JUDGMENT OF THE COURT (Fifth Chamber)

8 May 2003 *

In Case C-438/00,

REFERENCE to the Court under Article 234 EC by the Oberlandesgericht Hamm (Germany) for a preliminary ruling in the proceedings pending before that court between

Deutscher Handballbund eV

and

Maros Kolpak,

on the interpretation of Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, approved on behalf of the Communities by Decision 94/909/ECSC, EEC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 359, p. 1),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, acting for the President of the Chamber, A. La Pergola (Rapporteur), P. Jann, S. von Bahr and A. Rosas, Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Deutscher Handballbund eV, by P. Seydel, H.J. Bodenstaff and R. Jersch, Rechtsanwälte,

— the German Government, by W.-D. Plessing and B. Muttelsee-Schön, acting as Agents,

— the Spanish Government, by R. Silva de Lapuerta, acting as Agent,

— the Italian Government, by U. Leanza, acting as Agent, assisted by D. Del Gaizo, avvocato dello Stato,

— the Commission of the European Communities, by M.-J. Jonczy, D. Martin and H. Kreppel, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Deutscher Handballbund eV, represented by R. Jersch; of Mr Kolpak, represented by M. Schlüter, Rechtsanwalt; of the Greek Government, represented by V. Pelekou and S. Spyropoulos, acting as Agents; of the Spanish Government, represented by R. Silva de Lapuerta; of the Italian Government, represented by G. Aiello, avvocato dello Stato; and of the Commission, represented by M.-J. Jonczy and H. Kreppel, at the hearing on 20 June 2002,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2002,

gives the following

Judgment

1 By order of 15 November 2000, received at the Court on 28 November 2000, the Oberlandesgericht (Higher Regional Court) Hamm referred for a preliminary ruling under Article 234 EC a question on the interpretation of Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, signed in Luxembourg on 4 October 1993 and approved on behalf of the Communities by Decision 94/909/ECSC, EEC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 359, p. 1) ('the Association Agreement with Slovakia').

2 That question has been raised in a dispute between Deutscher Handballbund eV (the German Handball Federation) ('the DHB') and Mr Kolpak concerning the issue of a professional player's licence.

The Association Agreement with Slovakia

3 Article 1(2) of the Association Agreement with Slovakia states that the aims of the Agreement are, *inter alia*, to provide an appropriate framework for political dialogue between the Parties, allowing the development of close political relations between them, to promote the expansion of trade and harmonious economic relations between the Parties in order to foster dynamic economic development and prosperity in the Slovak Republic, and to provide an appropriate framework for the Slovak Republic's gradual integration into the Communities, that country's ultimate objective being, according to the final recital in the preamble to that Agreement, accession to the Communities.

4 With regard to the case in the main proceedings, the relevant provisions of the Association Agreement are to be found in Title IV thereof, entitled 'Movement of workers, establishment, supply of services'.

5 Article 38(1) of the Association Agreement, which features in Title IV, Chapter I, entitled 'Movement of workers', provides:

'Subject to the conditions and modalities applicable in each Member State:

— treatment accorded to workers of Slovak Republic nationality 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,

— the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal workers and of workers coming under bilateral agreements within the meaning of Article 42, unless otherwise provided by such agreements, shall have access to the labour market of that Member State, during the period of that worker's authorised stay of employment.'

6 Article 42 of the Association Agreement, which features in the same chapter, states:

'1. Taking into account the labour market situation in the Member State, subject to its legislation and to the respect of rules in force in that Member State in the area of mobility of workers:

— the existing facilities for access to employment for Slovak Republic workers accorded by Member States under bilateral agreements ought to be preserved and if possible improved,

— the other Member States shall consider favourably the possibility of concluding similar agreements.

2. The Association Council shall examine granting other improvements including facilities of access for professional training, in conformity with rules and procedures in force in the Member States, and taking account of the labour market situation in the Member States and in the Community.'

7 Article 59(1) of the Association Agreement, which appears in Title IV, Chapter IV, entitled 'General provisions', provides:

'For the purpose of Title IV of this Agreement, nothing in the Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons, and supply of services, provided that, in so doing, they do not apply them in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of this Agreement....'

