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01

Article 163 of the Spanish Football Association's Regulations does not preclude termination of a coach's contract

Judgement by the High Court of Justice of Andalucía of March 3, 2022, delivered in Seville

Ángel Olmedo Jiménez

The High Court of Justice of Andalucía examines the termination, on the ground of dismissal, of a football coach in the Spanish Segunda División, and assessed the amount due to him in respect of that termination .

Issue in dispute and facts of interest

The basic facts in dispute are summarized below:

a) Club and coach signed a professional sports contract for a term lasting two seasons.

b) A termination clause was included in the employment contract, stating that, in the event of unilateral withdrawal without cause, by the club, the coach would be entitled to the severance set out in Royal Decree 1006/1985.

c) In the first season, the club achieved poor results in the first seven days of the Liga championship, only obtaining 3 points out of a possible 21, which gave rise to the delivery, by the team, of a dismissal letter, alleging that these were the worst results in the previous twelve seasons.

Due to disagreeing with the termination of his contract, the coach filed a claim with the Labor Court, which held that the dismissal was unjustified, and ordered the club to pay severance equal to 60 days' salary per year of service plus an additional payment of €50,000 (almost half his annual salary), due to the fact that there was no record of the coach being unemployed and no other circumstances had been evidenced that could show a higher damage or loss.

Due to disagreeing with the termination of his contract, the coach filed a claim with the Labor Court, which held that the dismissal was unjustified, and ordered the club to pay severance equal to 60 days' salary per year of service plus an additional payment of €50,000

Judicial interpretation

The coach appealed against the ruling described above to ask for his severance to be increased for the following reasons:

(i) The company having acted in bad faith, which is confined to two elements: (a) considering that the relationship was subject to Royal Decree 1006/1985, (b) the contract not setting out a specific amount of severance for events in which the coach was dismissed, and referring simply to the statutory amount of severance, and (c) there being a verbal agreement to paying the coach a higher salary.

(ii) When determining the severance payment, the lower court failed to take into consideration that the contract had been signed for two seasons.

(iii) The coach was not legally allowed to coach another team following his dismissal, and the termination of his contract had also given him a bad name.

(iv) The coach continued to be unemployed.

The High Court dismissed the appeal and confirmed the lower court's judgment, by holding that:

(i) There had not been bad faith on the part of the club, because:

a. the relationship between the coach and the club is legally required to be considered subject to Royal Decree 1006/1985 and the reference made to article 163 of the Spanish Football Association's Regulations,

regarding protection of the performance of contracts, was made to prevent defaulted payments occurring after the employment relationship was formed, and therefore it is not applicable to this case.

b. From a complete reading the contract it may be seen that there were clauses benefiting the worker (i.e., pay increase in the event of promotion), which evidenced freedom of contract when entering into the employment relationship.

c. No proof had been provided of the existence of the verbal agreement alleged by the worker.

(ii) The determined amount of severance was adequate, because:

a. It follows the Supreme Court's unified case law.

b. The relevant circumstances for determining the amount of compensation for the dismissal are adequate because the additional payment is a sum practically equal to the salary that the coach ceased to receive in the first season of his contract; bearing in mind that the coach only provided services for two months.

c. The coach could have been hired by another club in the year following his termination, without the dismissal causing any damage to his professional good name or reputation; especially since the sporting results during his time at the Club were not very good.

From a complete reading the contract it may be seen that there were clauses benefiting the worker, which evidenced freedom of contract when entering into the employment relationship

02

Validity of a termination clause included in the contract of a professional athlete aged 16, with moderation of its amount

Judgment by the Labor Court of Madrid no. 15 dated October 14, 2022

Ángel Olmedo Jiménez

The Labor Court of Madrid no. 15 holds that the early termination without cause of an employment relationship between a player and a club carries an obligation for the athlete to compensate the team, although it moderates the amount determined in the contract by reference to the existing circumstances

Issue in dispute and facts of interest

The club and the player held a contract which was later novated, by reason of the basketball player reaching 16, and was signed under Royal Decree 1006/1985.

