2018
June

MAGAZINE
SPORTS &
ENTERTAINMENT

GARRIGUES

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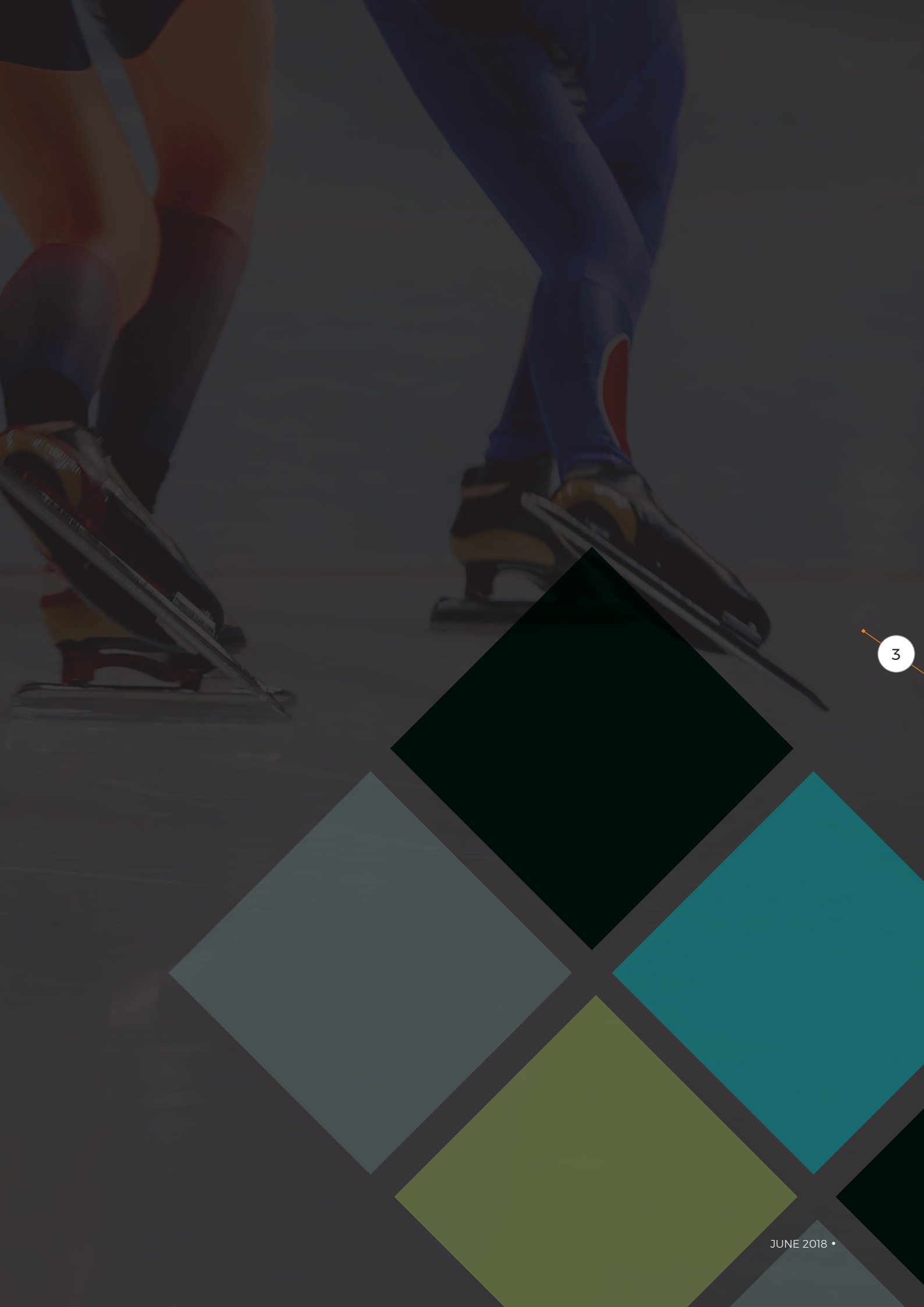

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EMPLOYER'S STATEMENTS ON A PLAYER'S PERFORMANCE MAY BREACH HIS RIGHT TO REPUTATION

ÁNGEL OLMEDO JIMÉNEZ

A professional athlete's right to reputation forms part of the employment relationship, and therefore, statements made by the employer in relation to the playing of the sport, could adversely affect that athlete, making it necessary for the courts to act to repair that effect

1. Issue under debate

The Basque high court judgment examined the statements made by the sole director of one of the companies that employ *pelotaris* (players of the Basque sport *pelota*); in the statements he cast doubts over that player's health, due to a number of shoulder injuries, by saying that *"the pelotari is a risk (...)"* and affirming that *"lately he has been playing at a high level, but has not done so for the rest of the year. A pelotari cannot play well only when he is nearing the end of his contract"*.

2. Facts of interest

The player (*pelotari*) had been providing his services for over sixteen years, and is one of the most recognized players in his profession.

