PINTÓ RUIZ & DEL VALLE
Lawyers & Economists

NEWSLETTER JUNE 2018

AUDIOVISUAL RIGHTS

THE SUPREME COURT ADMITS THE REQUEST OF THE SPANISH NATIONAL PROFESSIONAL FOOTBALL LEAGUE (LALIGA), REPRESENTED BY OUR PARTNERS Mª DEL MAR MARTÍN AND YAGO VÁZQUEZ, AND AGREES TO PUT FORWARD A QUESTION OF UNCONSTITUTIONALITY IN RELATION TO ARTICLE 19.4 OF THE LGCA

On 23 April, the Supreme Court issued a ruling admitting the request of LaLiga, and agreeing to put forward a question of unconstitutionality with regard to Article 19.4 of the General Audiovisual Communication Act (LGCA) 7/2010, of 31 March 2010, due to its possible contradiction with the property right (Article 30 CE) and the right of free enterprise (Article 38 CE). Said Article 19.4 of the LGCA established for radio audiovisual communication service providers free access to sports stadiums and complexes to broadcast live the sporting events that take place in them, with no other obligation than to pay the costs generated by the exercise of this right. As in its preceding applications, in this appeal to the Supreme Court, LaLiga, represented by our partners Mª del Mar Martín and Yago Vázquez, maintained that such a legal provision is unconstitutional due, among other reasons, to its breaching the property and free enterprise rights of the organisers of sporting events and, in this particular case, of LaLiga and its affiliated clubs. In its ruling, the High Court stressed that the legal provision that allows radio broadcasters free access to stadiums to broadcast sporting events live and for free deprives their organisers of an essential part of their economic benefit and, consequently, of the equity content of radio broadcasting rights, and their possibility of commercialisation. By contrast, and without paying any consideration for it, the radio operators freely make use of these rights, obtaining significant revenue from advertising, capturing a greater number of listeners, on the multiple entertainment programmes that are supported by the broadcasts of these sporting events.

Similarly, as regards the right to information that the legal provision whose unconstitutionality is being questioned would set out to safeguard, the Supreme Court casts doubt on the proportionality and need of this provision, in the sense that the right to information would be equally guaranteed with means that were compatible with the commercialisation of the radio broadcast rights, expressing its doubts about whether such provision is necessary, adequate and proportional when comparing the right to communicate information with the rights of property and free enterprise. In addition, the Supreme Court advises that although the football matches have a social interest and the media have a right to inform about them, as sustained by LaLiga, the fundamental right of information is a right of freedom and not a right of provision that imposes obligations on sporting bodies, so it should be questioned whether the legal provision that imposes on football clubs the obligation of allowing radio broadcasters access to stadiums for the live, free and full broadcast of private sporting events, consequently preventing the commercialisation of broadcast rights on the sporting events organised by them, is part of the essential content of the right of information.

FLOOR RATE CLAUSES

RULING OF THE SUPREME COURT ON THE VALIDITY OF FLOOR RATE CLAUSES TRANSACTIONS

The Supreme Court has ruled on the validity of transactional agreements on floor rate clauses (most of which were prior to the latest jurisprudence of the Court and to that of the CJEU in the matter), where the customer's renunciation of subsequently claiming the nullity of floor rate clauses is established. In opposition to its previous decision in its ruling of 16 October 2017, the Supreme Court (Plenary ruling no. 205/2018, of 11 April 2018) now considers valid the transaction agreed between the customers and the bank whereby the floor rate of the clause was reduced and both parties mutually renounced the exercise of actions. The High Court considers that as it is a judgeable matter, the agreement subject to judgement entails a valid transaction and that although the pre-existing obligation from which the dispute arises may be null and void, the legal relationship created by the transaction is valid providing it does not contravene the law.

However, in accordance with this ruling, it is, in any event, necessary to verify whether the agreement meets the enforceable requirements of transparency, i.e. that the customers are in a position to know the legal and economic consequences of the transaction. In the case in question, the Supreme Court considers that this agreement exceeds this rule of transparency and is, therefore, valid. The ruling includes a private vote of Judge Francisco Javier Orduña Moreno, who disagreed with the decision adopted by the majority of Judges.

DATA PROTECTION

GENERAL DATA PROTECTION REGULATIONS

We should remember that last 25 May saw the application in Spain and the rest of the member states of the European Union of the General Data Protection Regulations (GDPR). This obliges companies and institutions that process personal data to adapt to the new provisions of the above Regulations and to highlight the new provisions in terms of information to be provided to individuals of who collects personal data, new rights that are recognised for individuals (such as those of limitation of processing or data portability), data processing, records of processing activities and appointment of a data protection officer, among others.

