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The right of free movement for EU nationals in Switzerland in the domain of amateur sport: CEP Cortaillod v Swiss Athletics

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ABSTRACT

On the 13 June 2008, the Court of First Instance of Bern-Laupen, Switzerland, rendered a judgment concerning the right of free movement for EU nationals in Switzerland in the domain of amateur sport. This judgment is the first in Switzerland concerning solely non-professional athletes, and possibly one of the first in Europe.

This paper analyzes the application by the Court of the principle of prohibition of discrimination based on nationality in light of the Bilateral Agreement between the European Union, the European Community and Switzerland, and the limits of such principle. In this respect, the Court noted that quotas imposed on foreign athletes are not automatically illegal in amateur sport, but must remain limited to their proper objective in order to be acceptable, i.e. that in a team competition the number of foreign athletes should not be more than half of the team.

KEYWORDS

Right of free movement, Third States, Switzerland, Amateur sport

INTRODUCTION

In the well-known *Bosman* case decided in 1995, the European Court of Justice (hereinafter ECJ) judged that nationality quotas, particularly in professional sports, were illegal in the European Union when not concerning the composition of national teams (*Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman* (C-415/93) [1995] *ECR 1995 p. I-04921* (hereinafter *Bosman*). In the *Kolpak*, *Simutenkov* and *Kahveci* cases, the ECJ also judged that this prohibition extends to countries in the process of acceding to the European Community (*Deutscher Handballbund eV v Maros Kolpak* (C-438/00) [2003] ECR 2003 p. I-04135) and to those who have a specific agreement of no discrimination (*Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol* (C-265/03) [2005] ECR 2005 p. I-02579; *Real Sociedad de Fútbol SAD and Nihat Kahveci v Consejo Superior de Deportes and Real Federación Española de Fútbol* (C-152/08) [2008] ECR 2008 p. I-06291). 1

Conversely to other jurisdictions, Swiss courts have few opportunities to address issues related to nationality quotas since Switzerland is not part of the European Union. To date, one can acknowledge only two decisions rendered in November 2003 (Basel Magic v Unihockey-Verband [2003] Causa Sport 1/2004 30) and June 2008 (*CEP Cortaillod v Swiss Athletics* [2008] Causa Sport 3/2008 332). The latter is interesting insofar as it is the only one that deals with the right of free movement for EU nationals in Switzerland in the domain of amateur sport. This paper will now analyze the decision of the Court of First Instance of 2

Bern-Laupen in the case between the club CEP Cortaillod and Swiss Athletics.

THE CASE CEP CORTAILLOD V SWISS ATHLETICS

CEP Cortaillod is a multisport association incorporated under Art.60 of the Swiss Civil Code, and is affiliated to Swiss Athletics, the national federation governing athletics in Switzerland. Swiss Athletics' headquarters is located in Ittigen bei Bern, in the District and the Canton of Bern. 3

Swiss Athletics aims to develop and spread athletics within the population (Swiss Athletics Statutes, Art.2). Therefore, it organizes several events each year. One of the most important is the Swiss Interclub Championship (hereinafter SIC), an amateur club competition. 4

The SIC is divided into the A, B and C Leagues. At the time of the case, CEP Cortaillod was competing in the A League, the top-ranked level. The winner of this league becomes national champion and represents Switzerland in the European Interclub Championship. The last-place team is relegated to the B League. The SIC is governed by two sets of regulations. On the one hand, the Swiss Athletics Competition Rules which apply to all athletic events and on the other, the SIC Rules, a specific set of regulations which applies only during the SIC. 5

According to Art.20.11 SIC Rules, the SIC is comprised of 17 events: four jumps, four throws and nine races including a 4x100 relay. Each team can enter three athletes per discipline, but only two can score points. Athletes can take part in a maximum of two events and the relay. Swiss Athletics allows foreign athletes to participate, but their number is limited to two per team since a change of rules took effect on 1 January 2007 (Art.7.1 SIC Rules). Should the team's roster include more than two foreign athletes, the results of all non-Swiss athletes will be cancelled and deducted from the total number of points of the team (Art.7.3 SIC Rules). 6

On 30 June 2007, CEP Cortaillod took part in the SIC organized by Swiss Athletics. Its team included five foreign athletes; three French, one Brazilian and one Greek (who was later found to have Swiss citizenship too). At the time of the competition, four of them were legally living in Switzerland and competed effectively in the SIC. 7

CEP Cortaillod earned a total of 226 points and was ranked seventh out of eight competitors. As such, CEP Cortaillod was not relegated to the B League. On 5 July 2007, the team that ranked last and had to be relegated according to Art.20.3 SIC Rules wrote to the Central Committee of Swiss Athletics, arguing that CEP Cortaillod breached the SIC Rules by entering five foreign athletes, and that Art.7.3 SIC Rules should apply. 8

On 5 September 2007, after several letter exchanges, the Central Committee of Swiss Athletics decided, in accordance with Art.7.3 SIC Rules, to formally withdraw all points obtained by the foreign athletes of CEP Cortaillod. Consequently, the team earned only a total of 191 points and now was ranked eighth in A League competition. Thus, CEP Cortaillod was relegated to the second division for the 2008 SIC. 9

CEP Cortaillod appealed the decision to the Court of Arbitration of Swiss Athletics, the highest judicial body within the federation. On the 21 January 2008, the Court of Arbitration rejected the appeal, stating that the Central Committee of Swiss Athletics was indeed competent to make the aforementioned decision. However, the majority of the panel refused, without giving any explanation, to address issues concerning quotas imposed on foreigners, and in particular on EU nationals leaving thereby the door open to a civil action. Indeed, Art.75 Swiss Civil Code acknowledges that: 10

Each member shall be entitled by force of law to challenge in court, within one month of his having gained knowledge thereof, resolutions that he has not consented to and that violate the law or the articles of association. 11

Relying on this provision, CEP Cortaillod appealed the decision of the Court of Arbitration of Swiss Athletics in front of the Court of First Instance of Bern-Laupen, where Swiss Athletics is located. On the 13 June 2008, the Court rendered its judgment in the case *CEP Cortaillod*. 12

Methods, remarks and analysis of the decision

CEP Cortaillod's appeal was based primarily on the illegality of Swiss Athletics' regulations under state and international law. This will be the main focus of this analysis. In addition, CEP Cortaillod also relied on Art.8 Swiss Constitution, which forbids inequality of treatment, and the principle of protection of rights acquired with good faith. Both arguments have not been retained by the Court as such rights do not apply as between individuals, but are directed against the State. Therefore, these complaints will not be investigated. 13

The Right of free movement for EU nationals in Switzerland regarding amateur sport: The Bilateral Agreements

Area and scope of the Bilateral Agreements

The right of free movement of persons provided by Arts. 45 and 49 of the Treaty on the Functioning of the European Union (hereinafter TFUE) (ex Arts.39 and 43 of the Treaty establishing the European Community (EC) respectively) applies only within the member states of the European Union (Van den Bogaert 2005, p.75). Citizens of third countries do not benefit directly from this right, but the latter can be extended to them with a specific agreement (Hendrickx 2005, p.13; Martins 2009, p.228). Members of the European Economic Area (EEA) are in such a position (Hendrickx 2003, p.12). Despite this advantage, Swiss citizens rejected to join the EEA in 1992 (Dubey 2000, p.224). 14

Consequently, multiple treaties were negotiated directly between the European Community, its Member States and Switzerland, with a view towards preventing a legal void. These agreements were signed on 21 June 1999 and came in force on 1June 2002, and concerned domains such as the right of free movement of persons, air and road traffic, agriculture or science (Boillet 2010, p.13). They are usually referred to as 'the Bilateral Agreements' in Switzerland. The specific convention regarding the right of free movement of persons and its three annexes (Annex I: Free movement of persons, Annex II: Co-ordination of social security schemes, Annex III: Mutual recognition of professional qualifications) were rooted in Arts.12 and 39 of the EC (now Art.18 TFUE), and in this respect, the Bilateral Agreements specifically prohibit direct or indirect discrimination based on nationality (http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=112). Since their conclusion, the Bilateral Agreements have been extended to all new members of the European Community (Boillet 2010, p.15). 15

Nevertheless, many Swiss federations continue to impose quotas on foreign athletes in amateur and professional sport, including basketball and ice hockey where gentleman's agreements are still in force (Oppatja and Rigozzi 2005, N 12). As already stated quotas were also provided for athletics until the judgement *CEP Cortaillod v Swiss Athletics* was rendered in 2008. This tendency reflects the conservative attitude of Swiss sports governing bodies, especially clubs and federations. The argument frequently advanced is the maintenance of the interest of the public by protecting the training of local players and the national team (Sauber 2004, N 28). In addition, sports governing bodies enjoy the fact that under Swiss law, their rules do not face automatic state control. The latter must be requested through the mechanism provided for in Art.75 Swiss Civil Code. 16

Article 2 of the Bilateral Agreements

Article 2 of the Bilateral Agreements is the core provision and incorporates the general principles of Art.18 TFUE (ex Art.12 EC) (Boillet 2010, pp.58 and 141). It is read as follows: 17

> Nationals of one Contracting Party who are lawfully resident in the territory of another Contracting Party shall not, in application of and in accordance with the provisions of Annexes I, II, and III to this Agreement, be the subject of any discrimination on grounds of nationality'.

This provision applies to both workers and non-workers. According to the jurisprudence of the Swiss Supreme Court, the Bilateral Agreements, especially its Art.2, are self executing (*A.X. gegen Regierungsrat und Verwaltungsgericht des Kantons Zürich* (2003) Swiss Supreme Court 129 II 249, at pt.3.3; *A. und Mitb. sowie G. gegen Gemeinderat von Zürich, Bezirksrat Zürich sowie Regierungsrat des Kantons Zürich* (2003) Swiss Supreme Court 129 I 392, at pt.3.2.3). In other words, any EU national, lawfully established in Switzerland, can 18

claim a violation of the Bilateral Agreements, and in particular on the grounds of Art.2 thereof when the discrimination he or she experiences was made on the basis of nationality.

As highlighted previously, the wording of the Bilateral Agreements specifically forbids not only direct, but also indirect discrimination based on nationality. In *CEP Cortaillod*, the Court of First Instance qualified Art.7.1 SIC Rules as a direct discrimination due to the fact that it explicitly limits the number of foreign athletes in domestic competitions (*CEP Cortaillod v Swiss Athletics* (2008) Causa Sport 3/2008, p.338 §23). 19

However, it should be noted that athletes affected by this restriction were not professionals. Therefore, this restriction did not affect their access to the working market. Thus, the Court had to consider whether the prohibition of discrimination contained in the Bilateral Agreements also protects the side effects to the right of free movement of persons such as living conditions and the practise of sport. A first answer can be found by examining the applicability of the jurisprudence of the ECJ to Switzerland and the addressees of the Bilateral Agreements. 20

Applicability of the jurisprudence of the ECJ to Switzerland

Under Art.16 §2 Bilateral Agreements, it is mandatory for Swiss lower courts to refer to the jurisprudence of the ECJ regarding the interpretation of issues related to the right of free movement. However, this requirement applies only to the ECJ rulings that were made before the signature of the Bilateral Agreements, i.e. prior to 21 June 1999 (Boillet 2010, pp.23 and 53; Epiney 2009, N 17). In the domain of sport, this includes the *Walrave and Koch*, *Donà v Mantero* and *Bosman* cases (Dubey 2000, pp.227-228; Martenet and Boillet 2007/2008, p.329). 21

Decisions of the ECJ rendered after the signature of Bilateral Agreements will only be brought to the attention of Switzerland. A joint committee will determine the implications of these post-Agreement cases at the request of one of the Contracting Parties. To our knowledge, such a joint committee has never addressed issues related to the present case. Nevertheless, in the perspective of allowing the implementation of the Bilateral Agreements, especially as regards to the aspect of free movement of persons, the Swiss Supreme Court stressed in two decisions of principle (*Office fédéral de l'immigration, de l'intégration et de l'émigration contre X. et Service de la population et des migrants ainsi que Tribunal administratif du canton de Fribourg* (2004) Swiss Supreme Court130 II 113, at pt.5.2; *A. und B. gegen Departement für Justiz und Sicherheit sowie Verwaltungsgericht des Kantons Thurgau* (2004)Swiss Supreme Court130 II 1 ff, at pt.3.6.1) that Swiss courts could in fact take into account decisions rendered by the ECJ after the date of the signature of the Bilateral Agreements. In the opinion of the Swiss Supreme Court, taking into consideration these post-Agreement decisions is particularly necessary if they serve to clarify decisions rendered before the signature of the convention (Martenet and Boillet 2007/2008, p.331). This is notably the case for the ECJ rulings *Deliège*, *Lehtonen* and *Meca-Medina*, which were all judged after 1999, as they clarify the above mentioned right in the domain of sport (Boillet 2010, p.231). 22

Addressees of the Bilateral Agreements

Applying the principles discussed above in relation to Art.16 Bilateral Agreements, we can refer to the jurisprudence of the ECJ to determine the addressees of the prohibition of discrimination based on nationality. For instance, the *Bosman*, *Walrave and Koch* cases acknowledge that the prohibition of discrimination based on nationality included in the Art.45 TFUE (ex Art.39 EC) does not only apply to public authorities, but to private organizations as well (*B.N.O. Walrave and L.J.N. Koch v Association Union cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo* (C36/74) [1974] ECR 1974 p.1405, pt.17; *Bosman*, pt.83). If the position enjoyed by certain private actors such as sporting federations was not limited, the efforts to guarantee the right of free movement of persons undertaken by States and the European Community would be undermined (*Donà v Mantero* (C-13/76) [1976]ECR 1976 p.1333, pt.13-74; *Roman Angonese v Cassa di Risparmio di Bolzano SpA* (C-281/98) [2000] ECR *2000 p.I-04139*, pt.31. (hereinafter Angonese). In other words, the ECJ recognized the principle of horizontal effect of Art.45 TFUE (ex Art.39 EC). This principle also applies to the prohibition of discrimination based on nationality contained in the Bilateral Agreements (Boillet 2010, pp.233). 23

That said, the extent to which this prohibition is implemented must be clarified. In *CEP Cortaillod*, the Court judged that the question of whether the discrimination occurred in a professional or private context was irrelevant. According to the interpretation of the Court, the prohibition of discrimination covers not only regulations that limit access to employment, but also extends to those associated with the living conditions of the person. This includes the practice of sport. Therefore, it is regarded as an auxiliary right to the free movement of persons (Ventura 2008, p.255). Hence, EU nationals are entitled to claim a violation of the Bilateral Agreements, regardless they are professional sportsmen or not, if they are excluded from the practice of sport in Switzerland. 24

To reach this conclusion, the Court referred to the Angonese decision rendered by the ECJ on 6 June 2000. The latter fully acknowledged the binding character of Art.45 TFUE (ex Art.39 EC) to private entities, including contractual relations between them (*Angonese*, pt.31). In light of this judgment, the Court found that Swiss Athletics is also an addressee of Art.2 Bilateral Agreements. 25

Some Swiss commentators question this interpretation. They argue that the Angonese case was judged after the date of the signature of the Bilateral Agreements, and that in accordance with Art.16 §2 of them, the joint committee should have decided the implications of this judgment before its application to Switzerland as it provides new developments regarding the right of free movement within the European Community. Additionally, in their opinion, Angonese severely limits the autonomy of private entities such as sporting federations (Boillet 2010, pp.231-232; Martenet and Boillet 2007/2008, p.333 and Epiney 2008, p.1237). This leads us to discuss the limits of Art.2 Bilateral Agreements. 26

LIMITS

GENERAL FRAMEWORK

In order to discuss the limits of the right of free movement included in the Bilateral Agreements, the Court first emphasised that in the *Bosman* case, the ECJ held that: 27

> The Treaty provisions concerning freedom of movement for persons do not prevent the adoption of rules or practices excluding foreign players from certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, such as, for example, matches between national teams from different countries (*Bosman,* pt.127).

Moreover, in Deliège the ECJ stressed that such restrictions 'must remain limited to its proper objective and cannot be relied upon to exclude the whole of a sporting activity' (*Deliège v Ligue Francophone de Judo et Disciplines Associées ASBL (C-191/97)* [2000] ECR 2000 *p.* I2549*, pt.43).* 28

From a legal perspective, restrictions to the right of free movement are rooted respectively in Art.45 TFUE (ex Art.39 §3 EC) and in Art.5 §1 of Annex I to the Bilateral Agreements. It is to be noted that both wordings match (Boillet 2010, pp.243; Ventura 2008, pp.255-256), and provide that this right can be restricted for reasons of public order, public security or public health. Individuals can rely on these grounds in order to justify a discrimination based on nationality (*Bosman*, pt.86; Boillet 2010, p.255). 29

In *CEP Cortaillod*, the Court highlighted the difficulty of applying these justifications to sporting federations, particularly in the field of amateur sport, since the contested nationality clauses do not affect access to the working market, but rather the living conditions of EU nationals in Switzerland (*CEP Cortaillod v Swiss Athletics* (2008) Causa Sport 3/2008, pp.334-335 §57). To resolve this case, the Court addressed the relationship between the right of free movement forbidding quotas included in the Bilateral Agreements and the right of freedom of association protecting sporting federations to enact their own regulations, especially regarding participation in their competitions, guaranteed by the Swiss Constitution and Art.11 Convention for the Protection of Human Rights and Fundamental Freedoms enacted by the Council of Europe. The Court noted that these rights are of the same rank (*CEP Cortaillod v Swiss Athletics* (2008) Causa Sport 3/2008, p.343 §50) and that,therefore, *prima facie* one shall not prevail on the other. 30

Thus, the Court is of the opinion that in the domain of amateur sport, an extensive interpretation of Art.5 of Annex I to the Bilateral Agreements should be conducted, i.e. that there is no *numerus clausus* of the justifications set out in the said article. In this way, sporting federations retain the possibility to justify their regulations, and their right of freedom of association is protected. Furthermore, the Court judged that reading this provision otherwise would severely endanger such a right. According to this theory, the Court of First Instance of Bern-Laupen admitted that nationality clauses are not automatically illegal in amateur sport, but stressed that they must remain limited to their proper objective in order to be acceptable (*CEP Cortaillod v Swiss Athletics* (2008) Causa Sport 3/2008, p.345 §58). 31

Swiss Athletics raised two arguments to justify its regulations: the 'national character' of the SIC and the protection ofefforts to train young athletes. In this respect, we will now discuss these arguments according to the interpretation of the Court of Art.5 §1 of Annex I of the Bilateral Agreements, and determine whether or not they are limited to their proper objective. 32

The 'national character' of the SIC

As noted above, the winning-team of the SIC in League A is awarded with the title of Swiss Champion and represents Switzerland in the European Interclub Championship the following year. Swiss Athletics argued that every reference to a Swiss championship would be lost if a team could win the title with only foreigners, excepting the fact that the club is located in Switzerland (*CEP Cortaillod v Swiss Athletics* (2008) Causa Sport 3/2008, p.345 §60). Thus, the Court analyzed the concept of 'national character' of a sporting event in the light of Swiss Athletics' regulations. 33

In this regard, the Court found that according to Art.20.11 SIC Rules, a team could be composed of a minimum of ten athletes up to a maximum of 50 (*CEP Cortaillod v Swiss Athletics* (2008) Causa Sport 3/2008, p. 345 §61). Accordingly, the Court had to determine whether a limit of two foreign athletes, especially in the case of a team composed with the minimum of ten athletes, would be proportionate and thus, if the restriction was limited to its proper objective. 34

Finally, the Court considered that Swiss Athletics' regulations were illegal, arguing that a quota of two athletes does not meet the criteria of proportionality, and that consequently the 'national character' of the competition was not endangered. Nevertheless, the Court stressed that in amateur sport, a limit could be acceptable if the number of foreign athletes was more than half of the team (*CEP Cortaillod v Swiss Athletics* (2008) Causa Sport 3/2008, p.346 §64). 35

A Swiss commentator, Epiney, expresses doubt about this interpretation for two reasons. First and foremost, the Court assumed without any further explanation that the preservation of the Swiss or 'national character' of the SIC could in principle justify such discrimination. Although individuals can rely on Art.5 § 1 of Annex I to the Bilateral Agreements to restrict the right of free movement, her argument is that the 'national character' of a sporting event is similar to those developed by professional football clubs in *Bosman* since the SIC is also a club competition. Therefore, it shall not be admitted (Epiney 2008, p.1238). Secondly, she emphasized that the position of the Court does not allow EU nationals to be regarded as full members of their athletics' club which is in contradiction with the purpose of Art.2 Bilateral Agreements. Indeed, as previously quoted the purpose of this provision is to grant EU nationals with the very same rights as Swiss citizens. Therefore, she establishes that the limit of half of the team set out by the Court is irrelevant, and contradicts the purpose of the Bilateral Agreements. Instead, Epiney suggests, if a limit should be imposed, that the criterion of domicile is the one used. Thus, EU nationals living in Switzerland would not be discriminated against (Epiney 2008, p.1238). One can see in this proposition similarities with the home grown player rule that some sporting federations are trying to introduce. 36

The protection of the effort to train young athletes

Lastly, Swiss Athletics argued that quotas on foreign athletes were aimed in part at encouraging efforts undertaken to train young Swiss athletes. The Court did not accept this argument based on two grounds. 37

First, the Court highlighted that the reason why foreign athletes were engaged in the SIC is that they are better than nationals. Thus, their participation increases the level of competition and, consequently, may have a positive effect on the development of young athletes who can progress. 38

Secondly, the Court stressed that young athletes were not prevented from participating in the SIC. Contrary to its development regarding the 'national character' of the SIC, the Court noted that a team could be composed of a maximum of 50 athletes and that this limit allows enough palces for young athletes. Given these arguments, the Court believes that the participation of foreign athletes may have a positive impact on the development of young athletes and that they are not excluded from the SIC because of them (*CEP Cortaillod v Swiss Athletics* (2008) Causa Sport 3/2008, p.346 §63). Consequently, the Court rejected the argument of Swiss Athletics. 39

Effects of the judgment and remarks

It is interesting to note that the Court of First Instance of Bern-Laupen, based on similar premises as the ECJ, i.e. the principle of prohibition of discrimination based on nationality included in the EC Treaty and the Bilateral Agreements, reaches a different solution from what the ECJ has always maintained within the EU. 40

Indeed, so far the ECJ has never undertaken an extensive interpretation of Art.45 TFUE (ex Art.39 EC). In this respect, the judgment of the Court of Bern-Laupen reflects a difference in the objectives pursued by these two institutions. The former aims to ensure the creation of a common market while the latter has a more pragmatic approach, i.e. taking more into consideration the rights and interests of all parties involved (principle of weighing of interests). 41

Another interesting feature of the judgment that deserves to be investigated is the analysis of Art.20.11 SIC Rules. The Court, by relying on this provision that states that a team may be compounded of a minimum of ten athletes up to a maximum of 50, rejected both arguments raised by Swiss Athletics. Initially, the Court dismissed the complaint regarding the 'national character' of the SIC by comparing the quota of two foreign athletes with the lower limit imposed by this rule. On the second occasion, the Court found that the complaint concerning the protection of the effort to train young athletes had to be judged according to the upper limit introduced by Art.20.11 SIC Rules. Thus, the Court has an ambivalent attitude that seems to indicate a lack of clear guidelines for addressing all this case's complaints. 42

Finally, one can interrogate the outcomes of this judgment. In Switzerland, it may be limited due to the fact that regulations of Swiss sports governing bodies are not automatically submitted to state control, as previously mentioned. For that to be the case, European athletes who are members of a Swiss sport federation would have to appeal every decision imposing quotas on them before they are permanently eradicated. However, it should be noted that most of these federations are located in the district and the Canton of Bern. Therefore, almost any future litigation regarding quotas on foreign athletes will be judged by the Court of First Instance of Bern-Laupen which will be bound by its earlier judgment in the case *CEP Cortaillod*. 43

Conclusion

The application of the right of free movement in sport has always been widely discussed, especially since the *Bosman* case. In this respect, the judgment *CEP Cortaillod* is the counterpart of the cases *Kolpak, Simutenkov*, and *Kahveci* since EU nationals can also be subject to discrimination based on their nationality. 44

Indeed, this paper analyzed the principle of prohibition of discrimination included in the Bilateral Agreements between the European Community, its Member States and Switzerland regarding the participation of EU nationals in amateur sport. More specifically, in the case *CEP Cortaillod* the Court of First Instance of Bern-Laupen found that nationality clauses in amateur sport are illegal but that in a team competition, the number of foreign athletes could be limited to half of the team. If the illegality of such clauses does not surprise lawyers, this is not the same with the Court's conclusions on possible justifications that could be developed, such as the one cited above. One cannot exclude other Courts in Europe 45

interpreting the Bilateral Agreements in the opposite way, in which case the application of the latter would have to be clarified.

This means that there is a need to address the issue of quotas on foreign athletes in amateur sport on a global basis as they can potentially affect nearly 500 million EU nationals. However, it was only in 2009 that the European Commission launched a study on equal treatment of non-nationals in individual sports competitions (http://ec.europa.eu/sport/news/news792_en.htm). As can be seen, 15 years after the *Bosman* case, this is still a constant evolving field.

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LINKS SECTION

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(http://ec.europa.eu/sport/news/news792_en.htm)

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