The sole director of one of the two companies that employ the *pelotaris* made a few statements to the press, as described above, which were widely broadcast in the sports media.

Over the previous four years of playing the sport, the *pelotari* had been unable to play up to six times due to lumbago and back problems, and his bad back was general knowledge in the *pelota* world.

Following the termination of his employment relationship with his employer, the *pelotari* signed a new contract with the other company that employs these players.

By reason of the statements that had been made, the *pelotari* claimed indemnification amounting to €1.4 million, pleading that they adversely affected his right to privacy and reputation, together with rights related to data protection.

The labor court hearing the case dismissed the claim in full and the pelotari lodged an appeal against that judgment.

3. Judicial interpretation

The Basque High Court carried out an exhaustive analysis as to whether the sole director's statements amounted to an adverse effect on the *pelotari*'s right to privacy and reputation, making a distinction between two elements:

a) Regarding the statements on the *pelotari*'s health: The Chamber held that none of the worker's rights may be deemed breached because: (i) the worker is an individual "in the public eye", which means that the content of the statements is relevant, (ii) the statements fall within freedom of expression and not within freedom of information, so the truth requirement applies to a lesser extent, and lastly, (iii) because they may not be characterized as either a criminal insult, or degrading or disproportionate.

b) Regarding the *pelotari*'s behavior consisting of playing at a higher level when nearing the end of his contract: The Court held that those statements, especially since they were made by the sole director of one of the company's employing the *pelotaris*, adversely affect the player's right to reputation, because: (i) the worker is being accused of a labor offense, (ii) this is done with a high degree of publicity, (iii) in the context of a very small professional field, having regard to the number of companies employing *pelota* players, which hinders his future employability, and (iv) by not dismissing him for the pleaded reasons, his alleged performance *ad gustum* (to order), prevents the *pelotari* from being able to present his case other than through a claim in relation to fundamental rights such as the one aired in this proceeding.

   In respect of this breach of his right to reputation, and because the company did not question the amount requested in the claim, the company was ordered to pay the *pelotari* €150,000 in indemnification.

Lastly, the judgment devoted a section to studying a potential adverse effect on the fundamental to the protection of data. On this subject, the ruling concluded that, due to the interest the *pelotari*'s physical condition and health has for fans, the worker's right cannot be deemed breached, because the employer's statements do not go beyond the limits of health matters related to sports obligations.

INTERNATIONAL SKATING UNION ELIGIBILITY RULES IN BREACH OF COMPETITION RULES

SAM VILLIERS

On 8 December 2017, the European Commission decided that the International Skating Union's (ISU) eligibility rules, which imposed severe penalties (including potential lifetime bans) if athletes participated in speed staking competitions which were not authorized by the ISU, breached EU competition law. The **non-confidential version of the decision** was published on 23 March 2018.

This is the first time that the Commission has issued a competition prohibition decision regarding a federation's eligibility rules. The outcome may prompt international sports federations to re-assess their eligibility rules.

Background

The ISU is the sole body recognized by the International Olympic Committee to administer figure skating and speed staking on ice. The ISU and its members — the national ice staking associations — organise and generate revenues from speed staking competitions such as the Winter Olympics and the World and European championships.

Under the ISU eligibility rules, speed skaters participating in competitions which were not sanctioned by the ISU could receive up to a lifetime ban. The Commission opened an investigation following a complaint from two prominent Dutch professional speed skaters.

Since the landmark *Meca-Medina* case (Case T-313/02), it has been well established that the EU's competition rules apply to sport. However, a sporting rule may fall outside the application of the competition rules in certain circumstances, taking into account the legitimacy of the objectives pursued by the sporting organisation in setting the rules, whether any restrictive effects of those rules are inherent in the pursuit of those objectives, and whether those rules are proportionate to such objectives.

The Commission Decision

The Commission concluded that the eligibility rules, taking into account in particular their content, objectives and the legal and economic context, had the object of restricting potential competition on the worldwide market for the organisation and commercial exploitation of international speed skating event. Specifically, the Commission found that:

i. the eligibility rules were intended to prevent athletes from participating in events not

authorized by the ISU, thus foreclosing competing event organisers;

ii. the eligibility rules aimed to exclude competing event organisers which could potentially harm the ISU's economic interests; and

iii. the eligibility rules could not be justified by reference to a legitimate sporting objective. Indeed, the ISU could impose these penalties at its own discretion, even if the independent competitions posed no risk to the integrity and proper conduct of sport, the health and safety of athletes, or the organisation and proper conduct of competitive sport.

Although the ISU made some changes to its eligibility rules in 2016, the Commission found that the system of penalties under the rules remained disproportionately punitive.

The Commission decision required the ISU to stop its illegal conduct within 90 days and to refrain from any measure that had the same or equivalent object or effect.

Current status

It has been reported that the ISU has told EU officials that it is currently amending its eligibility statutes and will not enforce the existing rules until the new ones are in place in June 2018.

