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THE MUSCLE DRAIN OF AFRICAN
FOOTBALL PLAYERS TO EUROPE:
TRADE OR TRAFFICKING?

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And then, how can we forget about those who don't make it? Who are we to reduce them to a statistic, when perhaps we encouraged them to throw away their lives for a few thousand euros? It's necessary for European football to recover its humanity, to put an end to bogus transfers of adolescents, to defend the values we uphold, and to protect the personality and the identity of even the youngest among us.

Michel Platini, 15 January 2007 during the run-up for his election as UEFA President.

Anyone under the illusion that following the 1995 Bosman Judgment sport on the one hand and fundamental human rights on the other hand would live together in harmony had, and still has, got it wrong

Roger Blanpain



Preface

The last months have almost been completely dedicated to what can be read underneath and it is therefore with pleasure that I at long last write a final word of reflection. This thesis comes forth out of the European master in human rights in which students write a thesis in their second semester. Choosing the topic of football and the immigration of African players was not evident. First of all because I chose to review the situation of African players although for example South American and East European players are also part of a worldwide trade and what is described underneath often also applies to them. However, the blatant presence of African players on the European market makes them the best option to focus on in order to show the scale of the phenomenon.

Words of gratitude go to many persons. It was not easy get deeply involved into the subject without the help of authors and person who were involved with the issue over the last years. Their information helped me to get started and put me on the right track. Furthermore, I thank Prof. Wolfgang Benedek for his advice and efforts to make the life of the e.ma students enjoyable during the last semester. Dr. Yvonne Schmidt was there as a co-supervisor which I also highly appreciate. Special thanks go as well to Veronika Bauer who was there at any time of any day for advice and help. This was a daily support I could always count on.

List of Abbreviations

ASEC	Mimosa Football Club de Abidjan
CAF	Confédération Africaine de Football
CFA	Currency of Senegal
CGKRB	Centre for Equal Opportunities and Opposition to Racism
CRC	Convention on the Rights of the Child
DRC	Dispute Resolution Chamber FIFA
ECJ	European Court of Justice
EEA	European Economic Area
EU	European Union
FFF	Fédération Française de Football
FSF	Fédération Sénégalaise de Football
FIFA	Fédération Internationale de Football Association
Fifpro	Fédération Internationale Des Associations de Footballeurs Professionels
GDP	Gross Domestic Product
KBVB	Koninklijke Belgische Voetbal Vereniging
TNC	Transnational Corporations
TEC	Treaty establishing the European Community
ILO	International Labour Organization
IOM	International Organization for Migration
UEFA	Union of European Football Associations
UCFFY	l'Union des Centres de Formation de Football de Yopougon
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNHCR	United Nations High Commissioner for Refugees
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme

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Abstract

This thesis deals with the issue of African football players who ply their services abroad, mainly in Europe. In a first part, use is made of the ongoing discussion on economic globalisation to frame the so-called muscle drain that afflicts the structural development of African countries. It is however also shown how the transfers of football players are caught by historic and cultural determinants. The second part analyses the institutional framework for player extraction, that is, the FIFA transfer system and the legal body of rules that guide the functioning of players' agents who are analysed as actors in the space between an exposed glut of African players and the wealth of European teams. Thirdly, examples of stranded African players are given to assess to what extent their situation fits into national human trafficking legislation. Specific case-law is analysed which reveals that players seem to fall in between trafficking and smuggling. The profit making and malpractices with players arise through football's labour market which thrives on a legitimate human trade. In a concluding part, perspectives on the findings in this thesis are given while certain proposals and theories are emphasised as ways forward and contributions to the current political and legal debate.

I Introduction

1.1 Moving with the ball

African football players have a long standing tradition in European football. It is no coincidence that the Old Continent introduced what is now sometimes called the Global Game in its African colonies. Nobody probably had expected how fast the popularity of the game would spread over the continent. Football quickly became the most significant pastime of young boys. It also became one of the few areas where countries could gradually aspire to achieve the same prestige as their Western or European counterparts. International competitions provide indeed a stage to measure themselves with their former rulers. As a consequence, football does not only intrigue the mind of the young African boy in all levels of society but has also become a true political stake.

There is only one key to succeed in Europe and that is hard working. The expectations that many African players cherish are somehow different from the reality however. The change of climate, the social aspect and sometimes blatant racism on and off the field does not really match their initial prospects. The style of football in Europe collides also with how most of the Africans see the game. They often distinguish themselves in making the ball their own even more so because, as foreign players, they need to prove their abilities more than home players. The first generation of Nigerian players for example, always talks about how to treat the ball. “Nigerians, they say, know how to handle it: they caress it with their feet; they sway it in their neck. They touch it personally, loving and tender, pitiless and harsh, like their feeling tells them. The ball is their long life. They grew up with it in the African streets where they not only dribbled their opponents but also the chickens, goats, motorcycles and cars along the road”.¹

The immigration of African football players, seeking employment in Europe has seen increasing interest over the past years. One particular element carries an important meaning however regarding statistical analysis. Indeed, a distinction has to be drawn between players who move *with* or *without the ball*.² The former obviously have the specific aim of migrating

¹ Antonissen & Loozen, 1998, p. 131.

² Lanfranchi & Taylor, 2001, p. 86.

in order to apply their services in Europe. The latter can be considered as immigrants with other main objectives, but who also end up being a professional football player. The phenomenon of immigration is mostly underpinned by economical or political motives but the movement of football players seems to be determined by mainly economic incentives. There of course exceptions, like political crises leading to societal turmoil which pushes players out to earn their living abroad. In 2003, after the World U-17 Championship in Finland, fourteen players of the 28-man squad of Sierra Leone did not show up at the airport. Later, three of them applied for political asylum.³ History has even shown more substantial examples with professional football players being among a mass exodus of political refugees. However, economic motivations determine steadily the immigration of football players, that is, the transfer from one team to another.

1.2 Context of the muscle drain

During the last decade, football and sport in general has evoked a lot of interest within a broad range of social actors. Academic literature, research from journalists, FIFA regulations and political initiatives have made professional football the focus of a lot of attention. In the line of the aforementioned economic centrality in explaining the immigration of African football players, this thesis will elaborate on human rights issues coming forth out of the economic and legal reality surrounding world football. To sketch a clear picture and to pave the way towards a clear assessment of the human rights at stake in the described phenomenon it is however necessary to construct a broader framework involving facts and figures from different branches.⁴ Thereafter, some elements of this will be part of a broader analysis below.

The position of football as an economic activity has long been left unattended by relevant decision makers but has now moved centre stage. In the world of football, FIFA is the highest ranking decision making body and is composed of six continental confederations, such as UEFA in Europe. These serve on their turn as an umbrella for the national football associations, such as the FFF in France. Prior to the judgement of the European Court of

³ BBC Sport, 'Sierra Leone Players disappear', 22 August 2003, at <http://news.bbc.co.uk/sport2/hi/football/africa/3173309.stm>.

Note that all websites were accessible on the date of 12 July 2007.

⁴ It should be noted that some areas of research that are also connected to football are not subject of this thesis in any part and are hence left aside. Among them are the politics of identity, racism and violence.

Justice in the Bosman case (see below), self-regulation has been the keyword for the functioning of these institutions. This means that for example the transfer system, the distribution of television rights but also the rules of the game itself, were decided only through interaction among these three levels of organisations. However, the clubs themselves and the players, as far as they are organised in a union, have also thrust a degree of influence towards themselves. A central agreed up element within the transfer system for example, were the restrictions on the free movement of football players. This implied that even after the expiry of a contract, teams willing to hire a player still had to pay a transfer sum to the club ‘possessing’ the player.

FIFA and national football federation’s rules, such as the transfer system, interfere with specific legal frameworks. In the end, football players ought to be considered as employees being hired for a specific period of time by a specific football team. This mere fact brings about obligations, not only for the employer, but also for national legislators in safeguarding for example on the one hand European Union obligations and on the other hand human rights commitments stemming from the European Social Charter. Clearly, the situation in which football players were at any time dependent on the willingness of their team to ‘release’ them contravenes the rights of employees in other economic sectors. In 1995 however, the European Court of Justice overhauled the international transfer system with its Bosman ruling.⁵ This proved to be a landmark decision in the evolution of professional football whilst bringing it as an economic activity under discussion and review within the European Union legal framework and more specifically within the context of freedom of movement. Before the ruling, professional football players could not move to another team at the end of their contract without agreement between the aspired future and previous team. A transfer fee had to be paid and placed the selling clubs in a position where they could hold their players hostage and deny their right to work. The Bosman ruling ended this situation and abolished national quota on foreign but EU Member State players since it contravenes the EU non-discrimination principle on its labour market .

The verdict paved the way for an increased interest in sports law. This case had proven that notwithstanding its specificity, sport rules could not always be granted a total exemption under Community law. Hence, the Court reasoned that sport is subject to Community law

⁵ Case C-415/93 Union Royale Belge des Sociétés de Football Association, Royal Club Liegeois, UEFA v Jean-Marc Bosman and others (1995). Hereinafter “the Bosman ruling”.

only *in so far as it constitutes an economic activity* within the meaning of Article 2 of the Treaty.⁶ This judgement leaves space for the interpretation of the specificity of sports as an economic area to which some exemptions have to be applied. An example of this are anti-doping rules which provide for suspension from participating in the relevant competition. Clearly, it is difficult to challenge these regulations under the European Union's competition law since there seems to be a legitimate claim for excluding athletes from competition. This reasoning was thoroughly followed in the Meca-Medina case.⁷ Hypothetically it is even harder to challenge this specific sport rules as a violation of the human right to work. In between the Bosman and the Meca-Medina cases there is thus a lot of space left to define the so called 'sporting exception' despite an increasing amount of cases that are pending before the European Court of Justice. Due to this ongoing legal uncertainty, that is, the lack of a legal basis for sport, the Court is forced to use a case-by-case approach.⁸

Within the elapsed time since Bosman, one also has to bear in mind the accelerated professionalisation and commercialisation of top-level football, which cannot be better illustrated by the astronomic revenues stemming from increased television broadcasting. Football teams have more and more the allure of enterprises relying on many forms of marketing to export the name of the team as a brand. Consequently, private money has increasingly flown to the football industry in the last years. This evolution asks for a legal regulation since some outcomes of the economic might of world football, under review in this thesis, are simply inadmissible. More than ten years after the Bosman ruling the debate is still far from reaching conclusions. Recently, a report on 'the future of professional football in Europe' has been presented in the European Parliament.⁹ Next to this a White Paper of the European Commission is in the pipeline, all of this bringing a whole range of football related issues in the limelight.¹⁰

⁶ The Bosman ruling at par. 28-34.

⁷ Case C-519/04 P, Meca-Medina & Majcen v. Commission (18 July 2006). Hereinafter "Meca-Medina".

⁸ Case C-243/06, SA Sporting du Pays de Charleroi, G 14 v FIFA (2006), in which clubs question the FIFA rule obliging them to release their players for matches national teams without entitlement to compensation: "Do the obligations on clubs and football players having employment contracts with those clubs imposed by the provisions of FIFA's statutes and regulations providing for the obligatory release of players to national federations without compensation and the unilateral and binding determination of the coordinated international match calendar constitute unlawful restrictions of competition or abuses of a dominant position or obstacles to the exercise of the fundamental freedoms conferred by the EC Treaty and are they therefore contrary to Articles 81 and 82 of the Treaty or to any other provision of Community law, particularly Articles 39 and 49 of the Treaty?"

⁹ European Parliament, Final Report A6-0036/2007 on the future of professional football in Europe by Ivo Belet.

¹⁰ European Commission, 'White Paper consultation by Commissioner Ján Figel with European Sports Federations', at http://ec.europa.eu/sport/doc/figel_federations_Report_en.pdf.

The uncertainty about how to encapsulate a football economy within a competitive legal framework is only one field of research that was opened after the Bosman ruling. This case gave, inter alia, rise to an increased interest in the migration of African and South American football players. Some scandals in which managers or players' agents appeared to abuse the vulnerable position of these players came under the public eye and many authors have pointed at the Bosman ruling as an origin for this modern form of slavery or human trafficking of young football players. The phenomenon is however far from new. Already in 1991 for example, the Italian side Torino FC was highly compromised after hiring three Ghanaian players between thirteen and fifteen years old under dubious conditions.¹¹ As a result, the evolving international transfer system, the economics of football, the functioning of player agents, etc. have led to a extensive volume of literature but there is still ample space for further research.

A final element within the theoretical framework concerns the use of sports, such as football, within broader development initiatives. This will not be part of the thesis but shows to which extend sports are rooted in societies. With this conception in mind, a United Nations Task Force on Sport for Development and Peace has been installed aimed at promoting cooperation between UN organisations such as UNHCR and UNICEF and the International Olympic Committee.¹² Human rights are a constant focus of the United Nations and sports seem to have a great potential in promoting them, but it can also work the other way round: human rights have a potential in promoting the sustainable development of sports in countries where sports have proved to be underdeveloped in terms of infrastructure, training and care. For example, the right to play is included in the Convention of the Rights of the Child and has inspired organisations to use sports as a means of education.¹³ Furthermore, it was used as tool for reconciliation in post-conflict societies such as Sierra Leone. Within the world of football FIFA could neither stay behind. Therefore, the current president of the organisation created the 'Goal Programme' which subscribes itself, although autonomously, alongside the aforementioned development projects. Somehow, this might be perceived as nothing more than a drop in the ocean but, as will become clear underneath, a change in the overall

¹¹ Andreff, 2004, p. 95.

¹² United Nations Sport for Development and Peace, at <http://www.un.org/themes/sport/index.htm>.

¹³ Convention of the Rights of the Child, entry into force 2 September 1990. Par. 31.1: "*States parties recognize the rights of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and arts.*"

mentality and ongoing economic interaction between the African football players resource and the European wealthy clubs is highly necessary. The Goal Project could eventually be an impetus for this.

1.3 Overview and theses

Above, a brief outline was given about how different aspects of football have been subject to an increasing field of research. This thesis will build on some aspects of the given theoretical framework. To cut things short it will provide the reader with an insight of how players' agents are in a position to make high profits in bringing talented African players to one of Europe's football leagues. This means that these agents have to be evaluated as operators between an extensive reservoir of cheap talents on the one hand and European clubs aspiring to hire these players on the other hand. The potential profits are obviously taking a central place since agents are remunerated through a percentage on the salary of the player and the transfer sum. European clubs are drawing on a double advantage. Firstly, they did not have to invest in the training of the player which makes them so to speak cheaper than their own youth. Secondly, they also have the possibility to sell the player for a much higher sum inside Europe. This depends on the real sportive value of the player and varies from case to case. Indeed, it is clear that not all players aspiring to perform in Europe have the sufficient skills to do so. It is exactly therefore that the practice of buying and selling has become such a highly debated issue over the last ten years. At this point, questions about the responsibility and role of players' agents arise. As will be shown below there is indeed a striking similarity within the most registered cases in which agents are in a very strong if not exploitative position and where players are strongly dependent on them.

The second part of this thesis, 'The African Football Resource', comprises an assessment of the economic rules governing world football. It will be shown how economic globalisation is related to the status of sport in developing countries. Globalisation has been a buzzword in many areas of the social sciences and therefore it needs to be approached with some caution, especially when it comes to the by some authors proclaimed high increase of footballer's mobility. Therefore it will also be shown how football players are captured by existing migratory patterns determined by history and culture. It is however the economic weakness of African countries and more particularly of their football infrastructure and training capacities

which will be the starting point of a larger assessment. To avoid criticism on overemphasising the exploitation of Africa's football resource by Europe and the use of some disputable terminology, it is also necessary to draw on perceived positive evolutions. European teams are for example increasingly setting up local training centres in Africa, which at first sight seems to be a grass roots impetus for a structural development of the game in terms of infrastructure and youth training.

A third part deals with the institutional framework for the transfers of players. FIFA transfer rules will be analysed in the light of the sketched situation of African football. The Bosman ruling will be examined more in depth with an assessment of the impact on the evolving international transfer system. This shifts the focus to the field where the institutional rules of world football collide with for example the competition rules of the European Union. The EU is currently elaborating on a legal framework for sport which requires a careful balancing exercise because of the social, cultural and educational aspect of the game and also because of the high level lobby of European football. The focus of this thesis lies however on the trade of African players and the element of exploitation involved. Therefore, the legal framework in which the players' agents are operating needs to be analysed. This is a slippery slope since not only FIFA regulations but also national and international legislation have to be taken into account.

In the fourth part this thesis will provide the reader with a closer look at some registered cases. Some years have elapsed since malpractices of agents and their neglect of fundamental responsibilities towards their recruited talents came under the focus of a lot of public attention. The growing awareness has triggered a debate in which the phenomenon is labelled as a contemporary form of slavery or human trafficking. This discourse has however not made any direct contribution towards translating agents' practices into a relevant legal order. Furthermore, to this day there have been no significant convictions of players' agents or managers under national human trafficking law, while neither the legal frameworks on slavery serves as a solution. Hence the question arises if there is any space to tackle the legal gap between the human rights language used on the one hand and the effective legal human rights instruments on the other hand. In trying to find an answer to this question the slavery discourse will be tested alongside the existing literature on contemporary forms of slavery, which offers a well-founded framework. The thesis will therefore elaborate on seven criteria

of 'new slavery'.¹⁴ These are: (1) legal ownership avoided, (2) very low purchase cost, (3) very high profits, (4) glut of potential slaves, (5) short-term relationship, (6) slaves disposable and (7) ethnic differences not important. The aim of putting these criteria forward is to make an assessment of specific elements of case-law, interviews and academic literature. Secondly, the this part analyses the immigration and human trafficking framework. The legal value of this framework is outlined to show the hindrances in applying cases of African football players. Specific case law will also be scrutinised here and shows that until today, no major convictions have occurred although a considerable amount of cases have been brought before criminal courts.¹⁵ This question is thus what the main impediments in national, that is Belgian, human trafficking legislation are regarding the cases of African players.

