Spanish Commercial Court grants provisional measures protecting *Super League* project and submits preliminary ruling to the European Court of Justice

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

➔ ***European Super League – UEFA – FIFA – Disciplinary litigation – National courts – National law***

UEFA and FIFA have already been notified of the civil claim filed by Super League*. However, this lawsuit does not travel alone.*

The judge in charge of the Commercial Court no. 17 of Madrid has already adopted several decisions with a different scope but a high potential impact in the future of European football competitions:

- provisional measures *inaudita pars* protecting the *Super League* project issued on 20 April 2021, followed by a new decision issued on 1 July 2021;
- a request for a preliminary ruling from the European Union Court of Justice (ECJ).

In fact, the first decision has already produced practical consequences: UEFA announced that the disciplinary action against *Real Madrid*, *Barcelona* and *Juventus* is suspended after it was served with the Court order banning it from intimidating the *Super League* clubs. However, the legal war has just begun and it will result in anything but a *Blitzkrieg*.

The first skirmishes

UEFA announced on 7 May 2021 that it had launched a disciplinary investigation into these three clubs, after they refused to recant their support for the breakaway competition.

Nevertheless, the other nine clubs (the *Premier League* clubs along with *Atletico Madrid*, *AC Milan* and *Inter Milan*) have officially signed up to a settlement with UEFA to participate only in the existing open European competitions and accepted giving up 5% of revenue for one season playing in Europe. It was not specified if that would be this or a future season.

The nine clubs will also make a combined payment of EUR 15 million for what UEFA called a "*gesture of goodwill*" to benefit children, youth and grassroots football.

In a move to prevent them from deploying the *Super League* threat again, the clubs have also agreed to be fined EUR 100 million if they seek again to play in an unauthorized competition or EUR 50 million if they breach any other commitments to UEFA as part of the settlement.

> ***"The same cannot be said for the clubs that remain involved in the so-called 'Super League', and UEFA will deal with those clubs subsequently"***

However, on 9 June 2021, a UEFA statement said: "*UEFA notes that the decision to temporarily stay the proceedings has been taken by the UEFA Appeals Body following the formal notification made to UEFA by the Swiss competent authorities on 2 June 2021 of an ex-parte court order obtained on 20 April 2021 by the legal entity European Super League Company SL from the Madrid Commercial Court No. 17.*"[1]

1 UEFA.com, 9 June 2021

All these actions from UEFA made the Spanish judge react again. In a new decision issued on 1 July 2021[2], the judge considers that these actions suppose "*a flagrant breach*" of the Order of precautionary measures issued in April, "*seeking an imposition by way of the facts of allegedly anti-competitive practices, with express disregard for what was ordered in a judicial resolution of which there was public knowledge.*"

He adds that the violation appreciated is not "*isolated*" but "*the result of a strategy directed by the defendants in order to cause the ineffectiveness of a judicial resolution.*"

On the other hand, this proactive judge deems that "*the announcement of the suspension of the disciplinary proceedings initiated against Real Madrid Club de Fútbol, Juventus de Turin and Fútbol Club Barcelona in no way alleviates the aforementioned breach.*"

For all these reasons, the Spanish Court has agreed to require UEFA again, with express warning of the imposition of pecuniary fines and of incurring in the crime of disobedience to the judicial authority, to comply with the following obligations:

1. Cancel, override and close the disciplinary proceedings against *Real Madrid*, *Juventus* and *Fútbol Club Barcelona*.

2. Refrain from excluding the founding clubs of the *European Super League* from competitions organized by UEFA;

3. Regarding the measures and commitments imposed by UEFA on the nine repentant revoke:

   - the disguised sanction consisting of a 5% reduction in income and a contribution to the Solidarity Fund of EUR 15 million;

   - the imposed obligation to proceed to dissolve the *European Super League* and to terminate the legal proceedings initiated by the *European Super League*;

   - the penalty of EUR 100 million in case of breach of the commitments of the agreement and, in particular, if they intend to participate in the *European Super League* of football; and,

   - annul any other terms of the agreement that have the effect of preventing or hindering, directly or indirectly, the preparation of the *European Super League*.

