



havens such as Belize and Uruguay to conceal earnings from image rights during years 2007 to 2009.

# Report on the MESSI's condemnation to 21 months in jail

By Enric RIPOLL GONZALEZ  
Lawyer, Ruiz-Huerta & Crespo  
Valencia - Spain

→ National civil courts – National Law – Tax Law – Image rights

Superior Tribunal of Catalonia no. 110/15, 5 July 2016

Barcelona (Spain), 2 June 2016 - Lionel MESSI of FC Barcelona and his father Jorge Horacio MESSI seen inside the court during the third day of the trial. Lionel MESSI and his father Jorge MESSI, who manages his financial affairs, are accused of defrauding the Spanish Tax Agency of EUR 4.1 million by using companies based in tax

On 5 July 2016, and after a procedure that has taken 3 years, the Spanish Courts rendered the sentence against the FC Barcelona player *Lionel MESSI* and his father *Jorge Horacio MESSI* to 21 months in jail for three different tax offenses. The condemnation was established as 7 months for each of the 3 offenses. The condemnation was also completed with a EUR 2 million fine for *MESSI* and EUR 1.5 million for his father.

The origin of the case brings action to 2005 when the family of the player, who was 16 at that point, sold his image rights in exchange of USD 50,000 (approx. EUR 45,000) to the company *Sportsconsultants* (obviously owned by the player and his family), a company based in Uruguay, creating a structure with companies in Uruguay, Belize, United Kingdom and Switzerland to reduce the tax costs of the player and that was ratified by him when he reached the age of 18.

That structure, in accordance with the player's defence, was created by his father and his tax advisors, not being himself aware of his criminal offense because he only took care of playing football. The sentence agrees with the Prosecutor's argument and concludes that the ignorance of the rules does not mean a lack of responsibility and of course that the player showed a "deliberate ignorance" because he should have had the minimum duty of care over all considering the amount of his income thanks to both his salary from *FC Barcelona* and the contracts linked to the exploitation of his image rights.

The offenses correspond to evasion of EUR 4.1 million in the personal income tax of the football player corresponding to years 2007, 2008 and 2009, because he did not declare in Spain EUR 10.1 million perceived as image rights, notwithstanding that and being the sentence inferior to 24 months neither the player nor his father will be forced to enter into prison because being his first criminal offense and non-existing risk of leakage, the Spanish courts usually grant the suspension of the condemnation. It means that, in accordance with Spanish procedural regulations, if *MESSI* or his father committed a new criminal offense during those 21 months, they will have to serve them together with the new condemnation.

The charges against the player and his father were presented in June 2013, one year after the modification of the Spanish Criminal Code that strengthened the condemnations related to tax evasion. Obviously, the charges correspond to previous years and of course the player proceeded immediately to declare and pay the income tax corresponding to 2010 and 2011 in accordance with the criteria used by the Tax Authorities in their pleadings in order to prevent them to initiate new procedures. The question as to why the Tax Authorities only charged the player and his father for those 3 years and not for all will remain unanswered.

The reason to only impose a 7-month condemnation for each of the offenses is because apart from paying the income tax corresponding to 2010 and 2011 using

the criteria of the Tax Authorities, once the authorities filed the complaint before the Spanish courts, the player decided to pay the requested differences, this payment was used by the player's defence in order to request the lowest condemnation foreseen in the Criminal Code, that previews a reduction of the condemnation in case of voluntary payment by the offender of the amounts requested. Therefore, the player and his father paid in 2013 those EUR 4.1 million plus interests also in order to prevent the latter increase the outstanding amount.

The sentence has now been appealed by the player and his father, therefore "we are only in the first half of this match", quoting the player's lawyers' statement when the sentence was made public.





The MESSI and MASCHERANO income tax case continued: a comparison

By Paolo TORCHETTI  
Lawyer, RUIZ-HUERTA & CRESPO  
Valencia - Spain

→ National civil courts – National Law – Tax Law – Image rights



Barcelona (Spain), 21 January 2016 - Javier MASCHERANO leaves the court after answering questions in a tax fraud case

FC Barcelona’s history has been riddled with taxation disputes with the Spanish fiscal authorities and this past year was no different as both Javier MASCHERANO and Lionel MESSI have recently settled their cases and are subject to suspended criminal sentences.

