The SEMEDO Case: Does a Players' Arrest Authorize Clubs to Terminate their Employment Contracts with Just Cause?

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→ ***National Law – Criminal Law – Player contract – Breach of contract – Just cause***

On 14 July 2017, Villarreal CF *transferred-in the Portuguese player* Ruben SEMEDO *(*SEMEDO*) from* Sporting CP *paying EUR 15 million. Afterwards,* SEMEDO *was firstly accused of aggression in October 2017, was detained for a few hours for threats in November 2017 and, following a third episode occurred on 22 February 2018, he was detained, being accused of attempted murder, injury, kidnapping, criminal possession of weapons and robbery.*

Ruben SEMEDO, *Aleksandr KOKORIN*, *Pavel MAMAEV*, *Arda TURAN* and *Nicklas BENDTNER* represent the most recent examples of football players facing criminal charges.

Besides the criminal repercussions connected with these crimes, football players could face additional employment-related consequences. In this sense, does a players' arrest authorize clubs to terminate their employment contracts with just cause?

First of all, it should be noted that every national law is different. Therefore, *Villarreal CF*, *Zenit Saint Petersburg, Başakşehir*, and *Rosenborg BK* could come to different decisions in accordance with the respective national legislations.

With reference to Spanish Law, a distinction should be made between pretrial custody and final prison sentence.

On the one hand, during the players' pretrial custody the impossibility for the players to perform their work is justified and therefore clubs may impose fines and suspend employment contracts, which cannot be, in any case, terminated with just cause. In this sense, Article 45.1.g) of the Spanish Workers' Statutes states that "*The employment contract could be suspended for the following reasons … g) The worker's privation of liberty, while no condemn exists […].*"

If/once the pretrial custody terminates, Article 48.1 of the Spanish Workers' Statutes grants players the right to be reincorporated in their working place. At the opposite, in case clubs decided to terminate players' employment contracts it would represent a termination without just cause, in accordance with the above Article 45.1.g).

As a necessary requisite, players shall have previously notified clubs of their pretrial custody. If they had not done so, the impossibility to perform their work will be considered as unjustified and clubs will have the right to terminate said employment contracts with just cause.

As a general rule, clubs do not have the power to terminate employment contracts with just cause as a consequence of players' crimes or misconducts which are not directly related to the working activity or committed during the working time. This is without prejudice to those crimes that indirectly affect the players' performance or the clubs' image (clubs' internal regulations and players' employment contracts play an important role in determining which the punishable conducts are).

On the other hand, if and once players were sentenced to prison by a final decision, Article 54.2.a) of the Spanish Workers' Statutes regulates the termination of

employment contracts for disciplinary reasons, sanctioning the "*Repeated offences, and unjustified absences or lack of punctuality at work.*" In this sense, the decision dated 24 April 2018 of the Spanish Supreme Court, Social Chamber[1], confirmed that when workers are sentenced to prison by a final decision, the absence from work allows employers to terminate employment contracts for disciplinary reasons. Furthermore, said absence may also be considered as tacit dismissal[2], in accordance with Article 49.1.d) of the Spanish Workers' Statutes, which justifies the employers' absence of compensation. At the opposite, clubs can request compensation for damage due to the termination of the working relationship attributable to players, in accordance with Article 15.2 of the Spanish Royal Decree 1006/1985.

Analyzing a concrete case, on 14 July 2017, *Villarreal CF* transferred-in the Portuguese player *Ruben Semedo* from *Sporting CP* paying EUR 15 million. Afterwards, *Semedo* was firstly accused of aggression in October 2017, was detained for a few hours for threats in November 2017 and, following a third episode occurred on 22 February 2018, he was detained, being accused of attempted murder, injury, kidnapping, criminal possession of weapons and robbery.

On 23 February 2018, *Villarreal CF* "*decided to suspend the player's employment and salary until a definitive resolution has been reached for the disciplinary inquiry that is in process*"[3], therefore in accordance with the abovementioned Article 45.1.g) of the Spanish Workers' Statutes.

Following more than 140 days under pretrial custody and two rejected requests of release, on 13 July 2018, the judge granted *Semedo* the conditional release on bail. On the same day, *Villarreal CF* decided to close the employment-related internal disciplinary proceedings by imposing a fine against the player. Five days later, *Semedo* was transferred on a yearly loan to *SD Huesca*, where he is regularly performing his duty while waiting for the sentence. In case *Semedo* were sentenced to prison by a final decision, *Villarreal CF* would have the option of terminating his employment contract with just cause, in accordance with the abovementioned Article 54.2.a) of the Spanish Workers' Statutes.