4. Publish on UEFA's website the actions described above carried out in compliance with the Order of precautionary measures;

5. Instruct its associate members, including national federations, confederations, licensed clubs and national or domestic leagues, to comply with the orders and prohibitions contained in the Precautionary Measures Order and, in particular:

   - regarding the English *Premier League*: to instruct it to cancel, override and close any actions taken in contradiction of said Order, including in particular the sanctions announced on 9 June 2021 on the six English founding clubs;

   - regarding the Italian Football Federation: to instruct it to refrain from imposing on the Italian founding clubs any conditions related to the *European Super League* to continue participating in their national competitions;

   - regarding both the English *Premier League* and the Italian Football Federation: to refrain them from adopting any other measure that has the effect of preventing or hindering, directly or indirectly, the preparation of the *European Super League*, violating the Precautionary Measures Order;

   - Refrain, by themselves or through any of their leaders, in particular the members of the UEFA Executive Committee, from carrying out any action, including making public statements that, due to their content, imply a breach of the Order of precautionary measures of 20 April 2021.

As anyone can imagine at this stage, the parties will fight for months, maybe years, in the fields and the streets.

Let's take a look at the grounds for both decisions.

The reasons for the precautionary measures

On 20 April 2021, Commercial Court no. 17 of Madrid granted provisional measures forbidding FIFA and UEFA to adopt, for the duration of the main proceeding, any type of sanctions against the *Super League* or the teams or players participating in the projected new European competition.

2 Juzgado de lo Mercantil no. 17 de Madrid, 1 July 2021, European Super League

According to the Spanish Civil Procedural Law, it is only possible to adopt precautionary measures "*inaudita pars*" when reasons of urgency justify the need of preventing the purpose of the precautionary protection from being thwarted through the necessary delay derived from hearing the counterpart.

The decision adopted by the Spanish judge orders FIFA and UEFA to refrain from any action that may affect the launch of the competition or supposes a veto to the participation of the founding clubs in the competitions in which they are currently playing, until the Court has fully considered the case. In the event that, prior to the decision on the precautionary measures, any such action has already been carried out, FIFA and UEFA shall take the necessary steps to remove it and to leave it immediately without effect.

The claimant is *European Super League Company S.L.* (ESLC), a limited liability company whose members are: *Real Madrid*, *AC Milan*, *FC Barcelona*, *Atlético de Madrid*, *Manchester United FC*, *FC Internazionale de Milano S.P.A.*, *Juventus FC*; *The Liverpool FC* and *Athletic Grounds Limited*, *Tottenham Hostpur FC*, *Arsenal FC*; *Manchester City FC* and *Chelsea FC Plc.*

ESLC is the sole owner of the *Super League* and the parent company of three other companies in charge of the management and supervision of the *ESLC*.

In order to justify the need of adopting these measures, the following provisions of the FIFA Statutes were quoted:

- Article 22 obliges regional confederations to ensure that international leagues or other similar organisations of clubs or leagues are not formed without FIFA's consent or approval;

- Article 71 grants FIFA, the confederations and national federations members the exclusive competence to grant prior authorisation for the organisation of international competitions and expressly prohibits the possibility of holding matches and competitions that are not previously authorised by FIFA, national federations member or by confederations:

- Article 72 prohibits players and teams affiliated with federation members to play matches or maintain sports relationships with players, teams not affiliated with FIFA members or who are not provisional members of the confederations;

- Article 67 confers exclusive ownership of all rights (property, commercial and marketing or intangible) on international competitions without restriction to FIFA, its member national associations and the confederations. Accordingly, Article 68 grants FIFA the exclusive responsibility for the authorisation of the distribution of the images, sounds and match data.

Those provisions are reiterated in Articles 49 to 51 of UEFA's Bylaws. As a consequence, UEFA is granted a monopoly on the organisation of international competitions in Europe; international competitions in Europe that have not previously been authorised by UEFA are not allowed.

Within this context, and based on Article 102 TFEU, the applicant seeks a declaration of abuse of a dominant position by FIFA and UEFA on the internal football market. Furthermore, under Article 101 TFEU, it requests a declaration related to the violation of free competition in the internal football market, carried out by UEFA and FIFA through the imposition of unjustified and disproportionate restrictions. It asks as well for injunctive relief: the anti-competitive behaviour of FIFA and UEFA and its future repetition shall be prohibited. Finally, it applies for the removal of the effects of any measure or action that the defendants may have carried out already, directly or indirectly.