The concluding part deals with outward and inward perspectives on what was described before. Therefore, initiatives trying to encapsulate football into a broader legal framework, human rights and other alternatives will be looked upon. The work by the European Parliament and the upcoming White Paper of the European Commission show the current relevance and topicality of the issue and deal with the rights and freedoms of football governing bodies UEFA and FIFA. Firstly, the space between human trafficking and trade will be used to assess an alternative for the current transfer system. The latter is herein mirrored against the need for local teams to receive a certain refunding for the trained players who acquire a high value on the European market while they were initially transferred for an under-competitive fee. Secondly, the defects within the functioning of the European sports model as a pyramid and the growing concentration of wealth will be used to make a link of how football's governing bodies could in the future be directly held accountable on their human rights record. Finally, the issue of social responsibility will be raised which finds a basis in the already wide-ranging projects. These aim at enhancing a structural development of the competition and the infrastructure in developing counties while other projects use football as a direct means for (re)conciliation and education. Concepts as self-regulation and social responsibility are also drawn from the comparison with transnational companies and European football academies in Africa. The latter are a product of the current economic globalisation and pose – because of the particularity of their functioning – serious questions to

¹⁴ Bales, 2004, pp. 14-19.

¹⁵ Court of First Instance of Kortrijk, Case 55.48.100423'01, Ishiaku Manasseh, Omo Monday and The Centre for equal opportunities and opposition to racism v Havegeer Roger, Storme James, De Bruyne Bart and Cooreman Maurice (2006).

the good functioning of the existing international human rights system. Some of these companies have therefore subscribed to a corporate social responsibility code.

From above, the research questions can be resumed. First, the underdevelopment of the development of the African football game with player agents and European clubs being the main profit makers. Second, how loopholes in the regulations on player agents and the transfer system provide space for the malpractices of the latter. Third, framing the current discourse and debate within the existing work on contemporary slavery. Fourth, the applicability of the human trafficking instruments on player agents.

II The African Football Resource

2.1 Pool of talent in a fragmented market

On 18 April 2007, football's recruiting world witnessed the launch of the "Aspire Africa Football Dreams" programme in Qatar. The scale of this project surpasses any organised scouting for talent up to today.¹⁶ It proclaims itself as the "largest football talent search project in history" and "will involve a six thousand person staff who will screen more than 500 000 boys in seven African countries across 700 locations".¹⁷ At a first stage, talents will be brought together at the capitals for trials. Thereafter the most gifted will have the opportunity to enrol in the Aspire Academy in Doha offering the world's best training facilities and providing high level academic education, medical assistance and all other support athletes can dream of. The academy leaves no aspect unattended to bring the best out of a talented athlete. As the programme director notes: "Everyone in football is aware of the significant talent that exists in Africa, and also of the challenges that can prevent this talent reaching its full potential. Aspire will offer a new window of opportunity for those players who have the talent and dedication necessary to succeed at the highest levels of professional football."¹⁸

The illustration above draws the picture of the economic reality surrounding world football. Economically speaking is the financial value of a football player, obviously determined by his performance in competition, utmost variable. Clubs diversify their income, but talented football players are a financial investment and consequently a potential source of high revenues. This is due to the fact that for example a highly talented 'home grown' player evokes at a certain age interest of financially more powerful teams. The team which has this player under contract then determines a transfer fee which is substantially higher than the incurred training costs. In the case of African football players the margin is even wider. A recruited player on the African continent is likely to be very cheap due to the weak negotiation position of local teams. The consequent selling of the player to another European

¹⁶ The official website of the programme, at <http://www.aspire.qa>.

¹⁷ 'Largest Football Talent Search in History Launched in Qatar', at http://www.aspire.qa/topics/index.asp?cu_no=1&item_no=2400&version=1&template_id=345&parent_id=32&operation_type=6. The countries involved are: Cameroon, Ghana, Nigeria, Kenya, Senegal and South Africa.

¹⁸ Ibid.

team will therefore more than likely consist of a much higher than the initial transfer fee. Indeed, “Belgian clubs have for example considered young players as an investment, to be bought cheaply and sold abroad for a significant profit”.¹⁹ As such, an African pool of talent, aiming at employing their services in a European football league one the hand is confronted with European clubs aiming at recruiting cheap talents driven by an estimated surplus value on the other hand. Furthermore, it will be shown below that this is a confrontation with a fragmented market; translated in economic terms, a market where actors operate individually. This means that the pool of talent is not only captured by competitions under the national associations but also by unofficial networks and football academies through which the FIFA transfer rules do not apply.

2.2 Economic globalisation of football

2.2.1 *Football as business*

Football has come a long way to reach the current era of professionalisation and commercialisation. Indeed, many of today’s high performing clubs were formed as amateur clubs, trade-unions or political associations reflecting in part non-commercial interests such as political preference and even ethnicity.²⁰ Some economic evolutions have however accelerated and it is now difficult to deny that football clubs today do not function as commercial enterprises. Sponsorship by major transnational corporations of the sporting good industry but also from outside the sport sector has accumulated over time and receives strong impetus from the substantial increase in television broadcasting and concomitant lucrative contracts. More and more private money is flowing into the game with for example Chelsea being overtaken by the Russian billionaire Roman Abramovitisj. Some clubs are now quoted on the stock exchange and try to sell the name of the club worldwide. Therefore, new markets, with a special focus on Asia, are opened up and some teams tour in these commercially interesting regions, promoting the brand that they are today. Marketing is taking a central part in the proliferation of a football club and as such a competition among clubs is created which involves much more than the simple goal of winning each game. Professional football clubs are now seeking customers everywhere in the world as fans, TV viewers and buyers of its

¹⁹ Lanfranchi & Taylor, 2001, p. 32.

²⁰ Milanovic, 2003, p. 9.

merchandised goods. Today, the trade within football makes up 3 percent of world trade.²¹ Hence, a true football economy exists illustrated by a growing related area of economic studies.²² Questions of fair competition take a central place through these commercial evolutions. Indeed, the peculiar market logic in the world of football contravenes first and foremost European Union competition rules. There are a broad range of issues which are of relevance within this scope but it is the movement of football players that is taking a central place in this thesis. One also needs to be aware of the duality of freedom of movement for players on the one hand being able to move from one club team to another and on the other hand the uniqueness of the choice for one national team. As such, the increasing immigration of football players from developing countries has brought benefits to the level and achievements of some national teams. Indeed, in the previous World Cup editions and other tournaments African nations were challenging the rooted big football nations in an ever more consistent manner.²³ There is thus a level convergence between national teams with developing countries being able to “capture some of their ‘leg drain’, that is the improved skills which their players have acquired in playing for better clubs”.²⁴

The other side of the medal is however less promising for poor and developing countries. At team level competition, the gap between rich and poor football teams widens progressively. Through sponsorship income and participation in the lucrative Champions League the rich clubs earn the most money and are able to sustain their dominance. “By letting the greatest talents from all the various countries play together and against equally talented players, the level continues to rise, particularly at the rich clubs.”²⁵ The latter also have an inherent drive to monopolise their business in an ever increasing demand to raise revenues. Therefore the ‘G14’²⁶ has suggested to create a ‘European Superleague, that is, a competition among Europe’s strongest teams providing for more commercial and broadcast incomes. Clearly, this would deprive smaller clubs even more of the already smaller part of commercial revenues they receive.

European football clubs today are thus commercial enterprises due to the increased flow of private money, sponsoring and the marketing of the name of the club as a brand. There is

²¹ Andreff, p.5, Workshop University of Paris Panthéon Sorbonne, at <http://kpe.fph.vse.cz/gallery>.

²² For a survey of the literature see: Matheson, 2003.

²³ Nigeria at the Olympics in Greece, Senegal at the World Cup in South Korea/Japan and Ghana in Germany.

²⁴ Milanovic, 2003, p. 9.

²⁵ Soccernomics, 2006, p. 4.

²⁶ The G14 represents today the interests of 18 major European football teams.

however also another field of action where clubs inscribe themselves within the ongoing process of economic globalisation. The latter term has been used by many authors to explain processes of immigration in the world of football but due to spatial limitations this thesis does not elaborate deeply on the concept itself. A definition of economic globalisation that helps to analyse economic relations within world football can however be put forward. *Aseem Prakash* considers it as “a set of processes leading to cross-border integration of factor, intermediate products, and final products markets along with an increasing salience of multinational corporations in economic activities”.²⁷ These transnational corporations (TNC’s) take a central place in the integration of today’s world economy, which is increasingly interdependent through trade, investment and knowledge. A growing number of European football teams seem to share similarities with the functioning of TNC’s. Adding the work of *Poli* to this shows the relevance of the definition above. *Poli* draws on the definition on globalisation of *Saskia Sassen* to theorise the immigration of African football players. The central theorem of this definition is the dual process which captures globalisation today. On the one hand, a growing concentration of economic power in certain locations is identified while on the other hand this trend is complemented with a dispersion of productive activities. Regarding world football’s economy it is hard to overlook these two trends. A strong economic core of strong football nations is manifestly apparent in Europe whilst the dispersion then takes place in the form of outsourcing their ‘output’ by following a cost-benefit scheme.²⁸

This outsourcing is indeed of relevance for football players’ immigration and recruiting, which in the past was mainly a top down process with player agents seeking talent in order to place them in one of Europe’s major football leagues. The last decade has however seen a stark rise of a bottom up process. Indeed, more and more European clubs are increasingly creating football academies or take a share in local African clubs. *Sepp Blatter*, President of football highest body FIFA, strongly condemned this evolution in expressing that “Europe’s leading clubs conduct themselves increasingly as neo-colonialists who do not give a damn about heritage and culture but engage in social and economic rape by robbing the developing world of its best players”.²⁹

²⁷ Prakash, 1999, p. 1.

²⁸ Poli, 2004, pp. 31-54.

²⁹ The Financial Times, 17 December 2003.

The African football academies are a seriously neglected field of research within the scope of footballer's immigration but are a highly important evolution. Indeed, with the functioning of player's agents being increasingly under discussion and legal actions being taken against them, the proliferation of academies might even more become an important alternative for clubs who are looking to find players that rank high on a price/quality scale.

The academies are often praised as offering an answer to the large scale immigration of African football players. Local academies, it is said, offer good training opportunities and benefit the development of football in developing countries. And indeed, a lot of these academies are besides football training also offering education.³⁰ Not all of the players make it to Europe and hence, an amount of players which received a high-level training and education stays in the country. The work of *Darby* provides however a deeper insight into the real objectives and effects of these academies and reveals how a true evaluation of this evolution requires a delicate balance act.³¹ First and foremost are the institutional structures framing the aspirations of African football players not experienced as impairing their career perspectives. In fact they are dependent on them. The most obvious example of the far stretching reach of an academy has been the ASEC Mimosas academy in Abidjan, Ivory Coast. Founded in 1994 by the Frenchman Jean-Marc Guillou, it laid the foundations for the success of Ivory Coast at the international scene today. This academy had a first hand cooperation with the Belgian first division team SK Beveren. The best 'académiciens' were transferred to Belgium and some of them were sold to other European teams after early successes. Informal sources speak of a distribution key in which Guillou receives 60 percent of the transfer fee of all academy players.³² Players who are offered the chance are utmost grateful to Guillou who they all refer to as their 'grand père'. *Darby* sees however few positive aspects of the functioning of the academies that can contribute to the development of the game in many African countries. Drawing on a typology he distinguishes (1) African academies, organised and run by African sides or African national associations, (2) Afro-European academies, which involve partnerships, (3) private or corporate sponsored academies and (4) non-affiliated, improvised academies.³³ The structural meaning of these academies within the broad patterns of African football migration cannot be overlooked.

³⁰ The Feyenoord Fetteh academy for example is offering daily education to it's pupils, but according to *Darby* this is also an example of a classic neo-colonial industry strategy of Feyenoord "by seeking a politically stable country where they could institute a facility that would provide a steady stream of raw talent".

³¹ Akindes & Darby & Kirwin, 2007 (forthcoming).

³² Sport Foot (édition néerlandais), 14 december 2005.

³³ Akindes & Darby & Kirwin, 2007 (forthcoming).

Indeed, their mushrooming during the last decade can be considered as a way of circumventing the new FIFA transfer regulations of 2001.³⁴ As such, the academies provide an alternative way for European clubs to lay hand on talented players at a very young age, although transfers of minors are prohibited under these regulations.

2.2.2 Economic underdevelopment and muscle drain

The end products of today's football enterprises are players which they have bought and sold or which they have trained and developed from an earlier age. Players have a financial value like the commodities that other businesses produce. Important questions arise however when football teams are turning to cheap labour markets to outsource the production of their end products. In the end, the recruiting and transferring of players abroad is nothing more than replacing the training of own youth products. The foresight of not incurring training costs and a possible surplus value on a transfer often shifts the balance in favour of recruiting foreign players. In this section, the focus turns to this recruiting market. In the light of the extensive flow of African players to Europe it is necessary to consider some distinctive elements regarding sports in developing countries, which brings us at the other end of the already mentioned concept of economic globalisation.

To contextualise the immigration of African footballers to Europe one has to be aware of the particular circumstances surrounding the global game in most of Africa's countries. Clearly, they have few in common with their European counterparts. The example of Qatar's Aspire Academy was given above which is screening 500 000 African 'boys' in seven countries. The average GDP per capita of these countries is 3 152 euro while the one of the wealthy Qatar is 21 559 euro.³⁵ These figures obviously point to a considerable divergence in livelihood and wage gaps in view of the respective remuneration in Africa and Europe or even Qatar. As such, it is not difficult to understand why talented African football players want to ply their services in Europe or in one of the oil wealthy countries which recently discovered football as a means of profiling themselves on the international scene. African players are thus seeking nothing more than to maximise their economic return. The direct result is however a large

³⁴ Ibid.

³⁵ The calculations of these figures are based on the country details which can be found in the CIA Worldfactbook, at <https://www.cia.gov/library/publications/the-world-factbook/index.html>.

scale immigration flow towards more prosperous countries or a so called ‘brawn or muscle drain’.

What is now the deeper underlying process feeding this muscle drain? A UNESCO survey in 1995 revealed an overall relationship between sport performances and economic underdevelopment.³⁶ This argument was strengthened by the fact that developed countries have averagely performed way better than developing countries at the world’s major sports tournaments. *Andreff* discerned three criteria that explain this relationship: (1) underdeveloped physical education and sport participation, (2) tiny financing of sport and (3) few sport facilities and few world sport events hosted.³⁷ The underdevelopment of sport is indeed both an aspect and a consequence of economic underdevelopment. Regarding the second point it is important to note that the state is the main sponsor of sport activities in developing countries, which implicates that a troublesome national economy affects their financing directly. As such the financial and economic wealth of African and European teams inscribes itself within a broader process of economic globalisation, that is, the increasing interdependence of economies. It is however outside the scope of the thesis to assess the overall economic relationship between North and South if only because of the ideological weight of different theories. However, since economic globalisation, as defined above, is an ongoing institutional process, regardless the intensity when looking at its history, one cannot leave aside some current evolutions that provide the humus layer for the trade in African football players. It is indeed difficult to deny that one of the direct consequences of the underdevelopment of sports is a large scale muscle drain. These athletes have considerable better opportunities to develop their talent in a more developed country that offers better infrastructure, education, remuneration, social welfare, etc. There is thus an immigration pattern which follows the unequal economic strength of different countries and as such it allows us to consider the economy of football as a rough blueprint of the world economy. This line of reasoning is confirmed by the conclusions of *Poli* who revealed a strong correlation between the GDP per capita and the average age of African players in Europe, which indicates that the migration is directly linked to the economic situation of the country of departure. “The poorer a state is, the younger are the players going abroad seeking better living conditions.”³⁸

³⁶ Souchaud, 1995. See also Ball, 1972; Levine, 1974; Bernard & Busse, 2003.

³⁷ Andreff & Borland & Szymanski, 2005, p. 5.

³⁸ Poli, 2006, p. 288-289.

However, if the economics of world football consist of a European core that extracts cheap football talents from among others African countries, one has to draw the whole picture. Ultimately, one cannot leave aside local dynamics and responsibilities from the side of different African actors involved. Bad management and corruption are more than often in the forefront of politics in many of these countries. *Faouzi Mahjoub* has for example repeatedly referred to the large responsibilities of politicians and national football federations.³⁹ Compared to Europe there are some manifest differences regarding the institutional or structural functioning of these institutions. Here, the importance lies on the often complete lack of collaboration between public services such as the Ministry of Sport on the one hand and the National Football Association on the other hand. As the government is the main financier it is not difficult to imagine that conflicts about funding take a central place.⁴⁰ Furthermore, the lack of institutional clearness paves the way for corruption, bad management and personal profit. Many scandals of corruption and fraud have indeed been registered.⁴¹ In fact many decision makers within African football and politics facilitate the ‘exodus of football players’ through direct deals with football agents. If one has good contacts, the issuing the international transfer certificate (see below) and visa necessary for short term trials in Europe will not be a problem.

Concluding, the muscle drain is evaluated as determined by a range of push and pull factors. First and foremost, “economic crises and national financial weakness of many countries have been a catalyst for the departure of players”.⁴² Players that attain an international standard of play can only maximise their economic and competitive return where they can find due training infrastructure, competition and earn more. Developing countries lack all of this. Although there is some degree of professionalism among clubs in northern Africa, they are not able to compete with European teams and consequently they cannot retain players at home. European club football constitutes on the other hand a growing business industry surrounded by far-reaching merchandising which is highly stimulated by concomitant sponsorships. African teams are thus far behind the multiple accruing sources of revenues that European teams rely on and have little to offer to a talented player who wants to take the maximum out of his career. As such, the African football players form a reservoir of talent for the wealthy

³⁹ Mahjoub, va-te-faire-foot, radio interview retrievable at <http://www.la-bas.org>.

⁴⁰ Tshimanga, 2001, pp. 248-251.

⁴¹ In 1998 a large scale scandal in Ghanaian Football was revealed which involved falsification of transfer documents, bribes to make transfers possible, embezzlements of players’ premiums, etc. According to Tshimanga Bakadiababu there was a chain of persons specialised in the trafficking of young players.

⁴² Lanfranchi & Taylor, 2001, p. 14.