MASCHERANO agreed to pay the Spanish fiscal authority an EUR 815,000 fine for failing to remit EUR 1.5 million on in taxes for the 2011 and 2012 fiscal years. In this settlement, the Barcelona stopper also paid approximately EUR 200,000 in accrued interest on the principal owed. Additionally, MASCHERANO was sentenced to one year in jail, however his lawyers effectively requested that the jail term be replaced with another fine and that the period of incarceration be suspended.

MESSI was charged with criminal tax evasion along with his father Jorge Horacio MESSI where the fiscal authorities alleged that the pair patriated income in the low tax jurisdictions of Belize and Uruguay while employing shell companies in the United Kingdom and Switzerland. The result was that the pair evaded paying EUR 4.1 million of tax on unreported amounts received for image rights for the 2007 to 2009 fiscal years.

In deals similar to MASCHERANO’s, MESSI junior and senior we required to pay fines of approximately EUR 2 million and EUR 1.5 million respectively, and sentenced to a suspended sentence of 21 months in prison. Both MESSI immediately paid approximately EUR 5 million in overdue taxes when the

fiscal authorities initiated the case in 2013.

Spanish Criminal Law and suspended sentences

The Spanish tax authorities prosecuted the players and MESSI senior arguing that the income from image rights should have been reported as taxable income in Spain despite the use of the low tax jurisdictions, and that the evaded payments amounted to tax fraud. In addition to the financial settlements the Courts relied on Article 655 of the L.E.Crim in order to declare that the tax evaders be sentenced to periods of incarceration. The ultimate result, however, is that it is highly unlikely that either of the three, MASCHERANO or the MESSIS, will spend a moment in prison. Further to Article 80.2 of the Código Penal, Spanish criminal courts are able to suspend the applicable jail time where (a) the accused is a first time offender when considering similar offenses; (b) the offense applies a sentence of less than two years incarceration; and (c) the accused has complied with the terms of the settlement. MASCHERANO has satisfied these three conditions and suspended the application of his jail sentence. The MESSIS have appealed the decision.

MASCHERANO tax evasion described

According to public records, MASCHERANO’s tax advisors arranged a series of crude and simple transactions that attempted to patriate amounts paid to him in tax havens. The first step was to sell the player’s image rights to a corporation controlled by related parties in the Madeira Islands for a fee of EUR 5 million. Further to his employment arrangement with the club, FC Barcelona agreed to pay 15% of his global remuneration to this company in what appears to be for the use of his image rights. The reason that this plan appears crude and simple is because MASCHERANO simply did not report this income with the Spanish authorities as he should have. All Spanish residents, those in Spain for more than 187 days in a year, must report their worldwide income and tax payers cannot hide behind sham transactions where piercing the corporate veil can be used as an effective prosecutorial tool.

In addition to image rights amounts received from FC Barcelona, the Spanish fiscal authority also argued that MASCHERANO had an obligation to report income that he continued to receive from previous image rights deals. MASCHERANO assigned payments from a sponsorship deal with Nike during his time at Liverpool to a corporation in Miami, Florida, a state that does not impose any personal income tax. The tax advantage in this case appears to be that if MASCHERANO ever retired to Florida and acquired tax residency he would not be subject to tax on the receipt of dividends paid to him from this company. This still may be the case in the future, however as the income was earned in Spain and the player resided in Barcelona prosecutors argued that he had a positive duty to report his worldwide income in Spain.

MESSI and mens rea

The Panama Papers leaked over the summer spectacularly alleged that MESSI had used the services of advisors Mossack FONSECA in arranging his affairs. Although the series of transactions in the MESSI cases appear to be much more complicated than those used for MASCHERANO they still drew on the basic principles of international tax planning in attempting to patriate income in corporate bodies residing in low tax jurisdictions.

Despite these general similarities MESSI argued that he should not bear any criminal liability because he did not understand the nature of these transactions where he relied on his advisors to ensure that his affairs were legally arranged. The Barcelona forward explained to the Court that that he had signed many documents without reading or understanding them. The prosecutors vigorously opposed this argument claiming that even 10-year-old children understood that taxes must be paid. Ultimately the Court imposed a suspended sentence of 21 months in prison on MESSI, where the State was requesting 22 months.

