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Criminal Procedure against Angel Maria VILLAR *in Spain*

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

→ ***Spanish Football Federation (RFEF) – Governance – Corruption – Criminal proceedings***

On 25 July 2017, Angel Maria VILLAR *was suspended as President of the Spanish Football Federation (RFEF).*

This suspension obeyed the criminal procedure conducted against him by the Spanish police and was a decision taken by the Spanish Council of Sports following the decision of the Judge, to send him into prison, unconditional and without bail, on 18 July 2017.

Angel Maria VILLAR, RFEF President since 1988, was found to have created a system to, through influences and favours, unjustly enrich himself and his family (his son is also charged). The criminal charges against the President are serious: unfair administration, misappropriation and/or fraud, documentary falsification and corruption between individuals, which is the reason why, considering his economic capacity and the contacts he has, the Judge decided to not grant him the opportunity to avoid prison by paying a bail.

The investigation conducted by the Spanish Authorities revealed that even politicians have been receiving "*benefits*" from *A. M. VILLAR*, for example one of the former Secretaries of State for Sport (*Rafael CORTÉS ELVIRA*) and his wife received EUR 1.2 million from 2010 to 2012 from a company called *Asesoramiento Corell S.L.*, coming from a deal that terminated the contract between the RFEF and an insurance company that cost EUR 51 million to the very same RFEF.

In 2008, being forced by the Spanish Law to call for new elections, *A. M. VILLAR* kept postponing it in order to avoid being examined by the Football family, the President of the Spanish Council of Sports at that time (*Jaime LISSAVETZKY*) pushed him several times to accomplish the regulations. *A. M. VILLAR* requested *Joseph BLATTER* to use FIFA as a threat to prevent the Government to try to influence football or on the contrary see how the Spanish teams and national team were excluded from participating in international competitions.

In 2010, the RFEF received a State aid of EUR 1.2 million to invest in solidarity and development programs in Haiti, money that did not end in the latter country and *A. M. VILLAR* accused his former Secretary General (and political rival for the elections to the RFEF) and another dismissed administrator. Finally, the RFEF was condemned to return the amount received plus the interest after being unable to properly justify how the money was spent.

After several scandals like those abovementioned, and the constant reports pointing to his suspicious way of managing the RFEF, in 2016, the Sports Council for Sports filed a complaint against him, including the so-called Haiti case. The Spanish Court ordered the investigation that was conducted by the Central Operative Unit (UCO). The UCO is the central body of the Judicial Police service of the Civil Guard of Spain, responsible for the investigation and prosecution of the most serious forms of delinquency and organized crime, whether national or international, as well as support Territorial Units of the Judicial Police, which, due to lack of personnel or means, or because the criminal sphere is interprovincial, require the support of this Unit.

During three months, the UCO recorded the phone calls of the President and his son, and discovered that both were planning their strategies to unjustly enrich themselves and perpetuate his position as RFEF's President.

Amongst those strategies, the President and his son organized several friendly matches, such as Spain-Bosnia (in Switzerland) in May 2016 and Spain-South Korea (in Austria) in June 2016, both to prepare the Euro 2016. To organize those matches *A. M. VILLAR* had a profit by contracting the services of his son, *Gorka VILLAR*, former General Manager of CONMEBOL (from 2012 to 2016). Once he terminated his contract with CONMEBOL (and being accused of extortion by several Uruguayan clubs), he helped his father to retain his position as RFEF President in 2017.

Amongst many people that appear in the investigation there are some names that stand out over the rest, apart from *VILLAR*'s saga, one of them is *Juan PADRÓN*, RFEF's Economic Vice-President. He was the right hand of *A. M. VILLAR*, and is accused of benefiting regional associations (Spain is divided in 17 Regional Associations that have the right to vote to decide the President) through subsidies (those that support more *A. M. VILLAR* were the ones obviously more benefited). He is also suspected of having had personal profit, and was also imprisoned.

Ten days after their imprisonment and considering that all the investigation was already concluded, the Judge decided to release them from prison and they are now pending the next step of the procedure.

Valencia CF´*s Hardship in the* KONDOGBIA *case*

By Alejandro PASCUAL
Lawyer, Ruiz-Huerta & Crespo Sports Lawyers
Valencia - Spain

→ ***Violence – Spanish Football Federation (RFEF) – Disciplinary litigation – FIFA Regulations – FIFA RSTP – Player transfer***

Geoffrey KONDOGBIA, while playing for *Sevilla FC*, received a direct red card during the second leg of the 2012-2013 Spanish National Cup semi-finals. The Spanish Football Federation (RFEF) sanctioned the player with a four-match suspension under Article 98 (typified as "*assault*") of the RFEF Disciplinary Code. The said sanction was later reduced to two matches by the RFEF´s Appeal Committee after partially accepting Sevilla's appeal, determining that *KONDOGBIA*'s conduct had to be typified instead as "*violent conduct*" based on Article 123 of the RFEF Disciplinary Code.

