

ORDER OF THE COURT (Fifth Chamber)

25 July 2008*

In Case C-152/08,

REFERENCE for a preliminary ruling under Article 234 EC, from the Tribunal Superior de Justicia de Madrid (Spain), made by decision of 24 October 2007, received at the Court on 15 April 2008, in the proceedings

Real Sociedad de Fútbol SAD,

Nihat Kahveci

v

Consejo Superior de Deportes,

Real Federación Española de Fútbol,

* Language of the case: Spanish.

THE COURT (Fifth Chamber),

composed of A. Tizzano, President of the Chamber, M. Ilešič (Rapporteur) and E. Levits, Judges,

Advocate General: M. Poiares Maduro,
Registrar: R. Grass,

the Court proposing to give its decision by reasoned order in accordance with the first subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

Order

¹ This reference for a preliminary ruling concerns the interpretation of Article 37 of the Additional Protocol, signed on 23 November 1970 in Brussels and concluded,

approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 133, p. 17) ('the Additional Protocol'), annexed to the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey, of the one part, and by the Member States of the EEC and the Community, on the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1) ('the EEC-Turkey Association Agreement').

- 2 The reference was made in the course of proceedings between Real Sociedad de Fútbol SAD and Mr Kahveci, on the one hand, and the Consejo Superior de Deportes and the Real Federación Española de Fútbol (Royal Spanish Football Association) ('RFEF'), on the other, concerning sporting rules which limit the number of players from non-member States who may be fielded in national competitions.

Legal background

- 3 The aim of the Association Agreement, according to Article 2(1) thereof, is to promote the continuous and balanced strengthening of trade and economic relations between the parties. To that end, the Association Agreement provides for a preparatory stage enabling the Republic of Turkey to strengthen its economy with aid from the Community (Article 3), a transitional stage, during which a customs union is to be progressively established and economic policies are to be aligned more closely (Article 4) and a final stage which is to be based on the customs union and is to entail closer coordination of the economic policies of the Contracting Parties (Article 5).

4 Article 6 of the Association Agreement is worded as follows:

‘To ensure the implementation and the progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred upon it by this Agreement.’

5 Article 9 of the Association Agreement provides:

‘The Contracting Parties recognise that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty establishing the Community.’

6 The Additional Protocol, which, according to Article 62 thereof, forms an integral part of the Association Agreement, lays down, in Article 1, the conditions, detailed arrangements and timetables for implementing the transitional stage referred to in Article 4 of that agreement.

7 According to Article 37 of the Additional Protocol:

‘As regards conditions of work and remuneration, the rules which each Member State applies to workers of Turkish nationality employed in the Community shall not discriminate on grounds of nationality between such workers and workers who are nationals of other Member States of the Community.’

8 Article 39(1) of the Additional Protocol is worded as follows:

‘Before the end of the first year after the entry into force of this Protocol the Council of Association shall adopt social security measures for workers of Turkish nationality moving within the Community and for their families residing in the Community.’

9 Article 10(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association provides:

‘As regards remuneration and other conditions of work, the rules which the Member States of the Community apply to Turkish workers duly registered as belonging to their labour forces shall not in any way discriminate on grounds of nationality between such workers and Community workers.’

The dispute in the main proceedings and the question referred for a preliminary ruling

10 Mr Kahveci is a Turkish national residing in Spain where he has residence and work permits. Having been taken on as a professional football player under a contract of employment concluded with the club Real Sociedad de Fútbol SAD, he obtained a federation licence as a non-Community player.

11 Mr Kahveci made an application, through that football club, to the RFEF requesting it to replace his licence with a professional player's licence identical to those held by Community players. In support of that application he relied on the Association Agreement and the Additional Protocol.

12 According to Article 129 of the RFEF's General Regulations, a professional footballer's licence is one issued by the RFEF, enabling that player to play that sport as a member of the federation and to be selected in official matches and competitions as a player belonging to a particular club.

