

Case C-650/22

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

17 October 2022

Referring court:

Cour d'appel de Mons (Belgium)

Date of the decision to refer:

19 September 2022

Applicant:

Federation Internationale de Football Association (FIFA)

Defendant:

BZ

Interveners:

Union royale belge des sociétés de football association (URBSFA)

SA Sporting du pays de Charleroi

Subject matter of the main proceedings

The parties to the main proceedings are in dispute as to whether the Fédération internationale de football association ('FIFA') and the Union royale belge des sociétés de football association ('URBSFA'), a member of FIFA which has responsibility, in relation to Belgium, for the organisation and oversight of football and all its variants, are obliged to indemnify a professional footballer, BZ, to the extent of the loss of earnings (loss of offers of employment from clubs) that he claims to have suffered by reason of the application of certain provisions of the FIFA Regulations on the Status and Transfer of Players ('the RSTP').

The RSTP provide, inter alia, that a player and his new club are jointly and severally liable to pay the compensation due to the club whose contract with the player has been terminated without just cause.

The RSTP also prohibit the new club from registering a professional footballer who has terminated his previous contract without just cause and permit the former club not to deliver the international transfer certificate ('ITC') required to register the player, where there is a contractual dispute between that club and the player concerning the termination of the previous contract.

BZ submits that those provisions of the RSTP are contrary to EU law.

SA Sporting du Pays de Charleroi, a Belgian football club which made an offer of employment to BZ, has voluntarily intervened in support of the pleas advanced and form of order sought by FIFA and by URBSFA. It submits that its offer of employment stemmed from dishonest manoeuvring by BZ.

Question referred for a preliminary ruling

Are Articles 45 and 101 of the Treaty on the Functioning of the European Union to be interpreted as precluding:

- the principle that the player and the club wishing to employ him are jointly and severally liable in respect of the compensation due to the club whose contract with the player has been terminated without just cause, as stipulated in Article 17.2 of the FIFA RSTP, in conjunction with the sporting sanctions provided for in Article 17.4 of those regulations and the financial sanctions provided for in Article 17.1;
- the ability of the association to which the player's former club belongs not to deliver the international transfer certificate required if the player is to be employed by a new club, where there is a dispute between that former club and the player (Article 9.1 of the RSTP and Article 8.2.7 of Annex 3 to the RSTP)?

Provisions of European Union law relied on

Article 45 TFEU:

1. Freedom of movement for workers shall be secured within the Union.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;

- (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.
4. The provisions of this Article shall not apply to employment in the public service.'

Article 101 TFEU:

'1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
- any agreement or category of agreements between undertakings,
 - any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.’

Provisions at issue

Article 9.1 of the RSTP:

‘Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association. The ITC shall be issued free of charge without any conditions or time limit. Any provisions to the contrary shall be null and void. The association issuing the ITC shall lodge a copy with FIFA. The administrative procedures for issuing the ITC are contained in Annexe 3, article 8 ... of these regulations.’

Article 8.2.7 of Annex 3 of the RSTP:

‘The former association shall not deliver an ITC for a professional player if a contractual dispute on grounds of the circumstances stipulated in Annexe 3, article 8.2 paragraph 4 b) has arisen between the former club and the professional player. ...’

Article 8.2.4 of Annex 3 of the RSTP:

‘Within seven days of the date of the ITC request, the former association shall ...:

...

- b) reject the ITC request and indicate ... the reason for the rejection, which may be either that the contract between the former club and the professional player has not expired or that there has been no mutual agreement regarding its early termination.’

Article 17 of the RSTP:

‘The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country

concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

...

2. Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.

3. ...

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage.'

