RIVISTA DI
DIRITTO ED ECONOMIA DELLO SPORT

ISSN 1825-6678
Vol. XVI, Fasc. 2, 2020

THE PECULIAR ITALIAN LEGAL FRAMEWORK OF FOOTBALL COACHES

by *Marcello Presilla*[*] and *Alessandro Mosca*[**]

ABSTRACT: The responsibilities and duties of a coach have grown over time. Consequently, salary and benefits have also increased significantly. Agreements between coaches and clubs have become a lot complex and structured as those of footballers. The employment agreements incorporate clauses and contractual provisions aimed to regulate the coach's professional activity. Individual work agreements between coaches and clubs are regulated by different national regulations. From this point of view, the lack of a framework of common rules very often favors the rise of disputes that could have been avoided in case more homogeneous and harmonious regulations had existed. This lack of a common rules forces clubs to apply exclusively the ordinary law contract. In this multi-faceted international landscape, this article aims to provide a breakdown into the regulatory Italian framework examining both the rules brought by the law of professional sportsmen and the clauses of the collective bargaining agreements in force. Salary, method of payments, dismissal in the peculiar form of the so called "esonero", taxation and licenses are amongst the other topics investigated in the paper with the aim to provide a full picture of the Italian discipline applicable to the contracts signed between clubs and professional coaches.

Keywords: *Coaches – Italian legal framework – Collective Bargaining Agreement – Esonero – Agents – License – Taxation.*

SUMMARY: 1. Introduction – 2. The Italian landscape: Law n. 91/1981 – 3. Collective bargaining agreements and standard employment contracts – 4. Salary conditions – 5. Method of payment and currency – 6. Employment process – 7. Dismissal and dispute resolution clause – 8. Limits to the coach's extra activities – 9. General obligations for both parties – 10. Football coaches and agents – 11. Licenses – 12. Taxation – 13. The Beckham law and the current Italian law establishing a special tax regime – 14. Conclusion

[*] Attorney-at-law admitted before Italian Courts. E-mail: marcellopresilla@hotmail.com.
[**] Ruiz-Huerta & Crespo Sport Lawyers Valencia – Spain. E-mail: amosca@ruizcrespo.com.

1. Introduction

The scope of the job of football coaches has had a stark evolution and has expanded worldwide, becoming great part of the clubs' financial strategies. The coach has become a manager both on and off the pitch. He is a key figure shaping the identity of clubs. He embodies the image and even the corporate philosophy of the clubs.

There are coaches with technical, temperamental and communication skills in managing relationships with players, media and supporters. Other coaches show particular attention to young athletes to make them top players who carry prestige and capital gains for clubs' balance sheets. Similarly, there are clubs that have changed coaches at the rate of two or more per year,[1] scapegoating them for the bad results, while other clubs have raised their coaches to the status of international icons. One such legendary coach is Alex Ferguson, who managed not only players' transfers but also imposed his own brand and a new identity for the team and the club. This has strongly characterized Manchester United for 27 years. Great coaches[2] such as Pep Guardiola, Jurgen Klopp, Carlo Ancelotti, Cholo Diego Simeone and Josè Mourinho are icons of their respective teams, being able to shape their identity and build winning teams over time, both from sporting and managerial point of view. However, we cannot forget other great coaches such as Arrigo Sacchi, Vicente Del Bosque, Marcello Lippi, Fabio Capello, Rinus Michels, Giovanni Trapattoni and Niels Liedholm.

The choice of a coach is the first tile in the mosaic to build an ambitious and winning project, from a sporting as well as from entrepreneurial point of view.

The responsibilities and duties of a coach have grown over time. Consequently, salary and benefits have also increased significantly. Agreements between coaches and clubs have become a lot complex and structured as those of footballers. The employment agreements incorporate clauses and contractual provisions aimed to regulate the coach's professional activity. Individual work agreements between coaches and clubs are regulated by different national regulations. From this point of view, the lack of a framework of common rules very often favors the rise of disputes that could have been avoided in case more homogeneous and harmonious regulations had existed. In fact, the application of the regulations for players is better defined. For the players, either the FIFA Regulations on the Status and Transfer of Players apply for the internationals, or the national regulations apply to national contracts. This lack of a common rules forces clubs to apply exclusively the ordinary law contract. Despite some countries

---

[1] On the contrary, there are cases such as the French coach Guy Roux, who has the absolute record of longevity on the same club, having remained continuously for over 40 seasons at Auxerre.

[2] This list does not want to be complete because there are so many great coaches in the history of football, coming from different geographical areas, that would be impossible mentioning all of them.

such as Italy,[3] Argentina and Uruguay have historically introduced collective bargaining agreements to provide a framework for regulating relationships between coaches and clubs, in many other countries such as Spain,[4] this option is not available.

In this multi-faceted international landscape, this article aims to provide a breakdown into the regulatory Italian framework examining both the rules brought by the law of professional sportsmen and the clauses of the collective bargaining agreements in force. Salary, method of payments, dismissal in the peculiar form of the so called "esonero", taxation and licenses are amongst the other topics investigated in the paper with the aim to provide a full picture of the Italian discipline applicable to the contracts signed between clubs and professional coaches.

2. *The Italian landscape: Law n. 91/1981*

In Italy, law no. 91/1981 regulates professional sports and put coaches in the category of professional sportsmen. In fact, the two distinctive elements that characterize a professional working relationship in sport are: (i) working full time; (ii) and receiving a salary, which make the difference from amateur activity. Therefore, professional sport worker must be "*remunerated with an amount proportionate to the quantity and quality of the performance, the amount of which is then freely determined by the contracting parties, except complying with collective minimums that are in any case much lower than the amounts agreed*".[5]

By a deeper interpretation, the national legislator considered the coach as an employee, although certain aspects of his contract are subject to negotiation. Hence, this means that the figure of the coach is hybrid, between self-employed and subordinate activity.

On that sense, the contract that binds a coach and a professional football club is a "*typical contract, established and regulated by law, governing consideration, terms and conditions, being of a bilateral nature*",[6] and it is regulated by the article 4 of the aforementioned law n. 91/81.

———————————————

[3] Two separate and distinct collective bargaining agreements are in force between coaches and clubs of Lega B and Lega Pro currently. Instead, the collective bargaining agreement between Serie A coaches and clubs expired some years ago and it has not yet been replaced.

[4] J. de Dios Crespo Pérez "*…the Government legislated on the special labor relationship of professional athletes through Royal Decree 1006/1985, dated 26th June*", in https://www.sportslawandpolicycentre.com/Bulletin_1_2014_TEASER.pdf.

[5] G. Nicolella, *La legge 23 marzo 1981, n. 91 sul professionismo sportivo*. Available at: www.altalex.com/documents/news/2011/12/07/la-legge-23-marzo-1981-n-91-sul-professionismo-sportivo.

[6] E. Battelli, "*Formazione e invalidità del contratto sportivo tra pluralismo delle fonti e unità del sistema normativo*", in Rivista di Diritto Sportivo, Giappichelli Editore, Torino, 2/2016.

The agreement must be drawn up in writing otherwise it would be considered null and void and "*according to the standard contract prepared in accordance with the agreement entered into force every three years by the national sports federation and the representatives of the categories concerned*".[7] The written form, imposed *ad substantiam*, is an essential condition, and its non-compliance results in the contract being null and void, pursuant to art. 1418.3, of the Italian Civil Code.

In a practical basis, each individual contract is the result of "*a complex negotiation consisting of several successive phases*":[8]

a) drafting a written contract which conforms to the model contract
b) submitting the contract before the federation
c) approval of the contract by the federation.

The national legislator was, therefore, oriented towards a multi-level bargaining agreement:

1. bargaining, which involves representatives of the coaches' trade union (AIAC), the leagues and the Italian Football Association (hereinafter, "FIGC"); and
2. individual agreement, to be concluded within the framework of the residual contractual autonomy of the parties.

