

Is Nihat Kahveci a EU-Footballer? The Path from His Request to the Legal End.

■ *by Juan de Dios Crespo Pérez**

I would like to deliver to my Turkish colleagues not all the legal grounds of the Nihat case, but my personal experience as his lawyer during all the years of dispute that we have both endured.

I started the legal battle to obtain for Nihat Kahveci his football EU citizenship on season 2001-2002. When the President of his club at that time, the Real Sociedad of San Sebastián, in Spain, told me that he had more foreign players under contract than those accepted by the Spanish football rules and requested a report on which possibilities do the club have to tackle this problem, I began to wonder which road we should go in order to reach that target.

I had been involved in several cases of Romanian and Bulgarian players who decided to request their “football EU citizenship” in Spain as per the Agreements signed by their countries with the European Union and was lucky enough to get some of them playing in Spain with the same rights as any Spaniard or citizen of the members of the EU.

I then dug into the Communities-Turkey Association Agreement and its integrated part the Additional Protocol and thought that even though Turkey was not yet on the starting blocks to enter the EU, as Rumania and Bulgaria were, it was no way a different Agreement and if I have to be sincere, I even pretended that the Ankara Agreement was much more legally interesting for Nihat in order to become considered “as a EU citizen”.

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The Spanish Football Association was then the first step to reach and a request was made by both the club and Nihat in order to be considered with the same rights of a EU citizen and thus to get the same type of license that could make him an *alter ego* of any Spanish, Italian or English footballer.

Of course, the Spanish FA denied such a category and opened then the path to the long and winding road of the legal system. We had to go to the Superior Council of Sports – CSD- (from the then Ministry of Culture and Sport) on appeal and trying to reverse such the first decision.

We had no chance to get a positive answer on that administrative way and when we were given a negative decision by the CSD, we had no other route but to began the legal struggle before the Spanish Court, according to our system.

The case was so unpopular within Spanish FA, as if Turkey citizens were to be considered with the same rights as EU members, it could not only open that door much before it was intended by the EU, but could also open other doors to countries with similar Agreements. The aim of the debate was to protect the “national product” and in fact is the same battle that today FIFA is trying to put back on the table with the famous 6+5 (6 nationals and 5 “non nationals”- including all of those that cannot play for the national teams).

This is of course another debate and should need much more room but the idea was similar: close the doors or our national team will be weakened. Before closing this issue, we have to point out that Spain has won the European Nations UEFA Cup with the highest percentage of non-Spanish players in their teams, so may be FIFA is mistaken and Spanish FA was at that time mistaken too.

And that clash was brought to the Courts with several issues on procedural matters, which gave us the opportunity to be in three different Courts before one of them (which previously denied its jurisdiction) accepted it finally. By that date two seasons have been finished and on July 2004, the Court denied a preliminary measure that we have requested in order to have Nihat playing “as a EU Citizen” while the case was under decision.

I appealed such a denial and was given a positive answer on December 2004, by the very same Court and as for January 2005 Nihat Kahveci began to play football not only as a Turkish citizen but also with the same rights of a EU citizen. That decision was important as it permitted that Nihat did not play anymore as a “foreigner” and then the restricted quota was not anymore applicable to him.

Of course, this was not the end of the proceedings as we still did not have a final decision on the request, but at least it gave us the tranquil-

lity to work without the *Damocles' sword* of Nihat playing with full and with the sporting and contractual consequences both for him and his club.

Nihat had even the time to switch from Real Sociedad to Villarreal CF that decided also to continue the legal struggle up to the end as the engagement with the player was based on his ability to play as a non-foreigner as the Villarreal quota for foreigner was replete.

We finally request the Spanish Court (Tribunal Superior de Justicia de Madrid) to present a prejudicial question to the European Court of Justice, which was accepted and was filed under number C-152/08.

The European Court of Justice finally answered the question on the 25th of July 2008 stating that the Agreement between the (then) EEC (now EU) and Turkey should be interpreted

“in the sense that it OPPOSES the application to a sportsman of Turkish nationality, legally contracted by a club established in a EU member State, of a rule adopted by a sporting federation of the same State, in which the clubs can only play, in competitions of State level, with a limited number of players from third States that are not a part of the European Economic Space”.

The said ECJ decision is not, in my opinion, a mere answer to the question, but has a *erga omnes* effect, in the sense that it clarifies that any professional sportsman from Turkey that is legally contracted in Spain will be considered as a EU citizen in his sport and that the decision is not framed within Spain but should be considered to have effect in all the members of the EU.

Finally, on the 6th of March 2009, after quite eight years of legal struggling, the Spanish Court delivered its decision in which Nihat Kahveci was considered “as a EU citizen” in his rights and duties in Spanish football, opening the way to his colleagues not only in his sport but in all the professional ones as well for the other EU members.

The conclusion can be that borders should not be of this world and it seems that only a clear (and legally binding) future message delivered by the European Union on the “specificity of Sport” in the sense of what FIFA is requesting with its 6+5 demand can avoid a future of non discrimination on the basis of nationality for sportsmen. In this sense, just think about the so-called “Cotonou agreement” between the EU and 77 States of Africa, the Caribbean and Pacific Ocean that permit to consider their citizens “as EU ones” also.

But of course this is not the end of the debate and we will surely have future news in a sense or another soon as FIFA is trying that the European Parliament accepts its 6+5 idea and I have been myself before the Legal Commission of the Parliament last 30th of March giving a report on the opposite side...