In the end, as is apparent from these cases, it is not illegal under international tax planning principles to use corporate entities in order to receive payments. What is illegal is to set up shell corporations without commercial purpose, and to violate domestic taxation laws in failing to pay tax on worldwide income in one’s home jurisdiction of residence.





# The RFEF Regulation of Summary Procedure for the Early Cancellation of the Federative Registration of Players belonging to Second “B” and Third Division Clubs

By Agustín AMORÓS MARTÍNEZ  
Lawyer, RUIZ-HUERTA & CRESPO  
Valencia - Spain

→ Spanish Football Federation (RFEF) – National Regulations

High Council for Sport, 14 June 2016  
RFEF, Circular no. 4, 19 July 2016



Through its Circular letter no. 4 of the 2016/2017 season, the Spanish Federation (RFEF) informed that on 14 June 2016 the High Council for Sport had authorised its “Regulation of summary procedure for the early cancellation of the federative registration of players”, approved by the Delegate Committee of the RFEF General Assembly.

This new regulation aims to allow the football players who belong to clubs that participate in Second “B” and Third Division in Spain to cancel their registration with their clubs early in case of default. In fact, this proceeding bears a great similarity to the one provided in Annex VII of the Collective Agreement LFP-AFE (“Summary proceeding for the early resolution of contract”) applicable to clubs belonging to LFP (First and Second “A” Division). This new Proceeding can be summarised as follows:

## Compatibility

This proceeding and its consequences are voluntary for the players, and results are compatible and independent from the exercise of legal actions for the early termination of their employment contracts.

## Prerequisites

The player will be able to trigger this Summary Proceeding when his club owes him:

- Amounts with a value greater than or equal to three months of his remuneration, consecutive or not, partial or total;
- Any instalment of a sign-on fee of the current season or deferred amounts corresponding to previous seasons with a value greater than or equal to three months of his remuneration.

However, the Regulation sets several limits to the initiation of the procedure:

- A player who has received at least 60% of the total amount agreed for a season shall not be able to initiate the proceeding during such season;
- The proceeding may be applied at any time during the season except during the last 10 matches of the National Championship of League or the second phase of such Championship in case the club takes part on it;
- The early cancellation of the registration through this Summary Proceeding may be granted to a maximum of 10 football players per team and season;
- The Summary Proceeding shall not be applicable to deferred debts if the instalment is settled beyond 30 November of the season following its accrual.

## Procedure

The procedure is extremely simple and shall be initiated by the player by filing an application addressed to the Joint Commission of Second “B” or Third Division before the Professional Players Association (AFE).

According to the RFEF General Regulations (Art. 58), these Joint Commissions shall be composed in equal numbers by members of AFE and RFEF appointed by the President of RFEF among the members of its Second “B” Commission. The club shall be granted the opportunity to make allegations and produce any evidence it deems convenient within three working days. The relevant Joint Commission shall issue a decision within two days granting or denying the cancellation requested.

However, the club has the right to set aside the proceeding by paying the full amount claimed at any moment before

the issuing of the decision. In case of discrepancy between the members of the Joint Commission, the matter may be submitted to an arbitrator appointed by mutual agreement if any party in the case so requests.

## Consequences of the decision

If the cancellation was granted by the relevant Joint Commission, the RFEF will cancel the player’s registration and the affected club shall not be able to substitute the player through a new registration during the same season. The player will be able to be registered with any new club of national scope and non-professional category except during the last 10 matches unless his application for cancellation has been filed before such time limit.

## Critical appraisal

The aim of these new regulations is laudable, trying to transpose into non-professional categories the system already established by the Collective Agreement LFP-AFE for First and Second Division.

Nevertheless, this regulation obviates that Second “B” is in fact a professional Division, even with a Collective Agreement signed in 1989 by numerous clubs, and the majority of players participating in Third Division should be considered professionals according to the criteria settled by the Labour Courts jurisprudence.

This situation entails that, while the RFEF’s new regulation is only focused in the player’s registration, there is a clear risk of dichotomy between the federative situation and the employment relationship, whose lives will no longer be parallel, giving rise to multiple problems of coordination and even serious consequences when Labour Courts eventually decide about the termination of the employment contract.