As stipulated in Article 56.5 of the RFEF Disciplinary Code and due to the fact that *Sevilla FC* was eliminated from the competition in question in that same fixture, *G. KONDOGBIA* should have fulfilled the sanction in the following Spanish National Cup´s match, to be held in the 2013-2014 season. However, in August 2013, the player was transferred to the French club *AS Monaco* and subsequently moved to *FC Internazionale* in 2015. He, therefore, had no possibility to serve the sanction in Spain.

In the summer of 2017, the player finally moved to *Valencia CF* without theoretically any pending sanction according to his international transfer certificate. Nevertheless, *Valencia CF* diligently checked the player's disciplinary situation and detected that *G. KONDOGBIA* had received a two-match ban in 2013. Consequently, *Valencia CF* consulted the RFEF´s Legal Department, which confirmed that such suspension was yet to be implemented, since the RFEF did not notify the French Football Federation (FFF) about the abovementioned sanction when the transfer to *AS Monaco* took place. This was in clear violation of Article 12 of the FIFA Regulations and Transfer of Players (FIFA RSTP), which states as follows:

"*Any disciplinary sanction of up to four matches or up to three months that has been imposed on a player by the former association but not yet (entirely) served by the time of the transfer shall be enforced by the new association at which the player has been registered in order for the sanction to be served at domestic level. When issuing the ITC, the former association shall notify the new association via TMS (for players to be registered as professionals) or in writing (for players to be registered as amateurs) of any such disciplinary sanction that has yet to be (entirely) served.*"

In this sense, it could be stated that Article 13.2 of the RFEF Disciplinary Code conflicts with Article 12 of the FIFA RSTP since the former states that in the event a player is sanctioned and, prior to serving it, the player loses his affiliation to the RFEF, the said sanction shall be fulfilled once the player resumes his affiliation to the RFEF.

Hence, the fact that *Geoffrey KONDOGBIA* had to serve the two-match sanction

while being registered with *Valencia CF* can be attributed to the RFEF's negligence. This case is similar to the issue of *Denis Cheryshev* who was fielded by *Real Madrid* in the Spanish National Cup despite the player´s ineligibility due to a previous suspension. However, as a key factor, in *Kondogbia*'s case the party acting negligently was the RFEF itself.

Primarily, as noted above, the RFEF did not notify the FFF that *G. Kondogbia* had a pending sanction which required to be enforced in the French National Cup. Secondly, when *G. Kondogbia* returned to *LaLiga*, the RFEF did not notify *Valencia CF* about the sanction which was imposed on the player in 2013 while playing for *Sevilla FC*. Had *Valencia CF* not investigated and *Geoffrey Kondogbia* been fielded against *Zaragoza FC* in the Spanish National Cup 2017-2018, the RFEF would have disqualified the Spanish club from the competition, as occurred with *Real Madrid* and *Cheryshev*.

It must be noted that *Geoffrey Kondogbia* neither participated in the 2013-2014 French National Cup game against *Monts d'Or Azergues Foot* nor in the 2014-2015 edition against both *Nîmes Olympique* and *Évian*. Accordingly, the player could be considered as having served the two-match ban while playing for *AS Monaco*.

Article 12.1 of the FIFA RSTP is crystal clear when stipulating that a non-served sanction "*shall be enforced by the new association at which the player has been registered.*" Therefore, the question remains whether the RFEF´s negligence could be considered not only as a breach of the principle of procedural fairness, which the Court of Arbitration for Sport (CAS) has recognized and protected on many occasions, but also if it would have made impossible for the RFEF to enforce a sanction which was supposed to be implemented by the new federation (*i.e.* FFF). Let alone, that *Kondogbia* may have served the two-match suspension while playing for *AS Monaco*.

In summary, *Valencia CF* seemed to have sufficient grounds to contest *G. Kondogbia*'s ineligibility, although probably, due to the comparative relevance of the match, the club preferred to comply with the RFEF´s decision avoiding any potential discrepancy.

Cristiano Ronaldo *opposes the Spanish Tax Authorities in its claim against him for EUR 14.7 million*

By Ivan Bykovskyi
Lawyer, Ruiz-Huerta & Crespo Sports Lawyers
Valencia - Spain

➔ ***Image rights – Tax evasion – National law – Tax Law***

According to a statement from the Public Prosecutors Office, *Cristiano Ronaldo* took advantage of a corporate structure created in 2010, the year following the signature of his employment contract with *Real Madrid*, in order to "*hide from the treasury the income generated in Spain*" by his image rights, something that implies a "*voluntary*" and "*conscious*" breach of its tax obligations in Spain. The Public Prosecutors Office bases its complaint on the "*most recent case law*", specifically on the Supreme Court ruling that sentenced *FC Barcelona* striker *Lionel Messi* on 24 May 2017.