In Italy, each league applies its own collective bargaining agreement. Indeed, the key step in the contract making process is given by clubs submitting the employment contract to FIGC for approval according to art. 4, par 3, of the aforementioned law. The Article is clear on this point, by charging FIGC to verify the formal requirements and the substance of the contract. It is important to emphasize that the contract must be drawn up in three original copies, one for the coach, one for the club and one to be submitted to FIGC.

If the club does not comply with this obligation, depending on the league involved on the case, the collective bargaining agreement allows the coach to deposit the contract.[9] In case of absence of a collective bargaining agreement, as in Serie A[10] (Italian Premier League) this obligation can be expressly inserted in

---

[7] For reference, see art. 4 of the law no. 91, of 23 March 1981, https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1981-03- 27&atto.codiceRedazionale=081U0091&queryString=%3FmeseProvvedimento%3D%26formType%3 Dricerca_semplice%26numeroArticolo%3D4%26numeroProvvedimento%3D91%26testo%3D%26giornoProvvedimento%3D%26annoProvvedimento%3D1981¤tPage=1.

[8] E. Battelli, op. cit.

[9] The collective bargaining agreement of Lega B, AIAC and FIGC establishes (art. 3) that clubs shall deposit employment contracts within 10 days following the signatures. In case clubs do not comply with this obligation, coaches are allowed to submit employment contracts within 20 days following the written communication of the failure of the submission. In any case, coaches can submit employment contracts by 90 days following the signature. On the contrary, Art. 3 the collective bargaining agreement of Lega Pro, AIAC and FIGC, establishes that clubs shall submit employment contracts within 5 days following the signatures. If clubs fail to do so, coaches can deposit them within 60 days following the signatures.

[10] As already said the collective bargaining agreement of Lega Serie A, AIAC and FIGC expired years ago and has not yet been replaced.

the individual contract. Any further clause related to this subject, which is not formally included in the contract or in a separate agreement between the parties, is considered null and void.

Eventually, during a football season, the parties are allowed to modify their contractual relationship by signing a new contract. In this case, it is necessary to expressly mention in the new contract that the previous provisions are modified by novation. In addition, it is a must to give the reason why a new agreement has been reached by the club and the coach. In this context, any clause that introduce worse conditions for the weaker party of the employment relation, being is the coach, is automatically replaced by those established by collective bargaining agreement. The purpose of this provision is, obviously, to avoid situations where the coach is forced to sign and give in to unfavorable conditions. Conversely, it is possible to agree on more favorable conditions for the coach.

On the basis of the analysis process, after 30 days from the submission, even without any official communication from FIGC, the contract is considered approved. Notwithstanding, if the contract does not comply with the requirements prescribed by the law, the federation shall communicate both parties its rejection. When the failure is due to the club´s fault, the coach has the right to request a "fair compensation", according to the collective bargaining in force amongst AIAC, FIGC, Serie B[11] and Lega Pro.

Finally, it is important to mention that the law forbids the apposition of a "*non-competition clause or any clause restricting professional liberty (...) for the period following the termination of the contract (...) nor can the contract be integrated or modified before its termination with the apposition of a similar clause or agreement*". However, it is arguable whether or not such clauses could be valid and applicable whenever the coach gets a financial compensation.

3. Collective bargaining agreements and standard employment contracts

Generally, the collective bargaining agreement establishes the legal framework that regulates how the parties can govern their mutual interests based on contractual autonomy. Nevertheless, what happens when a collective bargaining agreement is not in force? What are the limits for the parties and how can they regulate their contract? How can disputes be settled in this case?

Essentially, individual contracts can still be signed even in the case where no standard contract is in force (e.g. as in art. 4 of Law 91/1981). By a logical inference, the lack of collective bargaining agreements widens the parties'

[11] Art. 5, collective bargaining Lega B, AIAC e FIGC establishes that "*The extent of compensation is decided by the Court of Arbitration at the request of the coach…The compensation can also be established by agreement between the parties, in a written form , under penalty of nullity, but only in the case that the Federation does not approve the contract*".

contractual autonomy, which, however, must still operate within the limits imposed by the Law n.91/1981 and by the relevant FIGC regulations.

In this regard, the High Court of Sports Justice of the Coni (Italian Olympic Committee), in reference to this theme (Opinion No. 2 of 30 July 2010) stated:

> "*In conclusion, individual contracts are not invalid due to the absence of collective bargaining agreements but may be invalid due to specific defects likely to overwhelm the entire contract or, more likely, individual clauses. In other words, even the absence of a binding standard contract does not preclude the possibility of concluding new individual contracts, but these must comply with the mandatory rules of the national law and the special principles and rules of the sports law including the provisions and requirements of FIGC and, more generally, of CONI legislation.*"

Moreover, the High Court noted that "*there is no absolute lack of discipline and protection as the employment relationship, previously regulated by collective bargaining agreement (expired), remains, in any case, governed by the rules of law and in particular, as regards remuneration, by art. 36 Cost. and any existing conventional provisions, which may also be conclusive, keep applying the above rules (Cass. n. 11602 del 2008; conf. Cass. n. 21234 del 2007)*".

4. Salary conditions

It is interesting to analyze the rules regulating the salary conditions brought by the contractual bargaining agreements. First, the salary is given as a gross amount per year, and it usually consists of:

a) a fixed amount;[12] and
b) a variable amount due to the results of the team or the club.

In this respect, the fixed amount may not be less than the minimum established by the collective bargaining agreement of Lega Pro[13] only for the contract signed by III Division clubs and coaches.

For a contract signed between a coach and a III division club (Lega Pro), the variable amount cannot exceed 50% of the fixed amount. On the other hand, the collective bargaining agreement of Serie B does not impose any specific limits.

In regard to the absence of a collective bargaining agreement for Serie A, the parties involved are free to negotiate both the fixed and the variable amounts as they wish.

In the case of a multi-year contract, the parties shall clarify the terms regulating such extension using the form provided by FIGC, specifying:

[12] The fixed amount has to be paid in equal monthly installments and on the dates established in the collective bargaining agreement or in the individual contract.

[13] Art. 6 of Lega Pro CBA. This specific provision does not apply to contracts between Lega B clubs and coaches and obviously Lega Serie A clubs and coaches.

a) the total gross amount agreed upon
b) the exact number of football seasons
c) the corresponding gross amount (including any bonus or reward) for each season and for each professional category (Serie A, Serie B or Lega Pro). This is necessary in case of a relegation or a promotion from one league to another.

Additionally, there are some other provisions which must also be properly considered, such as those established by art. 7.3 of the collective bargaining agreement of Lega B-AIAC-FIGC: "*The gross amount due for participating in any promotional or advertising initiative of the club shall be included in the emolument. Any further agreement regarding the participation in promotional or advertising initiatives not included in the fixed part of the remuneration shall be provided in the Contract or in a separate agreement*".

It is worth to note that both collective bargaining agreements for Lega Serie B and Lega Pro establish the power of clubs to suspend salary payments, including bonuses and rewards, in cases where "*the coach is sanctioned with disciplinary measures by the Sport Judge due to the involvement in match-fixing or for having breached the betting or doping rules"*. On a similar reasoning, the club can also decide to interrupt the payments of the salary if the coach is unavailable because he is under arrest for other reasons.

In fact, these legal provisions combine both national law and FIGC Code of Justice, which are crucial to tackle match fixing and doping. Moreover, complying with these rules is simply the basic duty for all coaches and members of a football club in order to promote loyalty and to the application of the game's rules.

The duty of loyalty also includes "*the obligation to refrain from any attempt to fix matches, which is harshly punished by FIGC rules. This illegal behavior involves any act or conduct, which aims to alter the result or the regular development of a match in order to obtain undue sports advantages through specific agreements (combines) of various natures. These corruptive schemes are well known as pacts "for winning" or "for losing" which are in direct violation of the duty of loyalty and can cause severe consequences for the club in terms of disciplinary sanctions based on the rule of strict liability*".[14]

Thus, the duty of integrity and fairness is an essential part of the contractual relationship, which adds to the aforementioned duty of loyalty.[15] Then, it is highly recommended to regulate this sensitive matter by means of specific clauses in the individual contracts, even when collective bargaining agreements are in force.

