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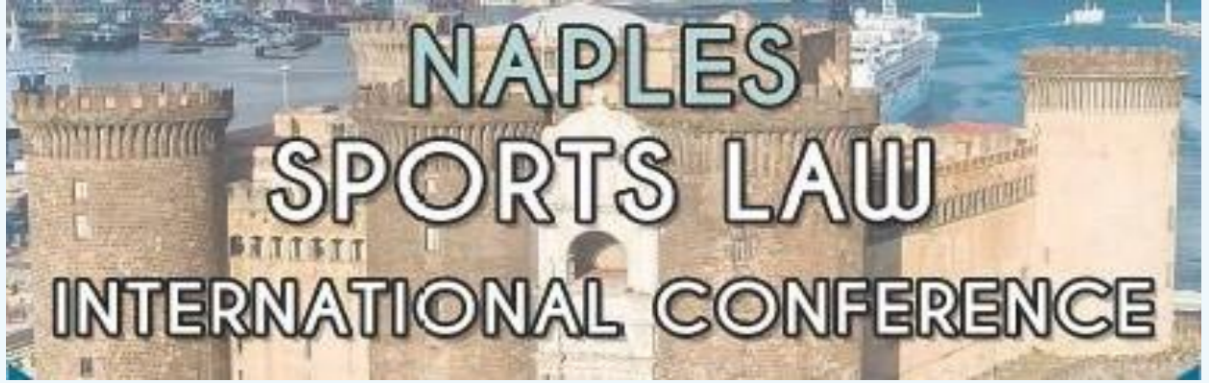

COCCIA DE ANGELIS & ASSOCIATI
STUDIO LEGALE E TRIBUTARIO

The EU Court of Justice's judgment on the RFC Seraing case: Much ado about little?

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Timeline of the RFC Seraing case

30 January 2015	RFC Seraing concludes a contract with Doyen Sports Investment Ltd selling portions of the economic rights to three players
3 April 2015	**Doyen and RFC Seraing start a lawsuit against FIFA, UEFA and URBSFA before the Brussels Commercial Court** claiming that the FIFA rules on TPI and TPO are incompatible with EU law (competition law and free movement) and request compensation for damages
4 September 2015	**FIFA Disciplinary Committee sanctions RFC Seraing** under Articles 18bis-18ter RSTP (TPI-TPO)
7 January 2016	FIFA Appeal Committee dismisses the appeal brought by RFC Seraing
17 November 2016	Brussels Commercial Court finds that it has no jurisdiction to examine the RFC Seraing's case
9 March 2017	CAS panel issues an arbitral award holding that the FIFA rules on TPI and TPO do not breach EU law or Swiss law and rejects the RFC Seraing's appeal
20 February 2018	**The Swiss Federal Tribunal dismisses the appeal** against the CAS award stating *inter alia* that competition law is not part of the Swiss substantive public policy (*ordre public*)
12 December 2019	Brussels Court of Appeal dismisses Seraing's appeal due to *res judicata* force of CAS award
8 September 2023	Belgian Court of Cassation refers the case to the CJEU for a preliminary ruling (Art. 267 TFEU)
1 August 2025	**CJEU issues its judgment and now the case goes back to the Belgian courts**

The CJEU's Judgment

- The "Seraing case": **Case C-600/23, Judgment of 1 August 2025**, Royal Football Club Seraing SA v. FIFA, UEFA, URBSFA
- It's a reference for a preliminary ruling under Article 267 TFEU from the Belgian Court of Cassation
- The CJEU so rules in the operative part:

> *"The second subparagraph of Article 19(1) TEU, read in conjunction with Article 267 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as* ***precluding****:*
> *– the* ***authority of res judicata from being conferred*** *within the territory of a Member State* ***on an award made by the Court of Arbitration for Sport (CAS)****, in the relations between the parties to the dispute in the context of which that award was made,* ***where*** **[1]** *that dispute is linked to the pursuit of a sport as an economic activity within the territory of the European Union and* **[2]** ***the consistency of that award with*** *the principles and provisions of EU law which form part of* ***EU public policy has not first been subject to effective review*** *by a court or tribunal of that Member State that is authorised to make a reference to the Court of Justice for a preliminary ruling;*
>
> *– probative value from being conferred, as a consequence of that authority of res judicata, on such an award within the territory of that Member State, in the relations between the parties to that dispute and third parties."*