Nevertheless, when the final decision will be rendered, *Semedo*'s employment contract with *Villarreal CF* could be naturally expired[4], or he could be definitely transferred to another club, which both options rendering *Villarreal CF*'s termination with just cause impossible (which would be valid for the purchasing club). At the opposite, if the final decision imposed *Semedo* to serve a period in jail and at that time he will still be contractually bound to *Villarreal CF*, the latter would have the opportunity of terminating said working relationship with just cause.

However, *Villarreal CF* should take several factors into consideration if/when terminating said employment contract. Indeed, such decision should consider that the rules of the Spanish Football Association do not allow the possibility of registering new players out of the transfer windows.[5] Therefore, if *Villarreal* fired *Semedo* outside the transfer windows, it would be prevented from registering a substitute. Moreover, terminating the *Semedo*'s employment contract would entail economic and financial negative consequences, where *Villarreal CF* would lose the chance to count on or transfer a player paid EUR 15 million in July 2017, but having the possibility to file a claim requesting compensation for damage, as explained above.

In view of the foregoing, *Villarreal CF* could terminate *Semedo*'s employment contract if/once he is sentenced to prison by a final decision and said employment contract will still be in force at that time. However, *Villarreal CF* should take into consideration also the sporting and financial consequences of such termination.

1 www.poderjudicial.es

2 It is considered as a tacit dismissal also when workers had simply notified the final decision and his arrest because, as the Spanish Supreme Court established, the working relationship cannot be based on a mere notification, which does not justify the workers' absence.

3 www.villarrealcf.es

4 It will naturally expire on 30 June 2022.

5 The only two exceptions are represented by free agent players (Article 124.2 of the General Regulations of the Spanish Football Association) and substitutes of players injured for more than five months, when an ITC shall not be requested (Article 124.3 of the General Regulations of the Spanish Football Association).

Did the IOC lie about the denial of Kosovan athletes' visas in Spain?

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→ ***Foreign players – Nationality – Visas***

Pere Miró *(picture), Deputy Director of the International Olympic Committee, declared that "*Spain is the only country with which there is no solution on Kosovo. We have two years and two different governments with this. (...) If the Spanish Government is not in the conditions to guarantee the access not only to Kosovo but to every athlete to compete, we should warn all IFs that, until this is solved, they should not hold international competitions there*."*

In a joint statement on 14 November 2018[6], the International Olympic Committee (IOC) and the Spanish Olympic Committee "*publicly expressed their deepest satisfaction*" with a commitment from Spain's foreign affairs minister *Josep Borrell* to allow athletes from Kosovo to use their national symbols, anthem, and flag while participating in international sporting events being held in the country.

However, hours later through a press release, the Spanish Minister of Foreign Affairs, *Josep Borrell*, said that the Spanish Government will raise a formal complaint to the IOC to denounce what he considers "*false information coming from a high-level IOC position*", which is groundless, "*and will transfer them*" the profound malaise that these statements have caused to the Spanish executive. In its statement, the Spanish government states that "*Spain has allowed and facilitated the participation of Kosovar athletes in these competitions, granting visas when requested, always in accordance with the Olympic chart and allowing the use of its symbols, flags and hymns according to the Olympic protocol*."

It also ensures that, in the future, they will continue with this "*without prejudice*" scheme for their political position not to recognize "*the independence of Kosovo.*"

The point that most annoys the Foreign Ministry is that of granting visas: "*We deny the reiterated statements by a senior official of the International Olympic Committee, according to which Spain would have denied the granting of visas to the Kosovars who participated in the World Karate, given that they did not request visas from the Spanish authorities.*"

The problem emerged at the World Karate Championships in Madrid, held at the beginning of November 2018, a competition in which the Kosovo team participated in under the banner of the International Federation, unlike the Mediterranean Games in Tarragona, where the athletes of that country competed under the flag and the anthem of the Kosovar Olympic Committee, almost equal to those of the country.

It was *Pere Miró*, Deputy Director of the International Olympic Committee, who stated that in the Karate World Championships, the Kosovar karateka had to ask for a visa to France, a country that does recognize its independence, because Spain did not grant it.

Pere Miró, also declared that "*Spain is the only country with which there is no solution on Kosovo. We have two years and two different governments with this. But the World Karate the truth that is the straw that broke the camel's back. If the Spanish Government is not in the conditions to guarantee the access not only to Kosovo but to every athlete to compete, we should warn all IFs that, until this is solved, they should not hold international competitions there.*"

Mr *Miró*'s reaction, who put himself forward for *Convergència i Unió* (the *Puigdemont*'s Catalan party) at the local elections in 1987, seems a bit histrionic. An IOC General Director should be more prudent and less passionate about politics.

Kosovo, which declared its independence from Serbia in 2008, was recognized as a member of the International Olympic Committee (IOC) in 2014, receiving the right to participate in international sports events as an independent state, but is not yet a member of the United Nations.

The present situation will not be rectified until Kosovo and Serbia, the core republic of former Yugoslavia, defy apparently insurmountable differences and come to a settlement aided by the United Nations Interim Administration Mission in Kosovo (UNMIK).

