



Judgement of the Spanish Constitutional Court regarding the so called “single license” in sport



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→ National Law - National Courts - Sport License

Spanish Constitutional Court, 12 April 2018,
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The Spanish Constitutional Court, in its Judgement of 12 April 2018, has partially overturned the modification introduced in the Sport Act by Article 23 of Law 15/2014, dated 16 September 2014, regarding the rationalization of the

public sector and other measures of administrative reform, which amended paragraph 4 of Article 32 of the Sport Act establishing a new regime regarding “single sport license”.

This Judgement concludes that the new draft of Article 32.4 of Law 10/1990 is not unconstitutional as long as it is interpreted in the sense that it is related exclusively to official competitions of state level.

Before its amendment, Article 32.4 of the Sport Act established that “for the participation in sport official competitions of state scope it shall be necessary to hold a sport license issued by the relevant Spanish sport federation” or “by the federations of autonomic level [...] when integrated in the Spanish sport federations.” After its amendment, the provision maintains the requirement of a license for participating in sport official competitions, but (i) extends this requirement “for participating in any sport official competition”, omitting the specification that it must be related to sport official competitions “of state level” which included Article 32.4 before its amendment and (ii) delegates the granting of the license to the sport

federations of autonomic level in any case, and not to the Spanish sport federations, projecting the efficacy of that autonomic license to the “state and autonomic level.”

The sense of the amendment is explained by the preamble of the law (paragraph IV): “consists in the implementation of a single sport license which, once obtained, enables its holder for participating in any competition, regardless of its territorial scope.”

Due to its content, the regulation of the “single sport license” must be understood as a competence of the State for ruling the “Spanish sport as a whole” admitted in the STC 80/2012.

This competence frame determines that the analyzed provision shall be constitutionally valid only to the extent that it may concern “general interests - supra-autonomics - of the Spanish sport as a whole” (see Spanish Constitutional Court, 18 April 2012, no. 80/2012, FJ 8).

On the contrary, if the rule does not affect general sport interests, which is the same as strictly autonomic interests, the provision must be declared unconstitutional and null for not respecting the constitutional distribution of competences, because in other case it would result in the effect of revoking the competence assumed through their statutes by the Autonomic Communities over the matter on an exclusive basis.

This intervention by public powers in sport must logically respect the constitutional order of competence distribution, which takes as its point of departure a model of sport practice of strictly private base already traditional and well consolidated, which is summarized in the mentioned decision of the Spanish Constitutional Court no. 80/2012, FJ 9. This model is “based on three axes: private nature of the sport organizations (regardless the fact that they may exercise public functions by delegation); federative monopole (i.e. one federation for each sport



modality) and organizational cascade-shaped or pyramidal structure (which entails that the base sport entities of a certain sport modality are integrated in the corresponding autonomic federation and then in the state federation, in order to participate in certain state or international competitions)."

This structure of associational and pyramidal type makes that the so called "vertical" effect of an autonomic sport license, *i.e.* the authorization which it grants to its holder to participate in official competitions at state level, may find competence coverage in the management by the State of "its" interests (Spanish Constitution, Art. 137), including amongst them the ones of the "Spanish sport as a whole" (see Spanish Constitutional Court, 18 April 2012, no. 80/2012, FJ 8), and consequently the ones of the official competitions of state level. On the contrary, with the transversal or horizontal effect of the same license, which enables its holder for participating in official competitions of "lower territorial level" (Art. 46.1, d) of the Sport Act), the State is breaking into strictly autonomic interests and, as a consequence, disrupting the exercise by the Autonomic Communities of their competences, in particular their interests and competence for organizing in an autonomous way their official competitions of autonomic level.

All the reasoning up to this point justifies the unconstitutionality exclusively of the so called "transversal" or "horizontal" effect of the single sport license, not the "vertical" one. This fact impedes to declare the nullity of the challenged provision as a whole; instead the Judgement decides to impose a compatible interpretation of Article 32.4 of Sport Act.

The new Article 14bis of the FIFA RSTP and the Spanish collective Bargaining Agreement

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→ **FIFA Regulations - Player contract - Breach of contract - Just cause - Salaries - National Regulations - Collective bargaining agreement**



FIFA, by means of the Circular Letter no.1625, informed its member associations of important amendments to the FIFA Regulations on the Status and Transfer of Players (RSTP) approved by the FIFA Council on 16 March 2018. Among other modifications, FIFA introduced the new Article 14bis of the FIFA RSTP, which is dedicated to address the specific circumstance of "Terminating a contract with just cause for outstanding salaries". Article 14bis par. 3 establishes that the principles may be deviated by "Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law", which shall prevail. In this regards, the Spanish collective bargaining agreement (CBA) currently in force and signed by the Spanish association of the professional football clubs (LNFP) and the Spanish trade union of professional football players (AFE), shall prevail over Article 14bis of the FIFA RSTP.

The Circular Letter no.1625 introduced the new Article 14bis of the FIFA RSTP, which is dedicated to address the specific

circumstance of "Terminating a contract with just cause for outstanding salaries". This provision came into force on 1 June 2018. Nevertheless, alternative provisions established in contracts existing at the time of Article 14bis coming into force may be considered.

The new Article 14bis provides legal security to the different interpretations the FIFA Dispute Resolution Chamber (FIFA DRC) jurisprudence has established during the years. Indeed, the FIFA DRC jurisprudence considered, as a general rule, that "Under normal circumstances, only a few weeks' delay in paying a salary would not justify the termination of an employment contract",¹ while a period of more than three consecutive months justified the players' termination of the employment contract with just cause.² Notwithstanding, the FIFA DRC has also considered sufficient a period of two or more months,³ depending on the particular circumstances of each case.

Moreover, the FIFA DRC jurisprudence has deemed necessary for players to put debtor clubs in default by means of written notices⁴ (independently from the duration of the time limit, accepting claims which provided 1-day deadline)⁵ even in the absence of a specific clause in the contracts. Nevertheless, the specific circumstances of each case have addressed the FIFA DRC decisions, without providing uniformity in its jurisprudence.

¹ As established by Article 14 of the FIFA RSTP Commentary.

² As established by Article 14 of the FIFA RSTP Commentary and by several FIFA DRC decisions; for instance, see FIFA DRC, 9 May 2011, no. 5112513, par. 10.

³ As established by several FIFA DRC decisions; for instance, see FIFA DRC, 7 September 2011, no. 9111901, par. 24.

⁴ As established by several FIFA DRC decisions, for instance see FIFA DRC, 24 November 2011 no. 1111796 par. 15.

⁵ As established by the FIFA DRC, 27 February 2013 no. 02131190 par. 15.