Academic Reactions

- The RFC Seraing judgment seems to be **written by several hands**, by people with different opinions; so, it might be a bit confusing at first reading and **some language can be misleading**
- Several authors have written comments on the RFC Seraing judgment and some of them have given a somewhat creative reading of it
- Probably, some of those commentators were influenced by the **Opinion of Advocate General Ćapeta**, which, however, was **wholly disregarded by the CJEU**
- Each commentator quotes the bits and pieces of the judgment that best suit their inclinations or ideas
- A correct understanding of the judgment needs to take into account elements of EU law, private and public international law, international arbitration law and sports law

My Submission

- The ***RFC Seraing*** **judgment, essentially, does not state anything new, it has rather a didactic or pedagogical attitude**
- **The CJEU's judgment usefully explains some issues**, in particular clarifying some doubts generated by the *ISU* judgment of December 2023
- It is **essentially neutral as to commercial arbitration and to CAS arbitration, and even supportive**
- **The exact same judgment, *mutatis mutandis*, could have been issued in relation to a judgment by a court of a non-EU State, such as a Swiss cantonal court** (applying the public policy exception of the Lugano Convention of 2007 "*on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*")
- **Any concern should be by the sports organizations**; the fact that some of them are located outside the EU cannot shield them from the full application of EU fundamental principles (EU competition law and the four freedoms of movement)

The New York Convention of 1958

- The **New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, dated 10 June 1958** is the basis of international arbitration
- This international treaty has been ratified by **172 States** (essentially, the whole international community) and requires contracting States to uphold arbitration agreements and to recognize and enforce arbitral awards issued in other States, with very limited exceptions that can be raised
- The only substantive exception that can be raised by a party asking a national judge not to recognize and/or enforce a foreign arbitral award is the **incompatibility with the public policy (*ordre public*)** of the State of that judge (it's the **"international public policy"**); the other exceptions are procedural (respect of right to be heard, etc.).
- It is **obvious** that a national court's evaluation as to the recognition or not of a foreign arbitral award is done regardless of whether the award has become final and binding in the seat of the arbitration (i.e. **regardless of its *res judicata* status!**)

Public Policy (*Ordre Public*)

- **International public policy** (not to be confused with internal public policy, which limits the contractual autonomy of parties) is a sort of "safety valve" that every State's legal system raises vis-à-vis any foreign legal deeds
- It's a notion encompassing the **core values and fundamental principles** of a given State and allows the courts of that State to refuse to apply, recognize and/or enforce foreign rules of laws, foreign judgments or foreign arbitral awards contradicting those core values and fundamental principles
- All national arbitration laws allow parties to challenge arbitral awards on that ground, either **directly**, i.e. asking the competent court of the State of the seat of the arbitration to **annul the award** (or part of it), or **indirectly**, i.e. asking a court of another State to **declare the non-recognition and/or non-enforceability of the award** in that State

EU Public Policy

- The fundamental principles of EU law form the so-called **EU public policy**, which is **part of the international public policy of each Member State** and can limit the application, recognition and/or enforcement of foreign laws, foreign judgments or foreign arbitral awards
- There is no doubt, at least since 1999 (*Eco Swiss* judgment), that the **principles of EU competition law** form part of the EU public policy
- Also, nobody could harbor any serious doubt that the **four fundamental freedoms of movement** granted by the TFEU (free movement of workers, freedom to provide services, freedom of establishment and free movement of capitals) have always formed part of the EU public policy (see the *Walrave* judgment of 1974 , where the Court stated that the freedom of movement for persons and the freedom to provide services "*are fundamental objectives of the Community contained in article 3(c) of the Treaty*"!)