That said, the ISU has recently lodged an appeal of the Commission's decision before the EU's General Court (Case T-93/18, International Skating Union v Commission).

Implications of the Decision

In a **statement** following the decision, EU Competition Commissioner Margrethe Vestager explained that the decision is not questioning the pyramid organisational structure of some sports, whereby a single federation organises competitions from local to international level. She stated that as long as a federation's eligibility rules are based on legitimate sporting objectives, such as preventing doping, protecting the well-being of athletes, or safeguarding the integrity of the sport, and are necessary and proportionate to these objectives, they will not be breaching competition law. If, on the other hand, the federation is merely trying to protect its commercial interests, then the competition rules will bite.

The decision has been criticized by some federations, who argue that they should be entitled to act as a regulator for their sport in order to protect its integrity, and to prevent private bodies from using top athletes in their commercial events without investing money back into the sport's grassroots, or in other words, free-riding. These arguments will likely play out in the upcoming court proceedings.

While the Commission did not issue the ISU with a fine, the decision makes clear that international sports federations should be mindful to avoid hampering the ability of athletes to take part in the events organised by rival bodies. The Commission's decision should therefore prompt sports federations to re-evaluate their eligibility rules.

Margrethe Vestager explained that the decision is not questioning the pyramid organisational structure of some sports, whereby a single federation organises competitions from local to international level

FIFA CIRCULAR NO 1625 (AMENDMENTS TO FIFA'S REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS)

ÁNGEL OLMEDO

On April 26 FIFA Circular no 1625 was published, informing about the Amendments to the Regulations on the Status and Transfer of Players (RSTP), set to come into force on June 1, 2018.

The main new items of legislation are described below:

a) They include as just cause for terminating a contract any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract (article 14.2).

b) A new article is added (14bis), related to terminating contracts with just cause for outstanding salaries. The new amendment provides that if a club fails to pay a player two monthly salaries it will be deemed just cause to terminate his contract, provided the player has put the debtor club in default in writing and has granted a deadline of at least 15 days for payment. Article 14 bis provides that domestically negotiated collective bargaining agreements will prevail over this new rule if they deviate from it.

c) An addition is made to article 17.1 (on the consequences of terminating contracts without just cause) on how to calculate the compensation due to a player, which will be governed by the following parameters:

   (a) If the Player has not signed a new contract, the compensation will be equal to the amount payable for the remaining term of breached contract with the previous club (the "residual value").

   (b) If the player has signed a new contract, the value of the period of the new contract that overlaps with the previous contract must be deducted from the "residual value". If, in this case, the contract is terminated due to outstanding salary payments, the player will be entitled to three monthly salaries on top of the sums mentioned above. In addition, if there are egregious circumstances, which the article does not define, the compensation may be increased up to a maximum of six monthly salaries. The overall amount of compensation may never exceed the "residual value" of the contract.

   (c) As in the previous case, domestically negotiated collective bargaining agreements prevail over the terms of the new article 17.1.

d) According to the new article 18.6, contractual clauses granting a club additional time to pay amounts that have fallen due (so-called "grace periods") will not be recognized. This does not apply if domestically negotiated collective bargaining agreements, or clauses in contracts before June 1, 2018, provide otherwise.

e) Lastly, a new article 24bis is added on execution of monetary decisions, which provides that when instructing a club or a player to pay a

sum of money, the Players' Status Committee, the single judge or the DRC judge will have to decide on the consequences of the failure to pay the relevant amounts in due time.

These consequences may be: (i) for the club: a ban from registering any new players up until the due amounts are paid, a registration ban that may last for up to three entire and consecutive registration periods; and (ii) for the player: a restriction on playing in official matches up until the due amounts are paid, a ban that may not last longer than 6 months. In both cases, the periods include the potential sports sanctions.

The article provides also that the prohibition or the restriction will be applicable if the due amounts are not paid within a period of 45 days as of the creditor having provided the debtor with the required bank details for the payment.

NEWS

GARRIGUES SPORTS & ENTERTAINMENT PARTICIPATES IN THE III WOMEN'S FOOTBALL CONGRESS

The III Women's Football Congress was held on April 24, organized by LaLiga to continue along the successful path towards professionalizing this sport.

Talks were given by Javier Tebas, LaLiga chairman, Javier Lozano, LNFS chairman, Dolores Martelli, in charge of sponsorship at Iberdrola, and Daniel Margalef, in charge of Mediapro, among other sports personalities who attended the event to define the course to follow in the professionalization of women's football.

Félix Plaza, partner in the Tax Department and co-leader of Garrigues Sports & Entertainment, participated in a talk entitled "*Camino hacia la profesionalización de una liga*" ("Path towards professionalization of a league").

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BEST LAWYERS AND CHAMBERS PINPOINT GARRIGUES SPORTS & ENTERTAINMENT AND ITS LAWYERS

For another year running, Garrigues Sports & Entertainment was placed among the law firms recognized by the Chambers directory and by Best Lawyers, both highlighting its sports law practice for high-profile athletes.