The national rules

8 The DHB adopted the Spielordnung (federal regulations governing competitive games) ('the SpO'), Rule 15 of which, in the version in force on the date of the order for reference, provided as follows:

'(1) The letter A is to be inserted after the licence number of the licences of players

(a) who do not possess the nationality of a State of the European Union (EU State),

(b) who do not possess the nationality of a non-member country associated with the EU whose nationals have equal rights as regards freedom of movement under Article 48(1) of the EC Treaty,

(c) ...

(2) In teams in the federal and regional leagues, no more than two players whose licences are marked with the letter A may play in a league or cup match.

...

(5) The marking of a licence with the letter A is to be cancelled from 1 July of the year if the player's country of origin becomes associated within the meaning of Paragraph 1(b) by that date. The DHB shall publish and continually update the list of the States correspondingly associated.'

The dispute in the main proceedings and the question submitted for preliminary ruling

9 Mr Kolpak, who is a Slovak national, entered in March 1997 into a fixed-term employment contract expiring on 30 June 2000 and subsequently, in February 2000, entered into a new fixed-term contract expiring on 30 June 2003 for the post of goalkeeper in the German handball team TSV Östringen eV Handball, a club which plays in the German Second Division. Mr Kolpak receives a monthly salary. He is resident in Germany and holds a valid residence permit.

10 The DHB, which organises league and cup matches at federal level, issued to him, under Rule 15 of the SpO, a player's licence marked with the letter A on the ground of his Slovak nationality.

11 Mr Kolpak, who had requested that he be issued with a player's licence which did not feature the specific reference to nationals of non-member countries, brought an action before the Landgericht (Regional Court) Dortmund (Germany) challenging that decision of the DHB. He argued that the Slovak Republic is one of the non-member countries nationals of which are entitled to participate without restriction in competitions under the same conditions as German and Community players by reason of the prohibition of discrimination resulting from the combined provisions of the EC Treaty and the Association Agreement with Slovakia.

12 The Landgericht ordered the DHB to issue Mr Kolpak with a player's licence not marked with an A on the ground that, under Rule 15 of the SpO, Mr Kolpak was not to be treated in the same way as a player who was a national of a non-member country. The DHB appealed against that decision to the Oberlandesgericht Hamm.

13 The Oberlandesgericht takes the view that the reference to Article 48 of the EC Treaty (now, after amendment, Article 39 EC) by Rule 15(1)(b) of the SpO must be construed as meaning that this latter provision covers only players who enjoy complete equality of treatment *vis-à-vis* Community nationals in respect of free movement of workers. According to this interpretation, Mr Kolpak is not entitled to be issued with a licence which does not contain the limitations resulting from the addition of the letter A, as such general equality of treatment does not feature in the association agreements concluded with the countries of Eastern Europe and the Mediterranean Basin, which include the Association Agreement with Slovakia.

14 The Oberlandesgericht accordingly asks whether Rule 15(1)(b) of the SpO is contrary to Article 38 of the Association Agreement. If that were so, and if the latter provision were to have direct effect in regard to individuals, Mr Kolpak would be entitled to be issued with an unrestricted licence.

15 In the opinion of the Oberlandesgericht, the DHB breaches the prohibition in Article 38 of the Association Agreement with Slovakia through its refusal to issue Mr Kolpak with an unrestricted licence on the ground of his nationality.

16 In that regard, the Oberlandesgericht Hamm observes that Mr Kolpak's contract, which is governed by Rule 15 of the SpO, is an employment contract, as that player undertakes thereby, in return for a fixed monthly salary, to provide sporting services, as an employee, in connection with training and matches organised by his club and that this constitutes his main professional activity.