According to the statement, the income tax amounts supposedly defrauded by *Cristiano Ronaldo* were of EUR 1.39 million in 2011; EUR 1.66 million in 2012; EUR 3.2 million in 2013 and EUR 8.5 million in 2014. All these amounts exceed EUR 120,000 per year that makes tax fraud a crime, punishable by one to five years in prison.

In his defence, *Ronaldo´s* lawyers stated that "*the fraud that is denounced, does not have a causal link with the use of a corporate structure for the management of image rights, but with a tax qualification issue by the authorities.*" The qualification differs a way that "*it can be said that Tollin Associates Ltd. [the offshore company used by Cristiano Ronaldo] is a problem unrelated to the reason for which a tax offense is considered to exist.*" However, the player insists that if the fact giving rise to the claim of the Tax Authorities of Spain is contained in the transfer of his image rights to the company *Tollin Associates Ltd*. then it has no grounds, as the company was created long before he went to Spain and such company was approved by English Tax Authorities as validly constituted and functioning.

Cristiano Ronaldo had until 20 August 2017 to pay the claimed amount to the Tax Authorities in order to terminate the investigation before it could enter the phase of judicial consideration, however, he did not realize such payment. Furthermore, in October 2017, *Ronaldo* refused to sign a collaboration agreement with the Tax Authorities, meaning that his case would be submitted for the consideration of the Judge and consequent decision. Despite the fact that he refused to sign a cooperation agreement with the Tax Authorities and to pay the requested amount, he has such possibility until the very same day of the hearing by the court, if the case proceeds further (based on Article 305 of the Spanish Criminal Code).

Spanish Image Rights: José Mourinho *vs the Spanish Tax Agency*

By Alessandro Mosca
Lawyer, Ruiz-Huerta & Crespo Sports Lawyers
Valencia - Spain

➔ ***Image rights – Tax evasion – National law – Tax Law***

In 2010, *Mourinho* signed an employment contract with *Real Madrid* and, while relocating to Madrid, he obtained the tax resident status in Spain. Consequently, he filed his 2010-2012 tax returns, however, without declaring the earnings from his image rights. The Spanish Tax Agency (*Agencia Estatal de la Administración Tributaria - AEAT*) believed that he did so "*with the intention of obtaining an illicit benefit.*"

In July 2014, the AEAT informed *Mourinho* that his 2010-2012 personal income tax returns (*Impuesto sobre la Renta de las Personas Físicas - IRPF*) and the 2013 Non-Resident period would be investigated. A year later, in July 2015, *Mourinho* signed an "*acta de conformidad*", acknowledging the non-declaration of image rights payments and paid a penalty of EUR 1,146,307.83. However, the AEAT later discovered the following off-shore corporate structure established by *Mourinho* "*with the object of hiding profits from his image rights*":

- *Multisports & Image Management and Polaris Sports* (Ireland) to negotiate commercial contracts exploiting *José Mourinho's* image rights;
- *Kooper Services* (Virgin Island) which owns *Mourinho's* image rights and receives the money transferred by the Irish companies;
- *Kaitaia Trust* (New Zealand) which *José Mourinho* owns 100% of *Kooper* Services through this trust.

In June 2017, the AEAT demanded an amount of EUR 3,304,670 from *Mourinho* which is the amount he should have paid during the 2010-2012 period. According to the AEAT, there was no difference between *Mourinho* and *Kooper Services*, therefore the *Virgin Island* company declared costs that did not correspond to the real fiscal position. Following a hearing held at the Court of First Instance and Instruction in Madrid on 3 November 2017, *José Mourinho* declared to journalists:

"*I was informed that an investigation was opened and they told me that in order to regularise my situation I had to pay a certain amount of money. I did not complain (or) appeal and I paid and I signed an agreement and a compliance act with the State, saying that everything was closed. For this reason, I was here only for five minutes to say the same things I am telling you.*"

As demonstrated by the numerous football cases that have occurred over the last few years the issue of image rights in Spain is considerable. Many footballers have faced investigations by the AEAT for tax fraud while they lived in Spain. The last player involved being *Ricardo Carvalho*, who was found liable for hiding income from his image rights while playing for *Real Madrid* in 2011 and 2012, by not declaring EUR 545,981 and consequently being sanctioned with seven months in prison and a fine of EUR 142,882.

Prior to 1996, Spanish clubs made partial payments to players through image rights companies due to a lower tax cost (*Impuesto sobre Sociedades* - currently, which can range up to 25%), effectively eluding the payment as employment income (IRPF - currently, which can range up to 45%). After 1996, the "*Ley 13/1996, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social*" prevents this practice by imposing a maximum 15% threshold as image rights payment to players' companies, while the other 85% is considered as players' employment income.