Summary of the facts and procedure in the main proceedings

- 1 While a dispute was pending before the FIFA Dispute Resolution Chamber between BZ and his former club, Lokomotiv Moscow, concerning the termination of the contract that had been in force between them since 20 August 2013, and in particular the payment by BZ of termination compensation of EUR 20 million, BZ began a search for a new club able to employ him.
- 2 That search proved to be difficult, however, and BZ claims that this was because of the risk to the new club of being held liable, jointly and severally with BZ himself, to pay any compensation found to be due to Lokomotiv Moscow.
- 3 BZ states that, in spite of interest from several clubs, the only offer he received was the one from Sporting du pays de Charleroi, which on 19 February 2015 sent him a letter of engagement containing two cumulative suspensive conditions:

- that he was registered and eligible, in accordance with the applicable rules and by 30 March 2015 at the latest, to play for SA Sporting du Pays de Charleroi’s first team in any official competition organised by URBSFA, UEFA or FIFA;
 - that he had (by the same date) obtained written and unconditional confirmation that SA Sporting du Pays de Charleroi could not be held jointly and severally liable for any compensation (in particular, compensation for termination of contract) which BZ might be liable to pay to Lokomotiv Moscow.
- 4 By letters of 20 February and 5 March 2015, the respective advisors of BZ and Sporting du Pays de Charleroi requested confirmation from both FIFA and URBSFA that BZ could be registered and made eligible, in accordance with the applicable rules, to play for Sporting du Pays de Charleroi’s first team, and that Articles 17.2 and 17.4 of the RSTP would not be enforced against him.
 - 5 By letter of 23 February 2015, FIFA replied that only the competent decision-making body, and not its administrative body, had the power to apply the provisions of the RSTP. For its part, URBSFA indicated on 6 March 2015 that, under the FIFA rules, BZ could not be registered until an international transfer certificate (ITC) had been issued by his former club.
 - 6 By decision of 18 May 2015, the FIFA Dispute Resolution Chamber upheld Lokomotiv Moscow’s claim in part, fixing the amount of compensation payable by BZ at EUR 10.5 million and dismissing BZ’s claims. The Dispute Resolution Chamber also decided that Article 17.2 of the RSTP would not apply to BZ in future. That decision was confirmed on appeal to the Court of Arbitration for Sport (‘the CAS’) on 27 May 2016.
 - 7 On 24 July 2015, BZ entered into a contract of employment with the club Olympique de Marseille.
 - 8 On 9 December 2015, BZ brought proceedings against FIFA and URBSFA before the Commercial Court of Hainaut, Charleroi division, seeking damages for loss, namely a loss of earnings of EUR 6 million, that he claims to have suffered by reason of their non-compliance, specifically the fact that they applied the provisions at issue, which he considers to be contrary to EU law.
 - 9 By judgment of 19 January 2017, that court found BZ’s claim to well-founded in principle and ordered FIFA and URBSFA to pay a provisional sum of EUR 60 001.
 - 10 FIFA brought an appeal against that judgment before the referring court. Having been joined as an intervener in the proceedings, URBSFA also seeks to vary the judgment of 19 January 2017.

The essential arguments of the parties in the main proceedings

- 11 On the substantive claim, BZ submits that FIFA and URBSFA are liable for his loss under Article 1382 of the Belgian Civil Code, which provides that ‘where an act of one person causes damage to another, the person who is at fault in causing that damage is obliged to make reparations for it’.
- 12 He submits that the provisions at issue are unlawful because they are contrary to EU law, more specifically the principle of freedom of movement for workers, enshrined in Article 45 TFEU, and Article 101 TFEU, which prohibits restrictions of competition.
- 13 According to BZ, FIFA and URBSFA acted wrongfully in adopting and applying those provisions, which has caused him damage in the form of a loss of earnings, as the provisions created an obstacle to his employment by another club, leaving him unable to work as a footballer during the 2014-2015 season.
- 14 That obstacle lies in the financial and sporting constraints (joint and several liability, non-delivery of the ITC) to which a new club exposes itself by employing a player whose contract with his former club has been terminated without just cause. BZ also criticises the way in which the compensation is calculated, in that the unamortised element of the amounts paid by the former club to recruit the player can be taken into account. He submits that the compensation (for which the club interested in the player in question becomes jointly liable) makes clubs all the more reluctant to employ a player who is liable to pay such compensation, and thus obstructs the freedom of movement for workers within the European Union.
- 15 According to BZ, FIFA and URBSFA should therefore compensate him for the loss arising from the unlawfulness of the provisions of the RSTP at issue, which prevented him from being employed by a new club.
- 16 In support of his submission that the provisions of the RSTP at issue are unlawful, BZ refers to the judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463) (‘the *Bosman* judgment’).
- 17 In that judgment, the Court held inter alia that Article 48 of the EEC Treaty (now Article 45 TFEU) applies to rules laid down by sporting associations which determine the terms on which professional sportsmen can engage in gainful employment (the *Bosman* judgment, paragraph 87). It reiterated that the freedom of movement for workers is one of the fundamental principles of the European Union (the *Bosman* judgment, paragraph 93) and held that Article 48 of the EEC Treaty (now Article 45 TFEU) precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee (the *Bosman* judgment, paragraph 1 of the operative part).

