

Compensation, y nada más - CJEU decides against Real Madrid in Case C-633/22

Just two days after losing to LOSC Lille in the Champions League, Real Madrid suffered another defeat against a French opponent. Among the 44 (!) judgments published this Friday by the CJEU - a flurry of decisions reminiscent of the madness that is the current Champions League format -, the Court decided a true 'clásico' of European private international law in Case C-633/22 *Real Madrid Club de Fútbol*.

The decision has long been awaited: eight months after the Opinion by AG Szpunar (discussed here) has been published and almost 18 years since the facts of the case. It concerns an



article published by leading French newspaper Le Monde in 2006, which claimed that both FC Barcelona and Real Madrid had retained the services of Eufemiano Fuentes, a sports doctor heavily implicated in numerous doping scandals. Real Madrid and a member of their medical team sought damages for the harm to their reputation and were eventually awarded payment of € 390,000 to the former and of € 30,000 to the latter by a Spanish court in 2014. Their attempts to enforce those awards in France were thwarted, though, with the Paris Court of Appeal holding that they were violating French public policy by deterring the media's freedom of expression as guaranteed by Art 11. of the Charter of Fundamental Rights of the European Union. The French Cour de cassation finally referred the

case to the CJEU in 2022, raising questions as to whether such a deterrent effect on freedom of expression would be a valid ground of public policy to refuse enforcement based on (what is now) Art. 45(1)(a) Brussels Ia and, if so, how it could be established.

In its decision (not yet available in English), the Court largely follows the Opinion of its Advocate General. After reiterating the importance of striking the right balance between swift recognition and enforcement of judgments between Member States and the defendant's right of defence (paras. 29-31), the Court emphasises that - except in exceptional circumstances - the courts of the Member State of enforcement must not review the substance of the foreign decision (paras. 36-39) and may even have to presume that the fundamental rights of the defendant, including those derived from EU law, have been respected (paras. 42-43). Yet, a violation of the freedom of expression enshrined in Art. 11 of the Charter (and Art. 10 of the European Convention of Human Rights) may constitute such exceptional circumstances (paras. 45-53).

Focusing on the present case, the Court then goes on to emphasise the role of the press as a 'public watchdog' (using the English term even in the French original), not least with regard to reporting on doping in professional sports, and the risks of a deterring effect, relying extensively on jurisprudence by the European Court of Human Rights (paras. 54-56). According to the Court, it follows that in this context,

'toute décision accordant des dommages-intérêts pour une atteinte causée à la réputation doit présenter un rapport raisonnable de proportionnalité entre la somme allouée et l'atteinte en cause.' (para. 57)

In order to establish the existence of such a reasonable proportion, the courts of the Member State of enforcement may indeed consider, in particular, the amount awarded: if it exceeds the material and immaterial damage, or if it is significant in comparison to the resources of the defendant, a deterrent effect may be found (paras. 62-64). What is more, the courts may also take into the account *'la gravité de la faute [des personnes condamnées]'* (para. 68).

While it remains for the French courts to apply these criteria to the Spanish decision - and to potentially refuse enforcement to the extent (!) that it has a deterrent effect on freedom of expression (i.e. not entirely; see para. 72) on this

basis -, the Court of Justice certainly appears open towards the possibility of such a deterring effect being found to exist in the present case.