17 The Oberlandesgericht also takes the view that the provisions of Rule 15(1)(b) and 15(2) of the SpO, read together, give rise to inequality of treatment in regard to working conditions. Mr Kolpak is already lawfully employed within the territory of the Federal Republic of Germany, in which he is resident, he holds a valid residence permit, he is not, under German legislation, subject to any obligation to obtain a work permit, and he is no longer personally affected by any barrier to employment, even an indirect one; all that notwithstanding, he does not, by reason of the above provisions, enjoy the same opportunities as others to participate in official matches as part of his professional activity.

18 Thus, according to the Oberlandesgericht, the prohibition of discrimination set out in Article 38 of the Association Agreement with Slovakia applies on condition that the proviso contained therein relating to the conditions and modalities in force in each Member State does not preclude this. In that regard, the Oberlandesgericht considers that such conditions and modalities are constituted solely by legal rules of a general character and not by rules involving the application of working conditions that differ according to the nationality of the worker. It thus tends to the view that the rules drawn up by the DHB, within the framework of the autonomy which associations are recognised as having, do not form part of those conditions and modalities. If the contrary were true, the prohibition of discrimination contained in the Association Agreement would serve no purpose.

19 The Oberlandesgericht Hamm further takes the view that Article 38 of the Association Agreement with Slovakia, in the same way as Article 48 of the Treaty, is a directly applicable provision inasmuch as, regard being had to its wording and to the purpose and nature of the Agreement, it contains a clear and precise obligation which is not subject, in its implementation or its effects, to the operation of any further measure. According to the Oberlandesgericht, Article 38 of the Association Agreement also has effects *vis-à-vis* third parties inasmuch as it does not apply solely to measures taken by the authorities but also extends to rules applying to employees that are collective in nature.

20 The Oberlandesgericht concludes that it is faced with an infringement of the prohibition of discrimination arising under Article 38 of the Association Agreement with Slovakia which should have the effect of rendering Rule 15(1)(b) of the SpO inapplicable to Mr Kolpak.

21 In those circumstances, the Oberlandesgericht Hamm has decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is it contrary to Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part — Final Act — if a sports federation applies to a professional sportsman of Slovak nationality a rule that it has adopted under which clubs may field in league and cup matches only a limited number of players who come from countries not belonging to the European Communities?'

The question submitted for preliminary ruling

22 By its question the Oberlandesgericht Hamm is asking, essentially, whether the first indent of Article 38(1) of the Association Agreement with Slovakia is to be construed as precluding the application to a professional sportsman who is a Slovak national and is lawfully employed by a club established in a Member State of a rule drawn up by a sports federation in that State under which clubs are authorised, during league or cup matches, to field only a limited number of players from non-member countries that are not parties to the Agreement on the European Economic Area ('the EEA').

23 In order to reply to the question, as thus reformulated, it is necessary first of all to examine whether the first indent of Article 38(1) of the Association Agreement with Slovakia can be invoked by an individual before a national court and then, if the answer to that question is in the affirmative, whether that provision can be invoked in regard to a rule drawn up by a national sports federation such as the DHB. Finally, it will be necessary to establish the scope of the principle of non-discrimination which that provision lays down.

The direct effect of the first indent of Article 38(1) of the Association Agreement with Slovakia

24 It should be noted at the outset that, in paragraph 30 of its judgment in Case C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049, the Court has already recognised the first indent of Article 37(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, signed in Brussels on 16 December 1991 and approved on behalf of the Communities by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1) ('the Association Agreement with Poland'), as having direct effect.

25 It is to be observed, first, that the wording of the first indent of Article 38(1) of the Association Agreement with Slovakia and that of the first indent of Article 37(1) of the Association Agreement with Poland is identical.

26 Second, those two Association Agreements do not differ in regard to their objectives or the context in which they were adopted. Each has, according to the final recital in the preamble and Article 1(2), the aim, *inter alia*, of establishing an

association to promote the expansion of trade and harmonious economic relations between the contracting parties so as to foster dynamic economic development and prosperity in the Slovak Republic and in the Republic of Poland respectively, in order to facilitate those countries' accession to the Communities.