European clubs which are in a position to recruit and to hire players at a low purchase cost. Furthermore, the transfer of a player is as a matter of fact one of the few ways of acquiring revenues for an African football team (or for its owners) which, as a consequence, places them in a weak negotiation position. A specific evolution which is situated between these push and pull factors is the so called ‘Coupe d’Afrique des Nations Juniors’ (CAN Juniors), that is, the African national youth championships under-17 and under-20. Obviously, it provides an excellent opportunity for managers and scouts to see a concentration of the best young players of one country. These African tournaments were created in 1979; two years after João Havelange⁴³ had brought the youth world cups for the same youth categories into life. According to *Darby*, the successes of the African youth teams “showcased the potential of emerging African talent to European clubs and helped generate the demand for African players in Europe”.⁴⁴ The Moroccan journalist *Mahjoub* sees these tournaments as “an industry of exportation that despises the internal market”.⁴⁵ The CAN Juniors provide indeed a favourable climate for the prospectors of African talents. The best youngsters of the qualifying African countries are present there, providing manifold opportunities for player agents to approach players who know that these tournaments are an outstanding opportunity to show their talent. As expressed by the president of ProAgent, the Dutch Union for player agents, these events are somehow contradictory to the FIFA rules prohibiting transfers of minors.⁴⁶

Globalisation has been the underpinning concept of many authors drawing on the migration patterns of African football players. However, more is involved than the integration of trade, investment and knowledge. With the increased overall appeal of the UEFA Champions League in Europe, which is the yearly championship among Europe’s best football players, one can feel the fabricated atmosphere where commercialism and success are deeply intertwined. Through the increased media coverage of world football, with the overall emphasis on the European competitions, one can discern an arising culture drawing a picture in which success and talent are one and the same. The reality is somehow different however. *Mahjoub*, for example, estimates the success rate of African players going through trials in

⁴³ Havelange became FIFA president in 1974 with the support of the developing nations and the “electoral promise of improving the profile and development of the game in Africa”. See: *Darby*, 2005.

⁴⁴ Akindes & Darby & Kirwin, 2007 (forthcoming).

⁴⁵ Déclaration de Bamako, 2000, p. 48.

⁴⁶ Telephonic interview with Branco Martins, ProAgent, 2 May 2007.

Europe on 20 percent.⁴⁷ Without entering theories about the media and the cultural goods it produces, it is difficult to deny the kind of globalisation that takes part within this field. While some authors are very critical about the use of globalisation as an all-embracing concept, it is also argued that “for globalisation to have any real meaning it must involve a process of economic and cultural interconnectedness which is historically unprecedented”.⁴⁸ This is without any doubt true for football which has seen an extremely high increase in broadcasting and media rights. Furthermore, internet and digital television have become new means of access to information. European football is part of today’s worldwide information stream and also reaches African countries where young and old is interested in the performances of African players abroad. Immigration patterns involve more than the mere physical movement of persons. People stay in touch with their country of origin and an ever increasing flow of images and information is part of this connection. The relative media attention paid to European and non-European club football is clearly a strong reflection of the economic strength and concomitant performances of the European teams. As *Maguire* and *Pearton* have indeed outlined: “the ‘West’ may be challenged on the field of play by non-core countries, control over the content, ideology and economic resources associated with sport still tends to lie within the West”.⁴⁹ Significant questions arise from this conclusion. What does the penetration of a culture of success and glamour through today’s communication methods provoke in African countries? Adding *Darby’s* conclusion shows indeed that “African football players have become more accessible as a result of the growing commercialism of the football industry and the compression of time-space that brings potential professional labour closer than ever to the global markets for its employment”.⁵⁰

2.2.3 *Theorising the global game*

Above, world football was assessed economically which reveals the fragile position of the African competitions in terms of infrastructure and training. The better players are consequently pushed out to (mainly) the stronger European football leagues. But in smaller clubs or at lower divisions, Africans are an even cheaper and more profitable labour reservoir. The players’ financial incentives are a good match with the objectives of most of Europe’s

⁴⁷ Mahjoub, va-te-faire-foot, radio interview retrievable at <http://www.la-bas.org>.

⁴⁸ Lanfranchi & Taylor, 2001, p. 17.

⁴⁹ Pearton & Maguire, 2000, p. 760.

⁵⁰ Darby, 2002, p 23.

teams which are looking for talents they might be able to sell with a certain profit. As such, players are pulled out by player agents and managers who offer contracts and high financial rewards in Europe.

In the last ten years, the face of football has remarkably changed which has led some authors to draw on overarching trends such as commercialisation, professionalisation and globalisation. These have indeed moved to the forefront and it is the latter concept that was used by many authors to explain the migratory patterns of today's football players. Within the literature, there is a clear economic prevalence with concepts and theories as the world system theory, dependency, neo-colonialism and imperialism explaining the global dimension of world football. The previous section provides all the elements that are necessary to make this kind of assessments. *Magee* and *Sugden* have triggered the debate by analysing world football alongside Wallerstein's world system theory while *Bale's* theory on neo-colonial exploitation was also highly influential.⁵¹ But while economic elements are central in explaining football player's labour migration they do not offer a sufficient explanation. It is indeed true that "sports labour migration is, in part, a reflection of pre-existing social, political and economic power arrangements in sport".⁵² As such, next to the mere economic incentives, a broad range of other determinants is directing the immigration flow of African football players. Indeed, when one takes the issue of economic globalisation to the level of the labour market, a distinction between the process of internationalisation and globalisation arises.⁵³ The former has to be considered as a simple quantitative extension of economic activities across national borders while within globalisation a qualitative aspect is involved, that is the functional integration of these dispersed economic activities. *McGovern* concluded at the time of writing, with a focus on players' immigration to the Premier League, that this functional integration, that is, a shift of "the hiring of foreign players from market transactions towards hierarchical arrangements", is not taking place within the British football labour market.⁵⁴ Today, this line of reasoning is difficult to uphold since it was indeed shown above how local African football academies are a clear example of the functional integration of labour and can and hence hierarchical arrangements. Consequently, *McGovern's* argument is overturned by the current reality of world football with its outspoken qualitative evolution on the international football players' labour market. However, this does not revoke the argument of the author which

⁵¹ Magee & Sugden, 2005 and Bale, 2004, pp. 229-246.

⁵² Maguire & Stead, 1998, p. 60.

⁵³ McGovern, 2002, p. 25.

⁵⁴ *Ibid.*, p. 26.

presupposes the hiring of foreign football players as ‘socially embedded’. Many authors have indeed taken a line in which historical links, colonialism, recruiting networks but also immigration policies join mere economic determinants.

Taylor has recently criticised the uncritical use of the notion of globalisation within migration studies and emphasises the importance of other determinants. The author sees the history of the international migration of footballers as “one of ebb and flow rather than of straightforward increase and growth; as a series of waves rather than a simple upward curve”.⁵⁵ Hence, *Taylor* puts three main sets of determinants of the movement of football labour forward: economic, cultural and institutional or structural. These causal factors are conceptualised within a so called systems approach, consisting out of the movement of footballers across national and continental borders based on established systems and networks. This can be applied to several immigration flows of football players. A brief analysis of for example the Austrian Bundesliga reveals that 25 percent of all foreign players come from former Yugoslavian countries and 16 percent from Czech Republic.⁵⁶ These percentages clearly disclose patterns of established immigration trails with Austria as a receiving country in the region and shows how the immigration of football players follows established migratory patterns or indeed a so-called migration system.

The immigration of African footballers can thus also be framed with cultural and structural or institutional determinants. At the world cup in Germany in 2006, 75 percent of the African squad’s players were plying their services in Europe.⁵⁷ This is almost exactly the same number of the South Korea/Japan world cup of 2002 but it should be noted that in Germany, big African football and hence export nations such as Cameroon, Nigeria and Senegal were absent. Europe is thus clearly the number one destination for African football players. Important therein, are the historical links between African and some European countries. The work of *Darby* gives a great insight in the connections that arose through colonialism, with Portugal as an outstanding example.⁵⁸ According to the author, football served rapidly as a tool of cultural imperialism in the early days of colonialism. Promotion tours of Portugal major teams as Benfica, Sporting Lisbon and Porto through Mozambique were common place and local teams were even called after them. Moreover, players of the colonies could easily

⁵⁵ Taylor, 2006, p. 13.

⁵⁶ These figures are the result of personal research.

⁵⁷ Ibid.

⁵⁸ Darby, 2006, p. 13.

achieve Portuguese citizenship. Add to this a “network for identifying and exporting football labour in the colonial era and beyond”, and it is difficult to overlook the conclusion of a “de-skilling and underdevelopment of African football on terms and conditions set by recruiting Portuguese clubs”.⁵⁹ It is even more difficult to ignore the striking similarities with today. Recruiting networks are still at place and as in the colonial era, the image of European football has not changed, with European teams being more popular than local teams. The promotion tours are neither an element of the past. Although Asia is commercially more interesting in terms of sponsorship and team related products sale, Real Madrid has planned a tour in Tanzania in June 2007. As a consequence, the term neo-colonialism comes close to its true meaning when characterising the interaction between the old continent and Africa in terms of talent or raw material exporting. The Portuguese example is also found in France and Belgium who have drawn extensively on talents from their former colonies. Historical and cultural links are thus an important factor in explaining the African talent drain. Within this field, *Bale* distinguishes three levels of neo-colonialism and exploitation: (1) ‘farm clubs’ by European mega-clubs in Africa, (2) exploitation of young African recruits in Europe and (3) the role of ‘agents’ in the exploitation of African sports talent.⁶⁰ The immigration of African football players is thus also determined by cultural links that exist since the colonial era and which are today socially embedded in stead of being an element of history.

2.3 Conclusion

Above, the flow of African football players was analysed on a dual level. First and foremost, economic incentives of players take a central place due to the financial weakness of the African competitions and their home countries. These countries have little to offer to retain their players at home which evokes a so-called muscle drain. The migration of African football players should therefore neither be seen as a detached from their direct context. All athletes try to migrate to where they can financially maximise their value as a sportsman or women. Secondly, it can be concluded that their migration is determined by cultural and historical ties. Belgium, France and Portugal are only three cases in point of how football players make use of established migration patterns which capture them into a system leading to these countries.

⁵⁹ *Ibid.*, pp. 14-15.

⁶⁰ *Bale*, 2004, pp. 229-246.

What conclusions can now be drawn of the described situation in which an African pool of football players' talent is confronted with an economically much stronger European club market? On this market, African players are low priced compared to the training of home grown players or the selling of other European players. The demand is consequently extensive and not only in Europe's highest divisions. Indeed, even more African players are found in lower levels of different competitions and in "less well-off clubs".⁶¹ Their extraction is situated on two levels. A manager either recruits a player directly and takes him to Europe or players are recruited through the different types of academies which have gained strong ground when FIFA prohibited international transfers of minors in 2001. The majority of these players are however still recruited at the youngest age possible. The younger, the cheaper and the higher the surplus value on a consequent sell. Hence, African countries are losing their talented players at an early age and do not take any advantage from the further development of the players. This is ironically enough the line of argument used by many European football clubs in the aftermath of the Bosman ruling. This ruling abolished transfer fees for players at the end of their contract which left clubs without any compensation. African teams are in this position since ever. If an African player makes a successful career, his financial value will be highest after one or more transfers within Europe. As such, home countries are further impoverished and de-skilled. The only benefit they incur is through the added skills of the 'European-African' players in the national teams. However, the difficulties around player releases for international matches and naturalisations of African players decrease their ability to capture part of the muscle drain.

The argument that academies contribute to strengthen the structural and institutional weak position of African clubs and hence to the muscle drain, is only partly true. There have indeed been success stories of some of these players, but the functioning of these academies jeopardises the local development of the game even more. They are not a grass roots development but a type of foreign direct investment which aims intrinsically at raising revenues through outsourcing the production of end products to low cost countries. These investments are often criticised for their lack of backward, forward and horizontal linkages to the rest of the economy and football academies share these disabilities. The backward linkages are regarded as the most important and refer to foreign firms acquiring intermediate goods or

⁶¹ Poli, 2006, p. 284.

services from domestic firms. Forward linkages are in place when foreign firms sell their goods or services to domestic firms and horizontal linkages exist when the foreign affiliates engage in competing activities with domestic ones.⁶² The functioning of the academies as transnational corporations shows that these linkages are seriously flawed. Furthermore, it is said that for foreign firms to realise spill-over benefits to the local economy, local firms need to have the ability and motivation to invest in foreign technologies and skills.⁶³ Academies are due to their stand-alone functioning and aim of transferring their best products to European sellers a separate economy within the local economy with few spill-over benefits. Consequently, there is not only a polarisation between African and European team football, but also within the African leagues themselves due to the freestanding functioning of academies. Indeed, next to their economic lopsided functioning, their institutional integration within local competition or national federation is completely absent. The majority of academy teams competes outside the regular competitions and goes often abroad on invitation to international tournaments. These players are openly exposed to potential buyers. As a consequence, they fall as a matter of fact “outside any legal and administrative regulations that are aimed at safeguarding young players from unscrupulous agents and are not required to obtain an official letter from their national federation and nor are their agents required to pay a bond to take the players abroad for trial”.⁶⁴

An analysis of the economic and cultural determinants of the African muscle drain has been given above. Now the focus shifts to the structural or institutional functioning of the football players' labour market. The transferring of players is bound by FIFA rules but also by European Union and national legislation. FIFA, considered as a private undertaking under EU competition legislation, has for a long time waived the regulations concerning the free movement of persons and association but with the Bosman case, this has been partly brought to an end. This brings African footballer's migration also within the scope of human rights, which deserves strong attention with the transfer system and the future of European football being under review by different decision makers.

⁶² Kaitila & Kotilainen, 2002, p. 74-75.

⁶³ Blomstrom & Kokko, 2003, p. 21.

⁶⁴ Akindes & Darby & Kirwin, 2007 (forthcoming).

III The Institutional Framework for Player Extraction

3.1 FIFA transfer rules

The transfer of a player from one team to another team of a different national association is bound by the FIFA ‘Regulations for the Status and Transfer of Players’.⁶⁵ These transfer rules determine to what extent football players are restricted or free to employ their services. Transfers within the same (national) association are set by this association’s rules but have to be approved by FIFA and must observe the general principles laid down by football’s highest body.⁶⁶

The judicial decision by the ECJ in the Bosman case brought the transfer system within the scope of European Union legislation and consequently affected the legality of FIFA’s international transfer rules worldwide. Ultimately, one can easily see how transfer fees restrict the freedom of labour, a fundamental principle of the EU. With the verdict, the restrictions have now been partially overturned giving football players at the end of their contract the freedom to sign a new contract with another club, independent of a transfer sum. As a consequence, FIFA was forced to lay down new regulations. After lengthy discussions with the European Commission, the outcome seems to be a victory for FIFA however. Indeed, the initial viewpoint of the Commission diverges firmly from the new regulations regarding international transfers. Reason for this is the entrance of politics in the debate; politics traditionally being intertwined with football since its mere existence. As such, in-contract players are still dependent on an agreement of a transfer fee to change employer, although this infringes Article 81 of the TEC.⁶⁷ Secondly, a player can still not terminate his contract unilaterally even if he complies with national laws governing the penalties for breach of contract. FIFA labels this as ‘contractual stability’.

The Bosman ruling and the following political melee have paved the way towards the opening of a legal reasoning in which some sporting rules are considered as having a specific nature which precludes them from certain EU provisions. This came to the forefront during the Nice

⁶⁵ At <http://fifa.com/aboutfifa/federation/administration/playersagents/regulations.html>.

⁶⁶ Articles 2 – 8, 10, 11 and 18 “are binding at national level and have to be included, without modification, in the Association’s regulations”. See also ‘The Regulations for the Status and Transfer of Players’, Article 1, par. 3.

⁶⁷ Article 81 (1) TEC prohibits: “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the common market”.

Summit in 2000 where the football world lobbied for this specificity, that is, the social and educational function, to be formally recognised. Today, there is however still no legal basis for sport in the European Union and therefore, a range of recent initiatives is focusing on this unresolved legal status.⁶⁸ These initiatives cover a broad range of issues which should or should not be subject to Community law. Clearly, there is a very strong relationship among these different aspects. Football has become business, as was argued above, with private money increasingly flowing into the game. The origin is rather seldom verified and it is no coincidence that gambling scandals, fraud and bad management loomed at the horizon in recent years.⁶⁹ One of the recurring elements under discussion is the trafficking of players and hence the practices of players' agents. This finds a breeding ground in the already outlined economic reality surrounding world football but is also an outcome of legal changes and loopholes in the current transfer system and in European and national legislations. This will now be refined underneath.

3.1.1 The Bosman ruling and its aftermath

The landmark decision in the Bosman case of the European Court of Justice in 1995 has still a significant bearing for the current transfer system. In this case, Jean Marc Bosman, who was a professional football player, lodged a complaint against UEFA, the Belgian football federation (KBVB) and his club Royal club Liégeois SA. The latter had prevented the player, who was at the end of his contract, from moving to the French team US Dunkerque. In essence, it could do so by not agreeing on a transfer fee. With its verdict the court declared the FIFA transfer system as incompatible with Article 39 (48 before) TEC which precluded “the applications of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract be employed by a club of another Member state unless the latter club has paid to the former a transfer, training or development fee”.⁷⁰ According to the second part of the judgement, Article 39 also precluded “the applications of rules laid down by sporting associations under which, in

⁶⁸ The Independent European Sport Review by the UK presidency of the EU in 2006 (reporter: José Louís Arnaut), The European Parliament Report on the future of professional football in Europe (2006/2130 INI) in February 2007 (reporter: Ivo Belet) and the Parliamentary Assembly Motion for a Resolution of the Council of Europe in January 2007 (reporter: José Luís Arnaut). The White Paper on Sport of the European Commission will be presented on 11 July 2007.

⁶⁹ Good case in point is Luciano Moggi, general manager of Juventus and central figure in the Italian football corruption scandal in 2006. Moreover, in 1991 Moggi was manager of Torino FC, which is pinpointed as the first team that ‘imported’ young African players under dubious circumstances; later referred to as ‘slave trade’.