From the documents accompanying the request for precautionary measures, the Commercial Court infers (among others) that:

a) Several professional football clubs have set up a new professional football competition called "*Super League*". The *Super League* aims to become the first European competition on the side-lines of UEFA, held annually and with the aim of maximising the possibilities to compete with the highest-level athletes and clubs. However, such competition would not prevent participating clubs from participating in their respective national competitions and domestic leagues;

b) "*Super League*" has communicated the creation of the aforementioned competition to FIFA and UEFA, organisations that have, until now, exclusively organised international professional football competitions;

c) Following that communication, FIFA and UEFA made a statement expressing (i) their refusal to recognise the creation of a European "*Super League*",

(ii) they warned that any player or club that participates in the said competition would be expelled from the competitions organised by FIFA and the confederations, and (iii) stated that all competitions must be organised or recognised by the corresponding body;

d) This statement was confirmed by another one of 18 April 2021 issued by UEFA, the English Football Association and *Premier League*, the *Real Federación Española de Fútbol*, the Italian Federation of football and the Italian league *Serie A*. This statement included a new warning regarding the adoption of disciplinary measures in respect of clubs and players participating in the creation of the *European Super League*;

e) The European Association of Football Professionals Leagues released a statement of unanimous support for the statement from FIFA and UEFA for the purposes of coordinating the measures necessary to prevent the operation of the new "*Super League*" competition and/or to adopt the disciplinary measures announced by FIFA and UEFA regarding those clubs and/or footballers participating in the new competition;

f) Should those measures be adopted, the clubs and/or players participating in the *Super League* would be prevented from participating in the EURO of June 2021, the Olympic Games in July 2021 and the World Cup in 2022.

In light of the foregoing, the applicant submits that the monopoly exercised by FIFA and UEFA regarding the organisation and management of national and international football competitions, as well as the exclusivity in the management of economic returns derived from said competitions, together with the sanctions announced by those private organisations, prevent the existence of free competition in the market of sports competitions. Therefore, should FIFA and UEFA implement the above-mentioned measures, the *European Super League* project would fail due to the impossibility of fulfilling the aforementioned compatibility condition. In addition, the investments and financial contributions by *J.P. Morgan* would be lost.

It is also submitted that these measures would affect trade between EU Member States and constitute an infringement of the following community freedoms:

a) The freedom to provide services regulated in Article 56 TFEU by preventing the provision of services by the *ESLC*;

b) The free movement of workers under Article 45 TFEU, by preventing players from providing their services through participation in the *European Super League*;

c) The freedom of establishment of Article 49 TFEU, by preventing the creation of the three companies that would be in charge of the management and supervision of the *ESLC*;

d) The freedom of movement of capital and payments regulated in Article 63 TFEU, preventing intra-community movements of payment and capital linked to the *European Super League*.

According to the Court, the conditions required to grant provisional measures are satisfied. In particular, Article 728 of the Spanish Civil Procedure Code (LEC) refers to the prerequisites of *fumus boni iuris* and *periculum in mora*. Furthermore, Article 733.2 of the LEC establishes the conditions to grant provisional measures inaudita pars.

Regarding *fumus boni iuris*, the Court considers that FIFA and UEFA, through the regulatory power of international football competitions and the possibility of adopting disciplinary measures, enjoy a dominant position in the relevant market (organisation of professional football competitions) and have abused their position of dominance. Such abuse is materialised in the application of the FIFA and UEFA Statutes that submit to authorisation of such private entities the creation of alternative sports competitions, being able to adopt sanctioning measures against those football clubs that do not submit to this authorisation and violate the aforementioned statutory precepts. Such prior authorisation is not subject to any type of limit or objective and transparent procedure but to the discretionary power of both private organisations, which due to the monopoly in the organisation of competitions and exclusive management of derived economic returns of these sports competitions, have a clear interest in the denial or authorisation of the organisation of the aforementioned competitions. Consequently, such actions imply *de facto* the imposition of unjustified and disproportionate restrictions, which have the effect of restricting competition in the internal market.

Moreover, abuse of dominance position can be inferred from Articles 67 and 68 of the Statutes of FIFA, in that they oblige the clubs to assign the commercial rights of the sports competitions in which they participate.

In respect *periculum in mora*, the Court considered that in the course of the proceedings, FIFA and UEFA could adopt disciplinary measures announced in the FIFA and UEFA's statement by applying the transcribed statutory article, that would cause the *European Football Super League* to be unable to start, causing damage irreparable to the clubs and players called to participate in the *Super League* and frustrating the tutelage that could be granted in an eventual judgment against the Respondent. The imposition of some of the penalties disciplinary measures announced by FIFA and UEFA would seriously jeopardise the funding of the *Super League*, taking into account the conditions established in the Shareholders and Investment Agreement of the founding clubs of the *European Football Super League*.