27 That being so, just as Article 58(1) of the Association Agreement with Poland does not preclude the first indent of Article 37(1) of that Agreement from having direct effect (see *Pokrzeptowicz-Meyer*, cited above, paragraph 28), so Article 59(1) of the Association Agreement with Slovakia does not preclude the first indent of Article 38(1) of that Agreement from having direct effect, given the similarity of the provisions in question.

28 Furthermore, as with the first indent of Article 37(1) of the Association Agreement with Poland, implementation of the first indent of Article 38(1) of the Association Agreement with Slovakia is not subject to the adoption by the Association Council, set up by that Agreement, of additional measures to define the detailed rules governing its application (*Pokrzeptowicz-Meyer*, paragraph 29).

29 Finally, just as in the case of Article 37(1) of the Association Agreement with Poland, the words '[s]ubject to the conditions and modalities applicable in each Member State' in Article 38(1) of the Association Agreement with Slovakia cannot be interpreted in such a way as to allow Member States to make the application of the principle of non-discrimination set out in that provision subject to conditions or discretionary limitations inasmuch as such an interpretation would render that provision meaningless and deprive it of any practical effect (*Pokrzeptowicz-Meyer*, paragraphs 20 to 24).

30 In those circumstances, the first indent of Article 38(1) of the Association Agreement with Slovakia must be recognised as having direct effect, with the result that Slovak nationals who invoke it are entitled to rely on it before national courts of the host Member State.

The question whether the first indent of Article 38(1) of the Association Agreement with Slovakia applies to a rule laid down by a sports federation

31 As a preliminary point, it should be observed that, in regard to Article 48(2) of the Treaty, it follows from paragraph 87 of the Court's judgment in Case C-415/93 *Bosman* [1995] ECR I-4921 that the prohibition of discrimination laid down in that provision applies to rules laid down by sporting associations which determine the conditions under which professional sportsmen can engage in gainful employment.

32 In that connection, the Court pointed out, in paragraph 84 of *Bosman*, cited above, that working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons, and that, if the scope of Article 48 of the Treaty were to be confined to acts of a public authority, there would therefore be a risk of creating inequality in its application.

33 With regard to the first indent of Article 38(1) of the Association Agreement with Slovakia, in order to determine whether that provision applies to a rule drawn up by a sports federation such as the DHB, it is necessary to examine whether the Court's interpretation of Article 48(2) of the Treaty may be transposed in this case to the above provision of the Association Agreement with Slovakia.

34 The Court has stated in this regard, in paragraphs 39 and 40 of *Pokrzeptowicz-Meyer*, that, although the first indent of Article 37(1) of the Association Agreement with Poland does not lay down a principle of free movement for Polish workers within the Community, whereas Article 48 of the Treaty establishes for the benefit of Member State nationals the principle of free movement for workers, it follows from a comparison of the aims and context of the Association Agreement with Poland, on the one hand, with those of the EC Treaty, on the other hand, that there is no ground for giving to the first indent of Article 37(1) of that Association Agreement a scope different from that which the Court has recognised Article 48(2) of the Treaty as having.

35 In that context, the Court stated in paragraph 41 of *Pokrzeptowicz-Meyer* that the first indent of Article 37(1) of the Association Agreement with Poland establishes, in favour of workers of Polish nationality, once they are lawfully employed within the territory of a Member State, a right to equal treatment as regards conditions of employment of the same extent as that conferred in similar terms by Article 48(2) of the Treaty on Member State nationals.

36 It follows from the foregoing and from the reasoning set out in paragraphs 25 to 30 of this judgment that the interpretation of Article 48(2) of the Treaty adopted by the Court in *Bosman* and referred to in paragraphs 31 and 32 of the present judgment may be transposed to the first indent of Article 38(1) of the Association Agreement with Slovakia.

37 That being so, it must be concluded that the first indent of Article 38(1) of the Association Agreement with Slovakia applies to a rule drawn up by a sports federation such as the DHB which determines the conditions under which professional sportsmen engage in gainful employment.

