

JUDGMENT OF THE COURT (Grand Chamber)

12 April 2005^{*}

In Case C-265/03,

REFERENCE under Article 234 EC for a preliminary ruling, made by the Audiencia Nacional (Spain), by decision of 9 May 2003, received at the Court on 17 June 2003, in the proceedings

Igor Simutenkov

v

Ministerio de Educación y Cultura,

Real Federación Española de Fútbol,

^{*} Language of the case: Spanish.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas, Presidents of Chambers, C. Gulmann, A. La Pergola, J.-P. Puissochet, J. Makarczyk, P. Kūris, M. Ilešić (Rapporteur), U. Löhmus, E. Levits and A. Ó Caoimh, Judges,

Advocate General: C. Stix-Hackl,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Simutenkov, by M. Álvarez de la Rosa, abogado, and F. Toledo Hontiyuelo, procuradora,
- Real Federación Española de Fútbol, by J. Fraile Quinzaños, abogado, and J. Villasante García, procurador,
- the Spanish Government, by E. Braquehais Conesa, acting as Agent,

— the Commission of the European Communities, by F. Hoffmeister, D. Martin and I. Martínez del Peral, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 January 2005,

gives the following

Judgment

- ¹ The reference for a preliminary ruling concerns the interpretation of Article 23(1) of the Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of 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/ECSC, EC, Euratom: Council and Commission Decision of 30 October 1997 (OJ 1997 L 327, p. 1) ('the Communities-Russia Partnership Agreement').
- ² That reference has been submitted in the context of a dispute between Mr Simutenkov, on the one hand, and the Ministerio de Educación y Cultura (Ministry of Education and Culture) and the Real Federación Española de Fútbol (Royal Spanish Football Federation) ('the RFEF'), on the other, concerning sporting rules which limit the number of players from non-member countries who may be fielded in national competitions.

The legal framework

3 The Communities-Russia Partnership Agreement entered into force on 1 December 1997. Article 23(1), which features in Title IV of that agreement ('Provisions on business and investment'), under Chapter I, which is itself entitled 'Labour conditions', provides as follows:

'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.'

4 Article 27 of the Communities-Russia Partnership Agreement is worded as follows:

'The Cooperation Council shall make recommendations for the implementation of Articles 23 and 26 of this Agreement.'

5 Article 48 of the Communities-Russia Partnership Agreement, which also features in Title IV, provides:

'For the purpose of this Title, 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 the Agreement. ...’

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

- 6 Mr Simutenkov is a Russian national who, at the time of the facts in the dispute in the main proceedings, was living in Spain, where he had a residence permit and a work permit. Employed as a professional football player under an employment contract entered into with Club Deportivo Tenerife, he held a federation licence as a non-Community player.
- 7 In January 2001, Mr Simutenkov submitted, through that club, an application to the RFEF for it to replace the federation licence which he held with a licence that was identical to that held by Community players. In support of that application, he relied on the Communities-Russia Partnership Agreement.
- 8 By decision of 19 January 2001, the RFEF turned down that application on the basis of its General Regulations and the agreement which it had concluded on 28 May 1999 with the national professional football league (‘the agreement of 28 May 1999’).

- 9 Under Article 129 of the General Regulations of the RFEF, a professional football player's licence is a document issued by the RFEF which entitles a player to practise that sport as a member of that federation and to be fielded in matches and official competitions as a player belonging to a specific club.

- 10 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.'

- 11 Article 176(1) of the General Regulations provides:

'1. 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, the Liga Nacional de Fútbol Profesional (National Professional Football League) and the Asociación de Futbolistas Españoles (Association of Spanish Footballers). Those agreements also govern the number of such footballers who may take part simultaneously in a game

...'