In accordance with the Personal Data Protection Act 15/1999, of 13 December 1999, we would like to inform you of the existence of a file the property of the Bufete Pintó Ruiz S.L. which contains your personal details (which are exclusively your name, position, company telephone number and e-mail), and the aim of which is to inform you about legal and case law news. Similarly, we would also like to inform you about the possibility of exercising your rights of access, rectification, cancellation and opposition in the terms established in current law, by means of a letter which you may send to the BUFETE PINTÓ RUIZ S.L.P, Calle Beethoven 13, planta 7.ª Barcelona or by e-mail to the following address info@pintoruizdelvalle.com.

AMENDMENTS TO THE FIFA REGULATION ON THE STATUS AND TRANSFER OF PLAYERS PUBLISHED BY FIFA CIRCULAR No. 1625

On 26 April, FIFA Circular no. 1625 informed of the new amendments to the Regulations on the Status and Transfer of Players (RSTP). These amendments were approved by the FIFA Council at its last session held on 16 March and will come into effect as of 1 June.

The Circular informs members of the significant amendments to the section on contractual stability between professional players and clubs.

In this sense, the new RSTP will foresee the following changes: Article 14 establishes that in employment relationships between players and clubs, potentially "**abusive conduct**" intended to force the counterparty to terminate the contract may be considered as just cause and lead to the aggrieved party terminating said contract; similarly, FIFA adds the new Article 14 bis regarding termination with just cause in case of a club failing to pay a player at least **two monthly salaries**; the new wording of Article 17 par. 1 specifies the **method of calculation of the compensation due to a player** if the club terminates the contract without just cause; new Article 18, par. 6 prohibits the so-called contractual "grace periods" for the payment of overdue payables towards players, unless explicitly allowed under a collective bargaining agreement; finally, FIFA introduces Article 24 bis granting FIFA's decision-making bodies (Players' Status Committee or Dispute Resolution Chamber) powers to **impose sporting sanctions on players** (restriction on playing in official matches) and **clubs** (a ban from registering any new players) until payment is made on the amounts owed.

PINTÓ RUIZ & DEL VALLE, GUEST FIRM AT THE 8TH LALIGA SPORTS LAW MEETING 17/18

Our firm was the guest firm at the 8th LaLiga Sports Law Meeting 17/18. Our partner Jordi López Batet gave a talk at the meeting entitled "Determining disciplinary sanctions in international sports regulations", after the talks given by Professor Alberto Palomar and Professor Antonio Sempere, who looked at the most relevant legislative and jurisprudence news in terms of sports law. The meeting was closed by Javier Redonet, from Uría & Menéndez, discussing the stock market flotation of sporting limited companies.

S P O R T S

NEW PROCEDURE ADOPTED BY THE FIFA DISCIPLINARY COMMITTEE WITH REGARD TO DEBTOR CLUBS

On 9 May, FIFA published Circular 1628 informing its members of the new procedure adopted by the Disciplinary Committee to ensure that the decisions passed by the FIFA Dispute Resolution Chamber (DRC), the Players' Status Committee (PSC), or a subsequent decision by the Court of Arbitration for Sport (CAS) on appeal are respected and complied with.

FIFA informs that according to its new procedure, the Disciplinary Committee, in addition to continuing to impose the relevant fine and granting a final deadline to the debtor to make payment, will impose additional sanctions consisting of a **point deduction and/or a transfer ban** in the same disciplinary decision, which will be effective as of the expiry of the final deadline. Under the new procedure, it will be the **debtor's national association** that should verify whether the amount owing has been paid to the creditor by the deadline and, if this is not the case, **it would be the same national association** that will **automatically apply the point deduction and/or the transfer ban at a national level (at the international level, FIFA will apply the ban through TMS)**. If the above sporting sanctions have been served and the debt has still not been settled, the creditor may request the FIFA Disciplinary Committee to impose additional sanctions to the debtor (e.g. relegation to a lower division).

In addition, FIFA informs that the Disciplinary Committee will no longer "enforce" the financial decisions issued by the DRC, the PSC or the CAS **if the parties reach an out-of-court agreement and/or a payment plan after the notification of the relevant decision**. In other words, the agreements entered into between the parties, after the financial decision, will lead to the closure of disciplinary proceedings and any claim resulting from the breach of these agreements will have to be lodged **again** before the PSC, the DRC or the competent bodies agreed upon by the parties for a new decision to be issued.

These changes came into effect on **23 May** for all Disciplinary Committee cases, **irrespective of the date on which the procedure was opened**.

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