13 Article 173 of the General Regulations provides:

'Without prejudice to the exceptions laid down herein, in order to register as a professional and obtain a professional licence, a footballer must meet the general requirement of holding Spanish nationality or the nationality of one of the countries of the European Union or the European Economic Area.'

14 Article 176(1) of the General Regulations states:

'Clubs entered for official professional competitions at national level shall be entitled to register foreign non-Community players in the number stipulated in the relevant agreements concluded between the RFEF, national professional football league and the association of Spanish footballers, agreements which also govern the number of such footballers who may be fielded simultaneously ...'

- 15 According to the agreement concluded on 28 May 1999 between the RFEF and the National Professional Football League, the number of players who are not Member State nationals who may be fielded simultaneously in the first division is limited to three for the 2000/2001 to 2004/2005 seasons and, as far as concerns the second division, to three for the 2000/2001 to 2001/2002 seasons and to two for the three following seasons.
- 16 By decision of 5 February 2002 the RFEF refused Mr Kahveci's application. Mr Kahveci brought an appeal against that decision before the Consejo Superior de Deportes (Higher Sports Council).
- 17 As that appeal was dismissed by decision of 26 June 2002 Mr Kahveci challenged that decision before the referring court.
- 18 In those circumstances, the Tribunal Superior de Justicia de Madrid decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'It is contrary to Article 37 ... for a sporting federation to apply to a professional sportsman ... a rule by virtue of which clubs may ... Does Article 37 [of the Additional Protocol] preclude a sporting federation from applying to a professional sportsman of Turkish nationality, legally employed by a Spanish football club, as in the main proceedings, a rule under which clubs may in national competitions use only a limited number of players from non-member States not belonging to the European Economic Area?'

The question referred for a preliminary ruling

- 19 In accordance with the first subparagraph of Article 104(3) of the Rules of Procedure, where the answer to a question referred for a preliminary ruling may be clearly deduced from existing case-law the Court may, after hearing the Advocate General, give its decision by reasoned order in which reference is made to its previous judgment or to the relevant case-law.
- 20 By its question, the referring court asks essentially whether the prohibition on all discrimination against Turkish workers duly registered as belonging to the labour force of a Member State with respect to remuneration and other employment conditions, as laid down in Article 37 of the Additional Protocol and Article 10(1) of Decision No 1/80, must be interpreted as precluding the application to a professional sportsman of Turkish nationality, legally employed by a club established in a Member State, of a rule laid down by a sports association in that State that clubs are authorised to field, in competitions organised at national level, only a limited number of players from non-member States which are not party to the Agreement on the European Economic Area.
- 21 That question is similar to that referred to the Court in the cases which gave rise to the judgments in Case C-438/00 *Deutscher Handballbund* [2003] ECR I-4135 and Case C-265/03 *Simuntenkov* [2005] ECR I-2579.
- 22 In the judgment in *Deutscher Handballbund*, the Court held that 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/EC, ECSC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1993 L 359, p. 1) ('the Association Agreement with Slovakia'), must be construed as precluding the application to a professional

sportsman of Slovak nationality, legally 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.

23 In the judgment in *Simutenkov*, in which the same provisions of the RFEF's General Regulations and the Agreement of 28 May 1999 cited in paragraph 15 of this Order were at issue as those which are the subject-matter of the main proceedings in this case, the Court held that Article 23(1) of the Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, signed in Corfu on 24 June 1994 and approved on behalf of the Communities by Decision 97/800/EC ECSC, Euratom: Council and Commission Decision of 30 October 1997 (OJ 1994 L 327, p. 1) ('the Communities-Russia Partnership Agreement'), must be construed as precluding the application to a professional sportsman of Russian nationality, legally employed by a club established in a Member State, of a rule drawn up by a sports federation of that State which provides that clubs may field in competitions organised at national level only a limited number of players from countries which are not parties to the Agreement on the European Economic Area.