Finally, the Court considers the proportionality and suitability of the measures. In this regard, it concludes that the provisional measures requested are proportionate and suitable to guarantee the protection intended in the main proceedings, avoiding actions by FIFA and UEFA that would prevent the protection that could be granted in an eventual judgment against the Respondents. Furthermore, the requested measures lead to protect free competition in the relevant market, avoiding the adoption of actions by FIFA and UEFA, such as those already announced, which due to the above would definitively prevent the implementation of the *European Football Super League* project.

Moreover, the interim relief requested must be adopted *inaudita pars*. The defendants have publicly announced the imminent adoption of measures restricting free competition; therefore, it is urgent to adopt the relief applied for without hearing the other parties. Regard should be paid to the next celebration of the semi-finals of the competition organised by UEFA, the UEFA *Champions League*, where up to three of the founding clubs of the *European Super League* participate. The adoption of the disciplinary measures announced by FIFA and UEFA could compromise the participation of those football clubs in the competition; the negative impact on free competition, latent in the provisions of the FIFA and UEFA Statutes above mentioned would thus crystalise, causing irreparable damage of an economic and sporting nature to the clubs and players affected.

The fact that FIFA and UEFA have their domiciles abroad and the need to seek legal assistance to serve the present proceeding, with the consequent greater delay in the summons of the parties to a hearing in a near period of time, further evidence the need to grant the measures *inaudita pars*.

The provision of a bank guarantee amounting to EUR 1,000,000 is deemed sufficient security under the protection of Article 728.3 second paragraph of the LEC to respond to damages that may be caused.

The preliminary ruling

In general, this procedure is considered useful when, in a case before a national court, a question of interpretation which is new and of general interest for the uniform application of EU Law is raised, or where the existing case-law does not appear to give the necessary guidance to deal with a new legal situation. In such cases, the national courts are entitled, under Article 267 TFEU, to refer to the ECJ for a preliminary ruling.

Following this possibility, Commercial Court no. 17 of Madrid has also asked Europe's top Court if FIFA and UEFA are able to impose restrictions or penalties on clubs who remain part of the planned *Super League* competition. In particular, it raises the following six questions:

1. Should Article 102 TFEU be interpreted in the sense that the said article prohibits abuse of a dominant position consisting of FIFA and UEFA establishing in their Statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, as well as any similar articles contained in the statutes of the member associations and national leagues), which requires prior authorisation from those entities, which have been attributed exclusive competence to organise or authorisee international competitions of clubs in Europe, for a third entity to establish a new pan-European club competition such as the *Super League*, when there is no regulated procedure based on objective, transparent and non-discriminatory criteria, and taking into account the possible conflict of interest that affects to FIFA and UEFA?

2. Should Article 101 TFEU be interpreted in the sense that the said article prohibits FIFA and UEFA from requiring in their statutes (in particular Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, as well as articles of similar content in the statutes of the member associations and national leagues) a prior authorisation from those entities, which have been attributed the exclusive competence to organise or authorise international

competitions in Europe so that a third entity can create a pan-European club competition such as the *Super League*, in particular, when there is no regulated procedure based on objective and non-discriminatory criteria, and taking into account the possible conflict of interest that would affect FIFA and UEFA?

3. Should Articles 101 and/or 102 TFEU be interpreted in the sense that the aforementioned articles prohibit an action by FIFA, UEFA, their member associations and/or national leagues consisting of threatening to adopt sanctions against the clubs participating in the *Super League* and/or their players for the deterrence they can generate? Suppose the sanctions for exclusion from competitions or prohibition to participate in national team matches are adopted; would such sanctions, without being based on objective, transparent and non-discriminatory criteria, constitute a violation of Articles 101 and/or 102 TFEU?

4. Should Articles 101 and/or 102 TFEU be interpreted in the sense that the provisions of Articles 67 and 68 of the FIFA Statutes are incompatible with them insofar as they identify UEFA and its member national associations as "*original owners of all rights derived from the competitions ... under their respective jurisdiction*" depriving the participating clubs and any alternative competition organiser of the original owner of the said rights, assuming the exclusive responsibility for their commercialisation?