6 Joint statement of the IOC and the Spanish Olympic Committee, 14 November 2018 www.olympic.org

To date, 110 countries of the 193 United Nations members recognize Kosovo as an independent country. However, of the ten most populous countries in the world, seven did not recognize the unilateral declaration of independence of the southern Serbian province, including powers such as China, India, Indonesia, Brazil, Nigeria, Russia, and Mexico.

On 18 February 2008, Spanish Foreign Minister *Miguel Ángel Moratinos* said that Spain would not recognize Kosovo because the declaration of independence did not respect international law. He also said that the independence of Kosovo would only be legal if it was the result of an agreement by all sides involved or if there had been a UNSC resolution. This position seems to be quite respectful to international law and UN resolutions.

The argument that "*the creation of States is a matter in principle governed by international law and not left to the discretion of individual States*" may be widely accepted in international legal circles. The radical divergence of third States in terms of their reactions to the Kosovo Declaration would be explained as the result of a deliberate decision of a considerable number of States to simply ignore its principles and rules, without suffering any kind of sanction as a result.

Politics and political banishment in the Olympics date back to its ancient Greek version. The city-state of Elis, which controlled the ancient games, remained neutral in disputes and wars. But during the Peloponnesian War in 424 B.C., Elis sided with Athens and banned Athens's rival, Sparta, from competing in the 89th Olympiad. Given that history, it may be that there never was hope of an Olympic Games devoid of politics.

The IOC has its own skeletons in the closet, as discussed below.

By the time the *Olympics* kicked off in October 1968 in Mexico City, Dr *Martin Luther King Jr.* had been gunned down in April, setting off riots and halting the Civil Rights Movement in its tracks. On the morning of 16 October, US athlete *Tommie Smith* won the 200-meter race with a world-record time of 19.83 seconds and the US's *John Carlos* won third place with a time of 20.10 seconds. They took their first and third-placed podiums barefoot and, during the playing of the US national anthem, raised a single black glove while bowing their heads.

The then IOC President *Avery Brundage* had supported the inclusion of apartheid-era South Africa in the Olympics and had fought against proposed boycotts of *Hitler*'s 1936 Games. But after *Carlos* and *Smith* raised their fists, it was the black American athletes, not the IOC President, who faced serious consequences.

They were banned from further Olympic activities by the IOC and the U.S. Olympic Committee. *Brundage* ordered *Smith* and *Carlos* be suspended from the US team and banned from the Olympic Village. When the US Olympic Committee refused, *Brundage* threatened to ban the entire US track team. This threat led to the expulsion of the two athletes from the Games.

Brundage, who was president of the United States Olympic Committee in 1936, had made no objections against Nazi salutes during the Berlin Olympics. He argued that the Nazi salute, being a national salute at the time, was acceptable in a competition of nations, while the athletes' salute was not of a nation and therefore unacceptable.

Brundage remained IOC President until 11 September 1972 and was appointed Life Honorary President until his death in 1975.

An official document about *Brundage* at the IOC website (Historical Archives-Olympic Studies Centre) only says about the above-mentioned facts: "*Several people criticised Brundage for being somewhat intransigent in his positions and in his way of leading the IOC during these crises. However, everyone agrees that he was always faithful to his convictions and to defending the two major Olympic ideals, i.e. amateurism and the non-politicisation of sport.*"

Let's go further in time. In its press release of 28 February 2017, the IOC communicated that, as part of the implementation of Olympic Agenda 2020, it is making specific changes to the 2024 Host City Contract with regard to human rights, anti-corruption and sustainable development. On this occasion, IOC President *Thomas Bach* stated that "*this latest step is another reflection of the IOC's commitment to embedding the fundamental values of Olympism in all aspects of the Olympic Games*".

For the moment, the IOC has made no objections regarding 2022 World Cup in Qatar.

The abuses in Qatar amount to modern-day slavery, with almost one Nepalese immigrant dying each day during the summer of 2018 constructing the infrastructure for the 2022 World Cup. The International Trade Union Confederation (ITUC) has claimed that Qatar's construction frenzy ahead of the 2022 World Cup is on course to cost the lives of at least 4,000 migrant workers before a ball is kicked.

FIFA is "*taking the matter seriously*" but has yet to reveal its own plans to monitor the issue. So far it seems its biggest concern has been the logistical nightmare of shifting to a winter schedule to avoid Qatar's searing summer temperatures, a trivial matter in comparison to the human lives exploited in the preparation for the event.

This matter seems a little more serious than the controversial recognition of a country unilaterally separated from another; Mr *Miró*, you have the floor...

