs16.html> (last visited Nov 5, 2010).

² Ibid.

Member States as enshrined in the Treaty of Establishing the European Communities (now TFEU). They argued that football players who wished to unilaterally break their contract of employment should be able to leave within a certain term of notice, as employees in other sectors were allowed, by only paying a relatively small amount of compensation to the club in return.³ Since then, once the contract had expired, the new club did not need to pay the transfer fee to the original club. It only needed to pay a relatively small amount of compensation. In 2001, after intensive negotiations, UEFA and FIFA joined forces to reach an agreement with the European Union's political authorities on an international player transfer system. This system aimed at stabilizing the relationship between player and the club, particularly from the point of view of the contract. In addition, this system was expected to protect the interests of smaller clubs, who would benefit from the training of future stars.⁴ This action led to a compromise reached between the football authorities and the Commission which was ratified by FIFA's Executive in summer 2001. The new transfer regulation was hence applicable to every player who signed a contract after 1st September 2001 and was involved in an international transfer. No reference, however, was made to the payment of a transfer fee.⁵

The Bosman case can be considered a landmark ruling. It has not only had an important impact in the EU but by virtue of the international organization of football, has also changed the organization of the professional football industry in the world. In this context, it is still a long way to make similar changes in the PRC. In China, the attitude of the Chinese government towards the transfer of Chinese football players was directly linked to the issue of the National Team's international performance. The Chinese Football Association (CFA) set an age limit to prevent top players from going abroad. One document issued by the CFA in 1993 noted that "unless dispatched by the CFA, the minimum age requirement for national athletes working abroad is 28 for male and 26 for female."⁶ Due to these rules, many elite football players were effectively barred from going abroad to get training in better football environment and earn more money. In addition, in the wake of the amendment to the FIFA rules, China was also under strong pressure to amend its rules and bring them into conformity with those of FIFA rules. This situation lasted until 2008, the same year that the two secret transfers took place. These events finally triggered considerations by the CFA about changing its rules. The CFA recognized that the change of its organizational structure and internal rules were necessary with a view of adapting them to the international standard. At the same time, a debate about the establishment of the Court of Arbitration for Sport (CAS) in the PRC was going on.

In 2010, 15 years after the Bosman case, China finally published the "Temporary

³ The Bosman Case, *EU Law and the Transfer System*, available at: <http://www.liv.ac.uk/footballindustry/bosman.html> (last visited Nov 7, 2010).

⁴ UEFA, *Organization of the UEFA*, available at: <http://www.uefa.com/uefa/aboutuefa/organisation/news/newsid=2483.html#1978+2000+ongoing+change> (last visited Nov 4, 2010).

⁵ The Bosman Case, *EU Law and the Transfer System*, available at: <http://www.liv.ac.uk/footballindustry/bosman.html> (last visited Nov 7, 2010).

⁶ Yuan Weimin, *China Football Encyclopedia* (Shanghai, East China Teachers University Press, 2002).

Regulations on the Status and Transfer of China Professional Football Players in 2011 Season". In these new rules, the CFA made some progress with regard to the protection of the rights of professional football players promising a better balancing of the interests among the parties involved in the professional football industry. The CFA has deleted the freeman system which required the certification of a "freeman" as the pre-requirement for the professional football players intending to transfer from one to another club in the PRC. In accordance with the new rules the professional football player no longer needs to wait for an additional 30 months after the expiration of his contract. At the same time, the revised transfer rules stipulate in Art.49 of the CFA rules that "a professional shall only be free to conclude a contract with another club if his contract with his present club has expired or is due to expire within three months". Moreover, the CFA has cancelled the transfer fee which was supposed to be paid after the contract had expired and instead replaced it by a training compensation. From now on, Chinese professional football players can freely transfer once their contracts have expired and they have the right to decide more freely on their own future. The new transfer regulation has not only reformed the transfer system in the CFA, but also brought important changes to the legal regime governing professional football in the PRC.

However, the analysis also revealed that the new transfer rules of the PRC still contain some provisions capable of restricting the freedom of professional football players. For instance, the quota system continues to impose some restrictions on the professional football player's freedom to transfer. From this provision, when a professional football player in China is willing to transfer, he/she needs follow the quota system. In line with this system, the CFA regulates that in this 2011 season transfer period, each club can accept or change no more than five professional football players and less than three young professional football players from domestic clubs. For the foreign professional football player quota, any Super League club may transfer in no more than five foreign professional football players whereas the respective number in the League One club is four players.⁷ The quota system hence restricts professional football players in choosing their preferred clubs. Because if there is no quota remaining in his/her interested club for that season, he/she cannot transfer to the club. For this reason, the CFA should consider deleting the quota system in the transfer system, as it was done in the EU in 1995 in the wake of the "Bosman Ruling". This means that at this stage, the reform of the CFA appears to be incomplete. The new transfer rules will equally restrict the development of the minor football players. According to the CFA rules, minor players cannot be protected through the professional contract because they are not allowed to sign a professional contract, which also means that they are barred from transferring to another club as a professional football player. In this point, the rules of FIFA differ because according to the Art.18 (2) of the FIFA provisions⁸, football players under the age of 18 can sign

⁷ Sports, available at: <http://sports.hsw.cn/system/2010/12/01/050699783.shtml> (last visited Feb 24,2011).

⁸ FIFA, *Regulations on Status and Transfer of Players*, available at: http://www.fifa.com/mm/document/affederation/administration/66/98/97/regulationsstatusandtransfer_en_1210.pdf (last visited Feb 28,2011).

a professional contract as long as the term of the contract is not longer than three years. By contrast, the CFA rules restrict the minor players to sign a professional contract and transfer to another club. In this way, we can conclude that the reform of the CFA appears to be incomplete, but it also bears reasons for hopes for the future of professional football in the PRC. In a word, in the way of perfecting the professional football area, changing the transfer system of the professional football is only the first step, the PRC has much work to do.