5. If FIFA and UEFA, as entities that attribute themselves exclusive competence to organise and authorise international football club competitions in Europe, prohibit or oppose, based on the aforementioned provisions of their statutes, the development of the *Super League*, should it Article 101 TFEU may be interpreted in the sense that these restrictions to competition could benefit from the exception established in this provision, considering that production is substantially limited, the appearance of alternative products to those offered by FIFA/UEFA is prevented in the market and innovation is restricted, by preventing other formats and modalities, eliminating potential competition in the market and limiting consumer choice?

   Would such a restriction benefit from an objective justification that would make it possible to consider that there is no abuse of a dominant position within the meaning of Article 102 TFEU?

6. Should Articles 45, 49, 56 and/or 63 TFEU be interpreted in the sense that they constitute a restriction contrary to any of the fundamental freedoms recognised in the said precepts a provision such as that contained in the statutes of FIFA and UEFA (in particularly Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, as well as any other similar articles contained in the statutes of the member associations of the national leagues), as they require prior authorisation from those entities for the establishment by an economic operator of a member state of a pan-European club competition such as the *Super League*?

The *European Super League* and the role played by the members of Spanish clubs

By Ana Cortés Bendicho
Lawyer, Ruiz-Huerta & Crespo Sports Lawyers
Valencia – Spain

→ ***European Super League – National law***

The European Super League *has revolutionised the world of football, and many articles and opinions have been written about it and its various vicissitudes since its announcement by* Florentino Perez *on 18 April 2021.*
*However, the great forgotten ones in the discussions and commentaries have been the members or "*socios*", despite the fact that they are an essential figure, without whose support the clubs could not survive. Therefore, we are going to briefly analyse the* Super League *from the point of view of the members of the Spanish clubs involved.*

The first thing to bear in mind is the different legal forms that football clubs can take in Spain, as the form affects members' rights.

Until 1990, all Spanish football clubs were merely private associations, whose corporate purpose was the promotion and practice of football and participation in non-profit sporting activities and competitions, and which were governed by Spanish Associations Law, which did not contain any special provisions in relation to those of a sporting nature.

In 1990, due to the enormous development of professional sport, Law no. 10/1990 of 15 October 1990 on Sport was adopted, and is still in force today. One of the novelties contained in the aforementioned Law was the creation of the figure of "*Sociedades Anónimas Deportivas*" (SAD), or Sports Public Limited Companies, a variant of the commercial limited companies, which was conceived to provide greater control and transparency to the clubs, and which was developed by Royal Decree no. 1251/1999 of 16 July 1999 on sports limited companies.

The said Law required clubs participating in official professional sporting competitions at the State level to adopt the form of a Sports Public Limited Company, becoming, in this way, subject to the general regime of Public Limited Companies, *i.e.* ceasing to be mere non-profit associations to become limited liability companies, of a commercial nature, with the particularities established by Sports Law. And what happened to the members of the transformed clubs? They ceased to have this status and became shareholders (they participate in the company capital through the acquisition of nominatives shares) or subscribers (they pay a fee to have certain rights, normally only the right to occupy a seat at sporting events, but they are not owners of part of the capital as they do not own shares).

Although the Spanish Sports Law generally required all clubs participating in the aforementioned competitions to become public limited sports companies, the Seventh Additional Provision of the Law provided an exception to the rule. According to the said exception, clubs that, at the time of the Law publication, complied with the requirement of economic reorganization were not forced to become public limited sports companies. Furthermore, the said criterion meant that these clubs had and were expected to achieve a positive financial balance before the adoption of the Spanish Sports Law in October 1990.

In order to fulfill this requirement, audits were carried out on behalf of the Professional Football League since the 1985-1986 season, analyzing whether clubs have presented a positive net

asset balance. Consequently, the Clubs could retain their private association form if this condition was met without becoming a SAD.

Only four Spanish clubs participating in official State professional competitions were able to retain their form without becoming SADs: R*eal Madrid Club de Fútbol*, *Fútbol Club Barcelona*, *Athletic Club de Bilbao* and *Club Atlético Osasuna*. All the others were converted into public limited companies, which altered their internal functioning, as they had to bring their actions into line with the state regulations on public limited companies and were subject to greater public control.

Of the three Spanish clubs that have joined the *European Super League* project, two of them, *Barça* and *Real Madrid* are simple clubs or sports associations, and one, *Atlético de Madrid*, is a SAD.