Individual commendation was received by Félix Plaza and Carolina Pina, partners in the Tax and Intellectual Property departments and co-leaders of Garrigues Sports & Entertainment by being included among the lawyers recognized by both directories.

GARRIGUES SPORTS & ENTERTAINMENT PARTICIPATES IN CONFERENCE ON THE TAXATION OF SPORTS ENTITIES, ORGANIZED BY BARCELONA ECONOMISTS ASSOCIATION

A series of talks on the taxation of sports entities, organized by Colegio de Economistas de Barcelona (Barcelona Economists Association) were held on May 9, given by Diego Rodríguez, partner in the Tax Department and co-leader of Garrigues Sports & Entertainment, Daniel Valldosera, partner in the Tax Department and VAT expert, and Mónica Rende, senior associate in the Tax Department.

The talks addressed topics including the legal classification of the various sports entities (club/association/commercial company) and their taxation in the field of corporate income tax and VAT, together with the tax incentives to patronage and non-profit entities under Law 49/2002.

GARRIGUES SPORTS & ENTERTAINMENT PARTICIPATES IN THE 5TH LALIGA CONFERENCE ON SPORTS LAW 2017-2018

The 5th LaLiga Conference on Sports Law, for the 2017/2018 season was held on February 13 at LaLiga's headquarters, and attended by football club representatives and sports law practitioners.

Félix Plaza, partner in the Tax Department and co-leader of Garrigues Sports & Entertainment discussed the tax treatment of transfer rights in international transactions, focusing particularly on Argentina and Brazil.

GARRIGUES SPORTS & ENTERTAINMENT GIVES TAX LAW LECTURES ON SPORT BUSINESS ADMINISTRATION COURSE, ORGANIZED BY CENTRO DE ESTUDIOS GARRIGUES

The tax law and labor law lectures on the Sport Business Administration program took place at Centro de Estudios Garrigues in May and June. These lectures were given by Félix Plaza, partner in the Tax Department and co-leader of Garrigues Sports & Entertainment and José Manuel Mateo, partner in the Labor and Employment Department and expert in sports law, among other industry professionals.

Judgments

1 National appellate judgment of October 27, 2017, on whether time spent by workers to participate in a company-organized sports competition is able to count as working hours

The National Appellate Court partially upheld a claim brought by labor unions in a collective dispute proceeding in which one of the issues discussed was whether the time spent by workers to participate in a sports competition (football championship) with various group customers could count as working hours.

For these purposes "working time" means any period in which the worker remains at work, available to the employer, and performing their activities or tasks, in accordance with domestic laws and practices (having a legal obligation to obey their employers' instructions and perform their activities for their employers).

The National Appellate Court held that, in this case, the workers' participation in sports championships in which customers are invited to take part, with the aim to strengthen business ties, are activities organized by the employer and related to the provision of services by workers, who must abide by the employer's guidelines -irrespective of their voluntary nature-.

2 Supreme court judgment of November 7, 2017, on the non-existence of an employment relationship between a music foundation and the musicians in its orchestra

The Supreme Court upheld an appeal in cassation for a ruling on a point of law lodged by a private music foundation against a judgment rendered by Catalonia High Court in a proceeding against the appellant, initiated on its own motion by Tesorería General de la Seguridad Social, the Spanish social security treasury, to examine the existence of an employment relationship.

Ruling against the lower court's judgment, the Supreme Court held that no employment relationship exists where a music foundation pays to its musicians a portion of the expenses their activities generate (without paying any salaries), these musicians are free to attend rehearsals and concerts (there are no sanctions for missing them), organize their own replacements if their instruments are a necessary element of the rehearsal or concert, and provide their own instruments (they pay the maintenance costs of their instruments out of their own pockets).

3 National appellate court judgment of November 10, 2017, on allowing the existence of an improper line-up

The National Appellate Court dismissed the appeal lodged by a football club against a judgment confirming a judgment rendered by the Spanish Disciplinary Committee for Sports, in which the existence of an improper line-up at a match in the Spanish *Copa del Rey* Championship was confirmed.

The grounds pleaded by the appellant club and the grounds on which the National Appellate Court dismissed those pleadings were as follows:

- Failure to give personal notice to the player of the sanction when the infringement determining his suspension for a match occurred, at a time when the player was also on loan to another club, so the appellant club had not been informed of the occurrence of that infringement. The National Appellate Court held that due notice of the sanction had been given to the player, insofar as it was sent by fax to the football club to which the player had been loaned, with the relevant acknowledgment of receipt.

  Anyway, explained the Court, leaving aside the notice, clubs have an obligation not to line up players sanctioned with suspension, and these sanctions are published on the RFEF's (Spanish football association's) website and entered on the Sanctions Register.

- ´The sanction was invalid due to coming from the previous season, in that after the third qualifying round of the *Copa del Rey*, any sanctions remaining to be fulfilled are rendered invalid. Against this, the National Appellate Court argued that this rule does not apply to first division teams, who start playing in the last sixteen round, and therefore, after the third qualifying round.