- 12 Under the agreement of 28 March 1999, the number of players not having the nationality of a Member State who were allowed to participate at any time in the Spanish First Division was limited to three for the 2000/01 to 2004/05 seasons and, in the case of the Second Division, to three for the 2000/01 and 2001/02 seasons and to two for the following three seasons.
- 13 As he took the view that the distinction which those Regulations draw between nationals of a Member State of the European Union or of the European Economic Area ('the EEA'), on the one hand, and nationals of non-member countries, on the other, is incompatible, so far as Russian players are concerned, with Article 23(1) of the Communities-Russia Partnership Agreement and limits the exercise of his profession, Mr Simutenkov brought an action before the Juzgado Central de lo Contencioso Administrativo (Central Court for Contentious Administrative Proceedings) against the decision of 19 January 2001 turning down his application for a new licence.
- 14 Following the dismissal of that application by a judgment of 22 October 2002, Mr Simutenkov appealed to the Audiencia Nacional (National High Court), which decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is it contrary to Article 23 of the [Communities-Russia Partnership Agreement] ... for a sports federation to apply to a professional sportsman of Russian nationality who is lawfully employed by a Spanish football club, as in the main proceedings, a rule which provides that clubs may use in competitions at national level only a limited number of players from countries outside the European Economic Area?'

The question referred for preliminary ruling

15 By its question the national court asks whether Article 23(1) of the Communities-Russia Partnership Agreement is to be construed as precluding the application to a professional sportsman of Russian nationality, who is lawfully 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 at national level only a limited number of players from countries which are not parties to the EEA Agreement.

16 Mr Simutenkov and the Commission of the European Communities take the view that Article 23(1) of the Communities-Russia Partnership Agreement precludes a rule such as that laid down by the agreement of 28 May 1999.

17 The RFEF, by contrast, invokes in support of its position the words '[s]ubject to the laws, conditions and procedures applicable in each Member State', which feature at the beginning of Article 23(1). It infers from this proviso that the competence which legislation confers on it to issue licences to football players and the sports regulations which it has adopted must be applied in a manner which takes priority over the principle of non-discrimination laid down in that provision. It also submits that the issue of a licence and the rules relating thereto form part of the organisation of competitions and do not concern working conditions.

18 The Spanish Government adopts the views expressed by the RFEF and submits in particular that, under the national rules and the case-law which interprets them, a

federation licence is not a working condition but rather an administrative permit which serves as an authorisation to take part in sporting competitions.

- 19 In order to provide a useful reply to the question posed, it is necessary, first of all, to examine whether Article 23(1) of the Communities-Russia Partnership Agreement can be relied on by an individual before the courts of a Member State and, second, if the answer is affirmative, to determine the scope of the principle of non-discrimination which that provision lays down.

The direct effect of Article 23(1) of the Communities-Russia Partnership Agreement

- 20 It must be pointed out that, as this question concerning the effect of the provisions of the Communities-Russia Partnership Agreement within the legal systems of the parties to that Agreement ('the parties') has not been resolved therein, it is for the Court to resolve that question in the same way as any other question of interpretation concerning the application of agreements within the Community (judgment in Case C-149/96 *Portugal v Council* [1999] ECR I-8395, paragraph 34).
- 21 In this regard, according to well-established case-law, a provision in an agreement concluded by the Communities with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (judgments in Case C-63/99 *Głoszczuk* [2001] ECR I-6369,

paragraph 30, and in Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 54).

22 It follows from the wording of Article 23(1) of the Communities-Russia Partnership Agreement that that provision lays down, in clear, precise and unconditional terms, a prohibition precluding any Member State from discriminating, on grounds of nationality, against Russian workers, vis-à-vis their own nationals, so far as their conditions of employment, remuneration and dismissal are concerned. Workers who are entitled to the benefit of that provision are those who hold Russian nationality and who are lawfully employed in the territory of a Member State.

23 Such a rule of equal treatment lays down a precise obligation as to results and, by its nature, can be relied on by an individual before a national court as a basis for requesting that court to disapply discriminatory provisions without any further implementing measures being required to that end (judgments in Case C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049, paragraph 22, and in *Wählergruppe Gemeinsam*, cited above, paragraph 58).