The latter club, *Atlético de Madrid*, abandoned the Super League only two days after its announcement, claiming, in the face of protests from the fans, that for the club, harmony between all the collectives that make up the red and white family and especially the fans, is essential. In addition to this public declaration of the role played by fans, Mr *Gil Marín*, CEO of the club, sent a personal letter to the members explaining the reasons for the decision to participate in the new competition. But apart from these *a posteriori* apologies, was the club wrong to have decided to participate in the *Super League* without the consent of the members? Should there have been a prior agreement of shareholders and/or associates?

The answer is to be found in the Club's Statutes, the basic rule of internal functioning, which establishes that the governance and administration of Sports Public Limited Companies shall be the responsibility of the General Meeting of Shareholders and the Board of Directors. The General Meeting is made up of all shareholders and decides by majority vote on the matters specifically indicated in the text itself, which do not include any issues relating to competitions. The Board of Directors, made up of several directors (between 7 and 12) appointed by the General Meeting, is entrusted with the management, administration and representation of the company, in and out of court, and in all acts falling within the company's corporate purpose. In view of the broad wording of the Board's competence, it seems clear that the decision on the *Super League* could have been taken, as it was, by this body, without recourse to the Shareholders' Meeting, and even less so to the simple subscribers, whose rights do not include the adoption of any decision. Even if the opinion of the shareholders had been taken into account, it should not be forgotten that the shareholding is highly concentrated and confused with the positions on the Board of Directors (*Miguel Ángel Gil Marín*, CEO of the club, holds 46.68% of the shares - of which 43.7% are held indirectly through the company *Holding de Inversiones Atléticas S.A. Idan Ofer*, 32%, through *Quantum Pacific* and *Enrique Cerezo*, President of the club holds 15.2% - 12.6% through *Videomercury Films*). This suggests that nothing would have changed if the decision on the *Super League* had been submitted to the General Shareholders' Meeting.

With regard to *Real Madrid* and *Barcelona*, they are not sport limited companies and do not have a divided share capital, nor shareholders to whom they are accountable. They are still non-profit sports associations with members, but they are also governed internally by Statutes.

Real Madrid's Statutes recognise the right of members to "*freely express their opinions within the Club*" and to "*Know the activities of the Club and examine its documentation*". But does this mean that they have real decision-making power over matters of such importance as the club's participation in a controversial new competition? Article 21 of the Statutes attributes the management and representation of the Entity to the General Assembly to the President and the Board of Directors. The Assembly, of which, unlike in the case of *Atlético de Madrid*, not all members are part, but only a representation of them (the so-called "*compromisarios*"), in addition to the President and the Board of Directors, among others, is not entrusted with any competence regarding competitions or, in general, the practice of the football. However, it does provide a referendum among the members with voting rights to decide on matters that "*due to their special importance, are proposed by the Board of Directors*". Therefore, the decision on which matters are of sufficient importance to justify a vote by the members rests with the Board of Directors, without the possibility of a reply.

The Board of Directors, made up of between 5 and 20 members, enjoys, according to the Statutes, the broadest powers for the government, administration and representation of the Entity, with no limits other than those matters that are specially reserved in these Statutes or by legal provision, to the General Assembly, being able to carry out and sign any acts and contracts. Therefore, it is clear that the Board could validly, as it did, decide to sign the founding contract of the *Super League*,

without previously submitting it to a vote at the General Assembly, as it was not a direct competence of the latter, although we understand that the matter was of sufficient importance to justify the Board's proposal to call a referendum so that the members could vote. At the Assembly held on 20 October 2020, *Florentino PÉREZ* presented the hypothetical participation of the club in a *Super League*, generating disparate opinions, despite which, neither at that time nor now has the club's participation in the *Super League* been put to the vote of the members, nor its status as a standard-bearer in the project, and therefore the rights of information and expression of opinion of the members, specifically recognised in the Statutes, were violated. Nor, after the official announcement of the *Super League*, has the club contacted its members to find out their opinion, despite the fact that *Real Madrid* continues to be one of the clubs committed to the new competition.

At *FC Barcelona*, events have unfolded very differently. When *BARTOMEU*, the previous President to the current one (*LAPORTA*), gave his resignation speech in October 2020, he already announced that the club was in a new European competition, with a document of intent having even been signed, although the final decision on participation was to be taken by the new Board of Directors. Nevertheless, *LAPORTA* picked up the gauntlet and agreed to the club's participation in the *Super League*, signing a binding contract with 11 other powerful European clubs, without, as in previous cases, the members (some 110,000 with voting rights this year) having had a say on whether or not they wanted to be part of this competition.