---

[14] V. Frattarolo, *Il rapporto di lavoro sportivo*, Giuffrè, Milano, 2004, 51.

[15] Art. 19 of the collective bargaining agreement Lega B-AIAC-FIGC establishes that "*The coach must act in full compliance with the principles of loyalty, honesty and probity, and must exhibit personal behavior in full respect of the professional commitment. The coach is committed to respecting the instructions issued by the club and the duty of loyalty toward the same club. He must also be an example of discipline and integrity*".

5. *Method of payment and currency*

The payment of the remuneration, both the fixed and variable part, must be made exclusively by bank transfer on the bank account indicated by the Coach in the contract or by subsequent written communication to the club,[16] as expressly established by the collective bargaining agreement applicable to the case.

Therefore, any other form of payment is not allowed. Payments by bank transfer ensure the traceability of the money and the transparency of payments within the agreed deadlines. Consequently, payments by cash, cheques or through bitcoins, cryptocurrencies or other forms of money transfer are not allowed.

In the event of overdue salary of more than one month, both Serie B (art. 16.4) and Lega Pro (art. 13.4) collective bargaining agreements establish that coaches are entitled to "*the monetary revaluation based on the price index calculated by Istat…. and legal interests to be calculated on the net amount from the first day following that on which the payment should have been made*".

Another important issue related to the payments to players and coaches is the currency used.

For instance, in the case CAS 2016/A/4623 & 4624, Joshua Simpson & BSC Young Boys v. Manisaspor, the Court of Arbitration for Sport "*in order to decide if on the date of termination of the Second Contract the Respondent had fulfilled all its financial obligations towards the Player or not, the Panel shall determine if the global amount paid in Turkish Lira (TRY 224,596.00) to the Player corresponded to contractual remunerations agreed or, on the contrary, to additional and extraordinary payments that the Respondent unilaterally decided to make to the Player in concept of collective match bonuses to trigger their sporting performance*".[17] Taking into consideration the specificities of the case,[18] "*the Panel reaches the conclusion that the amount of TRY 224,596.00 that the Respondent paid to the Player corresponded to*

---

[16] This is a specific duty of the coach; consequently, the club will not be required to pay until it receives written communication.

[17] The case involved a player and a club. However, the same is applicable to coaches by way of analogy. The award CAS 2016/A/4623 is available at: http://jurisprudence.tas-cas.org/Shared%20Documents/4623,%204624.pdf.

[18] In said case, the Panel observed that:

i. all the remunerations agreed in the relevant contracts were established in Euros and not in Turkish Lira;
ii. payments made by the club to the Player in Turkish Lira were made to a separate bank account and not to the account where the salaries were paid;
iii. the amount of the payments did not correspond to the remunerations agreed in the relevant contract. Specifically, the club made further payments in Turkish Lira as a surplus to the salaries;
iv. the dates on which the club made payments in Turkish Lira coincided with the dates on which the club achieved favorable results i.e. (either a win or a draw), as corroborated by the witnesses that were examined at the hearing of that arbitration.

the collective bonuses established by the Respondent and that when the Player terminated the Second Contract the Respondent was still in breach of its contractual obligations by owing the Player the amount of EUR 75,000.00".

Hence, it is highly recommended to regulate this sensitive matter in the individual contract with details as well.

6. *Employment process*

It is interesting to also note some legal clauses relating to the employment process. Among them, both Serie B (art. 8.1 and 8.2) and Lega Pro (art. 7.1 and 7.2) collective bargaining agreements establish that in case of "*a multi-year contract, the club is obliged to present, year by year, the official request for registration, countersigned by the coach, within 30 days following the start of the football season*, *unless the contract is terminated*". In the case of failure to present the "*request for registration by the established deadline, the Coach must be considered dismissed*".

7. *Dismissal and dispute resolution clause*

A very peculiar legal institution is the so called "*esonero*" or release or relieve from duty. The relieved coach quits the position or job but remains an employee of the club and he is entitled to receive his full salary, as the contractual relationship is still in force.

In fact, the release represents a hybrid position. The coach is not axed, and the working relationship is still in force. It is essentially a "*unilateral amendment of the contractual terms, to which the general rules are applicable*".[19]

Essentially, the club can relieve the coach:

a) when technical or professional trust in the relationship with the coach is compromised
b) when the relationship between a coach and the players is compromised
c) due to poor sporting results
d) due to pressure from public opinion, media and supporters
e) due to other reasons linked to the sporting activity.[20]

As it was mentioned, the coach has the right to receive all the agreed emoluments. Furthermore, the coach is also entitled to receive the bonuses

———————————

[19] C. Sottoriva, "*Il trattamento contabile dell'esonero dell'allenatore*", in https://www.sportbusinessmanagement.it/2018/12/il-trattamento-contabile-esonero-allenatore.html, and R. Bordon, U. Dal Lago, "*L'esonero dell'allenatore professionista e i suoi riflessi esistenziali*", in https://www.personaedanno.it/dA/700d7bfcbd/allegato/AA_001757_resource1_orig.pdf.

[20] The experience has shown how creative the reasons and the justifications are for clubs to dismiss a coach. Quite often the dismissal is used to disguise sports failure caused by clubs' lack of organization and projects.

proportionally to the period of time he has worked until the dismissal, unless a different agreement had been negotiated between the parties.[21]

The notification of dismissal shall be made in written form, with certainty regarding the date of delivery, by:

– Telegram
– Registered letter with acknowledgement of receipt either in person or by signature of receipt.

These are very important aspects for the legal consequences that may arise, involving both the financial and professional aspects. In fact, the written communication to the coach is not the only formal obligation for the club, which must also inform the registration office of FIGC, besides the corresponding League (A, B or Pro), by means of the official form.

The peculiar aspect of the so-called "*esonero*" is that the coaches remain employed and salaried though exempted from training, but they still are contractually available to come to work in case clubs decided so. According to the legally binding contract, the coach cannot be requested to fulfill other roles,[22] such as youth coach, sporting director, consultant or scout. Being an employee, the relieved coach is, however, due to inform in writing the club if asked to participate in radio or TV sports broadcasts as commentator, always respecting the duty of loyalty provided by collective bargaining agreements and employment contracts.

In case a coach is relieved by clubs before the start of the national championships in which the first team participate, *"he will have the right to unilaterally terminate the Contract and receive the agreed amounts until the date of termination. In this case, notwithstanding art. 38 of Technical Sector Regulations and art. 38 NOIF, the Coach will also have the right to register and carry out activities for another Club*".[23] So, only in this case the dismissed coach is given the opportunity to train another team. Otherwise, in the event that the dismissal is communicated to the coach after the start of the national championship in which the first team participates, the coach will have the right to terminate unilaterally the contract until the end of the running season, but in this case he will not be able to train another team, because the prohibition of art. 38 of the NOIF[24] and art. 38 of the Technical Sector Regulations applies.

The "*esonero*" is regulated by the parties in employment contracts and collective bargaining agreements, due to the absence of this notion in the national law and sporting regulations. Currently it is regulated in Lega Serie B and Lega Pro collective bargaining agreements.[25] So, what happens in the absence of a

---

[21] For reference, see the collective bargaining agreement of Lega Pro (art. 8) and Lega B (art. 9).

[22] Any change of duties can happen only by written consent countersigned by the coach.

[23] For reference, see the collective bargaining agreements of Serie B (art. 9.3) and Lega Pro (art. 8.3)

[24] https://figc.it/media/55323/tit1_noif_art_da36a42_________________________ 27-06-2018.pdf, NOIF FIGC.

[25] We recall that the collective bargaining agreement of Serie A coaches is expired and currently not in force. However, the "esonero" was provided in its last expired edition.

collective bargaining agreement (such as the case of Lega Serie A)? It is generally considered that this eventuality should be regulated entirely by individual employment contracts between coaches and clubs.