- The sanction had become statute-barred, because the one-month time limit had expired when the match was played by the appellant club. The Sports Law determines that the statute of limitations period starts from the day following the sanction decision, or from when it is breached, and therefore allows the sanction to be fulfilled at a later date. Accordingly, the National Appellate Court explained that the RFEF's Disciplinary Code allows the sanction to be fulfilled in later seasons if a competition ends or the club is eliminated before sanction has been fulfilled.

4 Basque high court judgment of December 12, 2017, on severance paid to a football coach

The Basque High Court settled an appeal lodged by a football club against a judgment which upheld a claim

related to dismissal brought by the coach at that club, holding the claim unjustified and ordering the football club to pay severance.

The appellant club argued that in the employment contract signed with the coach no severance was covenanted of the kind recognized by the lower court, but rather, in the event of termination suiting the wishes of the club, the coach would have to receive severance equal to all his salary items for the stipulated term (the season in progress), and not for the remaining or outstanding amount of time in the term stipulated in the contract.

The Chamber, by contrast, considered that, when determining the severance to be received by the coach, besides the terms stipulated in the contract, regard must also be had to the provisions in article 8.2 of Royal Decree 1006/1985, so his severance must include all the salary payments received from the club for the term stipulated in the contract (three seasons).

5 National appellate court judgment of December 27, 2017, on application of the 85/15 rule and characterization of payments made to agents

The National Appellate Court examined the personal income tax adjustment made by tax auditors on a professional footballer, which involved two of the most disputed and current issues in relation to the taxation of professional athletes: (i) the application of the 85/15 rule on income arising from the transfer of image rights; (ii) the reporting of the payments made to companies providing agency or intermediation services as additional compensation for the footballer.

The National Appellate Court confirmed in full the adjustment made by the auditors, based on the following reasoning:

(i) Insofar as it is a proven fact that the payments made by a club to a company in respect of the image rights were greater than 15% of the aggregate payments made (salary payments and payments in respect of image rights), income is required to be reported as provided in the Personal Income Tax Law in these cases, and the appellant's pleadings based on a breach of the principle of economic capacity may not be upheld, an issue on which there is settled case law.

(ii) The circumstances surrounding the transfer of the player in which a number of payments were made to companies for purported intermediation and agency services in the transfer (i.e. failure to evidence the services provided, participation of other FIFA agents in the transaction, nonexistence of a contract between the club buying the player, and the companies, a service description unrelated to the transfer on the invoices issued by the companies, no mention of intermediary or agency activities in the companies' corporate purposes, etc.) were deemed sufficient to characterize the operating procedures as a sham transaction under which it was sought to disguise compensation for the footballer subject to withholding tax and taxation in Spain as salary income.

6 Tarragona provincial appellate court judgment of January 8, 2018, on noise and light emissions caused by the activities of paddle courts

The appellant company, a tennis club, lodged an appeal against a judgment determining the existence of illegal emissions from the sports facilities next to the claimants' homes, and determined the club's obligation to stop them, and pay indemnification to the claimants.

The provincial appellate court allowed the lower court's reasoning by holding that the claimants, now respondents, had proved, by producing expert reports, the existence of those illegal emissions, and the appellant had been unable to refute that evidence beyond simply challenging it, on the basis of the amounts proposed by the respondent.

7 Supreme court judgment of November 24, 2016, concerning unlawful interference with the right to reputation of Spanish gymnastic coach

The Supreme Court settled an appeal in cassation lodged against a Madrid provincial appellate court judgment ordering the payment of indemnification to various former members of the team of the Spanish Gymnastics Association (Federación Española de Gimnasia) in relation to accusations of criminal acts by the then team coach. The appellants argued that the order was unjustified on the basis that in this case the right to freedom of expression must take precedence over the respondent's reputation.

The Supreme Court set aside and quashed the judgment, arguing that the accusation that the respondent had committed criminal acts does not correspond to exercising the right to freedom of expression, but to the right to freedom of information. So, when assessing the difference between the appellants' right to freedom of information and the respondent's right to reputation, it is essential to examine (i) the public relevance of the case, and (ii) the truth of the statements.

Regarding public relevance, the very nature of the attributed criminal acts proved sufficient to support their general public relevance.

When examining the truthfulness of the statements made by the appellants, the Supreme Court considered that, if statements are made on the attribution to someone of criminal acts with respect which the informant himself was a victim or witness, there is no justification for requiring confirmation of the information, because the informant is not a third party (especially since the facts are hard to prove due to their clandestine nature and their distance in time).

8 Judgment of the Court of Justice of the European Union of January 18 2018, on treatment of tourism activities involving visits to a stadium

The request for a preliminary ruling was made in the context of a dispute between Stadion Amsterdam CV and the Finance Secretary of State in the Netherlands, over that Secretary of State's refusal to allow the stadium to apply a reduced VAT rate to the visits it offers. The visit consists of a guided tour of the stadium and a visit, without a guide, to the team's museum (it was not possible to visit the museum without participating in the guided tour of the stadium), and the price of each of the visits could be identified.