⁷⁰ The Bosman ruling, par. 114.

matches in competitions which they organise, football clubs may only field a limited number of professional players who are nationals of other member states” (the so-called quota on non-nationals).⁷¹

With this ruling, the freedom of movement for football players and the freedom of association, enshrined in Article 11 of the European Convention on Human Rights, at the end of their contract were established. Transfer fees for players under contract and the quota on non-EU/EEA players were left unattended but are still fraught with legal difficulties in view of the existing Community law. Indeed, the recent *Simutenkov* case for example, has intrinsic elements which could challenge the legal ground of all quotas on third country nationals of whom his or her country has an agreement on partnership and cooperation with the European Communities.⁷² With this ruling, the Court argued for Article 23 (1) of the partnership between the European Communities and the Russian Federation to have a direct horizontal effect.⁷³ Therefore, this partnership has to be construed as “precluding the application to a professional sportsman of Russian nationality, who is lawfully employed by a club established in the Member State, of a rule drawn up by a sports federation of that State, which provides that clubs may field in competitions organised at national level only a limited number of players from countries which are not parties to the EEA Agreement”.⁷⁴ At first sight, this ruling seems to open the door towards legal proceedings of citizens who fall under the framework of other bilateral agreements, such as the ACP-EU development cooperation.⁷⁵ Article 13 (3) of the latter agreement could be invoked with the same reasoning as Article 23 (1) of the agreement with the Russian Federation. It remains to be seen if a plaintiff reaches the ECJ regarding this matter, but as *Schuilenburg* has outlined, the verdict in the *Simutenkov* case is certainly revolutionary in allowing for a direct effect of the partnership provisions. Contrary to the viewpoint of the author who evaluates them as an in essential political

⁷¹ *Ibid.*, par. 137.

⁷² Case C-265/03 *Igor Simutenkov v Ministerio de Educación y cultura and Real Federación Española de Fútbol* (2005). Hereinafter the *Simutenkov* ruling.

⁷³ Partnership signed in Corfu on 24 June 1994 and approved by decision 97/800/ECSC. Article 23 (1) of this agreement states: “the Community and its Member States shall ensure that the treatment accorded to Russian nationals legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals.”

⁷⁴ The *Simutenkov* ruling, par. 41.

⁷⁵ The agreement with 79 African, Caribbean and Pacific countries was signed in 1975 in Lomé and renewed in 2000 by the Cotonou agreement. Article 13 (3) of this agreement states: “The treatment accorded by each Member State to workers of ACP countries legally employed in its territory, shall be free of any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals. Further in this regard, each ACP state shall accord comparable non-discrimination treatment to workers who are nationals of a Member State”.

dialogue and ‘soft’ cooperation, the wording of the relevant articles seems nevertheless to be clear and the verdict justified. Note however, that the exact wording of the Cotonou agreement emphasises the obligations of the Member States in a less outspoken way, which might give legal proceedings smaller chances of success than was the case in *Simutenkov*.⁷⁶ Today, most countries still have quotas on third-country nationals. This could be regarded as a firm restriction on the recruitment of African players. However, these quotas are quite easily overcome by naturalisations and the renting out of players to countries where no restrictions are in place.⁷⁷

What are now the legal and institutional outcomes of this judgement? The European Commission initially took a hard stance (and threatened with unilateral sanctions against FIFA) on the matter and demanded an unconditional revision of the FIFA transfer rules in order to bring them into line with labour and Community law.⁷⁸ The work of the Commission was however quickly revoked by politicians who stressed the social and educational function of football due to its ‘special nature’. The verdict had indeed found a place on the political agenda of most of the European Member States. Essentially, the majority of national politicians take the position of granting certain football rules, mainly the transfer system, an exemption under European Community Law.⁷⁹ This shows how FIFA, UEFA and the European top teams are able to advocate their case easily into politics and they do so through a battery of high ranking lobbyists. Furthermore, from local to national and international level politicians and magistrates do have a long standing tradition of being involved in the management of football. Even more than a mere involvement, football is politics.

New FIFA Regulations were approved on 5 July 2001 and govern international transfers today.⁸⁰ These were not only an outcome of the legal corner FIFA was pushed in. In the years preceding the new regulations and more specifically during the 1990s, international transfers of minors and exploitation and abuses by players’ agents had come strongly to the forefront in the media and among decision makers. In Belgium, the first initiatives were taken to stop the

⁷⁶ Schuilenburg, 2005, p. 3-4.

⁷⁷ In Belgium no restrictions are in place which results in many cooperation agreements e.g. GBA and Ajax, Beveren and Arsenal, Dender and Real Murcia.

⁷⁸ For an extensive overview of the negotiations between the European Commission and FIFA from 1995 until 2001, see Blanpain, 2003.

⁷⁹ See for example the joint statement by Blair and Schröder regarding the Transfer System on 9 september 2000. See also: <http://news.bbc.co.uk/sport2/hi/football/917589.stm>.

⁸⁰ Note that they were only slightly changed on minor and procedural issues in 2005.

so called trade in black pearls or human trafficking.⁸¹ But also in France and Italy, this as new perceived phenomenon suddenly received much attention. The FIFA prohibition on the transfers of minors was one step in the direction of controlling the haphazard outcomes of the previous transfer system. Note however that exceptions on this rule are allowed in case the parents move with the minor to the country of the new club. Other measures were aimed at answering the legal outcome of the Bosman verdict.

Firstly, the new 'training compensation' installs a compensation fee for the clubs that have trained a football player between the ages of 12 and 23. This means that a fee for end of contract players who sign their first professional contract will flow to all the clubs that have contributed to the development of the player unless it is proven that the training of the player was finished before the age of 23. The latter applies for example when a player signs his first professional contract at a younger age than 23 but there are no further clear rules on this. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. National associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. For each category, the training costs are set and correspond with the amount needed to train one player for one year. This is multiplied with a 'player factor', which is the number of players who need to be trained to produce one professional player (but is always maximum ten), and the actual years of training by the clubs in question. Additionally, national associations have the right to stipulate ceilings that cannot be exceeded by the training compensation. Secondly, the 'solidarity mechanism' installs a deduction of five percent on any paid transfer fee during the course of a contract. This percentage subsequently needs to be divided among the teams with whom the player was registered between the ages of 12 and 23. This mechanism aims in theory at enabling the redistribution of a significant proportion of revenues to the training clubs concerned, including amateur clubs. Next to the prohibition on a transfer of minors, the training compensation and the solidarity mechanism, the rules on contractual stability that were laid down in the new regulations also deserve attention. Article 17 of the regulations installs protected periods of three years for players over the age of 28 and two years for players under 28. If a player unilaterally breaks his contract during this protected period a sports sanction (suspension of 4 to 6 months) and compensation fee based

⁸¹ After uproar in the media and politics, a commission in the Senate was installed aimed at investigating and tackling human trafficking in sports. Measures were approved in a final 2001-2002 report. The Centre of Equality of Chances and Opposition to Racism also reviewed the issue in its yearbook of 2001.

on 'objective criteria' such as the remuneration and other benefits due to the player under the existing contract and/or the new contract, the fees and expenses paid or incurred by the former club, etc. In a recent case before FIFA's Dispute Resolution Chamber (DRC), Andy Webster became the first player to successfully invoke article 17.⁸² This Scottish player had done so because he was frozen out of his team, Heart of Midlothian, after he did not reach an agreement to extend his contract. This is exemplifying for the dominance teams still have over the services of players and hence the freedom of labour and the free movement of workers. The final legal reasoning is still forthcoming since Webster's previous team is appealing against the decision of FIFA. Initially, it was asking for a compensation of 5 million pounds instead of the granted 625 000 pounds. At this stage, this case definitely bears a lot of importance and might convince more players to invoke Article 17. It is still remarkable however that this decision was not favourable for the player over the whole line, the suspension of two matches and the compensation fee being considerable.

3.1.2 Assessment of the new transfer system

The new regulations for the status and the transfer of players were established as a direct outcome of the Bosman verdict. From the onset it was clear that on the political level and on the club level, the post-Bosman era was expected to change the economics of world football. Small clubs, it was argued, will lose their main source of income because transfer fees for out-of-contract players were not due anymore. The game would as such be deprived from considerable financial flows that would now end up with the players and their managers who attained a strong negotiation position since clubs would be able to invest the saved transfer fee in the remuneration of the player. From an economic and legal viewpoint this argument has however been completely revoked, which will be shown respectively below.

First, it is often heard that players' wages have increased because of the Bosman judgement. However, the position that the Bosman ruling is directly responsible for this is untenable. As was already outlined, the business profile of European clubs has come strongly to the fore over the past ten years. The motor behind this are the astronomic revenues stemming from the selling of broadcasting rights and concomitant sponsorships. It is now undeniable that not

⁸² For information and follow-up on this case, see the news archive of <http://www.fifpro.org> and the upcoming announcements on <http://www.fifa.com> and <http://www.tas-cas.org>.

only the abolished transfer sum for out-of-contract players but also new revenues related to the growing economic dimension of football have flowed into the hands of players' remuneration. The Bosman ruling has thus only directed these financial flows to the players, but has not taken it away from the clubs who are now able to offer better conditions. Although more economic research on the issue would be welcome, it is obvious that after Bosman, clubs did not experience their self-proclaimed economic downfall. Current evolutions point in fact to the opposite and the argument that the pre-Bosman transfer framework redistributed revenues to smaller teams who invest in the training of players cannot be upheld. *Moorhouse* showed for example that "any detailed analysis of the available evidence in Europe reveals that most transfer deals are struck by big clubs with other big clubs and that any redistribution of income from big to small clubs is a small proportion of the total transfer market".⁸³ From an economic viewpoint are the training compensation and solidarity mechanism consequently contravening competition to the same extent as the pre-Bosman transfer system did. As *Nilsson* also outlined, the basis to calculate the compensation is essentially flawed and benefits the larger and financially more viable clubs.⁸⁴ This stems from the fact that within a national league the lion's share of transfers occurs from larger to smaller clubs or competition levels or between the big clubs themselves.

The more relevant question within the scope of this thesis is the economic relation between the training compensation, solidarity mechanism and muscle drain of talented African football players. If the training compensation is indeed calculated as stipulated, African clubs as well have a theoretical claim on an extensive compensation fee for the training of players. This could then counter the development of underdevelopment that African teams experience through the exit of many talented players at a young age. Although the compensation does not follow the market mechanism (i.e. is not dependent on the financial value of the player on subsequent transfers) it would still provide local teams with means to invest in a structural development which could on its turn enable them to retain players longer or to establish sustainable competitions in the long term. The underlying central idea herein would in my opinion always need to consist out of a gradual financial distribution that narrows the gap in economic development and dries as such the breeding ground of the muscle drain. In analysing the new system it is however difficult to see how the training compensation has the potential of an economic correction. Since 2004, 101 cases that are published on its website

⁸³ Moorhouse, 1999, p. 99.

⁸⁴ Nilsson, 2006, p. 49.

have been dealt with in FIFA's Dispute Resolution Chamber regarding the payment of compensation costs.⁸⁵ Besides the fact that nor there is a possibility to appeal before national civil courts regarding this matter, FIFA neither publishes the names and nationalities of the clubs in question. It is thus unknown if there are any cases with African teams involved. However, with the situation of African football in mind, it is very unlikely that much of the training compensation will flow to them. As outlined already, many African football academies do not function under national associations. These academies are sometimes even organised in the unofficial Confederation of African Football Academies. According to *Darby*, there are for example as many as 160 training centres registered with the 'Association of Football School Managers of Senegal' which fall outside any legal and administrative regulations of this country.⁸⁶ Adding the debilitated structure of the African national associations, which makes it often a cumbersome task to retrieve a player's details between the age of 12 and 23, leads to conclude that the training compensation does not target the muscle drain afflicting African countries. Secondly, the relation between the solidarity mechanism and muscle drain should be evaluated along the same line. Analysing the above outlined FIFA shows indeed that this mechanism suffers from the same defects as the training compensation. Furthermore, it has been established that the solidarity contribution of 5 percent, on each transfer sum and to flow to training clubs between the age of 12 and 23, cannot be awarded for players that are transferred inside the same national association.⁸⁷ If an immigrated or imported African player is thus transferred between for example two Spanish teams, no compensation will be paid. Unfortunately for the African teams and fortunately for the European teams, this is mostly the case.

Secondly, what is now the legal significance of these new transfer rules? It is already clear that the training compensation and solidarity mechanism do not foster a structural development of the game in so called football peripheries, that is, where there is a muscle outflow to the European core. It is now also fair to say that these perform similar to the pre-Bosman system since these compensations take the role of transfer fees for out-of-contract players. The strike of Danish professional football players who refused to accept a change in the collective agreement between the Danish League Association and the Danish Football Player's Association is clearly illustrative. In this case, the former had included unilaterally

⁸⁵ For a review of FIFA's competence and 'jurisdiction see 'Regulations for the Status and the Transfer of Players', Article 22 – 25. Also not that appeal against its decision is possible before the TAS/CAS.

⁸⁶ Akindes & Darby & Kirwin, 2007 (forthcoming).

⁸⁷ Decision of FIFA's Dispute Resolution Chamber in case 114679, 2004.

the new training compensation into the individual standard players' contracts.⁸⁸ Obviously, this inflates the market value of players which consequently restricts their mobility. Although it is not a main focus of this thesis, one cannot overlook the human rights issues that directly stem from this. In recent statements, UEFA President Platini said for example that he would not agree with an upcoming White Paper of the European Commission that did not emphasise the specific nature of football enough. This was to the surprise of Fifpro, the worldwide representative organisation for all professional players, who stated that the contractual relations between clubs – as employers – and players – as employees – must be governed by European and national labour law.⁸⁹ Within the latter framework, some important issues arise. Professor in labour law *Roger Blanpain* has for example outlined how the new system leads clubs to conclude contracts of lengthier durations to ensure that a player does not reach the end of his contract before he changes teams. Selling players during the course of the contract is becoming the general rule and promotes human trafficking, which is incompatible with inter alia Article 5 (3) of the Charter of Fundamental Rights of the European Union. Furthermore, the principle that man is not a commodity, freedom of association, freedom of labour, non-discrimination according to e.g. nationality and the Rights of the Child, enshrined in the UN Convention of 1989, are at stake in the current transfer system.⁹⁰ Article 8 (1) of the CRC reads: “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”.⁹¹ Practices as passport falsification, family related immigration and naturalisation have however gained significant ground as will be elaborated further upon below.

The new transfer system reaches nor from an economic and neither from a legal viewpoint its aspired outcome. The individual rights of players might be improved but were soon reversed by the new regulations for the status and the transfer of players. Also with regard to the muscle drain, no improvement has been made. Hence, it is necessary to reconsider the undefined legal position of sport and football within the European Union in order to formulate answers to current situations that arise due to the lack of legal certainty and a unregulated economic and institutional framework.

⁸⁸ Newsletter Danish Labour Organisation of 3 September 2004 at http://www.lo.dk/smcms/English_version/News/5423/Index.htm?ID=5423.

⁸⁹ See the newsarchive of Fifpro on 22 and 25 May 2007 at <http://www.fifpro.org/>.

⁹⁰ Blanpain, 2003, pp. 9 and 59.

⁹¹ Convention on the Rights of the Child, GA Resolution 44/25, Article 8 (1).

3.1.3 Player Agents and the specificity of sport

The verdict in the Bosman case was largely received as unexpected among politicians and football officials. However, the most striking merit of the ruling seems to be the opening of the discussion on how to encapsulate the rules governing sports into European Union law. The ruling itself can indeed hardly be seen as a surprise. Already in 1974, a sport related case led the ECJ to conclude that “the practice of sports is subject to community law only in so far as it constitutes an economic activity under Article 2 of the Treaty”.⁹² With this case, a prohibition on discrimination based on nationality (of another Member State), applied not only to public authorities but also to the rules of private sports associations. At the other end, sports associations lay down rules of pure sporting interest. In the case of Donà for example, the Court reiterated that nationality clauses regarding the composition of national sports teams do not fall under the scope of economic activities.⁹³ This was in fact the early recognition of the ‘special nature of sport’ and was more recently confirmed in the Deliège case. Here, the Court argued that criteria of national sports federations to select players for international competitions, where they represent their country, (cf. for example the UEFA Champions League versus the World Cup or European Cup) are not violating Article 59 of the EC Treaty, the freedom to provide services.⁹⁴ Currently, the crux of the matter in the ongoing legal debate is exactly this grey area between the specificity of sport and sport as an economic activity. The European Union has yet no legal basis for sport and although this was foreseen in the European Constitution (Articles 16 and III-182), it was still to be awaited if legal certainty would have been assured. As sport and football in particular is increasingly intertwined with economic interests, it is now difficult to avoid raising questions about to what extent sport associations’ rules can be granted an exemption under European Union law.

In 2006, the UK Presidency of the European Union took the initiative to define the sporting exception in a report called the ‘Independent European Sport Review’. This political action aimed at providing an answer to the legal ambiguity after the European Constitution had been

⁹² Case 36/74 B.N.O. and L.J.N. Koch Walrave v Union Cycliste Internationale Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo (1974), par. 4.

⁹³ Case 13/76 Gaetano Donà v Mario Mantero (1976).

⁹⁴ Joined cases 51/96 and 191/97 Deliège v Francophone Judo League, Belgian Judo League and European Judo Union (2000).

rejected and looks at finding a practical way of implementing the Nice Declaration.⁹⁵ This European Council meeting, essentially a meeting of Europe's political protagonists, asked for a recognition of the specificity of sport and steered the debate closer to the position of FIFA, aspiring for an independent role of sport and football associations. The Independent Review stresses three major headings under which the specificity of sport can be categorised. These are: (1) regularity and proper functioning of competitions, (2) integrity of sport and (3) competitive balance.⁹⁶ Examples given for the first category are transfer rules, competition calendars and the composition of national teams; for the second category: the club licensing system and rules on player agents; for the third category: local training of players and rules concerning salary caps. Rules on players' agents fall thus within the scope of the 'integrity of sport' and are, according to the report, "inherent to the proper functioning of football and therefore compatible with Community Law".⁹⁷

The FIFA 'Players' Agents Regulations' were adapted in 2000 to accommodate objections of the European Commission regarding the freedom to provide services. Therein, FIFA lies down new criteria to strengthen the control over a profession that gained significant importance after the Bosman judgement. As was outlined already, this ruling has placed out-of-contract players in a strong negotiation position. The money flow between clubs was diverged towards players' wages and consequently to the remuneration of players' agents, working on percentage when they conclude a contract for a player. *Poli* also refers to this major increase in players' salaries and the 'stability pact', which the G14 agreed upon and which installed a salary cap for the season 2005/06 underlines his conclusion.⁹⁸ Although the Bosman ruling has to be evaluated alongside other evolutions that made football a continuously growing economic activity, it is clear that today the contested occupation of being a players' agent can be a very lucrative business. The consequences of this were experienced by manifold players of whom the interests are not always the same as the interests of their players' agents. It are these illustrative cases that led to the new regulations. Like the transfer rules, the national associations have again the discretion for drawing up their own regulations but these must be in line with the official FIFA regulations by whom they are hence approved. The core of the regulations consists out of the licence system and the

⁹⁵ Nice Declaration, 2000, Annex IV, at http://europa.eu.int/council/off/conclu/dec2000/dec2000_en.htm#a.