Former Real Madrid *President Sentenced to 3 years in Prison over Tax Fraud*

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→ ***National Law – Tax Law – Tax Fraud – Criminal Law – National courts***

Audiencia Provincial de Madrid, section 5, 29 October 2018

Mr *Lorenzo Sanz* (9 August 1943, Madrid), *Real Madrid*'s former president from 1995 to 2000 after losing the elections against Mr *Florentino Perez*, has been sentenced to three years in prison and the payment of a fine of EUR 1,250,000 for deceiving the Spanish Tax Agency (*Agencia Estatal de la Administración Tributaria* - AEAT) by failing to declare part of his earnings in his Personal Income Tax corresponding to the years 2008 and 2009.

The national courts in Madrid recently issued, on 29 October 2018, a decision considering that Mr *Sanz* "*intentionally*" failed to declare an income of almost EUR 6,000,000 in his declaration on the Personal Income Tax in the said two years *"to obtain an illicit tax benefit."*

The criminal acts proven by the Spanish Court reveal that *Sanz* and his wife, Ms *María Luz Durán Muñoz*, hid more than EUR 465,000 in labor income, EUR 5,300,000 in profits obtained from its assets and over EUR 250,000 that entered into his bank accounts and was never justified.

The Spanish courts mitigated the sentence due the fact that Mr *Sanz*, by establishing mortgages over the assets of his sons and daughters, "*tried its best efforts to repair the damage caused towards the Spanish tax authorities.*" However, the magistrates in question recognized that, although Mr *Sanz* admitted the facts and his fault, such fact could not be taken as a mitigating circumstance since "*a late confession used as a strategical argument of defense in order to mitigate a judgment, shall not be taken into consideration.*"

Ms *Durán* was also considered as directly responsible for the fraud committed by her husband, which is why the court ordered her to bear in equal shares the compensation of EUR 1,250,000 that Mr *Sanz* must pay to the Spanish Tax Agency. The court concluded that Ms *Durán*, being married to Mr *Sanz* under a profit regime, was directly benefitted from her husband's fraud, although she was only condemned to the payment of the economic penalty without imprisonment, since the magistrates discarded her being unaware of the defrauding attitude of her husband as well as her not having any decision-making capacity in the tax declarations of the years 2008 and 2009.

Mr *Sanz* and his wife have been facing a tough process, which began on 20 June 2014 and where the State's Attorney and the Prosecutor where requesting sentences of four and over five years of imprisonment, respectively.

As a final remark, it is worth recalling that another procedure has been opened against Mr *SANZ* for an alleged crime of insolvency punishable as well under the Spanish courts. It appears that the Unit of Economic and Fiscal Crime of the National Police (Udef) is investigating Mr *SANZ* for an alleged crime of money laundering, after detecting deviations of money to tax havens of more than EUR 13,000,000.

The Spanish Tax authorities consider the referees as employees

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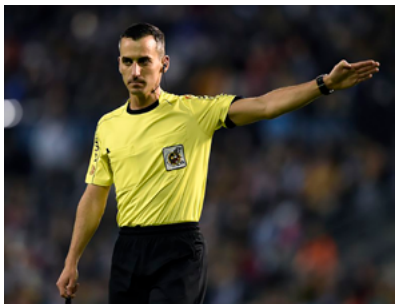
→ ***National Law – Tax Law – Referee***



The Spanish Tax Authorities have recently issued a document in the form of a consultation[7] where it responded to whether the football referees should be considered as employees or self-employed persons. The debates over this issue are ongoing in the Spanish legal society, however, the answer was given only for the purposes of the income tax of the referees.

It should be noted that the Tax Authorities did not consider the question of the employment of the referees in the context of their relationship with the correspondent sports association but rather from the point of view of the application of the law on the income tax to their remuneration and benefits in kind.

Thus, the Tax Authorities state that the Article 17.1 of the Law no. 35/2006, of 28 November 2006, on the Income Tax of natural persons defines the income from employment as *"all remuneration or income, whatever its denomination or nature is, monetary or in kind, that derives, directly or indirectly, from personal work or from the labour or statutory relationship and does not have the nature of the income from economic activities."*

The Tax Authorities note that, on the other hand, the Article 27.1 of the same Law conceptualizes the income from economic activities as *"the income that comes from combined personal work and capital, or from only one of these factors, and supposes from the taxpayer the correspondent orders on his own account of means of production and human resources or any of them, with the purpose of intervening in the production or distribution of goods or services."*

According to both legal definitions, the Tax Authorities qualify, again only for the purposes of the Personal Income Tax, as income from employment the remuneration earned by the referees of the corresponding sports federations for the realization of their functions, since the organization on their own account does not exist. The same applies for the means of production and human resources, or one of both, as the factor creating the income based on the economic activities.

Thus, at least in the eyes of the Tax authorities of Spain, the question to consider the referees as the employees is not controversial and is answered without doubts.

7 https://petete.minhafp.gob.es