The CJEU concluded that the Sixth VAT Directive (applicable having regard to the date of the facts) must be interpreted as meaning that a single supply, such as that at issue, must be taxed solely at the rate of VAT applicable to that single supply, that rate being determined according to the principal element, even if the price of each element forming the full price paid by a consumer in order to be able to receive that supply can be identified. An assessment otherwise would mean artificially splitting the supply, thereby distorting the functioning of the VAT system, and jeopardizing the principle of fiscal neutrality since distinct elements may need to be subject to distinct rates of VAT applicable to those elements according to whether or not it is possible to identify the price corresponding to those various elements.

9 Supreme court judgment of January 19, 2018, on the legal limits laid down to ensure pluralism in the television audiovisual market

The Supreme Court dismissed the application for judicial review lodged by the Spanish Advertisers' Association (Asociación Española de Anunciantes) against the decision rendered by the Spanish Council of Ministers on October 16, 2015, on the public tender for allocating in a competitive bidding process six licenses for the free-to-air broadcasting rights to operate the television audiovisual communication service over hertzian waves with national coverage.

The claimant based its claim on three pleadings, all dismissed by the Supreme Court:

- A breach of the limits laid down in articles 36.2 and 36.5 of the General Audiovisual Communications Law (Law 7/2010, of March 31, 2010), related to ensuring pluralism in television, with respect to viewer percentages and radio-electric spectrum occupancy. The Supreme Court explained that this article is not applicable to the allocation process, but instead the measures it envisages are provided for merger processes, that is, for acquisitions of shares or voting rights by a party already holding them in another audiovisual services platform.

- The deficient and incorrect assessment of the documents produced by the applicants, errors in legality judgments according to the Supreme Court, by not specifying the specific infringements that this assessment had incurred; and

- The sanctions imposed on the two companies to which the licenses were allocated, insufficient reasoning for the Supreme Court.

10 Asturias high court judgment of January 23, 2018, on termination of employment contracts of a second coach and of a physical trainer

Asturias High Court settled the appeal lodged by a football club against a judgment partially upholding the dismissal claims brought by the coach and by a physical trainer at the club, holding that their dismissals were unjustified and determining a severance payment.

The appellant club pleaded the existence of a severance clause envisaged in the model contract provided by the Spanish Football Association and signed by both respondents, and that the provisions in article 15 of Royal Decree 1006/1985 were not able to be applied, because they are only applicable in the absence of an express covenant between the parties. The club also considered that the lengths of service of the dismissed professionals had to relate only to the latest contract in force, rather than including all the time they had worked for the club.

The Chamber allowed the club's petitions, by arguing that article 15 of Royal Decree 1006/1985 must be applied only in the absence of an express covenant, and in this case the existence of such a covenant had been fully evidenced, preventing it from being interpreted that the severance envisaged in that article may be treated as a "minimum severance payment" below which no amount could be covenanted between the parties. Similarly, under the theory settled by the Supreme Court in cases of special employment relationships of professional

athletes, "length of service" must mean for these purposes, the provision of services by the professional under the latest employment contract in force, and this is so because finding otherwise would amount to denying the obligatory nature of definite terms for the employment relationships of professionals of this type.

11 Supreme court judgment of February 5, 2018, on agent's right to receive commission covenanted in representation contract after footballer had negotiated his own transfer to another team

The Supreme Court settled an appeal in cassation and on procedural infringement lodged by an agent against a judgment on an appeal that partially upheld the petition for indemnification by the appellant from his principal, a football player, for unilaterally negotiating his own transfer to another club.

Starting out from a characterization of the legal nature of the relationship between agent and footballer as a brokerage or mediation contract, and from the letter of the contract, the Supreme Court considered that indemnification is only able to be claimed in respect of fees for services provided, in cases of contracts signed by the player within the term of the contract itself. This right to receive the fees covenanted in the contract is different from damages for losses caused by a breach of the player's contractual obligations.

Accordingly, it concluded that, although the football player engaging in negotiations behind the agent's back entails a breach of the player's contractual obligations, it may not give rise to the agent's right to receive indemnification in respect of the fees to be received for signing the contract with the new football club, because this contract was signed after the end of the term of the contract between the agent and the player.

12 Supreme court judgment of March 13, 2018, on breach of fundamental right of association in amendment of bylaws of a professional football club to change requirements for members seeking to stand for management board

The Supreme Court partially upheld the appeal in cassation lodged by certain members of a professional football club against a Madrid provincial appellate court judgment on action to set aside corporate resolutions for court protection of the fundamental right of association.

The appellants considered that the resolution adopted at a special general assembly meeting of the football club, at which they amended the club's bylaws, to require a given length of service for members, higher than the existing requirement, in addition to the provision of a pre-guarantee to be able to apply to stand as candidate to the management board, breaches the fundamental right of association of the individual members from the standpoint of the right to form part of the association's governing bodies and representation bodies, and of safeguarding that right by requiring democratic pluralism in associations.