⁹⁶ UK Presidency of the EU, Independent European Sport Review, 2006, at <http://www.independentfootballreview.com/>.

⁹⁷ *Ibid.*, p. 40.

⁹⁸ *Poli*, 2006, p. 279 – 280.

examinations to obtain this official FIFA licence. Clubs are not allowed to deal with non-licensed agents, although the agents are allowed to work together with intermediaries if they provide the national association who issued their licence with a yearly list of employees. Other important issues are the compulsory professional liability insurance or bank guarantee, the signing of a Code of Professional Conduct, the prerequisite of an impeccable reputation and remuneration based on the player's annual basic gross income. Finally, also individual lawyers have the right to exercise the profession of a players' agent.

Recently the ECJ submitted a judgement after these players' agent regulations were challenged under Community Law.⁹⁹ With its verdict, the court dismissed the claim of Piau (and asserted the decision of the Commission) in which the FIFA rules on players' agents would contradict Article 81 of the EC Treaty. Main legal arguments for a verdict in favour of the claimant would have been double: (1) recognition that FIFA and national football associations are considered private undertakings and (2) recognition that the functioning of players' agents is in principle an economic activity.¹⁰⁰ Both of these criteria were in fact recognised by the Court and therefore, it is in my opinion surprising that the reasoning of the Bosman Judgment ('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, cf. *supra*) was not affirmed. The regulations on the activities of players' agents were thus not recognised as 'sport specific', but were evaluated as being eligible for a block exemption under Article 83 (3) of the Treaty.¹⁰¹ Central in the reasoning of the Court is its consideration of the regulations as a qualitative and not a quantitative restriction aimed at enhancing good practices. However, the contradiction between the 'Independent Review', classifying players' agent rules under the specificity of sport, and the judgement of the ECJ is clear. The lack of institutional clarity consequently creates a loose legal framework that still allows too much space for malpractices. This Court confirms this by submitting that "since there is at present no organisation of the occupation of players' agent and no generalized national rules, the restriction inherent in the licence system is proportionate and essential".¹⁰²

⁹⁹ Case C-175/05 P Laurent Piau v Commission of the European Communities, Fédération Internationale de Football Association (FIFA) (2005). Hereinafter the Piau ruling.

¹⁰⁰ The Piau ruling, par. 69 & 73.

¹⁰¹ *Ibid.*, par. 100 – 106.

¹⁰² *Ibid.*, par. 100.

The current system is thus left with a lack of defined rules and responsibilities at appropriate levels. The occupation of players' agents is indeed guided by FIFA although Article 14 of the players' agents regulations stipulates that a licensed agent is "required to comply with the relevant public law provisions governing job placement in the country concerned". Furthermore, the preamble also states that national associations have to take in account international treaties when drawing up their regulations.

3.1.4. The profession of player agent within national and international law

Looking at the characteristics of the profession of a player agent shows that their occupation falls in essence under 'job placement'. The legal definition and framework of this profession has come a long way especially since the 1990s saw an evolution in which job placement was not longer considered a monopoly of public authorities. Deregulation and privatisation processes have indeed steadily progressed and led to the adoption of the ILO Private Employment Agencies Convention replacing the previous Convention of 1949 which restricted and even forbade so called 'private employment services'.¹⁰³ Today, this profession is taking a central place on an integrating European labour market and Member States have to change their national regulation framework if they want to ratify the more recent ILO convention.¹⁰⁴

Belgium serves as a case in point of how the football players' agents have to abide by the criteria laid down in the private job placement sector.¹⁰⁵ For agents to deal with clubs they do not only need a FIFA license but also one issued by the Flemish Regional Government which allows them to act within the framework of this sector. The federal system of Belgium implies however the existence of different levels of playing field since lower standards are applied by the Government of the Walloons and Brussels, where no additional acknowledgment is required. This is exemplary for the situation at European level where the legislation on job placement differs nationally. Furthermore, it is questionable to what extend the FIFA regulations are in line with national legislation which on its turn is developing towards the standards laid down in ILO C181. For example, FIFA does only allow natural persons to

¹⁰³ ILO Conventions C091, 1949 and C181, 1997, Available at <http://www.ilo.org/>.

¹⁰⁴ See also the European Commission, Employment and Social Affairs, Directorate V/A.2, 1999, at http://ec.europa.eu/dgs/employment_social/publicat/employment/deregulation_en.pdf.

¹⁰⁵ Flemish Community Decree of 13 April 1999, at <http://www.staatsbladclip.be/wetten/1999/06/05/wet-1999035624.html>.

obtain a licence, while the Flemish Community Decree and the aforementioned ILO Convention do also allow legal persons to exercise the profession. Another crucial point of divergence lies in the way of remunerating the player agent. The Community Decree on the one hand, provides for a ceiling of seven percent on the first annual gross income that the agent negotiated on behalf of the player.¹⁰⁶ The FIFA Regulations on the other hand, provide for remunerations based on the annual gross income for the whole length of the contract instead of the first year.¹⁰⁷ Hence the question arises what then the value of Article 14 of the FIFA Regulations on Players' Agents is, stating that national associations have to abide by national laws? Agents who are dealing with clubs within the Flemish territory are indeed bound by stronger regional regulations, but move legally outside this scope when they accomplish a transaction abroad or even in the French District of Belgium where they are not bound by the same regulations.

Strengthening regulation is a central question in defining the scope of players' agents activities. A current FIFA Task Force, due to deliver its conclusions in 2008, is elaborating on new agents' regulations. The European Parliament has in this regard also stressed the matter with its report on the Future of European Football.¹⁰⁸ The proposals that are made therein can however be called unsatisfying since they stress a mere enforcement of the current regulations eventually confirmed by, if deemed necessary, a Directive of the European Commission. Concluding, it is clear that players' agents still have a considerable legal discretion to act outside an anyhow not mainstreamed regulated framework. This is continuously allowing for abuses and exploitations on the back of players, particularly these in a vulnerable position because of recent immigration regarding employment as a football player. They are not only dependent on convincing a team of their skills, but also on the legal migration policy framework of the country in question.

¹⁰⁶ Ministerial Order for Executing the Articles 7, § 5 and 13 of the second part of the Decree of 13 April 1999, at <http://www.staatsbladclip.be/wetten/2001/01/06/wet-2000036253.html>.

¹⁰⁷ FIFA Players' Agents Regulations, Article 12.

¹⁰⁸ European Parliament, Final Report A6-0036/2007 on the future of professional football in Europe by Ivo Belet.

3.2 Conclusion

The migration of African football players is to a large extent steered by recruiting agents who offer the perspective of making a living through playing in a financially viable league, mostly in Europe. Above was shown how the Bosman ruling created the free movement of out-of-contract football players. The transfer sums that were previously paid for these players consequently shifted into the hands of the players and their agents. Hence, players' wages increased considerably and made it even more interesting for clubs to hire cheaper foreign players and for agents to lure with them. However, the Bosman ruling is not the sole responsible factor for the increased import of African players. Their low purchase cost and potential surplus value has always been an impetus for clubs to seek the services of African players and therefore Bosman must be seen as an accelerator within this process.

Not only are clubs and agents in Europe clearly abusing tourist and student visa; African club leaders and politicians are also all too willing in finalising transfer deals that circumvent current rules. Their personal gain in dealing directly with clubs and agents precludes what is in the interest of the player. Indeed, the FIFA transfer regulations which are governing international transfers are easily eluded when it comes to the transfer of African players. The mere issue of an International Transfer Certificate by the relevant national association is sufficient and while transfers of minors are prohibited, they are still ongoing due to fraud with the passports and age of the players – birth registers are often absent, like in Nigeria – or by sending them as students. The institutional and legal requirements regulating transfers are thus not watertight and still provide for the abuses that were experienced before measures to counter them were taken, that is, the new FIFA transfer regulations of 2001 but also for example national legislation that raised the minimum wage for foreign players.

One of the recommendations of the European Parliament report on the future of professional football in Europe is to end the dual representation by players' agents.¹⁰⁹ Today, it is indeed possible to represent a team and a player at the same time. Obviously, an agent has to maximise the opposed interests of employee and employer but at the same time he needs to assuage the objectives of both parties. It goes without saying that this allows players' agents

¹⁰⁹ European Parliament, Final Report A6-0036/2007 on the future of professional football in Europe by Ivo Belet., par. 40.

to place their own financial gains above what is in the interest of the player. As such, situations arise in which agents bring players to clubs whilst at the same time other clubs could offer better conditions.¹¹⁰ The profession of player agent is mainly caught by FIFA rules and national legislations. Unfortunately, these two do not complement each other but rather contravene their common aim. Examples of this were given above and additionally it is worth mentioning how for instance the Danish Football Association prohibited this dual representation of players' agents. In Denmark, agents can only represent one party but notwithstanding these national rules, FIFA approved transfers of Danish players of whom the agent was also representing the club, thereby basically overturning national measures aimed at tightening the framework in which agents are operating.¹¹¹

Furthermore, the specificity of sport, an area of defence among decision makers within football and politics, is yet not ascertained within European Union law. The growing call for a legal regulation of football, of which the economic dimension increases continuously, is today still a white spot.¹¹² The mere existence of player agents and their profits stem however from this economic reality and therefore need legal regulation on higher levels than what is issued by FIFA. While the FIFA training compensation and solidarity mechanism misfire their target, that is, they do not narrow the gap in economic underdevelopment of sports in developing countries, the lucrative perspective of agents' business is still guaranteed. This is not to say that all players' agents are to be evaluated as traffickers of human beings alongside the relevant national, regional and international legislation. However, some reported cases show characteristics which easily lead to conclude of how human trafficking is a highly topical issue within world football's labour market. African players are a desired commodity of many football teams, whereby the legal obligations involved can be easily overcome. Therefore, the amount of players of whom the story is not heard is more striking than one would imagine. In a last part the focus will now shift to specific examples, bringing their situation within the scope of human rights.

¹¹⁰ Email from Chris Vanderkelen, Representative of the Trade Union 'Sporta', 25 April 2007.

¹¹¹ Niels Christian Jung, FIFA approves agents' double play, 25 May 2003, at <http://www.playthegame.org/Home/Knowledge%20Bank/Articles/FIFA%20approves%20agents.aspx>.

¹¹² The White Paper on Sport of the European Commission is due to be delivered on 11 July 2007.

IV Hiring African Football Players: Trade or Traffic?

4.1 Contemporary slavery in a globalising market

The phenomenon by which African football players are lured to Europe is often described as human trafficking or even as a form of modern slavery. Journalists, politicians and international organisations who are all too eager to use these terms have however contributed little towards an approach that makes use of the available legal instruments.¹¹³ The wording of the Council of Europe Convention is nevertheless clear: “trafficking in human beings is the modern form of slavery [...]; it treats human beings as a commodity to be bought and sold.”¹¹⁴ Today, it is praiseworthy that the discussion finally found a place on national and European political agendas. According to *Jean-Claude Mbvoumin*, president of the French organisation Culture Foot Solidaire¹¹⁵, it is for the first time that an official document as the European Parliament report on the future of professional football in Europe raises the issue of child trafficking in, inter alia, “the context of the implementation of Council Directive 94/33/EC on the protection of young people at work”.¹¹⁶

Before, it was established how economic relations between the different confederations, for example UEFA and the African Confederation (CAF), are a rough blueprint of the world economy, in this case between Europe and Africa. To take up the issue of economic globalisation again, it is interesting to note the divergence between the credo of free movement of capital, services, goods and persons on European Union level on the one hand and on a worldwide level on the other hand. In the case of the latter the laws of economic liberal theory are clearly infringed in the sense that one can maybe perceive an ongoing liberalisation when it comes to capital, services and goods, but it is difficult to say the same for the free movement of persons. “As in the area of foreign direct investment, there is no international regime liberalising cross-border movement, but, differently, liberalisation does

¹¹³ See for example Lindberg, ‘The man who traced 442 soccer slaves’, at <http://www.playthegame.org/upload/magazine%202005/themanwhotraced442slaves.pdf> and Krushelnycky, 10 March 1999, ‘Belgium’s football slave trade’, at http://newsvote.bbc.co.uk/2/hi/special_report/292958.stm and Mandard, ‘La traite des jeunes Africains du foot’ in *Le Monde*, 19 January 2006.

¹¹⁴ Explanatory Report of the Council of Europe Convention on action against Trafficking in Human Beings (CETS no. 197), par. 3.

¹¹⁵ For a review of the activities and background of this organisation, see: <http://www.footsolidaire.org/>.

¹¹⁶ European Parliament, Final Report A6-0036/2007 on the future of professional football in Europe by Ivo Belet., par. 33-34.

not result from domestic immigration laws either.”¹¹⁷ This implies a denial to allocate production factors in a worldwide optimal way since the case for protecting the own labour market is implicitly made through restrictive immigration policies. Criminal transnational activities breed on these restrictions which create space for lucrative businesses such as human trafficking. This involves the exploitation of people through force, coercion, fraud and deception and is therefore considered as a modern day form of slavery.¹¹⁸ Notwithstanding the necessary penalising legislation, more will be necessary to counter this evolution which will continue to gain ground alongside the growing income and development gap between the North and the South. The immigration of football players finds its place within this evolution which is extensively illustrated through many existing cases. Ironically, human trafficking seems to be a legitimate elementary component of the football players’ labour market if, at least, one considers the payment of financial sums to take on persons to employ them as an essential element of trafficking. Although legitimate, this is a triggering factor facilitating profit making with players, especially the ones that are cheap and easy to recruit. Regulation is thus highly desirable if only to counter the phenomenon by which recruited players who are not considered to be talented enough are suddenly not covered anymore by this legitimate form of trade. At that point they turn into victims of illegitimate punishable human trafficking although national legislations have some hindrances in covering the situations of football players.

It is a challenging exercise to frame the practices of football players’ agents under national human trafficking legislation. One can thus easily imagine that it is even more difficult if not impossible to apply the existing legal texts on slavery. In recent years, new research on so-called contemporary forms of slavery that might be of use came however forward. Although an in-depth analysis of the issue is outside the scope of the thesis; the work of Bales on contemporary forms of slavery provides an interesting window on the modern forms of work and debt bondage and human trafficking. His grass roots research is of great value in giving an understanding of local dynamics at work in for instance African villages where poverty and little schooling opportunities are rather the rule than the exception. This gives way to an open exposure of children’s vulnerability to traffickers who easily convince parents of the money their child will make in the city or for instance of the talent their boy has to play in one of the cities’ bigger football teams if not abroad. Their economic livelihood is the breeding

¹¹⁷ De Feyter, 2005, p. 9.

¹¹⁸ Article 3 of the Palermo Protocol. See further below.

ground on which patterns of human trafficking arise. An interesting finding of *Bales* reveals that villages with their own football teams and televisions see more children leave.¹¹⁹ “In a curiously contradictory effect, soccer¹²⁰, the very activity that most holds the attention of rural children, also helps them to see and yearn for life outside the village.”¹²¹ The author also elaborates on a set of criteria to frame this ‘new slavery’ versus ‘old slavery’. The many troublesome cases of African football players differ strongly from this but these criteria can be used as a threshold for analysing the outcome of player extraction and consequent transfers to Europe. They provide a means to cover the often used rhetoric of slavery although it is not intended to frame the African football player as a modern slave, knowing that today this is still a gruesome phenomenon of worldwide concern in which the individual harm tends to be much higher.¹²²

4.1.1 Legal ownership avoided

One of the most recurring practices that circumvent existing FIFA rules prohibiting transfers of players under the age of 18, is the falsification of the age of players and their passports. The so-called ‘traffic d’âge’ is an increasingly recognised problem by which “specialised agents often without FIFA license do not hesitate to raise the age of minor players with two or three years” in order to bring transfers in line with existing legislation.¹²³ This is today a very serious problem which was recognised by FIFA in its circular letters, urging national associations to take action against this growing number of falsifications.¹²⁴ The absence of birth registers in many African countries and the widespread corruption among officials is obviously contributing to these blatant practices. *Mbacké Seck*, the spokesman of the Senegalese Football Association (FSF) comments: “the slave traders of African football players come from Europe to recruit young talents together with their accomplices at local level, with whom they start up illegal training centres”.¹²⁵ Fraud with passports is only one way to circumvent the prohibition on transfers of minors. Another

¹¹⁹ Bales, 2005, p. 14.

¹²⁰ ‘Soccer’ is the corresponding American term for football.

¹²¹ Bales, 2005, p. 14.

¹²² For a recent illustration see: BBC News, ‘Mass Rescue of Slaves in China’, 14 June 2007, at <http://news.bbc.co.uk/2/hi/asia-pacific/6752507.stm>.

¹²³ Harscoët, June 2006.

¹²⁴ See FIFA’s circular letter of 9 April 2001.

¹²⁵ Habibou Bangré, ‘Le trafic d’âge dans le football’, 26 May 2004, at : <http://www.afrik.com/article7328.html>.

practice consists of moving the whole family of a player or to find a relative in the country of the team which legally justifies the transfers of minors.

Only official players' agents, that is, the ones that are recognised by FIFA, can represent players and conclude contracts with them for a maximum duration of two years. Obviously, these agents are dependent on a network of collaborators or recruiters which serve as in-betweens. Malpractices by the latter are thus not on the accountability record of the official agents. *Tshimanga* asserts that "the current FIFA licence is used as a cover which permits a network of several managers to exercise their profession under the same licence in group or association. As such, the licence contributes to the creation of parallel networks of managers rather than to restrict their functioning".¹²⁶ The process by which a player is recruited and brought to Europe falls consequently mostly outside the scope of their functioning which allows them to fulfil the obligations stipulated by the FIFA Players' Agents Regulations only once a player has been brought to Europe and proves to be skilled enough. The described cases by some media of players who were abandoned after they failed their trials in European clubs are illustrative for the fact that agents do not have any legal obligations towards the player.