As regards the facts of interest in the lawsuit, the contract determined a term lasting 3 seasons, and an annual salary amounting to €13,300 (in addition to paying meal and accommodation expenses, schooling expenses, and material, and support / tutorials, among other items).

In the agreement, it was agreed that, in the event of unilateral withdrawal by the player, without a cause attributable to the sports entity, the entity would have to pay €200,000.

With 2 seasons and 10 months of his contract left to complete, the player terminated his contract to enroll at a US basketball academy.

The club claimed the amount of the buy-out clause in court.

Judicial interpretation

The payer's defense alleged that the court did not have jurisdiction, because the relationship that the player had with the club was strictly speaking that of an amateur not of a professional

athlete. The court rejected that argument, due to considering that all the elements required to be a professional athlete as determined by Spanish case law existed (especially, that relating to the receipt of compensation over and above the reimbursement of expenses arising from performing the sport).

After establishing this basic premise, the court examined whether the amount contained in the buy-out clause is adequate or whether, conversely, it has to be moderated, according to the judicial powers in this respect.

On this specific point, the ruling considered that the €200,000 sum is disproportionate and needed to be assessed against the following factors:

(i) It held that the amount determined as compensation should be distributed over the period determined by the parties for the contractual relationship to exist (3 years in other words).

(ii) It needed to be considered also that there was a very short space of time between the signing of the latest contract and the unilateral termination by the player (only 2 months).

(iii) The sum of all the expenses borne by the club in the latest season also has to be taken into account.

Applying those principles, the court ordered the player to pay the club a sum amounting to €35,895.2, stating that an amount like €200,000 would give rise to an imbalance, as well as making it inviable to boost to the young basketball player's career.

NEWS AND EVENTS

The Centro de Estudios Garrigues and the Spanish Basketball Clubs Association (Asociación de Clubes de Baloncesto) present the new MBA program in Sports, Business and Law

Félix Plaza chairman of the Centro de Estudios Garrigues, together with Antonio Martín, chairman of the ACB, and Luis Villarejo, sports director of Agencia EFE.

On November 14, 2022, the Centro de Estudios Garrigues and ACB, the Spanish Basketball Clubs Association, presented the MBA program in Sports, Business and Law hosted by the Centro de Estudios Garrigues. The program has come out of the partnership agreement signed by both institutions with the aim of offering students the best training in sports management. Participating in the ceremony were Félix Plaza, chairman of Centro de Estudios Garrigues, and Antonio Martín, ACB's chairman.

The ceremony included a symposium between participants Félix Plaza and Antonio Martin, moderated by Luis Villarejo, sports director at EFE. In his speech, Félix Plaza underlined that this new MBA is a "commitment by Centro de Estudios Garrigues to train the best students in excellence and provide them with differentiating practical and technical know-how in law and sports businesses". He also affirmed that this is a "unique master, implemented with a first-class partner, ACB, which will bring an exceptional vision of the sports industry and in particular of professional basketball

It is a new program that will respond to the demands of professionals wishing to extend their training in law and sports businesses, and prepare them to meet major challenges in the field of sport.

Resolutions

Contributions to the self-employed workers social security program paid by artists and performers will not be deductible for Personal Income Tax (PIT) purposes if there is no organization of resources in the performance of their activity

DGT resolution V1270-22 of July 6, 2022

The requesting party is registered in group 019 of the tax on economic activities classifications relating to performance and artistic activities, and pays contributions under the self-employed workers program. Because he has not had any revenues or income from his activity for several years, he asks if his social security contributions may be deducted as expenses relating to his economic activity.

The DGT replied that, according to article 27 of the PIT Law, if there is no organization of means of production and human resources with a view to participating in the production or distribution of goods or services then the performance of an economic activity would not exist and therefore the expenses would not be deductible.

It stated, however, that the existence or otherwise of that organization for their own account is a matter of fact which may be evidenced using the means of proof accepted by law.