The Supreme Court only upheld one of the pleaded grounds, that concerning a breach of the member's right of association occurring as a result of the amended bylaw article and in relation to the broad powers granted to the election committee with respect to the pre-guarantee required to be able to stand as candidate for the election committee, which goes as far as allowing the committee to broaden the bylaw requirements, and set it aside. The court held that on this occasion the balance between the association's power of self-organization and the member's right of association is broken to the detriment of the member.

Ruling requests

1 DGT ruling V2209-17 of September 4, 2017, on VAT on professional services provided by artist representative to Mexican resident company

The request concerned the VAT liability on marketing, promotion and social media management services carried out by an artist representative, a Spanish tax resident, to a Mexican resident company.

According to article 69 of the VAT Law, the services provided to the company established in Mexico are supplied in Spanish VAT territory if the customer is a trader or professional and is established there. There is a cut-off rule (use and enjoyment rule), however, in article 70.2 of the VAT Law (economic charge method), according to which it will be regarded that services are supplied in Spanish VAT territory where, under the place of supply rules applicable to these services, they are not considered supplied in the Community, but their effective use or enjoyment take place in that territory; and these include electronically supplied services, telecommunications services, and radio and television broadcasting services.

Accordingly, interpreted the DGT, in the submitted case it could happen that the supplies of services made by the requesting party are used for its customer to perform transactions both inside and outside the Spanish VAT territory, and therefore it would be necessary to determine in each case the extent to which each supply has been used in Spanish VAT territory. This means that in the absence of any other method better suited to the circumstances, regard must be had to the proportion of revenues obtained from the transactions performed by the requesting party subject to VAT in Spanish VAT territory, in which the marketing, promotion and social media management services to which the request relates have been used, insofar as they amount to an "input by the company", with respect to the aggregate revenues it obtains as a result of their use or enjoyment.

2 DGT ruling V2334-17 of September 14, 2017, on characterization of fees paid to a mounted bullfighter in bullfighting events

On the subject of when a *rejoneador* (mounted bullfighter), under a special employment relationship for artists in public shows with the organizers of those shows, carries on an economic activity —due to organizing his own material and human resources— the DGT has been adopting the interpretation (among others, in its rulings 0366-02, 0367-02, V2064-12 and V0226-13) that the fact that bulfighters (*matadores de toros, novilleros* and *rejoneadores*) hire their squad and therefore become their employer (with the consequences arising from any employment relationship), all with the aim of participating in a public show, entails the existence of organization of their own resources a necessary element to characterize the fees obtained as arising from an economic activity.

3 DGT ruling V2990-17 of November 20, 2017, on withholding tax applicable to salary income paid to professional indoor football players

The request concerned the withholding tax that must be deducted by the requesting institution, a sports institution engaged in indoor football, to the salary income it pays to professional players.

The DGT makes a distinction according to whether the employment relationship falls inside or outside the scope of the special employment relationship for professional athletes under Royal Decree 1006/1985:

- If there is a special employment relationship between the requesting party and the athletes, withholding tax must be deducted under the general procedure in article 82 of the Personal Income Tax Regulations and having regard to the 15% minimum withholding rate.

- Otherwise, withholding tax also has to be deducted under the general procedure in article 82 of the Personal Income Tax Regulations, though in this case the minimum 15% rate will not be applicable, instead the limit on amount determining whether the employer is exempted from the obligation to withhold tax (article 81 of the Personal Income Tax Regulations) and the 2% minimum rate where they are contracts or relationships for terms shorter than a year (article 86.2 of the same regulations).

4 DGT ruling V3075-17 of November 23, 2017, on whether income received by tennis coach qualifies for exemption under article 7.p) of Personal Income Tax Law or as tax-free diem under article 9.A).3.b) of Personal Income Tax Regulations

The requesting party, a tennis player competing in international tournaments, requiring her to spend between 9 and 10 months of the year outside Spain, and who additionally as a tax resident in Spain determines the income from her activity under the direct assessment method, asked whether the income she pays to her coach, and only employee, who accompanies her to every tournament, qualifies for the exemption under article 7.p) of the Personal Income Tax Law or as a tax-free per diem

under article 9.A).3.b) of the Personal Income Tax Regulations.

In relation to the exemption under 7.p) the DGT concluded that the employee is not able to claim that exemption because he does not satisfy the first of the requirements regarding the work having to be performed for a nonresident company.

Nor does the excess income rule under article 9.A).3.b) of the Personal Income Tax Regulations apply, because the requirement to be assigned abroad is not satisfied (regardless of the fact that the exemption does apply to the allowances for traveling expenses and normal living expenses and accommodation which satisfy the requirements in the regulations).

5 DGT ruling V3085-17 of November 28, 2017, on applicable VAT rate to services supplied for hunting sports

The request concerned the applicable VAT rate to the services supplied to individuals practicing hunting sports.