4.1.2 Very low purchase cost

The fact that African players are relatively cheap compared to the costs for European clubs to train players themselves or to acquire European players is obviously the main determinant through their talent quest. According to *Mbvoumin*, it requires 3000 to 4000 euro to convince parents to let their child go.¹²⁷ This does however not mean that this money stays entirely in the hands of the family. A player from Cameroon whose case was described in *Le Monde* was required to pay 600 000 francs CFA (1000 euro) to contribute in the acquisition of the flight ticket just before leaving for France.¹²⁸ This is due to the lack of a legal framework which stipulates who is responsible for which costs. The acquiring of visa, flight ticket(s) and accommodation costs are not always determined beforehand and are easily retrieved from the player who finds himself in a dependent position. It is for example illustrative how many of these players do not even know their exact destination or how their

¹²⁶ Tshimanga, 2001, pp. 410-411.

¹²⁷ Mandard, 2006, p. 21.

¹²⁸ *Ibid.*

destination out of the sudden changes after departure. Another example that also will be drawn upon in the next part concerns the case of the Nigerian players Manasseh Ishiaku and Omo Monday.¹²⁹ The parents of both these players received 25 000 naira (today 146 euro) while the flight ticket was taken care of by the Belgian player agent and coach and manager of second division club Roeselare. They were operating through the Niger Dock Soccer Academy which was created as a talent seeking football players' nursery.

The players' market in Africa has obviously undergone a saturation since European clubs and agents have increasingly put foot on the ground. Establishing academies in order to recruit players at a young age is one answer to this. It is indeed more profitable to spot talents as early as possible because at a higher age, with a higher probability of growing interest in a particular player, the economic law of supply and demand increases the costs. This would at their turn plummet the high profits that agents and clubs are aspiring to acquire on a later sale of the player.

4.1.3 Very high profits

The amounts of money that are often paid for in-contract football players makes many people's eyebrows frown. The aim of training and buying players is indeed first and foremost to create a financial asset. Although it was established above that the trade in football players is not the sole means of income for teams, players remain a raw material on which a considerable potential profit can be made. When a team can leave out the trainings costs it incurs, the margin of profit becomes even wider.

According to *Poli*, it is an in economic terms search for comparative advantages by European teams which explains the high presence of African players among the total of foreign players in Europe. European clubs are working to control resources on a global scale, wherein the big clubs have increasingly organised themselves alongside a network of international observers. "Certain clubs are speculating on young Africans not to have them merely in their team but as to, in a long term strategy, recruit and resell them to other teams in order to create a surplus

¹²⁹ Court of First Instance of Kortrijk, Case 55.48.100423'01, Ishiaku Manasseh, Omo Monday and The Centre for equal opportunities and opposition to racism v Havegeer Roger, Storme James, De Bruyne Bart and Cooreman Maurice (2006).

value.”¹³⁰ According to *Andreff*, it is not only ethically desirable to establish a transfer system that is based on solidarity but also from an economic point of view since African players are usually acquired at a dumping price, that is, not even covering the cost invested by the nursery club in the player’s education and training.¹³¹ A clear example is the Guinean teenage player Souleymane Oulare who was recruited by the Belgian side of Genk for 100 000 euro and some years later sold to the Turkish Fenerbahce for 5, 75 million euro.¹³²

Besides the clubs, the players’ agents are as well in a central position to make lucrative deals with African players. The problem of double representation when an agent represents both the club and the player was already mentioned before and allows the agents to accrue revenues from both sides. FIFA rules do not set maximum percentages that agents get on the annual gross income of the player, while national legislations differ on the matter. The ‘Taskforce for the Good of the Game’, which will present its final proposals in 2008, has now however suggested to limit all agents’ fees for any deal to three percent.¹³³ Strengthening the rules on players’ agents is more than highly necessary and although the functioning of official FIFA agents might be questioned ethically, it can or should nevertheless be assumed that they will act within the limits of the ‘Code of Professional Conduct’.¹³⁴ Despite many reported problems with agents, the code is however not enforceable and does not capture the actions of bogus players’ agents. Furthermore are no sanctions for eventual malpractices. According to *Andreff*, “the fact that FIFA has favoured the development of the players’ agents business without fixing any sort of juridical penalty and economic sanction in case of illicit transactions is the crux of the matter”.¹³⁵ This is for example a growing problem in the Gulf States, where oil sheikhs have increasingly invested in football teams over the past years as a means of rising their prestige, even internationally. Like in other Asian countries, the development of football has gained a lot with the rapid economic growth in the region, especially in the Gulf where the economies are among the fastest growing in the world. The example of the Aspire football Academy in Qatar, which will screen 500 000 boys in the coming years, was already given above but agents themselves are now also well aware of the demand in this region. Recently, eight Nigerians paid 2000 dollars to a bogus agent for a

¹³⁰ Culture Foot Solidaire, Conférence Internationale du Jeune Footballeur Africain. Le jeune footballeur africain à l’horizon 2010 : enjeux et perspectives, Enghien-les-Bains, 2 November 2006.

¹³¹ *Andreff*, 2004, p. 18.

¹³² *Ibid.*, p. 6.

¹³³ Reuters Africa, ‘FIFA planning tougher controls on player agents’, 1 June 2007, at <http://africa.reuters.com/sport/news/usnBAN124904.html>.

¹³⁴ FIFA Players’ Agents Regulations, article 21, par. 1 and Annex B.

¹³⁵ *Andreff*, 2004, p. 16.

professional career that would lead them to Europe. The agent had claimed he had major contacts with teams in Dubai who were looking for African players. At their arrival, the players were however held in a detention centre where they paid some more hundred dollars to a so-called representative of the agent because of ‘problems with the visa’. When they finally arrived at the club where the agent had claimed to have organised trials, the club was not aware of anything. Elad, who was one of the eight players, now plays for the ‘Dubai Diamonds’, a team set up by the British David Callow who wants to draw attention to the phenomenon and help the duped African players get exposure of bona fide professional scouts and players’ agents.¹³⁶

4.1.4 Glut of potential slaves

In a recent undercover documentary of the BBC, a dark light is shed on the profession of managers and players’ agents.¹³⁷ The film clearly shows how the world of football is fraught with money laundering and how team managers do not hesitate to circumvent rules and legislation that might impede their prospect on personal financial gain. Mogi Bayat, team manager of the Belgian side Charleroi, contends in the reportage that Belgium is an ideal platform to stall players before selling them to one of Europe’s major leagues. In his exact words he could fly 150 Africans to Belgium, let them go through test for several days before selecting the 5 best and send the others back home.

The glut of African players is also illustrated by the African Cup, which is nicknamed the ‘cattle fair’, and even more so by the junior edition where European club managers, players’ agents and coaches are omnipresent.¹³⁸ As was asserted above, the proliferation of these tournaments is sometimes considered as one of the main causes of the increased outflow of African players. It makes however more sense to see them as a logical outcome or evolution whereby African players are extracted in an increasingly organised manner. African teams which are integrally invited to play in Europe or which play official international tournaments are also to be framed within this line of thinking. Samuel Yaw Agyeukn was 19 when he went with the national youth team of Ghana to Denmark in 2004. After having lost in the quarter final against Sweden, the team manager took him to Italy where he did not manage to find a

¹³⁶ Charles Stratford, ‘Talented African Footballers duped by bogus FIFA Agents’, 4 March 2006, at <http://archive.gulfnews.com/articles/06/04/03/10030159.html>.

¹³⁷ Panorama BBC ONE, ‘Football’s Dirty Secrets’, 19 September 2006.

¹³⁸ Andreff, 2004, p. 5.

club. A Ghanaian acquaintance who heard of him and who acts as an unofficial manager in Austria then managed to let him come to the country where he is now playing in the low division club Seiersberg. His story is exemplary for many other cases I found through contacts with African immigrants and asylum seekers in Graz. It is again necessary to differentiate between players who moved with or without the ball. In both cases it is however clear that clubs deal differently with African players in a precarious administrative position. They usually have short-term contracts and change teams regularly with the hope to reach a higher competition. In 2002, Amulum Ogar Teejay moved with the ball from Nigeria to Malaysia, being 19 years old at that time. He was a successful striker in the high ranked team of Puchong Hunters and was noticed by a manager who asserted he could bring him to the Austrian Bundesliga, the first division of the country. Once he arrived he could indeed test with SV Stadtwerke Kapfenberg in the Red Zac Erste Liga, Austria's second division. His manager made a very profitable deal for himself and after Teejay was paid less each month, he left the team. Now, he is 24 and without team.¹³⁹ He contents that it is impossible for him to find a good team without a manager. Offering his services directly to a club would deprive him from contractual clauses, such as equipment and transport costs, that only an agent is able to negotiate and would leave him with fairly unsound financial conditions.

4.1.5 Short-term relationship

Official agents with a FIFA licence are allowed to conclude contracts with players for a maximum duration of two years. As was said above, there is however a prevalence of non-licensed agents who represent players without any contract either alone or in collaboration with an official agent. This enables them to take care of a player for a short period of time, that is, after some trials have been executed. The outcome of these tests might lead to a contract or to the end of the informal representation of the agent when the player failed to obtain a contract. In the majority of these cases, players prefer however to stay in Europe albeit mostly in an illegal situation. The first international conference on 'the young African football player' in 2006 has also highlighted this issue.¹⁴⁰ It goes without saying that the failed trials do not necessarily mean the end of their stay in Europe. The goal of making it to Europe

¹³⁹ Interviews with Samuel Yaw Agyeukn and Amulum Ogar Teejay, Graz, April, May and June 2007.

¹⁴⁰ Culture Foot Solidaire, Conférence Internationale du Jeune Footballeur Africain. Le jeune footballeur africain à l'horizon 2010 : enjeux et perspectives, Enghien-les-Bains, 2 November 2006.

is always under the surface and is established through trials as a football player. Furthermore, most of these players are under a fierce social pressure from home to succeed.

A majority of the players leave their country without any written contract and just a short-term or student visa. When the player does not pass his trials, he is left stranded in Europe, contends Hadjia Habiba, one of the three official Ghanaian players' agents.¹⁴¹ Okyere Missah was 16 when he was spotted by an unlicensed agent in 2006 and brought to Europe. His parents were easily convinced by the hard money talk of the agent who would take Missah from country to country. Although the Ghanaian Ministry of Sports and Education has issued warnings to turn down unlicensed agents who approach players, the families of the players in question see a possible football career in Europe still as a major opportunity for their son. Unfortunately, the story is mostly of the short term and often ends with a stay in Europe without the big promises being fulfilled.

4.1.6 Slaves disposable

In March 2007, the Mali authorities alerted IOM of the presence of a large group of 34 young boys in a villa in Sikasso. The boys turned out to be members of an amateur football club from Abidjan in Ivory Coast. They had been promised contracts with European football clubs and had therefore agreed to travel with the club president and a manager to Europe via Mali. The parents of the boys had each paid about 450 euro to the player agent for the journey. Once in Sikasso, they joined a smaller group of boys already held in the villa. 11 of them escaped and alerted the Malian authorities, which arrested the manager and the president, and requested IOM's assistance for the voluntary return and reintegration of the boys home.¹⁴² The press briefing of IOM concerning this story further revealed that the boys were smuggled into Mali in late December and experienced rough living conditions. They were all aged between 16 and 18 years and coming from Yopougon, a municipality in the outskirts of Abidjan.¹⁴³ Accidentally, this place has been subject to research by *Poli* in 2004, revealing some interesting links with this story.¹⁴⁴

¹⁴¹ Christos Gavalas, 'Make me a Drogba', at <http://www.thenewblackmagazine.com/view.aspx?index=662>.

¹⁴² Email from Viviane Van Hoeck, IOM Dakar, 16 May 2007.

¹⁴³ IOM Press Briefing Notes, 'Footballers' Dream of Fame in Europe Shattered', 27 March 2007, at <http://www.iom.int/jahia/Jahia/pbnAF/cache/offonce?entryId=13514>.

¹⁴⁴ *Poli*, 2004, pp. 144-146.

Yopougon is one of the densest populated areas in Ivory Coast where football is omnipresent everywhere, although limited by the characteristics of an urban area. Other large African cities like Dakar and their peripheries share this picture of young boys exposing their talents openly during their pastime. In Ivory Coast, the potential of taking the play of so many young boy's to a more or less organised level was captured by the 'Union des Centres de Formation de Football de Yopougon' (UCFFY). Created in 1997 it has, according to *Poli*, now more than 100 formation centres. Their aim is twofold: on the one hand they provide youngsters with the possibility to sport in an organised way and as such keep them away from criminality and on the other hand the centres try to form football players to transfer them in return for some financial or material help. The biggest hindrance lies in the organisation of competitions which is dependent on the support of outside actors such as the big football academies but also managers of European clubs. These centres experience the lack of compensation for their work as the main problem for their functioning since young talents leave rapidly for an academy or bigger team. This demonstrates how football talents are exposed openly and how they constitute an infinite way of attracting players, even more so because these unofficial local structures are not accommodated within the national associations. As such, there are no administrative requirements to fulfil, such as the issuing of the International Transfer Certificate. Furthermore, some of the centres in Yopougon are directly connected to European clubs.¹⁴⁵

There are even more reasons why Ivory Coast is hot today. One would assume that political and social unrest infringes the efforts of talent-seeking personnel. The opposite seems to be true however as this country is an outstanding example of how the connections between an African country in turmoil skyrocketed in terms of player extraction. A recent article in the Guardian revealed how today, "fuelled by the post-war economic crises that have ravaged this stretch of West Africa, a lucrative trade in young players is on the rise".¹⁴⁶ Lebanese businessman in Abidjan who were once preoccupied with diamond and timber smuggling have now shifted their focus to young football players, "establishing illegal training schools across the country in an attempt to farm the best talent out to some of the Middle East and Europe's largest clubs".¹⁴⁷

¹⁴⁵ Ibid., p. 147.

¹⁴⁶ The Observer, 'Inside the Football Factories that feed the Beautiful Game', 10 June 2007, at <http://observer.guardian.co.uk/world/story/0,,2099499,00.html>.

¹⁴⁷ Ibid.

4.1.7 Ethnic differences not important

Where the previous criteria all had a certain degree of relevance for the relationship between the African football player and their player agent or European club, the category by which ethnic differences are not important to define contemporary slavery cannot be upheld. Europe's best and most famous African players mainly come from West and North Africa, where the activities of players' agents and football academies aimed at tracing young talented players have their focal point. This is illustrated by the data of the 'Professional Football Players Observatory' which gives clear evidence of the fact that an overwhelming majority of African players is recruited in the West and the North compared to the East and the South while figures of some Central African countries tend to range in between.¹⁴⁸ Obviously, these countries did not become strong football nations by coincidence but have directly taken advantage from the export of players. Their enhanced physical and tactical evolution in Europe has made their respective national teams stronger although a margin of appreciation is left open in that European teams are increasingly trying to circumvent the FIFA obligation to release players for national team encounters.¹⁴⁹

Research has revealed that West Africans are genetically determined to excel in football and other intense short-distance sports but not in for example long distance running. The validity of the research that gives 'nature' and not 'nurture' a central place in classifying success in sports has been attacked by American sociologists who see this as form of racist thinking or by others who deny the argument through an unwillingness to admit this so-called physical superiority of Africans. In the line of racist thinking, *Harry Edwards* of University of California/Berkeley comments that "what really is being said in a kind of underhanded way is that blacks are closer to animals in terms of their genetic and anatomical make up than they are to the rest of humanity. And that's where the indignity comes in".¹⁵⁰ These arguments are however refuted by scientific research which reveals that West Africans have "denser bones, less body fat, narrower hips, thicker thighs, longer legs, and lighter calves than whites", who

¹⁴⁸ The Observatory has implemented a database consisting of the number of players taking part in the five major European leagues (the English Premiership, the Spanish Primera Liga, the Italian Serie A, the French Ligue 1 and the German Erste Bundesliga). By basing themselves on a crosschecking of sources, the career paths of each player was reconstructed, at <http://www.eurofootplayers.org/>.

¹⁴⁹ Case C-243/06, SA Sporting du Pays de Charleroi, G 14 v FIFA (2006).

¹⁵⁰ Jon Entine, 'The Story Behind the Amazing Success of Black Athletes', at http://run-down.com/guests/je_black_athletes_p1.php.

are situated in between East and West Africans.¹⁵¹ The research of the Copenhagen Muscle Research Centre has pointed in the same direction.¹⁵² West Africans are genetically predestined to distinguish themselves in football and not in other sports which require other characteristics of the human body. Therefore, they and not East or South Africans have become the target of European football clubs which have over time affirmed this reality by implementing the lion share of all academies in West Africa.

4.2 The immigration framework

Assessing the legal account covering immigration of third country nationals to the European Union takes up the previously outlined player extraction framework. In this part, an assessment of legal evolutions was given which has over time facilitated the flow of African players and which is today channelled through, inter alia, the regulatory framework for players' agents. Now, it is intended to add the opposing legislation, that is, legislation governing economic migration and in a next stadium the penalising human trafficking framework. The Member States of the EU cooperate towards the development of a common policy but today, national legislations still differ. It is not the aim to give an extensive overview of this evolving framework but rather to outline procedures and European Council Directives which are relevant for players who are moving with the ball. The human trafficking framework of the European Union is furthermore strengthened and streamlined on different levels. The Council of Europe Convention against Trafficking in Human Beings allows for an adherence by the European Communities and needs to be considered as norm setting. This leads to a last part where a closer look at some case law is confronted with this human trafficking legislation that seeped through to national levels.

4.2.1 *Economic migration*

The European Union policy regarding the management of economic migration received strong impetus with the Green Paper of the European Commission in 2005.¹⁵³ A central point in this guiding document is the "Community Preference" principle which urges Member

¹⁵¹ Holden, 2004, pp. 637-639.

¹⁵² Ibid.

¹⁵³ European Commission, Green paper on an EU approach to managing economic migration, COM(2004) 811.