24 That interpretation cannot be brought into question by the words '[s]ubject to the laws, conditions and procedures applicable in each Member State', which feature at the beginning of Article 23(1) of the Communities-Russia Partnership Agreement, or by Article 48 of that Agreement. Those provisions cannot be construed as allowing the Member States to subject application of the principle of non-discrimination set out in Article 23(1) of that agreement to discretionary limitations, which would have the effect of rendering that provision meaningless and thus depriving it of any practical effect (*Pokrzeptowicz-Meyer*, cited above, paragraphs 23 and 24, and Case C-438/00 *Deutscher Handballbund* [2003] ECR I-4135, paragraph 29).

- 25 Nor does Article 27 of the Communities-Russia Partnership Agreement preclude Article 23(1) thereof from having direct effect. The fact that Article 27 provides that Article 23 is to be implemented on the basis of recommendations by the Cooperation Council does not make the applicability of Article 23, in its implementation or effects, subject to the adoption of any subsequent measure. The role which Article 27 confers on that council is to facilitate compliance with the prohibition of discrimination but cannot be regarded as limiting the immediate application of that prohibition (see, in that regard, Case C-18/90 *Kziber* [1991] ECR I-199, paragraph 19, and Case C-262/96 *Sürül* [1999] ECR I-2685, paragraph 66).
- 26 The finding that the principle of non-discrimination set out in Article 23(1) of the Communities-Russia Partnership Agreement is directly effective is not, moreover, gainsaid by its purpose and nature.
- 27 Article 1 states that the purpose of the Agreement is to establish a partnership between the parties with a view to promoting, inter alia, the development between them of close political relations, trade and harmonious economic relations, political and economic freedoms, and the achievement of gradual integration between the Russian Federation and a wider area of cooperation in Europe.
- 28 The fact that the Agreement is thus limited to establishing a partnership between the parties, without providing for an association or future accession of the Russian Federation to the Communities, is not such as to prevent certain of its provisions from having direct effect. It is clear from the Court's case-law that when an agreement establishes cooperation between the parties, some of the provisions of that agreement may, under the conditions set out in paragraph 21 of the present

judgment, directly govern the legal position of individuals (*Kziber*, cited above, paragraph 21, Case C-113/97 *Babehenini* [1998] ECR I-183, paragraph 17, and Case C-162/96 *Racke* [1998] ECR I-3655, paragraphs 34 to 36).

- 29 In the light of all of the foregoing, it must be held that Article 23(1) of the Communities-Russia Partnership Agreement has direct effect, with the result that individuals to whom that provision applies are entitled to rely on it before the courts of the Member States.

The scope of the principle of non-discrimination set out in Article 23(1) of the Communities-Russia Partnership Agreement

- 30 The question which has been referred by the national court is similar to that referred to the Court in the case which led to the above judgment in *Deutscher Handballbund*. In that judgment the Court ruled 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/ECSC, EEC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 359, p. 1) ('the Communities-Slovakia Association Agreement') had to be construed as precluding the application to a professional sportsman of Slovak nationality, who was 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 were 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.

31 The first indent of Article 38(1) of the Communities-Slovakia Association Agreement 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.’

32 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 within the meaning of the first indent of Article 38(1) of the Communities-Slovakia Association Agreement inasmuch as it directly affected participation in league and cup matches of a Slovak professional player who was already lawfully employed in the host Member State (*Deutscher Handballbund*, cited above, paragraphs 44 to 46).

33 The Court also ruled that the interpretation of Article 48(2) of the EC Treaty (now, after amendment, Article 39(2) EC) which it handed down in its judgment in Case C-415/93 *Bosman* [1995] ECR I-4921 to the effect that the prohibition of discrimination on grounds of nationality applies to rules laid down by sporting associations which determine the conditions under which professional sportsmen can engage in gainful employment and precludes a limitation, based on nationality, on the number of players who may be fielded at the same time, could be transposed to the first indent of Article 38(1) of the Communities-Slovakia Association Agreement (*Deutscher Handballbund*, paragraphs 31 to 37 and 48 to 51).