Barcelona's Statutes recognise the right of members to receive information on any matter affecting their individual membership and relations with the club and establish, as in previous cases, two governing bodies: the General Assembly and the Board of Directors. The former, made up of members with compromising powers, has much broader functions than in the clubs analysed above, as it is entrusted with the ratification of resolutions of the Board of Directors approving contracts of various kinds and the approval of *"any other proposal that the Board of Directors agrees to submit to the General Assembly."* Although this last competence means leaving it up to the Board to decide which matters it submits to the Assembly for approval and which it decides on its own, the fact is that this club has traditionally relied on the members for its decision-making. In line with this philosophy, in the agreement with the other clubs that make up the *Super League*, *LAPORTA* included a clause whereby the compromising members must ratify the agreement at the Assembly to be held, in principle, in May 2021, so that if the vote is negative and there is no ratification, *Barcelona*'s commitment will not be valid, as the condition has not been fulfilled and, supposedly (pending the exact wording of the clause) the club should not pay any compensation to the remaining clubs (*Real Madrid* and *Juventus* only, at the moment) for the *"abandonment"* of the *Super League*.

Different consideration for the figure of the member, and different legal consequences for a fact, the participation in the European *Super League*, which is still going to give a lot to talk about.

SPAIN

The High Council for Sports approves another issue of a licence for a foreign minor player

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

➔ ***Spanish Royal Federation (RFEF) – Minors – Player registration – Sports Licence – Player transfer***

High Council for Sports, 20 May 2021

At the end of May 2021, the High Council for Sports (CSD - Consejo Superior de Deportes*) rendered another decision on the application of the parent of a minor to whom both the Spanish Royal Football Federation and Madrid Football Federation denied the issue of the sporting license.*

This decision goes in line with previous CSD jurisprudence regarding the issue of sporting licenses to minors. In the case at hand, the minor had Honduran citizenship. One of the clubs belonging to the Madrid Football Federation requested his inscription to the juvenile competition of the 2020-2021 season. The club filed its application based on the parents and the minor's passports and, additionally, on the document of international protection of the father and the minor.

Both the Madrid Football Federation and the Spanish Royal Football Federation denied the registration of the minor, referring to the necessity of the application to such request of the FIFA Regulations on Status and Transfer of the Players. The Spanish Royal Football Federation additionally indicated that, for such application to be considered correctly, it had to be reverted to the sub-committee of the FIFA Players' Status Committee. The latter had to establish whether the international protection status would apply as an exception to permit the minor's registration in Spain.

The key issues that the CSD invoked in its decision are the following:

- The CSD underlines that FIFA is a private association governed by Swiss Law and is based in Zurich. The national federations responsible for organising and supervising football are part of this international association;

- Furthermore, the CSD distinguishes between the relationship that the national football federations may have with FIFA or FIFA could have with athletes, agents, and clubs. These are of a private nature. However, they are entirely different from what the Spanish State authorities in the sphere of sport may exercise and have. In that case, the relationship is a public one;

- The Spanish public authorities are competent to supervise the public functions carried out by sports federations whose territorial scope of action is limited to Spain. The CSD mentions that even though the sports federations may be private organisations in the form of association, they exercise certain administrative functions under the coordination and supervision of the public authorities.

Specifically, the CSD pointed out that one of the public functions exercised by sports federations is organising official competitions where their affiliates and members can participate, with the sports license being the title that enables athletes to participate in such competitions.

Having mentioned that the CSD bases its allegations on the following Spanish national legislation:

- First of all, the decision of the Supreme Court of 11 December 2012, which directly states that

the "*decisions related to the granting, denial, deprivation or modification of the federal license imply the exercise of public functions to the extent that they affect or condition the right to participate in official competitions;*"

- Secondly, the provisions of Law no. 19/2007 against violence, racism, xenophobia and intolerance in sport. The second additional provision of that law establishes that the sports entities must "*eliminate any obstacle or restriction that prevents or make it difficult for foreigners and their families who are located legally in Spain to participate in non-professional sports activities;*"

- Thirdly, the CSD invoked the fifth additional provision of the same law, which modified Law no. 10/1990, of 15 October 1990, on Sports, and included in its Article 32 an amendment of the same tenor. However, in this case, the Law applies to all athletes, both professional and amateurs.