As it was mentioned, "*esonero*" is a typical Italian contractual peculiarity. Though, this practice has no application in other countries and is not provided by the relevant FIFA rules.[26] For instance, this is not supported by the well-established FIFA jurisprudence of the Players' Status Committee[27] which, in case a club dismiss a coach by excluding him from his job, it is not allowed that the latter remain an employee of the club. In such scenario, the club's decision of relieving the coach would entail the termination of the employment contract without just cause. Therefore, the coach would be entitled to ask for the compensation due to the damages, in the amount he would have earned, had the employment relationship ended on the agreed deadline, in accordance with article 337c of the Swiss Code of Obligation.

In case of any dispute between clubs and coaches, which is the competent authority to hear the case? Article 4 of the Italian law no. 91, of 23 March 1981 grants the parties the possibility to include in the relevant employment contract a clause according to which any related dispute would be heard by an Arbitration Panel. Thus, in the absence of such clause, ordinary courts would deal with the case.

Article 4 of the Italian law no. 91, of 23 March 1981 does not specify the competent Arbitration Panel, leaving this choice to collective bargaining agreements (this is the case of Serie B and Lega Pro) or to the Parties. In the latter case, clubs and coaches have the opportunity to agree on other Arbitration Panels, such as the Court of Arbitration for Sport. It shall be also noted that, in case of an Italian club and a foreign coach, they can designate the FIFA Players' Status Committee as the competent judicial body to hear any possible contractual dispute (even though it cannot be considered as an Arbitration Panel), in accordance with article 22.c) of the FIFA Regulations on the Status and Transfer of Players.

8. Limits to the coach's extra activities

To collaborate to the balance of the employment relationship, there are some limitations expressly provided in the collective bargaining agreements imposing to coaches the prohibition of carrying out "*any other competitive, working or entrepreneurial sports activity or any other activity incompatible with the*

---

[26] This does not happen in FIFA, where the FIFA Regulations on the Status and Transfer of Player allows termination of employment contracts with just cause and without just cause. However, articles from 13 to 17 of the FIFA RSTP are not directly applicable for coaches, thus Swiss Law applies subsidiary. In this regard, we should mainly rely on article 334.1 and 337c of the Swiss Code of Obligations.

[27] Ex multis, FIFA PSC decision n.07171600-e, n. 0514775, and 06190205-e.

execution of the contract during the term of the same, unless prior written authorization has been granted by the club”.[28]

If the club does not grant such approval, it shall justify the reasons behind the refusal within 30 days after receiving the request from the coach. On the contrary, approval is deemed granted after 30 days without the said refusal. In the case of denial of authorization by clubs, coaches can challenge said decision before the competent authority.[29]

If the coach is already engaged in other works or entrepreneurial activities, he has the obligation to inform the club immediately in order to evaluate and verify whether any incompatibility exists.

9. General obligations for both parties

Clubs cannot interfere with the technical competence of coaches. However, they may intervene, if necessary, with total respect for the prerogatives of coaches, who is in charge of all technical aspects, without jeopardizing the role and image of clubs.

In case of a grave interference by clubs, coaches may submit claims before the competent authority in order to request compliance with contractual obligations or the adoption of sanctions, including the termination of the contract. In such a case, clubs shall be obliged to pay compensation in accordance with the general rules and criteria of compensation for damages.

At the same time, coaches are required not to interfere with the decisions taken by clubs’ management, keeping their activity’s scope within the technical matters in line with the agreed contractual clauses. In that sense, coaches are primarily responsible for enhancing the technical and athletic potentialities of the players and collaborators in order to ensure optimal preparation for the competitive activity of the team. However, it is undeniable that the line between the areas of responsibility is rather thin, especially since the coach has become an iconic figure of the football clubs’ management over the last decades.

It is evident that many of the activities of the club, such as those related to the transfer market, the development of young players and investment in clubs’ structures,[30] can have a decisive impact on the coach’s results in the technical area.

As already stated, the program, the improvement, and the management of the infrastructures of clubs have a direct and an indirect impact on the evolution of the clubs’ sportive results, which are within the coach’s responsibility. Thereby, these issues are dealt with in collective bargaining agreements, where it is

---

[28] For reference, see the collective bargaining agreements of Serie B (art. 14.1) and Lega Pro (art. 12.1).

[29] For reference, see the collective bargaining agreement of Serie B (art. 14.2 and 14.3).

[30] E.g. decisions about the training ground and related infrastructures, location and time for the annual training camp and pre-season preparation, etc.

underlined, as far as possible, the commitment that the club must undertake to ensure the highest efficiency of the team, which is necessary for the coach to achieve his goals.

On that line, the inadequacy or failure to build adequate sports facilities to pursue sportive goals can be the subject of conflict and disputes between the parties. Therefore, it is essential that these aspects should be strictly regulated in the employment contract, which represents the appropriate solution to determine not only the financial aspects (salary and benefits), but also all those issues which directly or indirectly affect the overall performance of the coach, while clarifying the club´s responsibilities as well.

In this regard, the Congo Football Federation versus a coach case, awarded by the Court of Arbitration for Sport in Lausanne in 2008[31] proves how this matter can cause conflicts between coaches and management.

In this specific case, the coach complained about numerous contract's breaches,[32] including delay in payment of bonuses and some monthly salaries, besides grave and repeated infringements of the federation's obligation regarding making available human, structural, financial and technical means necessary for the creation and smooth running of a sporting training center.

The working conditions for the coach and his staff were not compliant in various respects with the contractual agreement. Among various violations, the one relating to the failure to build the sports training center, a central element of both the project and the employment contract, was of central relevance.

Factually, the creation and operation of the Sports Training Center were crucial to the achievement of the objectives set in the contract. Indeed, they had specified in a special clause that the failure to build the sports training center and to manage it properly[33] represented a serious violation of the employment contract, carrying the termination of the contract with just cause by the coach.

Consequently, the Court of Arbitration for Sport recognized the full effectiveness and applicability of the aforementioned clause for the termination of the contract. In addition, accepted the residual claims made by the coach related to the violations of the agreed financial aspects.

---

[31] CAS Award 2008/A/1491 *Christian Letard c. Fédération Congolaise de Football* (FECOFOOT), 16 octobre 2008.

[32] Amongst the others the no payment of the salary of the staff members and the failure of making available an adequate house and a service car as established in the contract.

[33] CAS stated "*l'Employeur n'a pas mis à disposition les moyens humains, structurels et techniques formulés et décidés par le salarié [l'appelant] pour assurer la création du centre de formation et son bon fonctionnement alors cette non-exécution se qualifiera comme une modification essentielle du contrat de travail de Monsieur ...., entraînant dès lors la rupture du contrat aux torts exclusifs de l'Employeur*".

10. *Football coaches and agents*

Presently, football agents have made their place among the most important figures within the football´s world. Over the whole year of 2019, Serie A clubs have spent EUR 187,9[34] million in agents' commissions (registering an increase of 9.5% compared to 2018), while Serie A players have paid almost EUR 14 million to agents over the same period[35] (registering an increase of 55% compared to 2018).

However, commissions paid by coaches and by club regarding coaches are not taken into consideration, since FIGC Sporting Agents Regulation only refers to football players and does not mention professional services provided by agents to coaches. Essentially, FIGC neither forbids nor allows football coaches to be represented by agents. On that sense, since 2015, the Italian FA-Football Association has regulated only the agents' dealings with players.

Worldwide, before the last reform of the FIFA Regulations on Working with Intermediaries on 1 April 2015 (which is still in force),[36] the activities of football agents were governed by FIFA Players' Agent Regulation,[37] which was lastly amended in 29 October 2007 and came into force on 1 January 2008.

On this regard, it is convenient to make a reference to article 1.3 of said regulations, which states:

> "*In particular, these regulations do not cover any services which may be provided by players' agents to other parties such as managers or coaches. Such activity is regulated by the laws applicable in the territory of the association*".