Applying the 85/15 rule means not recognizing on a taxpayer's PIT return the portion of the dividends distributed by the transferee company which had been allocated to that taxpayer

DGT resolution V1312-22 of July 9, 2022

The requesting party, tax resident in Spain and a professional football player, has transferred the right to make commercial use of his rights of publicity to a Netherlands company that is 99% owned by the requesting party. The requesting party has been reporting for personal income tax purposes as own income the revenues obtained from transferring the rights to make commercial use of rights of publicity to third parties. Those revenues in turn became part of the company's revenues and were taxed in respect of Netherlands Corporate Income Tax (CIT). The requesting party is going to liquidate the company and wants to distribute a dividend before doing so. The issue concerned whether the amount already paid by the requesting party in respect of personal income tax could be deducted from income obtained from the dividend or whether it would be exempt.

The DGT stated that article 92.6 of the PIT Law stipulates that the portion of dividends distributed to the requesting party by the Netherlands company that relates to the amount that the taxpayer has already attributed cannot be attributed for personal income tax purposes.

The DGT analyzes deduction of VAT and depreciation charges for personal income tax purposes in the construction of a principal residence of a performer used partially for their activity as performer

DGT resolution V1467-22 of July 21, 2022

The requesting party, registered in group 019 of the tax on economic activities classifications relating to film, theater and circus activities, is self-building a dwelling on land owned by them. That dwelling will be their principal residence and 37 percent of it will be used for their economic activity. The request concerned the deduction of input VAT paid in respect of the percentage of the building used as a place of work, as well as the expenses relating to the architect, surveyor and designer; and also concerned the deduction for personal income tax purposes of the depreciation charges in respect of the portion of the dwelling used in their activity.

The DGT concluded that the reduced rate provided in article 91.1.3 of the VAT Law applies to the performance of construction work where the conditions set out in that article are fulfilled, which include the performance of construction work under contracts formalized directly between the developer and the contractor and which are for the construction of a dwelling, as in the case described. However, the reduced rate does not apply to any professional fees that fell due. Moreover, because the building is going to be used partially to conduct a trading or professional activity, under article 95.3 of the VAT Law, the requesting party could deduct the input VAT paid on the acquisition of that asset.

In relation to personal income tax, the DGT affirmed that, under article 22 of the PIT Law, the portion of the dwelling that will be used to conduct the economic activity may be allocated to that activity, if it may be used separately and independently from the other parts of the dwelling. Therefore, this partial allocation allows the requesting party to deduct, in proportion to the portion of the dwelling that is allocated, the expenses relating to ownership of the dwelling.

Request for resolution in relation to the liability for tax on revenues obtained by a not-for-profit association created for management and use of sports area in a residential development

DGT resolution V1855-22 of August 3, 2022

The requesting entity is a not-for-profit association, created for maintenance and use of a sports area which obtains income from: (i) members' fees which give access to all the facilities and the right to hire padel courts, (ii) vouchers and daily passes to use the facilities, entry tickets for the hiring of padel courts, (iii) a royalty fee for licensing use of the facilities to an owners' association, and (iv) a royalty fee for operating a business in the kiosk located in the swimming pool. The

requesting party asked about the corporate income tax and VAT on these revenues.

In relation to CIT, the DGT concluded that, despite being a not-for-profit entity, the requesting entity carries on an economic activity which involves the organization for their own account of material and/or human resources to participate in the production or distribution of goods or services, and the income from these activities is subject to and not exempt from CIT.

For VAT purposes, the DGT specified that the requesting association would be considered a trader or professional if it organized a set of human and material resources, independently and under its responsibility. Were that the case, any supplies of services made by the entity in the Spanish VAT area would be subject to VAT. However, the DGT discussed the option of the requesting party being characterized as a private entity or establishment of a social nature, which would make it eligible for the exemption set out in article 20.1.13 of the VAT Law. It must be highlighted that this exemption is only applicable to supplies of services that are directly related to the performance of sport. Lastly, for the requesting entity to be taxed as a private establishment of a social nature it must fulfill the requirements set out in article 20.3 of the VAT Law.

