

## Fixed-Term Employment Allowed in Professional Soccer – For the Time Being!

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**Decision** In its decision of 17 February 2016 (4 Sa 202/15), the Rhineland-Palatinate Higher Labor Court reversed the decision of the Mainz Labor Court of 19 March 2015 (3 Ca 1197/14), ruling that fixed-term employment contracts with professional football players are legal.

In Heinz Müller (former goalkeeper) vs. FSV Mainz 05, the Rhineland-Palatinate Higher Labor Court ruled (at first orally) that objective reasons exist for such fixed-term contracts “due to the unique nature of the work to be performed by the plaintiff as a professional football player”, arguing that this is grounded not only in the unpredictability of athletic performance, but also in the fact that the public insists upon variety, as is also the case in the entertainment business.

**Background** This is the first decision to expressly address the legality of fixed-term employment contracts with professional football players. The question as to whether such fixed-term employment is permissible has been the subject of much dispute in the scholarly literature. Those who are of the opinion that such employment is legal regularly cite the need for innovation and variety, the gradual decline in the performance of professional athletes with age and what is referred to as ‘wear’. What that means is that fatigue and wear may occur in the case of work in the same environment and inhibit the development of athletes who are under management.

The Federal Labor Court recognized the element of wear as the reason for fixed-term employment contracts with coaches at the state and club levels in the areas of fencing and tennis and ruled such fixed-term contracts legal (Federal Labor Court, Decision of 19 June 1986 – 2 AZR 570/85; Federal Labor Court, Decision of 29 October 1998 – 7 AZR 436/97).

It remains to be seen whether the Federal Labor Court will also recognize one of the above reasons in the case of professional football players and conclude that fixed-term contracts with the latter are also legal. Heinz Müller has the possibility of appealing the decision of the second-instance court to the Federal Labor Court.

**Conclusion** Professional football has not suffered any major upheaval. The clubs and the companies that employ professional football players can relax. Despite the opinion of many officials who – reasoning on the basis of the ultimate result – argue that it is simply impossible to apply ‘normal’ labor law to professional football, the legality of fixed-term contracts is not by any means anchored in doctrine although good arguments do exist for such legal treatment.

# Legal Update

## Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr. Heiko Reiter on +49 69 170000-220 or by email to [hreiter@goerg.de](mailto:hreiter@goerg.de). For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

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