34 The wording of Article 23(1) of the Communities-Russia Partnership Agreement is very similar to that of the first indent of Article 38(1) of the Communities-Slovakia Association Agreement. The only significant difference between the respective wording of those two provisions is in the use of the terms 'the Community and its Member States shall ensure that the treatment accorded to Russian nationals ... shall be free from any discrimination based on nationality' and 'treatment accorded to workers of Slovak Republic nationality ... shall be free from any discrimination based on nationality'. In view of the finding in paragraphs 22 and 23 of this judgment that the wording of Article 23(1) of the Communities-Russia Partnership Agreement lays down, in clear, precise and unconditional terms, a prohibition of discrimination on grounds of nationality, the difference in drafting highlighted above is not a bar to the transposition, to Article 23(1) of the Communities-Russia Partnership Agreement, of the interpretation upheld by the Court in *Deutscher Handballbund*.

35 Admittedly, unlike the Communities-Slovakia Association Agreement, the Communities-Russia Partnership Agreement is not intended to establish an association with a view to the gradual integration of that non-member country into the European Communities but is designed rather to bring about 'the gradual integration between Russia and a wider area of cooperation in Europe'.

36 However, it does not in any way follow from the context or purpose of that Partnership Agreement that it intended to give to the prohibition of 'discrimination based on nationality, as regards working conditions ... as compared to [the Member State's] own nationals' any meaning other than that which follows from the ordinary sense of those words. Consequently, in a manner similar to the first indent of Article 38(1) of the Communities-Slovakia Association Agreement, Article 23(1) of the Communities-Russia Partnership Agreement establishes, for the benefit of Russian workers lawfully employed in the territory of a Member State, a right to equal treatment in working conditions of the same scope as that which, in similar terms,

nationals of Member States are recognised as having under the EC Treaty, which precludes any limitation based on nationality, such as that in issue in the main proceedings, as the Court established in similar circumstances in the above judgments in *Bosman* and *Deutscher Handballbund*.

37 Furthermore, in the judgments in *Bosman* and *Deutscher Handballbund*, the Court held that a rule such as that in issue in the main proceedings related to working conditions (*Deutscher Handballbund*, paragraphs 44 to 46). The fact that Article 23 (1) of the Communities-Russia Partnership Agreement applies only in regard to working conditions, remuneration or dismissal, and thus does not extend to rules concerning access to employment, is accordingly irrelevant.

38 In addition, the limitation based on nationality does not relate to specific matches between teams representing their respective countries but applies to official matches between clubs and thus to the essence of the activity performed by professional players. As the Court has also ruled, such a limitation cannot be justified on sporting grounds (*Bosman*, paragraphs 128 to 137; *Deutscher Handballbund*, paragraphs 54 to 56).

39 Moreover, no other argument has been put forward in the observations submitted to the Court that is 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 a State which is a party to the EEA Agreement and, on the other, professional players who are Russian nationals.

40 Finally, as has been stated in paragraph 24 of the present judgment, the words '[s] subject to the laws, conditions and procedures applicable in each Member State', which feature at the beginning of Article 23(1) of the Communities-Russia Partnership Agreement, and Article 48 of that Agreement cannot be construed as allowing Member States to subject the application of the principle of non-discrimination set out in the former of those two provisions to discretionary limitations, inasmuch as such an interpretation would have the effect of rendering that provision meaningless and thus depriving it of any practical effect.

41 In the light of the foregoing, the answer to the question referred must be that Article 23(1) of the Communities-Russia Partnership Agreement is to be construed as precluding the application to a professional sportsman of Russian nationality, who is lawfully 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 EEA Agreement.

Costs

42 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. The costs incurred in submitting observations to the Court, other than those of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) rules:

Article 23(1) of the Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of 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/ECSC, EC, Euratom: Council and Commission Decision of 30 October 1997, must be construed as precluding the application to a professional sportsman of Russian nationality, who is lawfully 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.

[Signatures]