As it is possible to understand, FIFA Players' Agent Regulation clearly established that coaches' agents did not fall under the scope of said regulation, which delegated their legal treatment to the laws applicable in the territory of FIFA Member Associations. As a result, the article 1.5 of FIFA Players' Agent Regulation required Member Association to "*draw up their own regulations which shall incorporate the principles established in these regulations and may only deviate from these regulations where the provisions of the latter do not comply with the laws applicable in the territory of the association*".

Duly complying with the above provision, FIGC issued "*Regolamento Agenti di Calciatori della FIGC*" in order to regulate agents' activities within its territory. The scope of the mentioned regulations does not provide any direct reference to coaches, as in article 1.3 of FIFA Players' Agent Regulation.

---

[34] Available at: https://www.figc.it/media/120605/serie-a-dato-economico-aggregato-societa-2019.pdf.

[35] Available at: https://www.figc.it/media/120624/serie-a-dato-economico-aggregato-calciatori-2019.pdf.

[36] Available at:https://resources.fifa.com/image/upload/fifa-regulations-on-working-with-intermediaries.pdf?cloudid=bntdqpzf9y8ntewsosb1.

[37] Available at:https://resources.fifa.com/image/upload/players-agents-regulations-2008.pdf?cloudid=umrmelh3zftzj9yme11q.

However, article 20.4 of "*Regolamento Agenti di Calciatori della FIGC*" states:

"*Agents may not represent the interests of sports system stakeholders other than players and clubs*"

While FIFA simply left to national ordinary and sportive law the regulations of the activity of agents representing managers or coaches, FIGC explicitly forbade players' agent to represent any other stakeholder of the football system, either natural person or legal entity.

Licensed agents, besides representing players and clubs, could legally represent the interests of coaches under a separate agreement subject to Italian law. Hence, potential disputes should have been decided by the competent Italian court or arbitration, in case of a specific agreement. At the same time, FIGC was entitled to impose disciplinary sanctions. However, FIGC rarely had access to those contracts, being private and available only to the signatory parties.

In 2015 FIFA modified radically football agents' regulations switching to the so-called "deregulation", which abrogated the issuance of licenses and delegated to FIFA Member Associations the implementation of *ad hoc* regulations, upon complying with FIFA Regulation on Working with Intermediaries. Accordingly, FIGC implemented "*Regolamento per i servizi di procuratore sportivo*". Therefore, following another major amendment operated by the Italian legislator, today the football agents' activity is regulated by FIGC Sporting Agents' Regulation.

At the moment, neither FIFA Regulation on Working with Intermediaries nor "*Regolamento per i servizi di procuratore sportivo*", and "*Regolamento Agenti Sportivi*" cover agents' activity with regard to coaches, since the previous few mentions in the previous regulation are no more applicable.

In such context, are licensed players' agents allowed by FIGC to represent also coaches, without the risk of violating any provision and being sanctioned?

In order to answer this question, we shall analyze both Italian law and FIFA/FIGC regulation governing the agents' activity.

Pursuant to article 2 of the Italian law no. 91, from 23 March 1981,

"*For the purposes of this law, athletes, coaches, sports directors and fitness coaches are professional sportsmen…*"

The category of football coaches falls within the category of professional sportsmen upon compliance with CONI and FIGC regulations.

In addition, pursuant to the Preliminary Provisions of the FIGC Sporting Agents Regulation:

"*This Regulations, in accordance with CONI Regulation of Sports Agents, with the principles issued on the subject by Federation Internationale de Football Association (F.I.F.A.) regulate the activity of Sports Agent authorized to operate in the field football, who bring together two or more subjects for:*

i) the conclusion, termination or renewal of a professional sports performance contract;

ii) the conclusion of a contract for the transfer of a professional sporting performance;

iii) the registration of professionals at the F.I.G.C.".

The natural conclusion would be that by combining article 2 of the law no. 91/1981, and the Preliminary Provisions of the FIGC Sporting Agents Regulation, the latter regulation should also apply to cases of conclusion, termination or renewal of professional coaches' employment contract.

However, the article 5.3 of FIGC Sporting Agents Regulation exclusively refers to contracts signed between agents, clubs, and/or a football player, without any mentions whatsoever of professional coaches.

In view of the foregoing, is the contract binding agents and professional coaches subject to the FIGC Sporting Agents Regulation? If so, would coaches and agents be exposed to disciplinary sanctions in case they failed to submit contracts before FIGC?

In order to answer to these questions, FIGC Agents' Department first understands that the FIFA Regulations on Working with Intermediaries is the first legal source, being the hierarchically higher regulations governing football agents. On that sense, the article of the mentioned regulation, states that:

"*1. These provisions are aimed at associations in relation to the engagement of the services of an intermediary by players and clubs to: a) conclude an employment contract between a player and a club* ...".

Moreover, article. 2.1 further states that:

"*Players and clubs are entitled to engage the services of intermediaries when concluding an employment contract and / or a transfer agreement*".

From the reading of the above article, the activity of football agents, as regulated by FIFA, exclusively refers to services provided to players and clubs.

Based on this reasoning, it is necessary to resort to the FICG Sporting Agents Regulation, which by its art. 5.3, states that concerning the representation contracts, which the parties have the obligation to submit before FIGC, exclusively refers to the "*contract entered into and signed by a sports agent, a club and / or a football player, or with both*".

For these reasons FIGC concluded that the current FICG Sporting Agents Regulation exclusively governs the activity of football agents in the context of the services provided to football players and/or clubs. Therefore, professional football coaches are excluded from the application and compliance with FICG Sporting Agents Regulation.

Notwithstanding that, according to the civil, ordinary laws, anyone (including FIGC licensed agents) is allowed to sign representation agreements with professional football coaches, without risking disciplinary sanctions by FIGC, as it happened before 2015. However, these agreements shall be governed by national laws and possible disputes decided by ordinary courts or arbitration, in case of a specific agreement in this sense.

11. Licenses

The coaching licenses required by FIGC[38] to allow professional coaches to perform their services for Italian clubs comply with the hierarchically higher UEFA regulations. In this regard, in the European football, the UEFA Coaching Convention[39-40] provides that the "*high coach education standards to improve the quality of coach education in all UEFA member associations, with the aim of developing better coaches and, ultimately, better players and the overall quality of the game*".[41] Its article 3, detailing the scope of application, states:

"*The present convention*:

a) defines the rights and duties of UEFA and the convention parties with regard to the UEFA coaching diplomas, for all levels of football and futsal;

b) sets out the minimum requirements for coach educators, admission criteria, organization, duration, content, teaching methodology, course completion and issuance of diplomas, further education and the validity of licenses for all endorsed courses;

c) sets out the process for recognizing the competence of coaches educated by a nonconvention party or an ICP.

d) is without prejudice to the right of a convention party to accept any national qualification or equivalent qualification recognized under national or European law for the purposes of domestic competitions or other coaching activities on its territory".

Therefore, UEFA Member Associations and their affiliated clubs must comply with the UEFA Coaching Convention's standards courses and coaching diploma courses.

In order to understand how much FIGC complies with this convention, we refer to article 14 of FIGG Statutes, which empowers FIGC to directly take care of the study and of the qualification activities due to improve the technical aspect of the game of football. In fact, FIGC created the Technical Sector, responsible for the international relations concerning the definition of the rules of the game, and the players and coaches' training. In this regard, the Technical

---

[38] For reference, see arts 16-40 of "Regolamento del Settore Tecnico » (available at : https://www.figc.it/media/122621/parte2_settore_tecnico_art_16a40__________01-07-2020.pdf) and "Sistema Licenze Nazionali 2020/2021" of Serie A (available at: https://figc.it/media/113375/manuale-licenze-nazionali_serie-a_-2020-2021.pdf), Serie B (https://www.figc.it/media/113427/manuale-licenze-nazionali_serie-b_-2020-2021.pdf) and Lega Pro (available at https://www.figc.it/media/113454/manuale-licenze-nazionali_serie-c_-2020-2021.pdf).

