

Press and Information Division

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Judgment of the Court in Case C-438/00

*Deutscher Handballbund e.V. v Maros Kolpak*

**THE COURT INTERPRETS, WITHIN THE AREA OF SPORT, THE PRINCIPLE OF NON-DISCRIMINATION ON GROUNDS OF NATIONALITY SET OUT IN THE ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND SLOVAKIA**

*The Association Agreement between the EC and Slovakia precludes the application of rules drawn up by a sports federation under which Slovak players enjoy only a limited opportunity to take part in league and cup matches of federal and regional leagues*

Maros Kolpak, who is a Slovak national, has, since March 1997, played as goalkeeper for the German second-division handball team TSV Östringen eV Handball. He signed a contract of employment, is resident in Germany and holds a valid residence permit.

The Deutscher Handballbund e.V. (the national handball federation in Germany) (DHB), which organises league and cup matches at federal level, issued Mr Kolpak with a player's licence marked with the letter A on the ground that he was a national of a non-member country whose citizens do not benefit from the equal treatment provisions under the EC Treaty or, in identical terms, under the Agreement on the European Economic Area (EEA).

Under the federal rules governing competitive games drawn up by the DHB, teams in the federal and regional leagues may, in league or cup matches, field no more than two players whose licences are marked with the letter A.

Mr Kolpak requested that he be issued with a player's licence which did not feature the specific reference to nationals of non-member countries, as he considered that he was entitled to take part without any restriction whatsoever in competitions by reason of the prohibition of discrimination set out in the Association Agreement between the EC and Slovakia.

The Oberlandesgericht (Higher Regional Court) Hamm, before which the dispute was brought on appeal from the court of first instance, stayed proceedings in order to ask the Court of Justice, under the preliminary-reference procedure, whether the principle of non-discrimination on grounds of nationality set out in the Association Agreement between the EC and Slovakia, under which Slovak workers lawfully employed in the territory of a Member State are entitled to the same treatment as nationals of that Member State in regard to conditions of work, remuneration or dismissal, precludes a rule drawn up by a sports federation under which clubs are, for certain matches, authorised to field only a limited number of players from non-member countries that are not part of the EEA.

In this regard, the Court first of all stated, on the basis of its recent judgment in *Pokrzeptowicz-Meyer* concerning the interpretation of that same principle within the context of the Association Agreement between the European Communities and Poland,<sup>1</sup> that the provision of the Agreement laying down the principle of non-discrimination on grounds of nationality is directly applicable. Slovak nationals are thus entitled to invoke that principle before the national courts of the host Member State.

The Court then went on to point out that, according to the principles which it set out in *Bosman*,<sup>2</sup> the prohibition of discrimination laid down in the provisions of the EC Treaty dealing with the free movement of workers applies not only to measures of public authorities but also to rules drawn up by sporting associations which determine the conditions under which professional sportsmen can engage in gainful employment. In this connection the Court stated, still on the basis of its judgment in *Pokrzeptowicz-Meyer*, that, although the relevant provision of the Agreement does not set out a principle of free movement for Slovak workers, the principle of non-discrimination laid down in the Agreement also applies to a rule drawn up by a sports federation such as the DHB.

Finally, the Court defined the scope of the principle of non-discrimination by pointing out that the prohibition of all discrimination on grounds of nationality applies only to Slovak workers who are already lawfully employed in the territory of a Member State and solely with regard to conditions of work, remuneration or dismissal. That scope does not extend to national rules dealing with access to the labour market.

The Court found in this regard that Mr Kolpak is lawfully employed under a contract of employment, that he holds a valid residence permit and that, according to national law, he does not require a work permit in order to carry out his profession. The Court also pointed out that, according to its judgment in *Bosman*, a rule which limits the number of professional players who may participate in certain matches does not concern the employment of professional players, on which there is no restriction, but the possibility for their clubs to field them in official matches, and that participation in such matches is the essential purpose of those players' activity. Moreover, such a rule is discriminatory and cannot be justified on sports-related grounds linked to the training of young players who are nationals of the Member State concerned.

From this the Court concluded that a rule such as that drawn up by the DHB relates to working conditions and that a **limited opportunity** for Slovak players, in comparison with

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<sup>1</sup> • Judgment of 29 January 2002 in Case C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049.  
<sup>2</sup> • Judgment of 15 December 1995 in Case C-415/93 *Bosman* [1995] ECR I-4921.

players who are nationals of the EEA Member States, **to take part in certain matches involves discrimination prohibited by the Association Agreement.**

Such discrimination cannot be justified on sporting grounds (this might, in contrast, be the case with regard to matches between national teams excluding foreign players for exclusively sports-related reasons).

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