Therefore, the CSD issued its decision based on the main factual circumstance that the minor in question lived on the Spanish territory on legal grounds. Consequently, no discrimination should be applied to him based on his nationality to issue him a sporting license to participate in competitions.

As for the conclusions regarding the sports federations' actions, the CSD recalled that the Royal Spanish Football Federation is subject to the Spanish legal system. Furthermore, even though it is a private entity, it exercises "*the public functions of an administrative nature*" by delegation, acting in such a particular case as a collaborating agent of the public administration. Finally, the CSD concludes that, given the previous, the requirements of Article 19 of the FIFA Regulations on the Status and Transfer of the Players are not in line with the Spanish legal system. Therefore, the CSD once again reiterated that it was sufficient to be (reside) in Spain on a legal basis to obtain the license requested from the Spanish Royal Football Federation.

Professionalization of the Spanish Women's Football League

By Juan de Dios Crespo Pérez
Lawyer, Ruiz-Huerta & Crespo Sports Lawyers
and Belén Ros López
Legal Intern, Ruiz-Huerta & Crespo Sports Lawyers
Valencia – Spain

→ ***Women's football – Sport entities – National law – Collective Bargaining Agreement (CBA) – Salaries***

On 15 June 2021, the professionalization of the highest women's football league in Spain was officially declared. In this regard, it becomes the fourth league in Spain to be considered professional along with LaLiga Santander *(first category of the men's football league),* LaLiga Smartbank *(second category of the men's football league) and* Liga Endesa *(first category).*

For legal purposes, professionalization will have multiple repercussions for both the clubs and players. On the one hand, according to Article 19 of Law 10/1990 (Spanish Sports Law), clubs, or their professional teams, that participate in official sports competition of a professional nature and at a State level, shall convert to Public Limited Sports Companies. Therefore, in order to play in the professionalized women's league, clubs or their professional team must first convert to a Public Limited Sports Company. In addition, Article 19 further states that these Public Limited Sports Companies will be subject to the general regime for Public Limited Companies.

However, due to a forthcoming amendment of Law 10/1990, the Spanish legislators' plans ease or even exclude the rule of Article 19, which would exempt clubs from changing themselves into Public Limited Sports Companies. As a result, football clubs could transform themselves into the legal structure they consider most appropriate, opening up a wide range of possibilities. Nevertheless, this rule is being effectively applied until the amendment to Law 10/1990 would be finally implemented. That is to say, clubs must, at the very least, initiate the process of becoming Public limited Sports Companies, since the future amendment is expected to enter into force once the season has started.

The first step to becoming a Public Limited Sports Company will be to meet the minimum capital requirement. The Royal Decree on Public Limited Sports Companies stipulates that this procedure must be carried out "*within the three months immediately following the date on which the financial year of the clubs and sports corporations of the respective competition begins.*" Since the fiscal years usually begin on the 1st of July, the day on which the seasons begin, these clubs would have until the 1st of October to request the minimum capital. Currently, only *Real Madrid*, *FC Barcelona*, *Athletic Club de Bilbao* and *Club Atlético Osasuna* will be exempt from this procedure since they are not Public Limited Sports Companies.

Meanwhile, it is not defined whether Public Limited Sports Companies with a women team, such as *Valencia CF*, *Club Atlético de Madrid* and *Sevilla FC*, would have to form a new sport limited company or it would be sufficient to create a new league with its own Statues, General Regulations, etc.

In turn, the obligation to become a Public Limited Company will result in greater control of the shareholding by the Spanish Sports Council (CSD). In this regard, Article 2 of Law 10/1990 establishes that "*any individual or legal entity that acquires or disposes of a significant shareholding in a Public Limited Sports Company must communicate, under the terms established by regulation, to the CSD the scope, term and conditions of the acquisition or disposal.*"

On the other hand, although the professionalization of the women's league apparently means an improvement in the working conditions of the players, the reality is that the applicable collective bargaining agreement, among other things, sets the minimum salary at EUR 16,000. In this sense, as long as the working conditions are not equalized with those of men, the professionalization of the women's league will be useless. This explains why the Players' Football Association (AFE) has denounced the collective bargaining agreement to proceed to negotiate a new one. Therefore, we should wait for the renegotiation of the women's collective bargaining agreement to assess whether the professionalization of the women's league has improved the working conditions of female players.

On a final note, being considered a professional league will be a step forward in narrowing the gap between the rights of male and female football players in Spain and opening the door to other women's leagues.