[39] The UEFA Coaching Convention was established by European football's governing body in 1997, and every UEFA member association (including the RFEF) had signed up for the convention by 2008 at one or more of the three training levels – Pro, A and B.

[40] Available at: https://www.uefa.com/MultimediaFiles/Download/uefaorg/CoachingCoachedu/02/64/19/58/2641958_DOWNLOAD.pdf.

[41] Vision of the UEFA Coaching Convention.

Sector carries out researching, training, and specialization activities in all aspects of the game, including the social, cultural, scientific, and economic aspects connected to it.[42]

FIGC Technical Sector is governed by its own regulation. The Chapter 2 of the latter describes, the coaches' qualification, classification, and discipline. Therefore, with regard to the issuance of license, FIGC Technical Sector organizes courses for each of the existing coaches' categories. Once the course is successfully completed, the coaches receive the relevant license, allowing them to work in the pertinent leagues and championships.

One of the most important requisites of the licensing procedures, especially for the highest categories, is having a previous career as football player. On that sense, the higher the numbers of matches played, the higher is the final score, useful for the license.

It shall be noted that the 2020 UEFA Coaching Convention does not exclusively refer to UEFA Member Associations, as it happened in the previous edition (2015). Indeed, the 2020 UEFA Coaching Convention further "*sets out the process for recognising the competence of coaches educated by a nonconvention party[43] or an ICP[44]*". Therefore, coaches holding licenses issued by National Associations affiliated to FIFA other than UEFA's and by independent course are entitled to the equality of treatment as the holders of a UEFA license and to their qualification recognized as equivalent.

The same reasoning applies in other continents, such as in Asia. The AFC Regulations Governing the Recognition of Experience and Current Competence (RECC) by the Asian Football Confederation governs the recognition of coaching competence process for Coaches and Instructors who have gained knowledge, practical experience and/or coaching qualifications awarded outside of the AFC jurisdiction. These regulations make it possible to recognize a license equivalent to an AFC license.

However, the 2020 UEFA Coaching Convention opened up to the possibility to coaches who hold licenses issued by football coaching providers' courses. On that sense, a coach holding a license issued by a private institute can apply before any UEFA Member Associations to have his/her license recognized.

After successfully completing the courses, ICP graduates will have their competence recognized under the 2020 UEFA Coaching Convention. In this process, the UEFA Jira Panel, an *ad hoc* committee composed by coach education experts, monitors the correct implementation of the UEFA Coaching Convention.

---

[42] For reference, see article 14 of FIGC Statutes.

[43] Pursuant to article 1.2.m) of the 2020 UEFA Coaching Convention, a non-convention party is defined as "*national association affiliated to FIFA that is not a UEFA member association, or is a UEFA member association but has not signed the present convention*".

[44] Pursuant to article 1.2.j) of the 2020 UEFA Coaching Convention, an independent course provider (ICP) is defined as "*provider of football coaching courses within UEFA's territory that is not a UEFA member association*".

Therefore, UEFA ended the exclusivity originally granted to its Member Associations to issue and recognize coaching licenses. Before this sort of revolution, coaches holding licenses issued by private institutions faced difficulties to exercise their profession, especially in the European territory, because their licenses where not recognized abroad. On this regard, clubs hiring these coaches would have infringed national sports regulation and the relevant UEFA Coaching Convention.

This phenomenon happened in many European countries, such as in Spain, where the Spanish Football Federation (hereinafter, also "RFEF"), along with its territorial federations, is the sole Spanish body entitled to issue UEFA licences. On that sense, being the sole Spanish member of the UEFA Coaching Convention, RFEF granted UEFA licences after the student completed the mandatory coaching courses organized by the same RFEF.

In this football context, the decision rendered by the First Instance Tribunal n.5 of Majadahonda, on 2 April 2019, required the Spanish Football Association to recognise a coaching licence issued by an academic institute, which is not part of the courses organized by the RFEF. The main point of the discussion was to issue the correspondent UEFA licence and, therefore, allow a coach to perform his work outside the territory of Spain. Specifically, the Decision condemned RFEF to realize all the necessary steps in order to issue the pertinent UEFA licence to the coach, who had completed the mandatory coaching course with an academic institute and not with the RFEF. Therefore, this decision was the first that allowed a coach to obtain a UEFA licence without attending a coaching course organized by the RFEF.

With regard to the merits of this decision, the Spanish tribunal applied both Spanish Law (specifically, Article 15 of the Royal Decree 320/2000[45] and Article 55 of the Law on Sport[46]) and sports law (specifically, Book II, Title III of the RFEF General Regulations[47]), besides taking into consideration Articles 20 and 21 of the Charter of Fundamental Rights of the European Union,[48] which ensure the principles of equality before the law and non-discrimination.

This decision established that to evaluate if it is possible for a coach to work in a foreign football federation, the RFEF shall communicate to the foreign football federations which is the licence held by the coach. If the only difference, was the sole issuance of the UEFA licence, the RFEF was forced to issue said licence.

---

[45] *Real Decreto 320/2000, de 3 de marzo, por el que se establecen los títulos de Técnico Deportivo y Técnico Deportivo superior en las especialidades de Fútbol y Fútbol Sala, se aprueban las correspondientes enseñanzas mínimas y se regulan las pruebas y los requisitos de acceso a estas enseñanzas*, available at: https://www.boe.es/buscar/doc.php?id=BOE-A-2000-5990.

[46] *Ley 10/1990, de 15 de octubre, del Deporte*, available at: https://www.boe.es/buscar/act.php?id=BOE-A-1990-25037.

[47] *Reglamento General RFEF*, available at: https://cdn1.sefutbol.com/sites/default/files/pdf/reglamento_general_junio_2019.pdf.

[48] Available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

Specifically, this is a case of a Spanish coach who resided in Switzerland and who obtained a coaching licence issued by the Spanish academic institute *IES Sánchez Cantón de Pontevedra*. This coach was willing to work with a club playing in the Swiss third division. Therefore, the Swiss Football Association requested the RFEF to indicate which was the corresponding UEFA licence held by the coach. The RFEF replied that no UEFA licence could be issued and compared to the one held by the coach.

On the one hand, Spanish Law ensures that coaches with a licence issued by a Spanish academic institute, as well as coaches holding UEFA licenses, are qualified to work in Spain. On the other hand, one of the pillars of the 2015 UEFA Coaching Convention (which was eliminated by the 2020 editions) was "*to ensure that coach education remains under the sole and exclusive control of UEFA and its member associations*".[49]

Actually, before this decision, the licences issued by an academic institute enabled any coach to perform their work in Spain, in any category, as per Spanish Law. However, in case said coach decided to work outside the territory of Spain, he was only authorized to do so if holding a UEFA licence.

Article 5.2.b) of the 2015 UEFA Coaching Convention states "*As a signatory of the present convention, UEFA has the following duties (...) to recognise only diplomas/licences issued by a convention party in accordance with the present convention*" (which provision was eliminated by the 2020 UEFA Coaching Convention). Therefore, in case the mentioned coach decided to move abroad, his licence could not allow him to perform his work because he did not comply with the UEFA Coaching Convention and the regulations of its signatory members.

In the end, the RFEF was judicially forced to face and solve a complex issue due to the overlapping of sports and ordinary laws. Indeed, the above mentioned ruling opened a new scenario, whereby the RFEF was obliged to convert the licences issued by academic institutes into a UEFA licence, allowing the coach to perform his work not only in Spain, but also within the territories of the signatories of the 2015 UEFA Coaching Convention.

However, in recognizing the equivalence of the training diplomas, the RFEF contravened the 2015 UEFA Coaching Convention and they could have been subject to possible sanctions by UEFA.