The scope of the principle of non-discrimination set out in the first indent of Article 38(1) of the Association Agreement with Slovakia

38 According to the DHB and the Greek, Spanish and Italian Governments, the scope of the non-discrimination clause contained in Article 38 of the Association Agreement with Slovakia is not intended to place on an entirely equal footing workers who are nationals of the Slovak Republic and workers who are nationals of the Member States of the European Union. The free movement of workers provided for in Article 48 of the Treaty, as applied within the area of sport by the *Bosman* judgment, can, they argue, benefit only Community nationals or nationals of an EEA Member State.

39 Furthermore, all the parties which submitted observations to the Court agree that the prohibition of discrimination on grounds of nationality, set out in the first indent of Article 38(1) of the Association Agreement with Slovakia, applies only to workers of Slovak nationality who are already lawfully employed in the territory of a Member State and solely with regard to conditions of work, remuneration or dismissal.

40 On this point, the DHB and the Greek, Spanish and Italian Governments argue that the rule contained in Rule 15(1)(b) and 15(2) of the SpO relates to access of Slovak nationals to employment. Article 38(1) of the Association Agreement with Slovakia, they submit, cannot therefore preclude the application of such a rule.

41 Against this, Mr Kolpak, the German Government and the Commission submit that the facts in point in the main proceedings come within the first indent of Article 38(1) of the Association Agreement with Slovakia inasmuch as Mr Kolpak

is not seeking access to the German labour market but is already lawfully working in Germany pursuant to domestic law and is suffering, in that connection, discrimination in working conditions by reason of the SpO.

42 In that regard, it must be observed, first, that, according to the wording of the first indent of Article 38(1) of the Association Agreement with Slovakia, the prohibition of discrimination on grounds of nationality laid down in that provision applies only to workers of Slovak nationality who are already lawfully employed in the territory of a Member State and solely with regard to conditions of work, remuneration or dismissal. In contrast to Article 48 of the Treaty, that provision does not therefore extend to national rules concerning access to the labour market.

43 According to the order for reference, Mr Kolpak is lawfully employed as a goalkeeper under a contract of employment signed with a second-division German club, has a valid residence permit and does not, under national law, require a work permit in order to exercise his profession. It thus appears that he has already had lawful access to the labour market in Germany.

44 In that context, with more particular regard to the question whether a rule such as that laid down in Rule 15(1)(b) and 15(2) of the SpO constitutes a working condition, it is necessary to point out that, in *Bosman*, the dispute in the main proceedings related to, *inter alia*, similar nationality rules or clauses drawn up by the Union of European Football Associations (UEFA).

45 It follows from paragraph 120 of the judgment in *Bosman* that clauses of that kind concern not the employment of professional players, on which there is no

restriction, but the extent to which their clubs may field them in official matches, and that participation in such matches is the essential purpose of their activity.

46 It follows that a sports rule such as that in issue in the main proceedings relates to working conditions within the meaning of the first indent of Article 38(1) of the Association Agreement with Slovakia inasmuch as it directly affects participation in league and cup matches of a Slovak professional player who is already lawfully employed under the national provisions of the host Member State.

47 That being so, in order to establish whether the first indent of Article 38(1) of the Association Agreement with Slovakia precludes the application of a rule such as that laid down in Rule 15(1)(b) and 15(2) of the SpO, it remains to determine whether that rule involves discrimination prohibited by that provision of the Association Agreement.

48 In that regard, it must be observed, first, that, so far as Article 48(2) of the Treaty is concerned, it follows from paragraph 137 of *Bosman* that that provision precludes the application of rules laid down by sporting associations under which, in competition matches which they organise, football clubs may field only a limited number of professional players who are nationals of other Member States.

49 With regard to the interpretation of the first indent of Article 38(1) of the Association Agreement with Slovakia, it follows from paragraphs 25 to 30, 34, 35 and 44 of the present judgment that that provision introduces for the benefit of workers of Slovak nationality, on condition that they are lawfully employed in the territory of a Member State, a right to equal treatment as regards working

conditions having the same scope as that which, in similar terms, nationals of the Member States are recognised as having by virtue of Article 48(2) of the Treaty, and that the rule in issue in the case in the main proceedings is similar to the nationality clauses in point in *Bosman*.