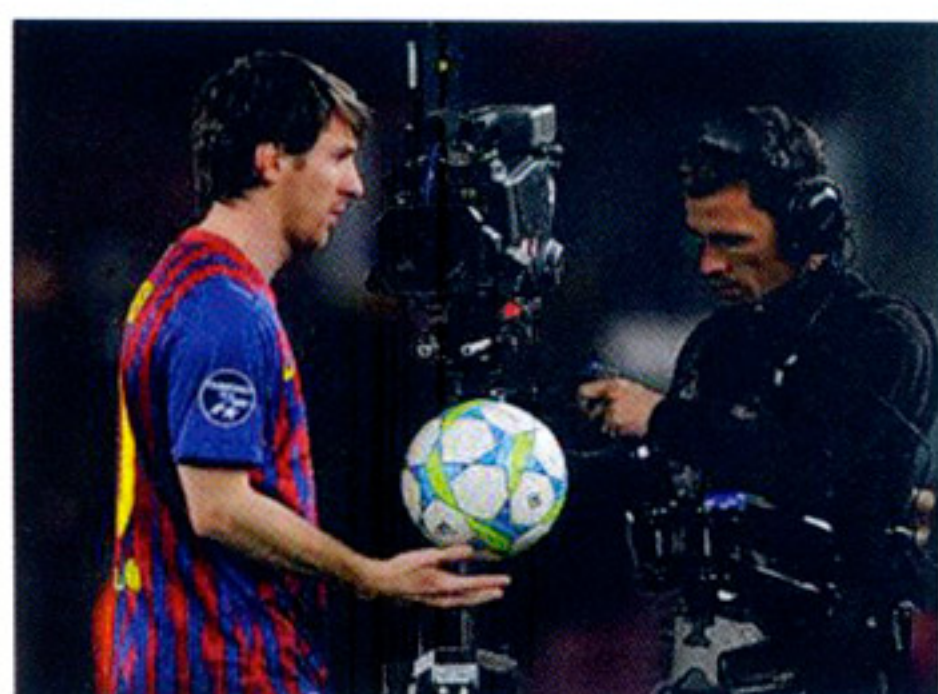


# LaLiga gets up to date on TV broadcasting

By Alfonso LEÓN LLEÓ  
Lawyer, RUIZ-HUERTA & CRESPO  
Valencia - Spain

→ Spanish Football Federation (RFEF) – National Law – Broadcasting rights

Royal-Decree law no. 05/2015, 30 April 2015



On 1 May 2015 a Royal-Decree-law was published.<sup>1</sup> Said piece of legislation had been long-awaited among any and all football stakeholders in Spain. The Royal-Decree law 5/2015 had a great impact over professional football in Spain by allowing for the first time joint-selling and management of media rights corresponding to the Spanish *La Liga* and the *Segunda División*.<sup>2</sup>

However, the implications of said joint-selling of the TV rights would not stop there. In fact, the Royal-Decree law 5/2015 entailed that the ties in between each participant in the Spanish competitions had to be strengthened at the very least when it comes to audiovisual matters. This is a common and necessary pattern. Ever since the 1996/1997 sporting season each club dealt separately with the media broadcaster of their choice, accordingly, professional Spanish football was not that much of a uniform product due to the fact that each club negotiated with a different media operator, or with the same, under different terms though and accordingly the features, *i.e.* the audiovisual film-making and production of each football match offered on TV could greatly differ depending on the clubs involved and the company holding the rights. This was due to the fact that the standards required could vary from one to another.

The situation at the present stage remains far away from the uniformity

offered by the US professional leagues such as the NBA, NFL or MBL. However, step-by-step Spanish clubs will have to acknowledge either by themselves or under the scrutiny of the *Liga de Fútbol Profesional* that *LaLiga* is a product, being them all part of the same side, and accordingly shall do their best efforts in order to offer a uniform and standardized product.

As it is well-acknowledged in the field of sports marketing, it is crucial for a product to maintain almost equal standards in its different shapes. For instance, it would jeopardize the “product” as a whole if the rights of *LaLiga* when assigned to a sole media broadcaster, would greatly differ depending on whether the match was played at the stadium of one of the big clubs in Spain and all of a sudden would lose “audiovisual quality” if said big club played abroad at the stadium of a club who just got promoted earlier that sporting season. In the words of the Decision issued by the European Commission on the 23<sup>rd</sup> of July 2003 in the framework of the proceedings related to the joint selling of the commercial rights of the UEFA Champions League (COMP/C.2-37.398):

“141. UEFA also considers that its joint selling arrangement enables UEFA to maintain the uniform excellence and consistency of the “product” at a level and quality which it would not be possible to achieve if the media rights were handled on an ad hoc basis by individual football clubs selling the media rights to a succession of different operators.”