So, the RFEF appealed the decision (with the support of UEFA) in order to ensure that "*coach education remains under the sole and exclusive control of UEFA and its member associations*".[50] If the Appeal Court had confirmed the first instance ruling, this would have ruled out the exclusive control of the RFEF and UEFA on the coaching license and education system.

---

[49] For reference, see preamble c) of the UEFA Coaching Convention.

[50] For reference, see preamble c) of the 2015 UEFA Coaching Convention, which provision was eliminated by the 2020 edition.

The controversy was ended by the same UEFA, which decided to innovate its view by means of the reformed 2020 UEFA Coaching Convention, thus cutting off the exclusive jurisdiction on coaches' education and opening the way to recognize licenses issued by independent course providers as equivalent to UEFA licenses.

12. Taxation

As reminded above, in accordance with article 2 of the Italian law no. 91, from 23 March 1981, football coaches are considered professional sportsmen provided they comply with the other requirements established by the same law, CONI and FIGC regulations.

Moreover, article 3 of the same law further establishes that football coaches shall be considered as employees, due to the features of their job description.[51] As such, professional coaches' personal incomes shall be taxed based on arts 49 to 52 of the Italian DPR 917/86.[52] On that sense, Italian clubs, as per article 23 of the DPR 917/86, are mandatorily obliged to withhold taxes from the salary's amounts, even if coaches are not tax residents in Italy for the duration of the employment contract.

This situation is governed by article 2 of the DPR 917/86. Therefore, when a coach spends less than 183 days in Italy in 1 calendar year, depending on the fiscal residency and the (possible) applicable treaties with other countries to avoid or mitigate double taxation, coaches will eventually file tax returns at the end of the relevant tax period in the country where they spent more than 183 days in 1 calendar year.

Taking into account the mandatory obligation to pay taxes, it is also important to mention that such obligation is not only related to salary payments. For instance, it is also related to the compensation awarded to coaches in case of termination of employment contracts without just cause by clubs.

Indeed, compensation is usually awarded months or even years after the contract's termination when usually the coaches have left the country. In this scenario, in which country the coach would be required to file the tax return: in the country of employment relation or in the country of tax residency when receiving

---

[51] Art. 3 (Sporting performance of the athlete states):
"*The athlete's performance for consideration is the subject of subordinate employment contract, governed by the rules contained in this law. However, it is the subject of a self-employment contract when at least one of the following requirements is met:*
a) the activity is carried out within a single company sporting event or several related events in a short period of time;
b) the athlete is not contractually bound for what concerns the frequency of preparation or training sessions;
c) the service that is the subject of the contract, despite having continuous, does not exceed eight hours per week or five days every month or thirty days every year".

[52] https://www.gazzettaufficiale.it/eli/id/1986/12/31/086U0917/sg.

the amount of compensation? This question is of ultimate importance if we consider the different taxation of each country, ranging from 0% up to 50% approximately. With the purpose to avoid unfavorable scenarios in which coaches will be required to pay extra amounts in order to comply with fiscal obligations, it is possible to clearly establish any and all consequences of termination, including present and future tax liability, in the same employment contract.

This is exactly what happened in the milestone case CAS 2006/O/1055 (Del Bosque, Grande, Miñano Espín & Jiménez v. Beşiktaş),[53] where the coaching staff sued the Turkish club due to the unlawful termination of their employment contracts. In the interest of practicality, it is convenient to simply refer to the employment contract of the head coach, Mr. Vicente del Bosque.

In fact, article 3C[54] and 3F1[55] of the employment contract clearly and unequivocally established the club's tax obligations over the whole validity of the contract. Specifically, the club agreed on grossing up the net salary of the coach depending on his fiscal residency. In doing so, regardless of his fiscal residency, the coach would have always received the same net benefit, while the

[53] Available at: http://jurisprudence.tas-cas.org/Shared%20Documents/1055.pdf.

[54] *C) TAX MATTERS As a consequence of the payments (salary and bonuses) being free of taxes according to this agreement, the Club shall gross up the amounts to be paid taken into consideration the tax residence of the Coach. In this sense:*

C. 1) Considering the Spanish tax regulations, a tax rate of 45% shall be applicable to the net amounts fixed in paragraphs A) and B) to be paid during 2004. Consequently, the Club shall gross up the amounts stated in this agreement so that after deducting the tax rate of 45%, the net amounts fixed in paragraphs A) and B) are the result.

C. 2) The amounts fixed in paragraphs A) and B) to be paid during 2005 shall be calculated considering the tax regulations of Turkey, as the Coach will be considered as a tax resident of Turkey. Consequently, the Club shall gross up the amounts fixed in paragraphs A) and B) taken into consideration the tax rate stated in the applicable legislation in Turkey. The Coach will do his best efforts to be considered as tax resident in Turkey for the fiscal year 2005.

C. 3) The amounts fixed in paragraphs A) and B) to be paid during 2006 shall be calculated taken into consideration the tax rate of 45% as stated in the Spanish legislation. Consequently, the Club shall gross up the amounts fixed in paragraphs A) and B) taken into consideration the tax rate of 45% or the tax rate stated in the applicable legislation in Spain in 2006. During 2004 and 2006, according to the Tax Treaty to avoid double taxation between Spain and Turkey, the Club shall withhold the non-residents tax and provide the Coach the documents certifying the withheld figure of this tax. As a consequence to the former the Club shall pay the Coach the net amounts agreed upon, plus the difference between the applicable Spanish tax rate (45%) and the tax rate applicable to the non-residents according to the Tax Treaty to avoid double taxation between Spain and Turkey. Without prejudice to what is stated in this clause, the parties commit themselves to study other alternatives to structure and plan their respective tax obligations arising from this contract for a period of two (2) weeks from the date in which this contract is signed".

[55] *3.F1. If the Club decides to terminate this contract before the termination of its duration, the Club shall pay the Coach all the salaries and bonuses pending at the date of termination. Under no circumstance, the amount resulting from the anticipated termination of this contract shall be under the figure that results from subtracting from 4,000,000 Euro net, the amounts paid by the Club until the date of this hypothetical termination. The amount to be paid resulting from the anticipated termination shall be paid taken into consideration the tax residence of the Coach at the moment of termination.*

club was responsible to satisfy all coach's tax liabilities related to the employment relation.[56]

Besiktas and Del Bosque concluded the employment contract on 6 June 2004, valid until 30 June 2006. Since the club terminated the contract on 27 January 2005 without alleging any reason whatsoever, the coach claimed to condemn the club to pay compensation for such unlawful termination in accordance with article 3C and 3F1 of the employment contract.

CAS firstly acknowledged that the coach was tax resident in Spain, both at the date of termination and when the award was rendered. As such, the Panel found that the amount due to the coach shall be the net sums due in application of article 3F1 of the employment contract, increased by a 45% gross-up, corresponding to the Spanish tax rate on personal income.

Had the employment contract lacked a so detailed tax provision, the coach would have most probably borne the whole fiscal burden. Indeed, the employment contract clearly established that the amount of compensation should have been paid based on the fiscal residency of the coach at the date of termination. Since the contract was terminated on 27 January 2005, when the coach was tax resident in Spain, the coach was entitled to receive an additional sum by application of the 45% gross-up.

However, even if receiving this additional sum, it does not necessarily entail that the coach would have fully complied with the Spanish tax laws or, at the opposite, the fiscal charge could be lower than 45%, thus allowing the coach to register a higher benefit. In this regard, it is relevant to identify where the coach is tax resident when receiving the amount of compensation, because he will be required to pay the relevant taxes in the tax period in which he receives the amount of compensation. In the case at hand, supposing that the club fully complied with its financial obligations toward the coach in 2007 (the relevant CAS award was issued on 9 February 2007) the latter would have be required to pay taxes where he was tax resident in 2007, when he received compensation. In case the coach was tax resident in 2007 in a country with a higher personal income tax rate than 45% (for example at 48%), he would have been required to bear the difference amounting to 3%. At the opposite, in case the coach was tax resident in 2007 in a country with a lower personal income tax rate than 45% (for example at 42%), he would have received a higher net benefit amounting to 3%.