Nevertheless, as per the "*arm's length*" principle, the payment of image rights that players' companies transfer to the same players must be based on fair market value. Consequently, 15% of the total of the players' income is transferable into their companies. However, the AEAT considers that fair market value (the entire amount players' companies obtain from clubs, deducting only the expenses related to the exploitation of the image rights) should be paid to players (who must then pay the related IRPF) as compensation for the transfer of image rights.

The determination of said fair value represents the core of the issue. Therefore, it would be helpful to clearly set criteria to determine it by modifying the current image rights legislation in order to ensure legal and tax security considering its economic, administrative and criminal implications.

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VITOLO *case: Oral Agreements and their Validity as Football Player's Employment Contracts*

By Agustín AMOROS MARTÍNEZ
Lawyer, Ruiz-Huerta & Crespo Sports Lawyers
Valencia - Spain

→ ***Player transfer – Player contract – Breach of contract – Buy-out clause – National law – Transfer ban – Player loan***

In July 2017, *Atlético Madrid* announced the signing of the forward *VITOLO* after paying the EUR 35,5 million provided as release clause in his professional contract with *Sevilla*.

However, as *Atlético* was still under the transfer ban sanction imposed by FIFA and confirmed by the Court of Arbitration for Sport (CAS), *VITOLO* is playing at *Las Palmas* until January 2018, when *VITOLO* is to join *Atlético* performing a 5-year contract.

The issue arises because *VITOLO* had previously agreed to sign a contract extension with *Sevilla*, which its president *Jose CASTRO* had announced before the player's breach.

"*Sevilla FC reached a renewal agreement with Vitolo on July 10th, endorsed by written documentation with the club, which the player decided to break unilaterally*", stated the Andalusian club.

The legal action to be taken by *Sevilla* is based in the difference between the release clause paid by *Atlético* and the new one agreed with the player in the renewal with *Sevilla* (EUR 45 million).

According to the Spanish Royal Decree 1006/85 on professional athletes' special relationship, if the athlete is signed by another club within a year, said club shall have subsidiary responsibility for the payment of the above-mentioned compensation.

Therefore, the action can be taken against *Atlético* and *Las Palmas* together with the player.

The core of the dispute will surely be the validity of the oral agreement for the renewal and the evidences which *Sevilla* may submit in order to support this fact.

At this point it is relevant to remark that according to Article 3 of the Royal Decree 1006/85, the agreement should be made in writing and in triplicate.

Going further, the Collective Agreement for professional football activities signed between the National Professional Football League (LNFP) and the Spanish Footballers Association (AFE) requires six copies: a copy for each party, the third for the LNFP, the fourth for the AFE, the fifth for the RFEF and the sixth for the INEM (former name of the Spanish Public Employment Service; currently, SEPE).

However, on the rare occasions when the validity of a verbal agreement in the scope of contracts for professional athletes is questioned, the interpretation of this provision has been consistent with the provisions of Article 8.2 of the Employees Statute, the Courts accepting its validity, as in the judgment of the Labour Court no. 1 of Guipúzcoa 187/198, dated 5 May 1989 (*Real Sociedad* vs. *Uralde* case).

This early decision has been confirmed by several and more recent judgements of Labour Superior Courts. For instance, in the Judgement of the Social Chamber of the Superior Court of Justice of Catalonia dated 29 May 2014, it is absolutely clear:

"*The lack of a written form concerning the conclusion of the contract may have other effects, but an athlete's contract concluded in oral form with a certain club has full legal effect, because the form requirement provided in Art. 3.1 of RD 1006/85 has not constitutive effects, 'ad solemnitatem', but it's a form required as evidence, in similar terms as Art. 8.2 of the former Employees Statute, which stablishes the written form for the conclusion of any employment contract.*"

Another interesting issue would be the way in which the player was transferred on loan from *Atlético* to *Las Palmas*.

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Atlético confirmed the details in a club statement:

"*Atlético Madrid have reached an agreement with Victor Machin Perez, Vitolo, for the next five years after the player rescinded his contract with Sevilla Futbol Club. As a consequence of the FIFA ban which stops the club from registering any players during the current summer transfer window, the player will play the first half of next season at Union Deportiva Las Palmas and will join up with us from 1 January 2018. The Spain international has signed with our club until 30 June 2022.*"

But, how was the player loaned to *Las Palmas*? It seems clear that he already has an employment contract with *Atlético*, but this club cannot register the player. Was the agreement between *Atlético* and *Las Palmas* concealed in order to circumvent the transfer ban imposed to *Atlético*?

It seems, thus, that *VITOLO*'s case has only just begun.