States to “consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower”.¹⁵⁴ Football players comprise a clear exception to this since home grown players (trained players within one club) are continuously available to fill in vacancies. It is clear however that football clubs aspire certain qualifications of their employees which cannot always be matched by Community nationals and hence the exception seems to be justified. The question arises nevertheless if football clubs have a sole interest in finding qualified staff that they do not encounter among Community nationals. Clubs seem indeed to be driven by the specific financial incentives to employ or to recruit third country nationals. These are generally cheap, have the likelihood to be sold with a surplus value and clubs do not need to invest in training which altogether makes these players in essence more interesting than the home grown players.

At the European Council’s meeting in Tampere in 1999, Europe’s political leaders decided to work on a common EU immigration policy involving the issues of legal and illegal immigration, integration and relations with third countries.¹⁵⁵ The programme that came out of this meeting was set to achieve its objectives until 2004. One important element in the Tampere programme is the determination “to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants”.¹⁵⁶ In 2004, a new five year ‘Hague Programme’ was adopted which contains proposals and deadlines for the areas in which the Council would like to see policy decisions on, inter alia, the fight against illegal employment, opposition against discrimination, a common European asylum system and visas and the respect for fundamental rights.

African football players who wish to ply their services in Europe are subject to the application for a visa in the embassy of the destination country. Obtaining a Schengen visa allows them to move freely within the countries that are part of this Schengen agreement. This will normally be a short term visa, that is, for a maximum duration of three months. Visas exceeding the

¹⁵⁴ Ibid., p. 6.

¹⁵⁵ An overview of the institutional structure (Freedom, Security and Justice) covering immigration within the EU and the Tampere and The Hague Council of Europe meetings can be found at http://ec.europa.eu/justice_home/index_en.htm.

¹⁵⁶ Tampere European Council Presidency Conclusions, 1999, par. 23., at http://www.europarl.europa.eu/summits/tam_en.htm.

periods of three months are issued according to national legislation.¹⁵⁷ These are however increasingly streamlined by European Union lawmaking which was formalised with the Treaty of Amsterdam, incorporating the Schengen Agreement in the EU framework.¹⁵⁸ As a consequence, the EU is aspiring to create an equal level of playing field regarding visa application procedures as visas for longer than three months fall within the competence of individual countries. In Belgium for example, the law of 15 December 1980 provides for students to obtain a residence permit when a recognised institution delivers the necessary enrolment certificate.¹⁵⁹ Football players have thus different options when it comes to entering a European country. Very recently, the ‘student option’ came stronger under the public eye when FIFA started a formal investigation into the Danish side FC Midtjylland which hired several Nigerians players under the age of 18, although this is prohibited under Article 19 of FIFA’s Regulations for the Status and the Transfer of Players (cf. supra). The club maintains however that the Nigerians are primarily in Denmark for study related reasons. To justify this, they were given an ‘amateur status’ until they reached the age of 18.¹⁶⁰ This shows how national legislations allow for circumvention of the FIFA regulations, aimed at overturning the malpractices of players’ agents and abuses of young players in the past. Furthermore, the European Council Directive 2004/114/EC gives further impetus to national legislations for developing a common policy regarding the admission of third country students which also needs to allow these students to move freely within EU countries. Additionally, this directive holds that they will be granted access to the labour market.¹⁶¹ Hence, it is not impossible that Europe’s footballer players’ market will be confronted with an increasing amount of ‘player-students’. Obtaining a working permit is mostly officially followed by the issuing of a residence permit. Employers have however the obligation to apply annually for a renewal of the working permit. Note that this leaves the possibility open for clubs to conclude a contract of several years whilst at the same time they can disregard the prolongation of the permit and consequently bring the player in an illegal situation.

¹⁵⁷ The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, par. 12 & 18.

¹⁵⁸ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (1997), Protocol B.

¹⁵⁹ Law of 15 December 1980 concerning the access to the country, the residence, the settlement and the extradition of foreigners. Hereinafter Belgian Foreign Act.

¹⁶⁰ Fifpro News Archive, ‘FIFA examines Danish FA and Danish Super League Club’, at <http://www.fifpro.org/index.php?mod=one&id=15817>.

¹⁶¹ Council Directive on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (2004/114/EC), Official Journal of the European Union L 375/12 on 23 December 2004, par. 16-18.

Before employers actually hire a third country national in Belgium, they have to be in the possession of a work licence enabling them to take on foreign employees. Obtaining this licence is dependent on the requirement that a vacancy within this sector cannot be filled by a national of a European Union Member State or a third country national that is already residing in the country (the Community Preference principle).¹⁶² For certain sectors, there is however no obligation to be in line with this touchstone. Third country professional sportsmen and women are for example recognised as being exempted from the latter rule on the condition that their annual income is eight times as high as the minimum amount of 7 858 euro on annual basis for a Belgian remunerated sportsmen or woman as stipulated in the Royal Decree of 24 February 1978 i.e. 62 864 euro.¹⁶³ The last amendment changed the multiplying factor of the minimum amount from four into eight since the rather low minimum wage that the original law provided for was considered to be one of the main causes of the roaring human trafficking on Belgian's football labour market. In the Netherlands for example, the annual minimum wage for foreign players was at that time more than ten times higher.¹⁶⁴

The relevant integrating migration framework through which African football players pour to European leagues has now been outlined. Without questioning the necessity of a legal framework that deals with restrictions on the migration of third-country nationals, it is safe to say that these same restrictions make criminal activities as human trafficking and human smuggling a profitable business. There is however legislation in place to tackle the exploitative activities that harm many individuals. The question can now be raised to what extent the reported exploitation of African football players can be caught by this legal norms.

4.2.2. Human trafficking

The Protocols attached to the 'United Nations Convention against Transnational Organized Crime' (also known as the Palermo Protocols), have legally defined human trafficking and human smuggling on an international level, that is, where criminal activities

¹⁶² Royal Decree of 9 June 1999 regarding the execution of the Law of 30 April 1999 concerning the employment of foreign employees, Chapter IV, Article 9.

¹⁶³ Royal Decree 9 April 2003 amending the Royal Decree of 9 June 1999, regarding the execution of the Law of 30 April 1999 concerning the employment of foreign employees.

¹⁶⁴ Session of the Belgian Senate on 1 July 2002 regarding the report of the 'Subcommission on Human Trafficking in Sport' (2-1132/1).

transcend national borders.¹⁶⁵ The merits of the protocols lie in the creation of a definition on human trafficking and smuggling which serves as a model for national legislations but also for regional organisations.¹⁶⁶ Indeed, the wording of the ‘Council of Europe Convention on Action against Trafficking in Human Beings’ is exemplary for the norm setting value of the Trafficking Protocol.¹⁶⁷ The Convention also recalls the differences between trafficking and smuggling that are brought forward by the respective Palermo Protocols and which centres around the element of exploitation. Smuggling is considered as “the procurement, in order to obtain a financial or material benefit, of the illegal entry of a person into a state of which the person is not a national or a permanent resident”.¹⁶⁸ Note that a state in case of European countries means the EU countries that are part of the Schengen Agreement. Human smuggling concerns thus first and foremost the act of facilitating the illegal entry of persons into states of which they are not nationals. The critical factors that distinguish trafficking from smuggling lie in the use of force, deception, abuse of a situation of vulnerability, etc. and the use of that means for the purpose of exploitation.¹⁶⁹ This exploitation can take the form of sexual abuses but can also be merely economic by controlling the person as a workforce. The Council of Europe Convention does however not provide for this distinction within the Convention itself but only refers to it in its explanatory report. The relevance for distinguishing between the two will however be illustrated below through the example of Belgian national legislation.

With regard to human trafficking, the Council of Europe Convention broadens the scope to “all forms of human trafficking, whether national or transnational” whilst the ambit of the UN Convention only refers to “offences transnational in nature”. This Convention focuses mainly on the protection of victims but also aims at developing prevention and prosecution measures. Obviously, the effective functioning of the specific guidelines laid down in the convention is

¹⁶⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Adopted by GA Resolution A/RES/55/25 of 15 November 2000.

¹⁶⁶ Article 3, paragraph (a) of the Palermo trafficking Protocol states: “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

¹⁶⁷ Council of Europe Convention on Action against Trafficking in Human Beings and its explanatory report, adopted by the Committee of Ministers as CETS no. 197 on 3 May 2005.

¹⁶⁸ Protocol against the Smuggling of Migrants by Land, Sea and Air, Article 3.

¹⁶⁹ Explanatory Report of the Council of Europe Convention on Action against Trafficking in Human Beings, par. 75.

dependent on the implementation in national legislations. This is where human rights touch European Union legislation which deals with human trafficking and organised crime under its 'Freedom, Security and Justice' department. It should also be mentioned however that Article 5 (3) of the EU Charter of Fundamental Rights simply reads: "trafficking in human beings is prohibited". In addition, the aforementioned Hague Programme required the Commission and the Council to propose measures to tackle trafficking which led in 2005 to the 'EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings'.¹⁷⁰ This plan refers explicitly to the Council of Europe Convention in that Member States will "take into consideration legally binding documents, political commitments and other relevant documents, in particular the recently concluded Council of Europe Convention".¹⁷¹ Note also that the European Communities, the first pillar of the EU, can rightfully accede to Council of Europe Conventions to bring their legislation within the scope of European Human Rights protection. With the search for alternatives for the rejected European Constitution, this framework is however rapidly involving and a stronger cooperation between the two EU and the Council of Europe is in the future likely to arise.

There is thus no institutional complementarity between the work of the European Union on human rights and the work of the Council of Europe, which provides for the regional European human rights system as such. The cooperation is therefore limited to references in official documents to create equal levels of playing fields.¹⁷² Council Directive 2004/81/EC demands for example, for the drafting of legislation that grants (temporary) residence permits to the victims of human trafficking who are willing to cooperate with the judicial authorities.¹⁷³ Shifting the focus to the immigration of African football players and the question to what extent some of their cases fall under human trafficking rules, leads to the consideration that the specific element of economic exploitation is of utmost importance. Within the latter Directive there is namely a reference to the determinations of the Tampere Council meeting in October 1999 where economic exploitation was for the first time

¹⁷⁰ EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01), Official Journal of the European Union C/311/01 on 9 December 2005.

¹⁷¹ Ibid., Article 3 (vii).

¹⁷² European Council Framework Decision on combating trafficking in human beings (2002/629/JHA) of 19 July 2002, par. 8 states: "It is necessary that the serious criminal offence of trafficking in human beings be addressed not only through individual action by each Member State but by a comprehensive approach in which the definition of constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, forms an integral part".

¹⁷³ Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC), Official Journal of the European Union L 261/19 on 6 August 2004.

explicitly mentioned.¹⁷⁴ Arguably, the recurring problems many African football players experience with their manager needs this kind of approach since human trafficking legislation has traditionally been connected with sexual exploitation of women. African football players are in a situation which is characterised by an economic dependence on the person who facilitated their transportation. This is however as far as one can draw a parallel with other cases by which human trafficking is mostly exemplified and which involve often elements of sexual exploitation and violence. However, judging human trafficking merely on its outcome is nothing more than applying double standards on the existing legislation. Furthermore, many players have been brought in precarious financial and administrative conditions which needs to be the overall starting point when analysing a case under human trafficking legislation.

However, not only the central element of economic exploitation is of importance, but also the concepts of ‘consent’ and ‘vulnerability’. The consent of a person to be ‘trafficked’, that is, to agree on the terms set by a trafficker in order to reach a destination, seems to be a crucial point in the perception of football players as being trafficked.¹⁷⁵ For the general public, it might be difficult to understand how African players can be victims of trafficking when they agree on the terms set before leaving. However, the vulnerability of their situations has been described above in terms of the local underdevelopment of sport compared to the type of business enterprises that European clubs today are. Consequently, there is a parallel divergence in sustenance for African football players as is experienced by other trafficked victims of whom a majority are indeed women and children. Furthermore, the consent of a victim is deemed irrelevant when “the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person” is present.¹⁷⁶ With the term human trafficking I insist indeed on the legal value of its content, even more so, because trafficking of football players has been used in numerous articles in the media and legal documents, but has hardly been analysed alongside its real legal meaning.

Although human trafficking is increasingly defined on the international and the regional level, the responsibility to criminalise the phenomenon and to prosecute traffickers remains the responsibility of national legislations. One of the most striking characteristics of trafficked

¹⁷⁴ Tampere European Council Presidency Conclusions, 1999, par. 23., at http://www.europarl.europa.eu/summits/tam_en.htm.

¹⁷⁵ Note that until that point one can legally speak of human smuggling, while from the point that somebody is also considered as being exploited, the person is considered a victim of human trafficking. See also further.

¹⁷⁶ Council of Europe Convention on Action against Trafficking in Human Beings and its explanatory report, adopted by the Committee of Ministers as CETS no. 197 on 3 May 2005, Article 4 (b).

football players is the knowledge of where and with whom responsibilities lie. It could therefore be assumed that appropriate measures are taken, be it through trafficking legislation or through other measures that have the effectiveness to tackle the problem. The main impediment in applying national legislation is however that it was traditionally attached, in for example Belgium and the Netherlands, to prostitution legislation. In order to have a better understanding of the particularities in the case law of football players and how they are perceived as being connected with or disconnected from human trafficking, some of them will now be scrutinised.

4.3.3 Impediments within national human trafficking legislation

The law of 25 August 2005 detached human trafficking from human smuggling in the legislation governing access and extradition to the Belgian territory.¹⁷⁷ While smuggling of human beings continues to be part of the Foreign Act, trafficking was lifted out of the Act and was accommodated within the Criminal Code.¹⁷⁸ These legal changes incorporate the European Council Framework decision of 22 July 2002 and the Directive of 28 November 2002, which demand penalising measures for persons who facilitate illegal immigration, within national Belgian law.¹⁷⁹ Although the European Union deadline was not respected, these legal adjustments are a major change regarding analysing and penalising human trafficking. The importance of the aforementioned element of economic exploitation has already been stressed and is neither absent within these changes. Concerning smuggling, Article 77 Quater of the Foreign Act sets the punishment in case “the crime is committed by abusing the particular vulnerable situation that a person finds him or herself in due to the unlawful or precarious administrative state, his or her precarious social state, [...], whereby the person does as a matter of fact not have any other possibility to let him or herself be exploited”. Furthermore, this is repeated in the human trafficking chapter within the Criminal Code¹⁸⁰ which additionally reads that human trafficking is, inter alia, “to employ a person or to let a person be employed in conditions that are contrary to human dignity”.¹⁸¹ The latter wording is supposed to come to terms with situations wherein an economic exploitation

¹⁷⁷ Belgian Foreign Act, Article 77.

¹⁷⁸ Belgian Criminal Code, Book II, Title IV, Chapter III Ter.

¹⁷⁹ Council Directive defining the facilitation of unauthorised entry, transit and residence (2002/90/EC), Official Journal of the European Communities L 328/17 on 5 December 2002.

¹⁸⁰ Belgian Criminal Code, Book II, Title IV, Chapter III Ter, Article 433 Septies (2).

¹⁸¹ Ibid., Article 433 Quinquies (3).

devoid of any sexual exploitation is present. However, the connection with human dignity causes some hindrances as will be shown below through case law that involves African football players.

Despite many described cases by which African football players were economically exploited through their precarious administrative and social situation, there have not been any major convictions under human trafficking legislation. In 2002, the president of a Belgian side was however convicted by the Council Chamber of Hasselt which refused to refer the case to a criminal court.¹⁸² This Chamber works behind closed-doors which kept public attention at a distance. The president of the club was however found guilty under human trafficking legislation because he had employed a player in his private company under conditions contravening human dignity. Furthermore, the player in question was not remunerated for playing football. In this case, former Article 77 Bis (now 433 Quinquies in the Criminal Code) referring to economic exploitation has been used as a basis for the judgement although the fact that the person in question was forced to carry out work under harsh conditions that was said to contravene human dignity, proved to be a crucial point in the reasoning of the Court.¹⁸³

A lawsuit which did get a lot of attention was the case of three Nigerian players who were brought to Belgium in 2000. Manasseh Ishiaku is now a striker of the German club MSV Duisburg, Monday Omo found a job in the municipality of Gent and Tanko Luka went back after failed trials which also shows their diverging career patterns. These three players arrived in Belgium with a Schengen visa through a cooperation between manager, players' agents and coach of the at that time second division side KSV Roeselare.¹⁸⁴ The players in question were minors at their arrival while recent changes in the law at that time forestalled the eligibility of minor players from third countries to play in competition. After originally submitting false data for matches in order to entitle the players to play in competition, player agent Bart De Bruyne, who acted on behalf of the Nigerdock Soccer Academy, forged the passports of the three players. Without being in the possession of a legal warrant, he withdrew 1500 euro of the bank account of Roeselare which was consequently paid to the Nigerian embassy in Brussels. According to the declarations of the former, the players were found to be two years older than the age mentioned on their Nigerian passports; a conclusion based on "observation"

¹⁸² Telephonic interview with Heidi Maris, Lawyer, 18 May 2007.

¹⁸³ Ibid.

¹⁸⁴ Interview with Jean Marie De Decker, Belgian Senator, Ostend, 13 February 2007.

of the players. Ishiaku and Omo were offered a contract until the end of the season in 2001 with an option for the next season 2001-2002. The players were however not paid during their first months and were not aware of the option in their contract. Indeed, when KSVR proposed Ishiaku lower conditions than the ones for the half season, the player refused to sign a contract. This placed club and player agent in a difficult position since the working permit of Ishiaku was about to expire and without a new contract the player would be illegally in the country. Towards the end of the season, Omo and Ishiaku were arrested by the police during a training and it has been alleged that the club and player agent deliberately informed the police in order to do away with the players.