---

[56] The CAS award 2017/A/5164 *FAT v. Victor Jacobus Hermans*, award of 2 March 2018, defines "net salary" at para. 134 as follows: "*In this regard, the Panel notes that a "net salary" is not an uncommon feature of employment contracts in professional football. Under such an arrangement, the employer, who is domiciled in the country where the employment contract is concluded and is familiar with its tax implications, assumes the responsibility to discharge the tax obligations arising from income owed to the employee under such employment contract: "It must be added that it is a common understanding in the practice of sports contracts [...] that the "net amount" refers to the final amount the creditor expects to receive in its bank account. Under this approach, all sorts of taxes, expenses and charges due to the tax authorities [...] in connection with the payment [...] are to be paid by the debtor on top of the agreed net amount" (CAS 2012/A/2806 at no. 75).*

In order to avoid such uncertainty, a possible solution would be to establish in the employment contract that, in case of termination, the club would be required to pay compensation together with all fiscal burdens taking into consideration the tax residency of the coach when receiving compensation (rather than when the contract is terminated, as it happened in the Del Bosque case). In doing so, the coach will be fully able to comply with its fiscal obligation. Thus, avoiding either positive or negative surprises linked to his tax residency at the date of termination.

13. The Beckham law and the current Italian law establishing a special tax regime

Recently, Mr. Javier Tebas, President of La Liga, called for a fiscal reform in order to reduce clubs' tax liabilities when paying players and coaches' salaries.[57] He specifically refers to the fiscal advantages of Italian clubs, which are subject to a lower tax burden than Spanish clubs and therefore benefit of advantages in the competitive balance with the other European clubs. In fact, Italian clubs are able to offer higher salaries, thus attracting top players and coaches. Actually, this was definitely an important card Inter played in the negotiation with Antonio Conte, persuading him to became Inter head coach in 2019.

In 2006, the Spanish legislator already issued a special tax law to attract qualified human resources to Spain by means of tax incentives. "*Ley 35/2006 de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio*" offered a special regime to workers, who would move to Spain and become resident.

This law, mostly known as "Beckham Law", allowed those workers who had their usual residence in Spain and who met a series of requirements to choose to declare their income through the IRNR[58] (maintaining their status as taxpayers in the IRPF[59]), during the year of the signature of the employment contract and the following five. In doing so, they were taxed at a maximum rate of 24.75%.

After 13 years following the introduction of Beckham Law, the Italian legislator issued a similar law with the same purpose of attracting to Italy human resources by means of tax incentives. Article 5-quarter and 5-quinquies of the Italian law n.58, 28 June 2019,[60] introduced a special tax regime for professional sportsmen who move to Italy to work, provided that:

i. They have been resident abroad during the two previous fiscal terms;

---

[57] For reference: https://www.palco23.com/competiciones/javier-tebas-laliga-si-no-hay-una-bajada-de-impuestos-al-futbol-perderemos-mas-talento-y-disminuira-el-valor-audiovisual.html.

[58] Income tax for non-resident.

[59] Physical person Income tax.

[60] Available at: https://www.gazzettaufficiale.it/eli/id/2019/06/29/19G00066/sg.

ii. They maintain their residency in Italy during the next two years following their move to Italy;
iii. They mainly perform their professional activities within the Italian territory.

This special fiscal regime for professional sportsmen, as from 2020 covers five years and it consists in a 50% deduction of professional sportsmen tax base, upon a payment of a tax amounting to 0,5% of the tax base. In order to define professional sportsmen, the Italian legislator directly refers to the Italian law 91/81 which includes athletes, coaches, technical-sports directors and athletic trainers.

Another important fiscal incentive is established by article 24 bis (option for substitute tax on income earned abroad by natural persons who transfer their tax residence to Italy) of Italian Law 232/2016, which entered into effect on 1 January 2017. It is especially attractive for wealthy foreigners who are willing to transfer their residence to Italy, because it provides them with the choice of paying a flat tax amounting to EUR 100,000 every year, regardless of their personal income.

Thus, natural persons who decides to move their fiscal residence to Italy have the option to apply for this tax with regard to income generated abroad, provided that:
i. they have not been fiscally resident in Italy, for at least nine tax periods out of the ten preceding the beginning of the period of validity of the option;
ii. the substitute tax does not apply to the capital gains from the sale of qualifying holdings, financial instruments, contracts etc. The option referred to in paragraph 1 is revocable and ceases to be effective fifteen years after the first tax period of validity of the option.

In doing so, all incomes earned abroad will be taxed by means of this substitute flat tax of EUR 100,000 for each tax period in which the option is valid, irrespective of the amount of income actually earned. A flat fee equal to EUR 25,000 payable for each tax period is also established for each of the family members of the main taxpayer.

14. Conclusion

From a sporting perspective, in the game of football the same rules apply in all countries, where the International Football Association Board issues the Laws of the Game. As such, football coaches are in principle mainly required to manage and train players how to perform in order to win on the pitch. However, even though the same rules apply, the game of football is not played equally everywhere because it is the natural result of years of evolution, which are intrinsically linked to the relevant territory, thus to its traditions and peculiarities.

The same happens from a legal perspective, where in principle coaches and clubs are bound by collective bargaining agreements and employment contracts. However, said agreements differently govern employment relationships and related consequences. In this regard, the Italian coaches' trade union should play a major role in ensuring legal security and protection to football coaches' legitimate rights.

However, this does not always happen as demonstrated, for instance, by the long-dated absence of a collective bargaining agreement regulating the working relationship between Serie A clubs and coaches, who have a wide contractual freedom when entering into employment contracts. Such freedom could be detrimental to coaches, generally being the weaker contractual party, while benefiting clubs, which usually have more bargaining power when negotiating the terms of employment contracts. Nevertheless, this is not an Italian peculiarity, where the maintenance of contractual stability of the FIFA RSTP (arts. 13-18) does not apply to coaches, but exclusively to player, as confirmed by CAS.[61] Therefore, not even FIFA provides a specific regulation for coaches, while it only refers to its long-standing jurisprudence when deciding cases between clubs and coaches. This is mostly due to the absence of an established international coaches' trade union at the round tables of the main football stakeholders in which, at the opposite, FIFPro[62] has always a seat and an established presence. The international coaches' landscape is expected to be modified by a specific regulation as announced by FIFA, which should be published in 2021. We hope it will also entail a development within the Italian coaches' legal framework, which has been too much static over the last years.

Along this article we have highlighted the characteristics of the Italian legal framework and its uniqueness such as, for instance, the institution of "*esonero*", which is well known by local trainers but it can be tricky for foreign coaches who, without being fully aware, may remain employed and salaried, though exempted from coaching, but still contractually available to be reinstated in their positions at the clubs' discretion.

Moreover, the current fiscal incentives aimed to attract professional athletes to come rendering their professional services to Italy, as well as the 2020 UEFA Coaching Convention open new scenarios for the future. On one side, clubs are now requested to pay less taxes associated to the salaries of coaches who move their residence to Italy for working purposes. Thus, having more financial resources to pay higher salaries. On the other side, the licenses issued by independent course providers can be recognized as equivalent to UEFA licenses. Thus, creating more working opportunities for coaches by opening a new market. Indeed, the end of the FAs' exclusivity on coaching license will inevitably encourage any coach to achieve the most prestigious European benches, which is perfectly in line with the pyramid structure of the European football.

As such, foreign coaches should be fully aware about the peculiarities of the Italian system before entering into an employment contract with Italian clubs. In the same line, Italian coaches willing to work abroad should be also aware that the characteristics of the Italian system described along this article may not apply in other countries.

---

[61] For reference, ex multis see CAS 2017/A/5402 *Club Al-Taawoun v. Darije Kalezic*, at para. 98 and CAS 2015/A/4161 *Vladimir Sliskovic v. Qingdao Zhongneng Football Club*, at para. 115.

[62] FIFPRO is the only global representative for professional football players.