The activities of a not-for-profit sports association will be exempt if their aim is to carry out the activities in its corporate purpose

DGT resolution V1856-22 of August 3, 2022

The requesting entity is a private not-for-profit association having as its purpose to promote or perform one or more types of sports and participate in competitions. The requesting entity carries out the following activities: training sessions for members, organizing open water swimming events for pupils at an air steward school and sporadic swimming sessions for members and non-members. It asked what being partially exempt from CIT means as provided for in article 9.2 and article 9.3 of the CIT Law and which of the activities it carries on is considered an economic activity.

The DGT made a distinction according to whether the amounts of income come from performing the activities in its corporate purpose or stem from the conduct of an economic activity which involves the organization for its own account of material and human resources with a view to participating in the production or distribution of assets or services. Accordingly, amounts of income will be exempt if they come from performance of the activities in its corporate purpose, whereas any income from economic activities will be subject to the tax and not exempt.

Swimming classes given to people with disabilities by self-employed teachers are subject to and not exempt from VAT

DGT resolution V1622-22 of July 6, 2022

The requesting party, a self-employed swimming teacher for people with disabilities at municipal swimming pools, asked whether the supply of these services is subject to and exempt from VAT due to being considered an activity of a social nature.

After affirming that the requesting party is a trader, the DGT specified that they are not a private entity or establishment of a social nature, which is a necessary requirement for applying the exemption under article 20 of the VAT Law. Therefore the activity carried on by the requesting party is subject to and not exempt from VAT.

Mediation services for hiring a Spanish football player in a foreign team are not subject to VAT if effective use or enjoyment of the services in Spain is not proved

DGT resolution V2039-22 of September 22, 2022

The requesting party provides mediation services to a Chinese football team to facilitate the hiring of a Spanish player and asked whether the supplied services are subject to VAT.

The DGT replied that, despite the mediation transactions being characterized as a supply of services and the requesting party being characterized as a trader, the supplied services are not subject to VAT, under article 69.One.1 of the VAT Law, because the customer, the Chinese football club, is a trader and does not have in the Spanish VAT area a place of business, permanent establishment or domicile or principal residence which is the effective recipient of those services.

However, the DGT specified that they could be subject to VAT if the effective use and enjoyment rule under article 70.2 of the VAT Law applied, an element that is a matter of fact which will have to be proved in each specific case and will have to be assessed by the Spanish Tax Agency.

Services provided as a music composer are subject to and exempt from VAT

DGT resolution V1742-22 of July 21, 2022

The requesting party made phonographic recordings as member of a music group, under a contract with a record company which stipulated payment to the musicians of a percentage of sales as royalties. The requesting party, who continues to collect royalties and works as an employee, asked whether their activity is subject to VAT.

The DGT replied that, under article 20.1.26 of the VAT Law the only exempt services are professional services related to the licensing of copyright to a business entity in exchange for royalties as a music composer.

If the requesting party carried out the activity as a performer not as a composer, they would be subject to and not exempt from VAT, but, under article 91.1.2.13 of the VAT Law, they are taxable at the reduced 10% rate, if they were related to a theatrical or musical work or were provided to their organizer.

Care and stabling costs and the ones of participating in shows are not deductible in the calculation of the capital gain or loss obtained on the sale of a horse

DGT resolution V1980-22 of September 16, 2022

The requesting party, registered in caption 826 of the tax on economic activities classifications, engages in giving horse riding lessons. In 2019 they bought a horse which they cared for and trained to participate in shows and competitions, but as a hobby and separate from their professional activity. After having the chance to accept an offer to buy the horse, the requesting party asked whether they may deduct expenses relating to care, stabling and participation in shows for the purpose of calculating the capital gain or loss for personal income tax purposes.

The DGT replied that, because there is no organization for their own account of means of production and human resources for the production of a good or distribution of a service, it cannot be considered an economic activity and the sale of the horse will be subject to personal income tax on the capital gain or loss equal to the difference between the transfer and acquisition values.