Review of Arbitral Awards

- The CJEU explains that arbitration is a legitimate mend to solve dispute between private parties and that all arbitral awards must be subject to **effective judicial review**, so as to guarantee **effective judicial protection**, i.e. the **review by a EU judge** that can verify **compliance with EU public policy** and, if warranted, make a preliminary reference to the CJEU (Art. 267 TFEU)

- The CJEU explains that there can be a **"direct review"** or an **"indirect review" of an arbitral award**:
  - **Direct review**: an **action for annulment**, *i.e.* an appeal against the award asking the competent court of the seat of the arbitration to set aside the award or a part thereof
  - **Indirect review**: **action for non-recognition**, *i.e.* the request to not recognize and not enforce an arbitral award issued in a non-EU State, such as Switzerland

Review of Arbitral Awards

- Effective judicial review "*does not mean that there must necessarily exist, in the European Union, one or more courts or tribunals with the power to consider all questions of fact and of law*" (§ 84)
- It is legitimate to have arbitration mechanisms and **the judicial review of arbitral awards "*may legitimately be limited in nature*"** (§ 84), so as:
  - to allow private parties to have recourse to arbitration
  - to protect the **"effectiveness of the arbitration proceedings"**
- The "effective judicial review" can be ensured by EU judges on the basis of the **"*legal classification* [...] of *the facts as established and assessed by the arbitration body*"**; "*qualification juridique [...] des faits tels que constatés et appréciés par l'organe arbitral*" (§§ 86 and 101)

Review of CAS Arbitral Awards

- The RFC Seraing judgment **does not deal at all with the issue of the independence of the CAS**
- The judgment mentions the fact that CAS arbitration is (often) "**mandatory arbitration**", in the sense that FIFA and other sports associations having "*extensive regulatory and oversight powers as well as the power to impose sanctions*", "**unilaterally impose**" such arbitration mechanism on individuals and clubs
- The **CJEU** distinguishes between "*compulsory arbitration and voluntary arbitration*" (§80) but **draws no consequences from such distinction between mandatory and voluntary arbitration** (§§92-94)

Review of CAS Arbitral Awards

- The CJEU states (**§ 94**) that in light of "*the legal autonomy enjoyed by international sports associations*" and of "*their responsibilities*", **CAS arbitration is "*warranted*" (*i.e.* acceptable, justified)**
- The CJEU states that the CAS mandatory arbitration is justified by the pursuit of **two legitimate objectives**:
  - **Legitimate procedural goal**: "*ensuring the uniform handling of disputes*" within their sport
  - **Legitimate substantive goal**: "*enabling the consistent interpretation and application of the rules*" of that sport

Review of CAS Arbitral Awards

- However, "***effective judicial protection***", i.e. **compliance with EU public policy principles by sports organizations**, must be ensured by a judge of a EU member State, with possibility of reference to the CJEU (art. 267 TFEU)
- This can occur either through a **direct judicial review**, if the seat of the arbitration is in a EU member State or with an **indirect judicial review**, through the New York Convention of 1958 or national civil procedure rules
- Indirect judicial review **can occur either at a party's request or by the "*tribunal's own motion*"**
- The CJEU implies that **this is what the Belgian courts should have done** instead of relying on *res judicata* (this is revealed by the detailed mention of the Belgian rules on the recognition and enforcement of arbitral awards at § 10 and of the position of the Belgian Government at §§ 62-63)

Review of CAS Arbitral Awards

- A **national court** reviewing a foreign arbitral award in the context of an indirect review **must not limit itself to the non-recognition of the award** (i.e. prohibiting the legal effectiveness and enforcement of that award in that country)
- In case of an infringement of EU competition law or a fundamental freedom of movement affecting the EU territory, **a national court of a EU member State must adopt a decision that can "*bring to an end the conduct amounting to that infringement*" and award damages** (§ 104)
- Moreover, that national court can grant **interim measures** which ensure the full effectiveness of the judgment later to be given on the merits, particularly if there is a request for a preliminary ruling to the CJEU, if needed disapplying the rules of national law which preclude that power or, *a fortiori*, any rules of sports organizations (§§ 105-106)

Conclusive Remarks

- The CJEU's judgment on the RFC Seraing case essentially does not bring about any innovation and has an illustrative and didactic attitude
- It usefully clarifies several matters, particularly with regard to some doubts that were raised by the *ISU* judgment of 21 December 2023
- In particular, **there is no need that CAS arbitration proceedings move to a seat within the territory of the EU**
- Perhaps it leaves some doubts as to the extent of the review of an arbitral award that a national judge can do in the context of the public policy exception under the New York Convention of 1958, particularly as to the facts as established by the arbitral tribunal

Thank you very much!

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