The latter case has been brought before the Court of First Instance in which the legal body 'Centre for equal opportunities and opposition to racism' (CGKRB) assisted Ishiaku and Omo as a civil defence¹⁸⁵ party.¹⁸⁶ The accused were exonerated although evidence was given of for example the fraud and bribery related to the passports. The signatures of the Nigerians appeared on the 'new' passports that were allegedly issued in Nigeria at the moment they were already in Belgium. Here, the court ruled that since only copies of the original Nigerian passports were available and since no birth registers in Nigeria exist, a reasonable doubt exists, precluding the accused from the allegations. Furthermore, it was not to be assumed unreasonable that one needs to pay for new passports since this is also due in Belgium and hence one cannot establish that the Nigerian embassy was bribed. Concerning the charges on human trafficking legislation the Court held that the accused did not make use of "malicious manoeuvres, force, threat or other means of coercion" and that they did not abuse the "particular vulnerable position of the foreigner due to the unlawful or precarious administrative situation or state of minority".¹⁸⁷

After being arrested, Ishiaku and Omo ended up in Payoke, one of the three centres for victims of human trafficking in Belgium. In 2000, the CGKRB found that 5 percent of all human trafficking victims are situated in the sport sector.¹⁸⁸ These centres have indeed increasingly dealt with African football players who stranded illegally in the country. In line

¹⁸⁵ Translation of the corresponding Dutch term 'burgerlijke partij'.

¹⁸⁶ Correctional Court of First Instance of Kortrijk, Case 55.48.100423'01, Ishiaku Manasseh, Omo Monday and The Centre for equal opportunities and opposition to racism v Havegeer Roger, Storme James, De Bruyne Bart and Cooreman Maurice (31 October 2006).

¹⁸⁷ Ibid., par. 5.2.1.2.

¹⁸⁸ The Centre for equal opportunities and opposition to racism, Annual Report 2000: image-forming of human trafficking and analysis of the jurisprudence, p. 64.

with Council Directive 2004/81/EC (see above) victims receive protection in these centres and a temporary residence permit on the condition that they cooperate with the competent authorities. It is a magistrate of the Prosecution which judges on the merits of the dossier whether a person can or cannot be considered as a victim of human trafficking. The Cameroonian player George Mouandjo who was assisted by Pag-Asa, centre for victims of human trafficking in Brussels, was formally recognised as victim.¹⁸⁹ In his lawsuit, the Court again did not uphold the charges of human trafficking but found infractions concerning labour law.¹⁹⁰ Particularities of this case were the facts that Mouandjo had two contracts through which the side of Mons paid him less than the stipulated minimum wage. Furthermore, the player was loaned by the side of Tournai which conveyed the player into illegality since Mons had not sought the prolongation of his working permit while his monthly payment was neither respected anymore. Although the player was clearly brought into a precarious administrative and financial situation, the Court argued however that since Mouandjo came by own means to Belgium, the charges of human trafficking could not be upheld.

4.3 Conclusion

This thesis has gradually elaborated on the existing legal loopholes regarding the transfers of African football players. The premise of development of underdevelopment through the large scale muscle drain has been raised and was strengthened by showing the ineffectiveness of FIFA's solidarity mechanism which aims at redistributing the high transfers sums that are often paid for players. Additionally, the training compensation does neither provide local teams with the means to foster a structural grass roots development. The situation on the ground is furthermore exacerbated by unofficial structures that operate outside national competitions and form transnational networks with European scouts and managers. Without financial means for development, local African teams remain dependent on the minor compensation that is taken on transferred players. Due to local dynamics through weak institutional structures, this involves however mainly personal transactions of players' agents or club managers and presidents who deal directly with the party they want to sell the player to. Transfers provide thus mainly for individual gain and in the case of the player, often for individual harm. Today, an openly exposed glut of African talent who do not set the terms of

¹⁸⁹ Interview with Pag-Asa, centre for victims of human trafficking, Brussels, 20 February 2007.

¹⁹⁰ Correctional Court of First Instance of Mons, Pag-Asa, Georges Mouandjo v Jamin Maurice, Lafosse Maurice, Heymans Gilbert, Tognelli Mauro, ASBL RAEC Mons and ASBL Royal Sportive (17 December 2002).

their offer is still available to European recruiters. Legal restrictions are easily avoided through passport fraud and their purchase cost is low but surplus value high.

The legislation of FIFA, international and national legislation does not capture the functioning of player's agents in a way that malpractices can be prevented. The examples above have shown that the outcome of a lack of institutional clearness can lead to situations in which football players ought to be considered as victims of human trafficking. This has been affirmed by legal instances in Belgium although no major sentences on the merits of national human trafficking legislation have occurred. One might need to seek the reason for this within the trafficking legislation rather than within the factual situations of the players. With the above mentioned European Council Directives, human trafficking is gradually detached from being based on sexual exploitation only. The example of Belgian legislation was taken to show how trafficking was brought under the Criminal Code and how it captures economic exploitation.¹⁹¹ The difficulty with this article is however the reference to human dignity which asks for football players to be exploited through standards that are applicable to other victims of human trafficking, such as illegally employed manpower who are working under harsh and sometimes humiliating conditions. Although there are reported cases in which football players were brought in precarious work and living conditions, these have been fairly rare. The common practice of double contracts shows however how African football players are easily exploited through their precarious administrative and socially vulnerable position. Furthermore, the human smuggling is laid down in the Belgian Foreign Act and frames smuggling as an activity in which persons are transported with the aim of obtaining a financial benefit.¹⁹² The aforementioned abuse of a precarious and vulnerable situation is however conditional here but as was shown, most African players enter the Schengen zone legitimately and mostly become victims of these abuses once they are in the country.

This legal outcome leads to the final conclusion that transferred African football players fall in between the legislation covering human trafficking and smuggling. The central reason for this is that human trafficking or rather trade is part of football's labour market, where employers buy their employees. For that reason alone, more restrictions and regulations on the profession of players' agents are highly necessary since they thrive on this legitimate trade. These agents do not take on players illegally but through tourist or student visa and work with

¹⁹¹ Belgian Criminal Code, Book II, Title IV, Chapter III ter, Article 433 septies (2).

¹⁹² Belgian Foreign Act, Article 77.

intermediates. Their direct aim is thus not to obtain a financial advantage by bringing a player into a country of which he does not have the nationality but through the contract a player is eventually able to hold. Firstly, this complicates the use of human smuggling legislation while secondly, the element of human dignity comes in when economic exploitation of the player has to be proven. The cases of African football players range in between human trafficking and smuggling and show that an infringement of one's human dignity is not always necessary to be exploited economically and hence to be a victim of trafficking in human beings.

V Perspectives

5.1 Football players between human trade and trafficking

Human trafficking involves the economic or sexual exploitation of persons through means as coercion, violence, deception and fraud which are mostly nurtured by a situation of vulnerability. The term human trade carries less weight although in most other languages this is the corresponding legal term for human trafficking.¹⁹³ Therefore, it is less controversial to talk about the trade in football players while this is just how the world's football labour market functions. Players all have their own market value and are part of a worldwide trade. This enhances the probability for the legally defined phenomenon of human trafficking to find its way on the back of this legitimate trade.

From a human rights perspective many issues are at stake. First and foremost, the transfer system impinges the freedom of movement and association and hence workers' rights of football players with a fixed-term contract. The Bosman ruling has only partly dealt with this which implies that clubs still have discretionary power to control where players can ply their services. On the one hand this is made possible through lengthy contracts while on the other hand clubs put pressure on players to prolong their contract and indeed, cases have been registered that show how players were frozen out the team because they refused to sign a new contract. Furthermore, the system like it is today still has the inherent potential to trigger human trafficking. Football players are an asset for football clubs even more so when they can be obtained cheaply. For European and home-grown players, the outcome of the transfer system might often only be a minor problem since football is financially rewarding once you reach a semi-professional or professional level. For African players, the situation is more complicated at first sight. They are dependent on clubs and agents and are in a vulnerable position, that is, the length of their contract often equalises their legal residence. Their situation strongly diverges according to the level of competition they play in. As was shown above, most African players are found in less well-off leagues and have rather short contracts.¹⁹⁴ As such, clubs safeguard themselves for players that do not reach the expected level. These contracts and low remuneration, often in the form of double contracts, show how African football players are an easily interchangeable good. Clubs can do away with them

¹⁹³ 'Traite des êtres humains' in French, Menschenhandel in German and Trata de seres humanos in Spanish.

¹⁹⁴ Poli, 2006, pp. 284-286.

without severe consequences since alternatives are at hand. The accessibility of African football players, even for clubs with less financial means on these lower levels is blatant and it is mainly in this regard that wrongful conducts are likely to arise. These teams generate less public attention and have a less transparent functioning which makes it even easier to deal selectively with African players.

Human rights have an inherent ethical side and that is why it is praiseworthy to elaborate further on alternatives for contemporary phenomena that cannot be easily captured by the relevant legislation. As was shown above, the cases of African football players are a clear example of this because they fall in between human trafficking and smuggling while there is a conception of legitimacy due to the worldwide human trade in players. However, this large scale muscle drain impoverishes local leagues and infringes structural development. This evolution continues whilst many African players are cheered upon in Europe where they are part of astronomic financial flows involving player transfers, marketing, sponsoring, broadcasting etc. The issue of solidarity and compensation for what is directly taken from many African countries has already been acknowledged as one of the most urgent issues to tackle and was given shape through new FIFA transfer regulations in 2001. As shown, these do however not have the desired outcome which opens the door for alternative proposals that allow countries to capture some of their experienced leg drain. The proposed Coubertobin tax of *Andreff* aimed at covering education and training costs has the potential to gradually slow down the large scale muscle drain and needs therefore careful consideration.¹⁹⁵ The strength of his arguments lies in its economic foundations, that is, it proposes for an 1 percent flat rate to be levied on all transfer fees and initial wages in labour contracts signed by players from developing countries with foreign partners. This fund would finance sport facility building and maintenance but also physical education programmes in schools.¹⁹⁶ The author uses football as the most significant example of how a muscle drain affects developing countries but note that this Coubertobin tax would count for all athletes. Furthermore, the European Commission created an Action Plan called after Pierre de Coubertin, which stresses societal

¹⁹⁵ The Coubertobin tax refers to the work of two persons. Firstly, *James Tobin* (Nobel Prize Winner in Economics), whose Tobin tax became well known as a levy on short-term speculation in currencies and secondly, *Pierre de Coubertobin*, who wished all the countries of the world to participate on equal footing to the Olympic Games.

¹⁹⁶ Andreff, 2004, pp. 97-98.

and economic aspects of sport and will guide the Commission in its sport-related activities during the coming years.¹⁹⁷

The Coubertoin tax might be difficult to enforce – clubs and national associations will of course attempt to resist this taxation – and asks for a major institutional set-up of a monitoring, supervising and conflict-settling international instance.¹⁹⁸ However, besides overcoming the described difficulties with the solidarity mechanism and training compensation, the Coubertoin tax performs also better on a human rights level. Indeed, it does not forestall transfers of players under 18 and allows as such for “the basic human right of human being mobility”.¹⁹⁹ This tax provides thus an interesting alternative to the ongoing discussion of how to counter the disproportionate muscle drain afflicting developing countries today, a discussion which is far from closed.

5.2 The market today

The functioning of European sport and football in particular is characterised by a pyramid structure. The basis of this structure is formed by clubs, above them are regional associations or leagues, then national associations and on top the European federations which is UEFA for the European football pyramid. The Independent European Sport Review has stressed the importance of this structure because it allows financial flows to seep through to the bottom and hence provide clubs and organisations at the basis with means to foster the five recognised social functions of sport. These educational, public health, social, cultural and recreational functions are said to be essential which is at once the reason to lobby for a recognition of the specificity of sport.²⁰⁰

Some difficulties loom at the horizon however which were also stressed in the recent European Parliament report.²⁰¹ The report emphasises how the social function of football is jeopardised by the growing corruption in football where clubs are nowadays driven by pure

¹⁹⁷ European Commission, White Paper on Sport, COM(2007) 391, 11 July 2007.

¹⁹⁸ Ibid., pp. 99-100. This can be an existing organisation such as the UNDP or World Bank or an ad hoc agency.

¹⁹⁹ Ibid., p. 103.

²⁰⁰ UK Presidency of the EU, Independent European Sport Review, 2006, at <http://www.independentfootballreview.com/>.

²⁰¹ European Parliament, Final Report A6-0036/2007 on the future of professional football in Europe by Ivo Belet.

business motives. An even more worrisome evolution is the concentration of economic wealth, which continues to grow as was shown above. This actually endangers the well-functioning of the pyramid structure since this concentration leads to an increasing gap between different levels within it. The troubling money laundering, corruption and bad management that accompanies these huge financial flows need a central place on the political agenda because the raised issue of human trafficking also finds its place herein. Financial deals under the table are indeed commonplace with sometimes drifting private investors being the main impetus for this. This occurs not only on the highest levels but mainly on lower levels where malpractices breed on this veiled financial world which is often intertwined with politics. Hence the question arises what can be done on a structural level to safeguard the future of football and moreover, the rights of vulnerable individuals. Redirecting money flows might be the central issue here although one can imagine that this again opposes the interest of the big clubs which have a strong influence through their lobbying at the highest political levels. However, the current challenges carry important weight for all actors within football and although UEFA and FIFA distribute their incomes and rewards in proportion to the economic size of clubs, they might need to admit the need to redistribute money flows to smaller clubs. This could eventually lead to more checks and balances in a sector that does not easily allow for major infringements in its self-regulation. Healthier finances on all levels will however help to do away with abuses and malpractices that often occur, for example through luring with African players.

A second issue that comes forth through the pyramid function concerns the legal definition of FIFA and UEFA. As was said above, these bodies are currently seen as private undertakings within European competition law. The question now arises to what extent these bodies are exercising public functions and if they do, if this brings for example human rights obligations about. As *de la Mare* and *Mulcahy* have pointed out: “even though not subject to judicial review – currently – sports governing bodies will be amenable to a human rights challenge if they are held to constitute a public authority.”²⁰² They base their conclusion on the 1998 UK British Human Rights act, incorporating the Council of Europe Convention on human rights into national legislation. Article 6 of this Act prohibits public authorities or instances that have to be considered as public authorities to act in a way which is incompatible with a Convention right. If FIFA is in the future to be considered as a public authority, this would for

²⁰² De la Mare & Mulcahy, 2002, p. 2.

example create an opening for sporting bodies under FIFA to appeal before civil courts the latter's decision. At this point, FIFA is sanctioning teams who seek to do this. Obviously, this would broaden the responsibility of clubs and governing bodies in the face of existing human rights legislation which could serve the game only well.

5.3 Social responsibility

Above, a comparison was drawn between African football academies and transnational corporations. The latter are part of the selective integration of the world's economy and pose some serious challenges to the environment where they are operating. These challenges are found on different levels and are often brought back to the question of accountability although also the long-term effects on local economies carries high importance. Furthermore, one can question "what a business owes to the society in which it flourishes".²⁰³ Within human rights law for example, the state is still the main duty holder and therefore the question arises who is to be held accountable when a foreign firm violates basic human rights. In order to deal with the increasing criticism that comes forth from this, social responsibility is now on the rise. This is embodied by a broad range of initiatives which are all categorised within the scope of soft law which means that their strength lies merely in an internal enforcement and an external naming and shaming.

European football teams have a huge potential in their hands with this social responsibility which needs of course to be designed in order to make the two parties benefit. FIFA is today already a major contributor to existing development projects and initiatives of the UN. For the World Cup in Germany 2006, they were mounting a global communications campaign under the banner "Unite for Children – Unite for Peace". Initiatives like the "Red Card to Child Labour" and the support for SOS Children's village further show the functioning of FIFA as almost an international non-governmental organisation.²⁰⁴ This might be a step too far but it is clear that FIFA shows a willingness to rally itself alongside social responsible projects. The most significant project today is probably the Goal Programme, created in 2001 by FIFA's president Sepp Blatter. It aims at fostering a structural development of the game in developing countries and provides national associations with extensive financial means to "promote the sustainable long-term development of the member associations and encourage

²⁰³ United Nations Conference and Trade and Development, 1999.

²⁰⁴ Eisenberg, 2006, p. 61.

solidarity among them” and to “seek parity in the standard and infrastructure of football in individual countries”.²⁰⁵ These projects have to be cherished and need to further strengthening as examples of how these can be established and nurtured on a grass roots level. Although all these FIFA initiatives are more than praiseworthy, they do however not originate from clubs which are the main financial stake holders in the world of football. As such, the initiatives of FIFA can be considered as a buffer to the outcome of club’s dealing on the market. However, one should also acknowledge the willingness to support projects devoid of competitive elements and hence to foster also local development that is not connected to football and its infrastructure.

The successful FIFA projects show the potency and capacity of football to reach out to local communities in developing countries and to serve as a development tool. This capacity is however far from fully realised and that is where today a lot of possibilities lie. Football clubs should be brought under the umbrella of social responsibility without taking away their need for marketing and proliferation. Social responsibility can indeed be a ‘marketable’ thing that football clubs can use to foster development and to raise a picture of how football contributes to that aim. It is all about operating in Africa with a social responsibility code that diverges from what is happening now on the ground. Today, football clubs are brands which they sell and disperse locally through an increasing presence on the ground, for example in the form of football academies related to European teams. In their slipstream, they carry the smell of a culture of success suggesting that talent suffices to reach this success. Mostly it does not however and what is more, by bringing the perspective of playing in Europe as a first goal, they directly take away local dispositions for football development at home. What thus needs to be done in a first place is further awareness raising of how the situation of today needs a change, which is moreover subject of a political discussion during the last years. Furthermore, this needs to lead clubs to use social responsibility as a means of a two tyre development. In the long term this would create the seeds to overcome the current problems that are experienced with football academies, so to turn the outcome of their functioning in the first place towards own competitions and structures. The media can also play a major role in this process since it is already investing astronomic sums to obtain broadcasting rights. Focusing on local development projects of European teams, which can of course strongly diverge in

²⁰⁵ Information about the Goal Programme is available at <http://fifa.com/aboutfifa/developing/goalprogramme/index.html>.

their content, might bring in interesting television for a very broad public. However, the stress needs to be on the local teams and not on the interests of European sides.

In 2010, the World Cup takes place in South Africa. For the first time Africa will receive the tournament and already today a lot has been said about the challenges this poses in terms of organising the world most watched sport event. For one month, the spotlights will be on Africa, providing manifold opportunities to draw the attention to issues that are less well known to the general public. It would thus be a blow for FIFA if it does not fully use the potential to create an agenda with priorities for football in Africa. The day that European teams will then realise this urgent need to prioritise what is needed on a local level, football will be a little bit more ‘the beautiful game’.

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