The DGT concluded in this respect that the care and stabling costs and costs of participating in shows are not considered to be inherent to the acquisition of the horse, not can they be considered as enhancements, due to not implying an increase in its production capacity or a lengthening of its useful life. As a result, these expenses cannot be deducted to calculate the capital gain or loss on the sale of the horse.

Contribution to the development of a SAD (sociedad anónima deportiva, a publicly traded sports company) is not a public interest purpose under Law 49/2002

DGT resolution V2136-22 of October 11, 2022

The director of the requesting entity is going to be appointed trustee of a foundation engaged in promoting the coaching of young footballers, which plans to elect the option of applying the special tax regime for not-for-profit entities and the tax incentives for patronage. Additionally, a business partnership agreement is to be concluded between the requesting party and the foundation, under which the requesting party will give financial support to the foundation and the foundation will advertise the requesting party's activity.

In relation to CIT, the DGT recalled that the first requirement to be able to apply the special tax regime for not-for-profit entities is (according to article 3 of Law 49/2002) that they must pursue public interest purposes and that the contribution to the development of a SAD, a for-profit entity, does not satisfy this requirement. Therefore it did not give any view on the issued relating to corporate income tax.

On the subject of VAT, the DGT concluded that the amounts received from sponsors in respect of supplies of advertising services will be subject to and not exempt from VAT. However, if the foundation fell within those defined in article 16 Law 49/2002, the advertising and sponsorship activities would not amount to a supply of services subject to VAT.

Judgements

The tax authorities cannot deny the right to deduct VAT on advertising services in a motor racing championship due to considering that the price for the service is excessive

Judgment by the Court of Justice of the European Union (CJEU) on November 25, 2021

The CJEU ruled on a petition for a preliminary ruling submitted by the Court of Veszprém (Hungary), on the option of deducting input VAT on advertising services at a motor racing championship which, in the tax authorities' view, are not beneficial to the taxable activities of the recipient of the invoice because the value of the supplied service is disproportionate in relation to the benefit.

The CJEU explained that in principle the right to deduct may not be limited due to being an integral part of the VAT scheme. In this respect, and insofar as the taxable person uses the good or service for the purposes of their taxed transactions, they are entitled to deduct the VAT paid or payable for the good or service. Moreover, the CJEU noted that the right to deduct is exercised in respect of all the amounts of tax charged on input transactions. And that, despite there being a limit determining that the taxable amount must match the open market value, this is only for supplies in which there are family or close ties, as defined by the member state concerned. In relation to the fact that the service has not increased the appellant's turnover, the CJEU found that the right to deduct cannot be made subject to the economic profitability of the transaction.

The CJEU concluded that the amount of VAT that may be deducted must be determined in accordance with the taxable amount calculated by reference to the consideration actually paid by the taxable person. Therefore, the fact that the price invoiced for such services is excessive in relation to a reference value cannot be taken into consideration to deny the right to deduct.

Payment of a fee is imposed on a football team for extraordinary use of police services

Judgement by the High Court of Catalonia of June 1, 2021

The High Court of Catalonia dismissed an application for judicial review filed by a football club against the decision delivered by the Taxes Board of Catalonia on July 17, 2019, which confirmed the calculation of the fee for the supply of extraordinary services by Mossos de Escuadra, the Catalan police force. The police provided extraordinary surveillance services, and deployed 306 police officers between 17:00 and 24:00, due to considering there was a potential risk to the safety of persons and property.

The High Court ruled that the requirements in article 22.4.1.1 d) of Legislative Royal Decree 3/2008 of June 25, 2008 approving the Revised Law on fees and public prices of the Catalan regional government had been fulfilled to impose

the fee concerned: i) it was a sport event held at a football stadium with the capacity to hold more than 15,000 people; ii) attended en masse (by approximately 75,000 people); iii) it was organized with the aim to make a profit; iv) there was a potential risk to public safety; and v) it required extraordinary policing (more than 95 police officers).

The court concluded that the fee was necessary and that the reasoning provided for the decision was sufficient. It therefore dismissed the application for judicial review filed by the football team and ordered the applicant to pay costs because all of its claims had been rejected.