DGT referred to article 90.1 of Law 37/1992, according to which, unless article 91 provides otherwise, the claimable rate is 21%. It then explained that in view of the removal of article 91.1.2.8 of that Law, allowing the reduced rate to be applied to the services supplied to individuals practicing sport or physical education, the services supplied to individuals practicing a hunting sport must be taxed at 21%.

6 DGT ruling V3216-17 of December 15, 2017, on a few questions concerning the VAT due on supplies of paddle class services by a sports association

The requesting party, a non-profit association, registered as a sports association, which is engaged in supplying paddle classes and practical lessons at its sports facilities, asked (i) whether the exemption under article 20.1.13 of Law 37/1992 is applicable, (ii) whether the classes given to school pupils may be regarded as extracurricular activities and therefore exempt under article 20.1.9 of that Law, (iii) whether the services supplied to the requesting association by teachers hired by the hour by the association may claim the first of the exemptions.

In reply to the first question, the DGT explained that for this exemption to be applicable it is necessary (i) for the transactions to be regarded as supplies of services, (ii) for the customers of the supplied services to be individuals, and (iii) for the sports services to be supplied by social entities or establishments (which means their income is not distributed, but instead used for the activities in their purposes, and their directors are not compensated for their services as such), concluding that the requesting party could satisfy those requirements and apply the exemption.

Concerning the paddle classes it gives to school pupils, the DGT concluded the exemption under article 20.1.9 is not able to be claimed because it does not apply to the supply of services by institutions other than the education institutions themselves.

Lastly, as to whether teachers hired by the hour are able to claim the VAT exemption the institution claims on its activities, the DGT explained that the exemption may not under any circumstances include supplies of goods and services in which the requesting association is customer. And with this it concluded that the hired teachers must charge VAT on those supplies of services and goods in which the requesting association is customer.

7 DGT ruling V3217-17 of December 15, 2017, on whether exemption under article 20.1.9 of the VAT Law applies to the supply of sport education services and it potentially including given supplies of goods

The request concerned, on the one hand, whether the exemption under article 20.1.9 of the VAT Law applies to the supply of sport education services. The exact services supplied by the requesting institution are courses to obtain (i) the coaching certificate for wrestling, and (ii) the certificate for professional wrestlers. And also, whether that exemption includes the supply of books and teaching materials, together with the supply of sport uniforms and kit bags.

For that exemption to be applicable two requirements must be met:

(i) Those activities must be carried on by public law institutions or private institutions authorized to carry on those activities (where their activities are included on a syllabus that has been recognized or authorized).

(ii) The teaching activities must involve a transfer of knowledge and skills between teacher and students, and not be purely recreational .

Since in this case it was evidenced that the taught subjects are on a syllabus in the Spanish education system, the services consisting of obtaining the coaching certificate for wrestling may be treated as VAT exempt, provided the certificate is obtained to be used to carry on professional activities, not personal or recreational services.

Lastly, over whether the exemption includes the supply of books, teaching materials, sport uniforms and kit bags, the DGT explained that article 20.1.9 excludes from the exemption for teaching goods and services any supplies of goods made for consideration, and therefore it will have to charge 4% on the sale of that material.

8 DGT ruling V0170-18 of January 29, 2018, on the tax on business activity classifications for the owner of an orchestra performing concerts at venues and whether the fees received for them are subject to withholding tax

The requesting party, owner of an orchestra engaged in performing concerts at venues, asked about the tax on business activity classification in which he must be registered, and whether withholding tax must be deducted from the fees received for those concerts.

He must register (i) in group 032 of section three, related to "Musical instrument players", and (ii) in caption 965.4 of section one, related to "Entertainment companies".

Moreover, the inclusion of the requesting party's activity in section three means that it is characterized as income from professional activities, and withholding tax must be deducted from the fees received in respect of performances.

NEW LEGISLATION

On April 3, 2018 the General Budget Bill for 2018 was laid before the Spanish parliament. Among other measures, the Bill determines the priority patronage activities for 2018. These priority activities include those carried on by foundation Fundación Deporte Joven in conjunction with the CSD (National Sports Council) as part of the project called *"España Compite: en la Empresa como en el Deporte"* ("Spain Competes: in Business and in Sport") aimed at contributing to giving momentum to, and projecting, Spanish SMEs across Spain and internationally, furthering sport and promoting the entrepreneur as the driver of growth associated with the values of sport.

The Bill also sets out the activities that will be regarded as events of exceptional public interest for 2018. These include the following:

- 2019 Men's Junior World Handball Championship
- 2021 Women's World Handball Championship
- Andalucía Valderrama Masters
- 2019 Pontevedra ITU World Triathlon Multisport Championships
- Badminton World Tour
- Nuevas Metas
- Barcelona Equestrian Challenge (3rd Edition)
- Universo Mujer II
- Deporte Inclusivo
- Plan 2020 de Apoyo al Deporte de Base II


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