24 The Court ruled, inter alia, that a rule which limits the number of professional players, nationals of the non-member country in question, who might be fielded in national competitions did relate to working conditions, inasmuch as it directly affected participation in matches of a professional player from that State who was already legally employed in the host Member State (*Deutscher Handballbund*, cited above, paragraphs 44 to 46).

25 The wording of Article 37 of the Additional Protocol is very similar to that of the first indent of Article 38(1) of the Association Agreement with Slovakia and that of Article 23(1) of the Communities-Russia Partnership Agreement.

26 The first indent of Article 38(1) of the Association Agreement with Slovakia was worded as follows:

‘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’.

27 Article 23(1) of the Communities-Russia Partnership Agreement provided:

‘Subject to the laws, conditions and procedures applicable in each Member State, the Community and its Member States shall ensure that the treatment accorded to Russian nationals 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.’

28 As the Court has observed, such provisions prohibit, in clear, precise and unconditional terms, a prohibition precluding any Member State from discriminating, on grounds of nationality, against workers from the non-member State concerned, vis-à-vis their own nationals, so far as their conditions of work, remuneration and dismissal are concerned. Those provisions may therefore be relied on by individuals before the courts of the Member States (*Deutscher Handballbund*, paragraphs 28 to 30 and *Simutenkov*, paragraphs 22 to 24).

29 That finding must be applied to Article 37 of the Additional Protocol the wording of the latter being essentially the same as that of Articles 38(1) of the Association Agreement with Slovakia and 23(1) of the Communities-Russia Partnership Agreement. Furthermore, the Court has already had occasion to state that Article 10(1) of Decision No 1/80, which repeats the rule laid down in Article 37 of the Additional Protocol, lays down in clear, precise and unconditional terms a prohibition precluding the Member States from discriminating, on the basis of nationality, against Turkish migrant workers duly registered as belonging to their labour force as regards remuneration and other conditions of work (Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 57).

30 Moreover, as the Court has previously held, the finding that the prohibition on discrimination on grounds of nationality against workers of Turkish nationality duly registered as belonging to the labour force of the Member States as regards remuneration and other conditions of work has direct effect is in accordance with the purpose of the Association Agreement. The purpose of the Association Agreement is to establish an association to promote the development of trade and economic relations between the parties, including the progressive achievement of freedom of movement for workers. Such a purpose allows the recognition by the Community of the direct effect of the provisions of that agreement which establish principles which are sufficiently clear and precise and unconditional to be applied by national courts (*Wählergruppe Gemeinsam*, cited above, paragraphs 62, 65 and 66).

31 It is clear from the foregoing that the interpretation adopted by the Court in the judgments in *Deutscher Handballbund* and *Simutenkov* is also applicable in the framework of the Association Agreement.

32 Therefore, the answer to the question referred for a preliminary ruling must be that the prohibition on all discrimination against Turkish workers duly registered as belonging to the labour force of the Member States with respect to remuneration and other conditions of work, as laid down in Article 37 of the Additional Protocol and 10(1) of Decision No 1/80, must be interpreted as precluding the application to a

professional sportsman of Turkish nationality legally employed by a club established in a Member State, of a rule laid down by a sports association in that State, that clubs are authorised to field in competitions organised at national level only a limited number of players from non-member States which are not parties to the Agreement on the European Economic Area.

Costs

- 33 Since 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) hereby rules:

- 1. The prohibition on all discrimination against Turkish workers duly registered as belonging to the labour market of the Member States as regards remuneration and other conditions of work, as laid down in Article 37 of the Additional Protocol, signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, annexed to the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12 September 1963 by the Republic of Turkey, of the one part, and by the Member States of the EEC and the Community, on the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 and Article 10(1) of Decision No 1/80 of the Association Council of**

19 September 1980 on the development of the Association, must be interpreted as precluding the application to a professional sportsman of Turkish nationality legally employed by a club established in a Member State, of a rule laid down by a sports association in that State, that clubs are authorised to field in competitions organised at national level only a limited number of players from non-member States which are not parties to the Agreement on the European Economic Area.

[Signatures]