Unlawful intrusion on the right of publicity due to improper use of a photograph of a deceased singer by a festival organizer

Judgement by the Supreme Court of June 16, 2022

The Supreme Court dismissed a cassation appeal lodged by an entity against a judgment by the Provincial Court of Madrid on June 29, 2021 relating to the use at a musical festival of a photograph of a deceased singer. The singer's heirs brought a claim against that entity for unlawful intrusion on the singer's right of publicity by using his name and likeness for commercial and advertising purposes.

In relation to article 8.1 of Law 1/1982, the Supreme Court explained that the simple fact of mentioning that the concert will be a tribute to the singer does not amount to a relevant cultural interest justifying the unlawful intrusion on the right of publicity. Moreover, in relation to the exception under article 8.2 a), it held that, although the singer had attained a certain level of notoriety among members of the general public who were interested in eighties music, this does not mean that any kind of use of his likeness is allowed. In this case, the photograph came from the archives, and it was not used to exercise a right to information, instead for advertising and commercial purposes.

The court concluded therefore that the interest of the singer's heirs in preventing the distribution of the singer's likeness prevails and therefore, the cassation appeal lodged by the entity was dismissed.

Illegal retransmission of football matches is not an offense against intellectual property

Judgement by the Supreme Court of June 2, 2022

The Supreme Court dismissed the cassation appeal lodged by the public prosecutor's office against the judgment by Provincial Court of Valencia dated June 7, 2021 and confirmed the sentence for a minor offense against the market and consumers. The sentence was imposed on the owner of three bars for showing football games without authorization from LaLiga, which held the commercial use rights.

The Supreme Court affirmed that the illegal retransmission of football matches cannot be criminalized under article 270.1 of the Criminal Code, namely, as an offense against intellectual property, due to football not being a literary, scientific or artistic work. It therefore held that football is a sporting rather than an artistic spectacle, because in spite of the existence of "launches with undeniable aesthetic value" they are not defining features of beauty allowing the events to be characterized as an artistic work.
Therefore, due to not considering the facts as an offense against intellectual property, the Supreme Court validated the characterization of the facts as a minor offense relating to the market and consumers as defined in article 286.4 of the Criminal Code with the existence of a mitigating factor that the damage was repaired.

The Supreme Court has concluded in the context of a proceeding relating to the unjustified dismissal of a football coach, that the Spanish Public Employment Service (SPEE) has the power to review its own decisions if the beneficiary fails to submit relevant information.

Judgement by the Supreme Court of October 4, 2022

The Supreme Court upheld the cassation appeal filed by the Spanish Public Employment Service (SPEE) against a judgment handed down by the High Court of Madrid. The judgement of the High Court appealed against had concluded that the SPEE lacked the authority to review its own earlier decision declaring entitlement. In this case, the SPEE withdrew the coach's unemployment benefit after his dismissal was held unjustified and the Office of the General Secretary for FOGASA recognized his entitlement to back pay, on the grounds that the receipt of such back pay was not compatible with entitlement to unemployment benefits.

At issue in this judgment was if the SPEE, as manager of the unemployment benefits, is able, of its own initiative, one year after the decision concerned, to review its decisions declaring entitlement without being required to challenge them in the courts of justice. The Supreme Court ruled that since the situation of incompatibility came about unexpectedly, it is the delivery of the Decision by the Office of the General Secretary for FOGASA that marks the start of the one-year statute of limitations period for adjustments to benefits.

Likewise, article 146 of the Labor Jurisdiction Law provides, as a general rule, that government authorities do not have the power to review their own decisions; it stipulates, however, that cases in which there are found to be omissions or inaccuracies may be excepted from this rule. In this respect, the Supreme Court affirmed that the SPEE has the authority to review its own decisions, without needing to take the matter to the courts, when the beneficiary has failed to provide relevant data such as a certificate evidencing the back pay in question.