- 18 While FIFA and URBSFA do not dispute that Article 1382 of the Civil Code applies, they deny that they engaged in any wrongful conduct capable of giving rise to a liability on their part.
- 19 FIFA submits that the provisions of the RSTP at issue are compatible with EU law.
- 20 It argues that in determining whether those provisions are compatible with the Treaty, regard must be had to the specific features of sport, as recognised by the TFEU and by EU bodies, which include, in particular, maintaining contractual stability and the stability of teams as well as the integrity, regularity and proper functioning of sporting competitions. According to FIFA, those specific features constitute legitimate objectives capable of justifying potential interference with freedom of movement or restrictions of competition.
- 21 The provisions at issue have, furthermore, been recognised by EU bodies as being compatible with EU law. Thus, the European Commission indicated its agreement, in 2001, to the RSTP, later versions of which have retained the essential content and *ratio legis* of the principles relating to transfers, as approved by the Commission. FIFA relies in particular on a Communication from the Commission of 5 March 2001, referring to FIFA's agreement to amend the RSTP in accordance with various principles. It also submits that, in a press release of 5 June 2002, Commissioner Mario Monti stated that the new FIFA rules found a balance between the players' fundamental right to freedom of movement and the stability of contracts together with the legitimate objective of integrity of sport and the stability of championships.
- 22 URBSFA also disputes liability on the ground that FIFA – and not URBSFA – is the author of the provisions at issue.

Assessment of the referring court

- 23 In the view of the referring court, there are strong, specific and consistent indications that the provisions of the RSTP at issue prevented BZ from being employed by a new club following the termination of his contract with Lokomotiv Moscow. That is apparent *inter alia* from the letter of engagement signed by Sporting du Pays de Charleroi, which makes the conclusion of the contract conditional on the absence of joint and several liability in respect of the payment of compensation due to the former club and on the delivery of the ITC. Furthermore, BZ was able to join a new club shortly after the CAS decision not to apply Article 17.2 of the RSTP in the future.
- 24 As to the existence of the fault required for liability to arise with regard to BZ, the referring court considers that that assessment depends on whether the provisions of the RSTP at issue are compatible with the TFEU, and therefore that it would be appropriate to make a reference to the Court of Justice for a preliminary ruling in that regard.

- 25 The referring court considers that it cannot determine, on the basis of the Court's case-law as it presently stands, whether those provisions are compatible with EU law, as this requires a delicate assessment, having regard in particular to the balance to be struck between the objectives pursued by the sporting associations and the rights guaranteed by the TFEU.
- 26 Furthermore, it does not appear that the question referred to the Court in the case which gave rise to the judgment in *Bosman* can be assimilated to the present dispute, which relates to compensation due to a club following the termination of a contract without just cause and the joint and several liability of the new club in respect of the payment of that compensation. The *Bosman* case related to the transfer, training or development fees due on expiry of a contract between a club and the player in question.
- 27 As regards URBSFA's submission that it is not liable because it is not the author of the provisions at issue, the referring court considers that it is for URBSFA to deal with enrolment of players belonging to that association, in accordance with FIFA rules. It was thus URBSFA which, in the present case, could not accept BZ's request to be registered and made eligible, in accordance with the applicable rules, to play for Sporting du Pays de Charleroi. In that respect, the referring court considers that URBSFA might also be liable in so far as the provisions of the RSTP at issue infringe EU law.
- 28 The referring court does not, at present, consider it appropriate to refer BZ's further proposed questions to the Court for a preliminary ruling; in its view, those questions will be relevant only if the question referred is answered in the affirmative.