“1.2. Branding

(154) UEFA’s second argument that it is able to create and maintain the uniformity and consistency in quality of a UEFA Champions League product via its joint selling arrangement is not without merit. These are factors that contribute to establishing the reputation of a brand, which is associated with a uniform and high quality TV coverage underpinned by a homogeneous presentation which increases the attractiveness for the viewer (68). These are also factors that attract the best football clubs who want to participate in this particular international tournament. The UEFA Champions League has, in fact, become the most prestigious pan-European club football tournament with the participation of the very best European football clubs.”

The arguments issued by UEFA related to the “branding” and need to “maintain the uniform excellence and consistency of the “product”” are entirely applicable to the case at stake, however instead of to the UEFA Champions League to the Spanish

*LaLiga*. That is the reason grounding *LaLiga*’s implementation of the Regulations for the Television Broadcasting (hereinafter, the “Regulations”). First of all, the *Regulations* entered into force as of the current sporting season 2016/2017 with the sole exception of clubs participating in the Spanish *Segunda División* who were granted a 1-year additional margin in order to adapt themselves.

Different criteria have been imposed that need to be fulfilled by football clubs. Any infringement of the *Regulations* would entail the deduction of a specific number of points from the relevant club. The overall number of points will be evaluated at the end of each sporting season and will result in the club affected being imposed the corresponding financial fine.

Part of the criteria listed are the following:

- Grass: color, uniformity, height, shape and direction. In respect of the latest criteria, clubs will be forced to instruct their employees to cut the artificial grass from 20mm up to 30 mm. Over the past years there has been a lot of controversy as certain football coaches used to complain about the height of the grass as a way of obstructing their team’s football production (sic). This approach, by standardizing all fields hopefully will contribute to dispel any doubts.
- Lighting: timing, brightness so that it allows a better TV screen resolution.
- Fans: this particular aspect is noteworthy as the stand in front of the main camera’s location shall be occupied at the very least at a 75% rate. Accordingly, football clubs that do not manage to sell all their match tickets, are better of placing a considerable amount of its fans at this stand or otherwise they will face sanctions. Said sanction will be doubled if the attendance in that particular stand is lower than 50%.
- Advertising perimeter system: (Restricted) Media access: this is a crucial aspect particularly when considering the controversy that arose as radio operators were not allowed to be present in the

<sup>1</sup> L VILCHES, Audio-visual rights on LaLiga’s competitions – towards a more sustainable model, *Football Legal* # 6 (November 2016), p. 60

<sup>2</sup> L. TORRES, The Spanish TV Rights Distribution System after the Royal Decree: An Introduction, 27 May 2015, published on [www.asser.nl](http://www.asser.nl)





stadiums, while under the previous *LaLiga* management there was a tacit consent.

- Camera location.

The ability to impose sanctions by virtue of the *Regulations* is attributed to the *LaLiga's Órgano de Control de la Gestión de los derechos audiovisuales* ("*Órgano de Control*" – Royal Decree-law 5/2015, Article 7; Section XI *LaLiga Regulations*).<sup>3</sup> A *LaLiga* match responsible will be assigned to each stadium. The *LaLiga* representative at the end of each match will provide a report to the affected club and to the *Órgano de Control* detailing the infringements committed, if any. The relevant club will have since reception of the report a 48-hour deadline to file his allegations before the *Órgano de Control*. The latter will issue a decision. Said decision is subject to appeal by the club within 48 hours before *LaLiga's Juez de Disciplina Social*. The appeal will exhaust the "sporting" remedies available for the club.

In sum, the Spanish *LaLiga* could not stay away from the industry, and notably from its competitor(s), *i.e.* the English *Premier League*. If Spanish professional football is seeking to expand worldwide it had to ground its growth not only on the excellent level of its professional competitions and the presence of *Real Madrid*, *FC Barcelona* and major football stars known worldwide but also on the product offered to television-viewers. The product is as important as the bottle and the above-noted recent developments in our industry are very well-welcomed by (almost) any and all its stakeholders.

<sup>3</sup> Annex I of the *Regulations*