If the 85/15 rule is met, transfer pricing rules do not have to be applied to the assignment of rights of publicity between a footballer and the entity at which he is shareholder

Judgement of the National Court of May 23, 2022

The National Court has upheld the application for judicial

review filed against the TEAC ruling of July 16, 2018 by the family business to which a well-known footballer had transferred his rights of publicity. In its ruling, TEAC validated the principle adopted by the tax authority, which was that the transfer of rights of publicity to the company is a related-party transaction and that the income should therefore be measured at market value and included as revenue from movable capital in taxable income for personal income tax purposes.

The National Court applied the 85/15 rule, as set out in article 92 of the Personal Income Tax Law, according to which all income paid by the employer which derives from the assignment of rights of publicity is taxable at the company when it is equal to or less than 15% of the total income paid by the employer, as was the case here.

Consequently, the National Court has concluded that in cases in which it is not appropriate to include the income in the taxpayer's taxable income for personal income tax purposes because the requirements of the 85/15 rule are met, the rules on related-party transactions cannot be applied to the transfer of rights of publicity between the footballer and the family business.

The expiry of the Ballon d'Or trade mark for entertainment services is annulled.

Judgment by the Court of Justice of the European Union (CJEU) on July 6, 2022

The General Court of the European Union has annulled the decision of the European Union Intellectual Property Office (EUIPO) declaring the expiry of the Ballon d'Or trade mark in respect of all goods and services for which it had been registered, with the exception of services consisting of the organization of sports competitions and the presentation of trophies. The Appeals Board also ruled that a declaration of expiry of the trade mark was inappropriate in the case of printed matter, books and magazines.

For all other products and services, the General Court reminded us that the rights of the proprietor of an EU trade mark will be declared to have expired if no use has been made of it for the products or services for which it is registered within a period of five years. The Court concluded that the company that owns the trademark had not demonstrated that it has a telecommunications network that can be used by third parties and, therefore, that the use of the trademark for telecommunications services had not been proven, as a result of which the trademark was declared to have expired for these services. However, it annulled the EUIPO's decision in respect of entertainment services, since it cannot reasonably be denied that the main purpose of the organization of an awards ceremony such as the "Ballon d'Or" is entertainment.

In short, the General Court upheld the EUIPO's declaration of expiry of the trade mark in respect of the provision of telecommunications services, but annulled that declaration in the case of entertainment services.

The lack of jurisdiction of the Labor Court to rule on the appeal brought by a non-professional player is confirmed.

Judgement of the High Court of Murcia of September 27, 2022

The High Court of Murcia has dismissed the appeal filed by a footballer in relation to a claim for damages based on a breach of fundamental rights against a judgment handed down by the Labor Court of Cartagena, which found that this court did not have jurisdiction because the footballer could not be considered a professional athlete.

The High Court determined that it had to be examined whether the case involved an amateur player or whether an employment relationship was being concealed. It based that examination on the understanding that the sums received by the player did not constitute a salary within the meaning of article 26.1 of the Workers' Statute, consisting instead of compensation for travel expenses and per diems. It therefore did not find that the legal relationship was a professional one.

Consequently, the High Court confirmed the Labor Court's lack of jurisdiction, dismissed the appeal lodged by the footballer and indicated that he could take the case to the civil courts.

The Court of Justice of the European Union permits the application of a reduced rate of VAT to services provided by a fitness club

Judgment by the Court of Justice of the European Union (CJEU) on September 22, 2022

The Court of Justice of the European Union has ruled on a question referred for a preliminary ruling by a Belgian Court of First Instance in the context of a dispute between the Belgian State and a fitness center. The referring court asked whether, pursuant to article 98.2 in relation to point 14 of Annex III to Directive 2006/112/EC, the reduced rate of VAT should be applied to the activities pursued by the fitness center.

The CJEU confirmed that Art. 98.2 of the VAT Directive in relation to point 14 of its Annex III, allows for the application of a reduced rate to the "right to use sporting facilities". The CJEU, in previous judgments, has interpreted this concept as referring to the right to use facilities intended for the performance of sport and physical education.