50 That being so, the interpretation of Article 48(2) of the Treaty applied by the Court in *Bosman* and set out in paragraph 48 of the present judgment can be transposed to the first indent of Article 38(1) of the Association Agreement with Slovakia.

51 Thus, the first indent of Article 38(1) of the Association Agreement with Slovakia precludes any application to Mr Kolpak of a rule such as that laid down in Rule 15(1)(b) and 15(2) of the SpO in so far as that rule gives rise to a situation in which Mr Kolpak, in his capacity as a Slovak national, although lawfully employed in a Member State, has, in principle, merely a limited opportunity, in comparison with players who are nationals of Member States or of EEA Member States, to participate in certain matches, that is to say, league and cup matches of the German federal or regional leagues, which constitute, moreover, the essential purpose of his activity as a professional player.

52 That interpretation cannot be called in question by the DHB's argument that the rule laid down in Rule 15(1)(b) and 15(2) of the SpO is justified on exclusively sporting grounds, as its purpose is to safeguard training organised for the benefit of young players of German nationality and to promote the German national team.

53 Admittedly, in paragraph 127 of *Bosman*, the Court pointed out that, in paragraphs 14 and 15 of its judgment in Case 13/76 *Donà* v *Mantero* [1976]

ECR 1333, it had recognised that the Treaty provisions on the free movement of persons do not preclude rules or practices excluding foreign players from certain matches for reasons which are not economic in nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, such as matches between national teams from different countries.

54 In paragraph 128 of *Bosman*, however, the Court stated that nationality clauses do not concern specific matches between teams representing their countries but apply to all official matches between clubs and thus to the essence of the activity of professional players.

55 In that context, the Court pointed out that a football club's links with the Member State in which it is established cannot be regarded as any more inherent in its sporting activity than are its links with its locality, town or region. Even though national championships are played between clubs from different regions, towns or localities, there is no rule restricting the right of clubs to field players from other regions, towns or localities in such matches. Moreover, in international competitions participation is limited to clubs which have achieved certain sporting results in their respective countries, without any particular significance being attached to the nationalities of their players (*Bosman*, paragraphs 131 and 132).

56 Regard being had to that case-law, the discrimination arising in the present case from Rule 15(1)(b) and 15(2) of the SpO cannot be regarded as justified on exclusively sporting grounds inasmuch as it follows from those rules that, during

matches organised by the DHB, clubs are free to field an unlimited number of nationals of EEA Member States.

57 Furthermore, no other argument capable of providing objective justification for the difference in treatment between, on the one hand, professional players who are nationals of a Member State or of an EEA Member State and, on the other, professional players who are Slovak nationals, resulting from Rule 15(1)(b) and 15(2) of the SpO and affecting the working conditions of the latter, has been put forward in the observations submitted to the Court.

58 It follows that the answer to the question submitted for preliminary ruling must be that the first indent of Article 38(1) of the Association Agreement with Slovakia must be construed as precluding the application to a professional sportsman of Slovak nationality, who is lawfully employed by a club established in a Member State, of a rule drawn up by a sports federation in that State under which clubs are authorised to field, during league or cup matches, only a limited number of players from non-member countries that are not parties to the EEA Agreement.

Costs

59 The costs incurred by the German, Greek, Spanish and Italian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Oberlandesgericht Hamm (Germany) by order of 15 November 2000, hereby rules:

The first indent of Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, signed in Luxembourg on 4 October 1993 and approved on behalf of the Communities by Decision 94/909/ECSC, EEC, Euratom of the Council and the Commission of 19 December 1994, must be construed as precluding the application to a professional sportsman of Slovak nationality, who is lawfully employed by a club established in a Member State, of a rule drawn up by a sports federation in that State under which clubs are authorised to field, during league or cup matches, only a limited number of players from non-member countries that are not parties to the Agreement on the European Economic Area.

Edward La Pergola Jann

von Bahr Rosas

Delivered in open court in Luxembourg on 8 May 2003.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber