

**ICE HOCKEY: ARBITRATION IN VIEW
OF THE AGREEMENT BETWEEN
SWITZERLAND AND THE EUROPEAN
UNION ON THE FREE MOVEMENT
OF PERSONS**

Facts: In a game of the last Swiss ice hockey season that they won, the top league team of the HC Ambri-Piotta ("HCAP") employed four non-Swiss citizens (three Canadians and one player from the EU Member State Latvia). The Swiss Ice Hockey National League ("SIHNL") addressed the single arbitrator of the Swiss Ice Hockey Federation, claiming that by

 EC law; Free movement of persons;
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nominating those four non-Swiss citizens the HCAP had violated SIHNL rules, and asked the arbitrator to hold the game lost for the HCAP.

The SIHNL regulations for the season 2004–2005, formally accepted by the top league clubs in February 2004, read that each team may nominate four non-Swiss citizens per game of which at least one player needed to be an EU citizen (“3+1 rule”). On April 30, 2004, well before that season started, the SIHNL management informed all top league clubs of the upcoming Eastern expansion of the EU, specifying that citizens of the new EU Member States would be treated as non-EU citizens until the interim rules to the Agreement between Switzerland and the EU on the free movement of persons would enter into force (which was, then, not expected to happen until mid-2005 at the earliest). This specification, however, did not refer to the 3+1 rule. In September 2004, the SIHNL management released instructions for the coming season which repeated the regulations, including a reference to the 3+1 rule which, however, was not defined any further. The HCAP signed a document referring to this rule.

Held: The single arbitrator held that the HCAP had violated the 3+1 rule and therefore lost the game in question. He found that the SIHNL rules would treat ice hockey players from new EU Member States like non-EU citizens, as did Swiss law with regard to the free movement of persons. However, the appeal body, the Swiss Ice Hockey Federation Arbitral Tribunal, decided that the HCAP had not violated the 3+1 rule and that the game would be counted as won.

The appeal body argued that at the time of its implementation, the 3+1 rule did not elucidate whether citizens of the 10 new EU Member States would be treated like EU citizens. If it had been clear, the SIHNL management would not have sent its specification on April 30, 2004. This specification, however, could not be regarded as relevant for the legal situation as it reflected the opinion of the SIHNL management, but was not approved by a formal decision by the clubs.

Since the term “EU citizen” was not limited to citizens of the old EU Member States in any such formal decision, the appeal body stated that the HCAP did lawfully construe this term in such a way that anyone holding an EU passport would be considered an EU citizen. As the relevant player was a Latvian citizen, and Latvia a member of the EU at the time, he had to be regarded as an EU citizen.

Comment: The term “EU citizen” was not defined in the applicable rules, while the so-called specification defining it was not issued by the competent body and therefore not legally binding. Moreover, this specification did not refer to the 3+1 rule and might have been understood to be of assistance for the clubs on how to handle the work permit situation of the relevant players. The work permit situation, however, must not be consistent with the ice hockey rules. The SIHNL may basically be more generous than the Swiss permit authorities and regard EU passport holders as “EU citizens” without further ado.

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