The fitness center, in addition to access and the right of use, provides personalized accompaniment and group classes. The CJEU ruled that this service is subject to a reduced VAT rate if the accompaniment is associated with the use of the facilities and is necessary for the performance of the sport, or if the accompaniment is ancillary to the right to use the facilities.

Remuneration paid by a club to football players' agents is considered paid on behalf of the players and must form part of their remuneration.

Judgement by the National Court of October 28, 2022

The National Court has dismissed the application for judicial review filed by a well-known football club against a decision handed down by the Central Economic-Administrative Tribunal. This decision upheld the auditors' argument that the remuneration paid by the club to the agents -for items such as the signing of players, their transfer or the amendment of their contracts- must be considered paid on behalf of the players and, consequently, as part of their remuneration, given that the agents provide services to the players and not to the club. However, the club argued that the player's agent is an intermediary hired by the club to provide mediation services in the interests of the club, even if the player also benefits indirectly.

The National Court answered the various questions raised in the claim based on its judgment of March 23, 2022:

- With regard to the adjustment on the basis of a private regulation such as the Players' Agents Regulations, approved by FIFA, the National Court referred to the content of the judgment of March 23, 2022, i.e. the FIFA regulations serve as a reference for the interpretation of contracts falling within their objective scope of application, having regard to the principle of hierarchy of norms.

- In this regard, the National Court held that the use of a dual intermediary -a concept regulated in article 12 of the regulations- has not been adequately demonstrated, because an express written agreement between the three parties is required, and in this case, no such agreement exists.

- Similarly, the National Court found that the assessment of the evidence carried out by the auditors, based on which it was deemed proven that the agents provided their services to the respective players and not to the club, was reasonable and duly reasoned.

Consequently, the National Court declared the auditors' criterion as to the true legal nature of the payments made by the club to the agents to be lawful, and since there were no doubts as to the factual or legal aspects of the case, costs were awarded against the appellant.

Legislation

The Senate does not approve the amendment to the General State Budget Law for 2023: incentives for patronage and sports sponsorship

On 14 December 2022, the Senate Budget Committee approved the opinion of the rapporteur's report on the 2023 General State Budget Law without modifications, after having debated the partial amendments registered by the groups.

The *Plural* Parliamentary Group had proposed an addition amendment regulating new tax benefits linked to the promotion and sponsorship of programs declared to be of special sporting interest. The following, in particular, were envisaged:

- Tax benefits linked to programs of special sporting interest (approved by Law at the proposal of the National Sports Council):

  1. Companies and professionals, as well as non-residents operating in Spain through a permanent establishment, would be able to deduct from gross tax payable 45% of the amount allocated to the sponsorship of these activities, and to the plans and programs executed by the entities sponsored.

  2. Likewise, their entitlement to the tax credit for gifts envisaged in article 22 of Law 49/2002 of December 23, 2002 on the tax regime for not-for-profit entities and on tax incentives for patronage would be increased (by 5%, in both the percentage deduction and the limit on its application), in respect of gifts made to the entity responsible for the execution and realization of these programs.

- Creation of a new tax credit for sports sponsorship:

  1. Entities that entered into sponsorship contracts with any of the not-for-profit entities referred to in article 2, letters a), b), d) and e) of Law 49/2002, the main purpose of which is the promotion or performance of a sporting activity, will be able to apply a credit against gross tax payable equal to 25% of the amount paid in respect of that sponsorship. This credit would be compatible with the deduction of sponsorship expenses.

Approval of the new Sports Law

The new Sports Law has been approved on December 22, 2022 by a large majority in the Spanish Congress of Deputies. The text updates the previous Law 10/1990, of 15 October, on Sport, adapting the legal framework to the present day.

Among the most important aspects of the law are the recognition of physical activity and sport as a right and a social activity; it defends equality and inclusion in sport; it provides greater legal security for sportspeople; and it updates the model of the different professional sports entities, regulating and extending the competences of the Higher Sports Council.

In addition to the social dimension, it also includes aspects such as ecological transition, the promotion of rural sport, territorial cohesion and digital innovation in the sector.