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Press and Information

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Opinion of Advocate General Stix-Hackl in Case C-265/03

Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol

FIRST CASE RELATING TO ONE OF THE COMMUNITY'S PARTNERSHIP AGREEMENTS : IN THE VIEW OF ADVOCATE GENERAL STIX-HACKL, PROFESSIONAL FOOTBALLERS OF RUSSIAN NATIONALITY WHO ARE LEGALLY EMPLOYED IN A MEMBER STATE HAVE AN UNRESTRICTED RIGHT TO PARTICIPATE IN COMPETITIONS RUN BY THEIR ASSOCIATION

The prohibition of discrimination on grounds of nationality laid down in the EC/Russian Federation Partnership Agreement prevents a rule of the association from being applied to those players under which their opportunity to participate in certain competitions is restricted compared with that of Community nationals.

Igor Simutenkov, a Russian national, was a professional footballer with the Spanish club Deportivo Tenerife. He had an employment contract, a Spanish residence card and work permit, and a Spanish association licence for players from outside the European Community and the European Economic Area. The association licence granted to him by the Real Federación Española de Fútbol (Spanish Football Association) entitled him to engage in that sport as a member of the association and to be fielded as a player of his club in matches and official competitions such as the Primera Liga (First Division) and Second Division National Championships, the Copa del Rey (King's Cup) and the Supercup.

Under the regulations of the association, teams can, however, field only a limited number of players from States outside the European Economic Area in those competitions. Mr Simutenkov therefore applied, relying on the EC/Russian Federation Partnership Agreement¹ which prohibits discrimination on grounds of nationality as regards working conditions, to convert his licence to a Community player's licence, but the association refused

¹ Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part (OJ 1997 L 327, p. 3).

this. The Spanish court before which the resulting legal proceedings are pending has referred to the Court of Justice of the European Communities the question whether the Spanish association's regulations are compatible with the Treaty.

Advocate General Stix-Hackl has today delivered her Opinion in this case.

The Advocate General examines first of all whether the relevant provision of the Agreement is directly applicable. She comes to the conclusion that Mr Simutenkov can rely directly on the prohibition of discrimination laid down in the Agreement.

In the view of the Advocate General, the sporting rule in question relates to working conditions, within the meaning of the Agreement, with regard to which the Agreement contains the prohibition on discriminating against Russian nationals legally employed in a Member State compared with the State's own nationals. As is apparent from the judgments in *Bosman*² and *Deutscher Handballbund*,³ participation in matches organised by the association constitutes the essence of professional players' activity. The rule of the Spanish association restricts, however, the ability of teams to field certain professional players in official matches. It therefore has a direct impact on the participation of Russian professional footballers legally employed in a Member State, such as Mr Simutenkov.

The Advocate General then states that, under the Court's case-law, the prohibition on discrimination applicable to Community nationals precludes the application of rules laid down by sporting associations under which sports clubs may field in competitions only a limited number of professional players who are nationals of another Member State. Since the Agreement with the Russian Federation grants Russian nationals legally employed in a Member State a right to equal treatment with regard to working conditions which corresponds to the right to equal treatment accorded to Community nationals, that is also the case for such Russian nationals.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

² Judgment of the Court of Justice in Case C-415/93 [1995] ECR I-4921.

³ Judgment of the Court of Justice in Case C-438/00 [2003] ECR I-4315.

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Available languages: DE, EN, ES, FR, IT, GR, NL, PL

*The full text of the Opinion may be found on the Court's internet site
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day of delivery.
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