Sports Law & Taxation

CONTENTS

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EDITORIAL

It is with much pleasure that we welcome readers to the September 2024 edition (citation: *SLT 2024/3*) of our ground-breaking journal *Sports Law and Taxation (SLT)* and online database www.sportslawandtaxation.com.

The 2024 Paris Olympics have been and gone, with great success, but, for some time now, the size and cost of the Games has been questioned in several quarters, particularly at a time when "green" sport is on the international and political agenda. We take a look at this issue as follows.

The need for slimmed down Olympics!

The 2024 Paris Olympics got off to a soggy, but spectacular start on 26 July, with a pageant of competing athletes on boats sailing down the river Seine and came to an equally spectacular end on 11 August in the Stade de France, in the course of which the Olympic flag was handed over from the Mayor of Paris to the Mayor of Los Angeles, which will host the next edition of the Games in 2028.
The highlight of the closing ceremony was the appearance of the Hollywood super star, Tom Cruise, who abseiled from the roof of the Stade de France into the arena below, much to the great delight of the 70,000 spectators.
The opening ceremony reputedly cost a staggering US$ 1.5 billion, but no figures appear to be available for the cost of the star-studded closing ceremony. However, the total cost of staging the Paris Games is estimated at US$ 8 billion.
More than 11,000 athletes participated in 32 sports featured at the Games, including some making their debut, such as breakdancing, which, incidentally, has been dropped from the next Olympics in Los Angeles.
The International Olympic Committee (IOC) claimed that the Paris Games would be more innovative, sustainable, urban, inclusive and youthful, and herald a new era for the Summer Olympics.
As far as these Olympics being inclusive was concerned, there was the thorny issue of the participation of Russian athletes in them following the Russian invasion of Ukraine. The IOC adopted special rules for the participation of these athletes, who have qualified in their individual sports, as AIN's, individual neutral athletes. These rules included competing under a neutral flag, the Olympic flag. And the special rules also applied to Belarussian athletes participating in the Games. There is a view that such athletes should have been excluded completely from competing in the Games. So, were these arrangements a fudge?
Another innovation was that, for the first time, World Athletics would reward gold medallists with the sum of US$ 50,000 each. The IOC does not offer prize money directly, but indirectly funds sports' governing bodies that are members of the Olympic movement. Either way, this is incompatible with the idea of the founder of the modern Olympics, Baron Pierre de Coubertin, that the Olympics should be for amateur athletes and that participation in them is more important than winning medals. So, again, is this innovation a fudge?
Over the years, the number of sports at the Games has increased, as have also the costs of staging them, including necessary infrastructural costs, such as new road and rail links. As mentioned, the total costs of the Paris Games to the taxpayer could amount to US$ 8 billion. Cost overruns are usually the norm rather than the exception, so, perhaps, the organisers of the Paris Games could expect the final costs to be even higher, at a time when the French economy, officially, is expected to remain "subdued".
As a result of the high costs of staging the Games, in recent times, fewer cities have come forward to host them, and the IOC has simplified the bidding procedures, to reduce the costs. In the 2024 bidding campaign, three of the five candidates dropped out, resulting in the IOC awarding the Games to Paris and Los Angeles, the remaining host cities in contention.
In my view, the Games are now too big and there is a growing need to return to, essentially, the traditional sports of running, throwing and jumping. At the first Olympic Games, which were held in 776 BC, they lasted one day and by the fifth century BC, they lasted five days. They were held every four years and no medals were awarded, only olive leaf wreathes or crowns for the winners. Furthermore, all athletes competed in the nude and any athlete that made a false start on the track suffered corporal punishment! But we are not suggesting that we return to those practices!
However, what we are suggesting is that we return to the earlier practice of having a permanent venue for the holding of the Games, such as Olympia in Greece, the birthplace of the ancient Games. A permanent venue for the Games would also have positive environmental effects – the IOC is keen on promoting "green" Olympics and reducing their "carbon footprint"– as well as reducing the costs of staging the Games!
As a result of De Coubertin's initiatives, the revived Games of the modern era were held in 1896 in Athens, Greece, from 6-15 April, and featured nine sports: athletics, tennis, shooting, fencing, wrestling, gymnastics, swimming and weightlifting.

The President of the International Olympic Committee, Dr. Thomas Bach, hailed the Paris Games as *"sensational"* and, praising the *"simply amazing"* athletes who participated, he added:

"During all this time, you lived peacefully together under one roof in the Olympic Village. You respected each other, even if your countries are divided by war and conflict. You created a culture of peace. This inspired all of us and billions of people around the globe. Thank you for making us dream. Thank you for making us believe in a better world for everyone."

This is the power of sport!
Perhaps, the success of the modern Games, with all the eye watering national and international commercialism and corporate sponsorship – reputed to have contributed some US$1.3 billion towards the costs of the Paris Olympics – supporting and surrounding them, means that the point of no return may have been reached. Pierre de Coubertin must be turning in his grave!

We turn now to another pressing and related issue in international sport, where winning, at all costs, often appears to be the name of the game, especially nowadays with so much money circulating in sport: the need for integrity at all levels of sport. So, we asked Ennio Boloventa, until September 2024 of Valloni Attorneys at Law, Zurich, Switzerland, to let us have his thoughts on such an important and fundamental matter for sport as follows.

"The need for integrity in sport!

Introduction

When asked about the importance of integrity in sport, any stakeholder in the sports industry will most likely answer quite automatically that integrity is paramount; that it is a pillar of statutes and regulations; and that it is the essence of sport. If we then continue the conversation with the same person, asking what integrity actually means and why we need it in sport, the answer will probably be less automatic and more articulated.
The following remarks attempt to elaborate and build on these last questions, analysing the concept of integrity; the way in which sports governing bodies are addressing it; and the role it has in sport.

The concept of integrity

Sports governing bodies are committed to protecting and promoting integrity in sport. To start from the top of the pyramid, the Olympic Charter expressly states that, amongst the roles of the International Olympic Committee, is "to protect clean athletes and the integrity of sport, by leading the fight against doping, and by taking action against all forms of manipulation of competitions and related corruption" *(the Olympic Charter, art. 2, para. 9).*
In the same vein, the statutes and regulations of the international sports federations include commitments to the promotion and protection of integrity. For instance, the Statutes of FIFA, the world governing body of association football (soccer) provide that it is a FIFA objective "to promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, players, officials and member associations or give rise to abuse of association football" *(FIFA Statutes, art.2, lit. G).*
A further example, the International Cricket Council (ICC) commits "to taking every step in their power (a) to prevent corrupt practices undermining the integrity of the sport of cricket, including any efforts to influence improperly the outcome or any other aspect of any Match; and (b) to preserve public confidence in the readiness, willingness and ability of the ICC and its National Cricket Federations to protect the sport from such corrupt practices" *(ICC Anti-Corruption Code for Participants, art. 1.1.5).*
Also, a fundamental organization in sport, the World Anti-Doping Agency (WADA), through its World Anti-Doping Code, ties integrity to the fight against doping, declaring that "Anti-doping programs seek to maintain the integrity of sport in terms of respect for rules, other competitors, fair competition, a level playing field, and the value of clean sport to the world" *(WADA Code, Preamble).*
Despite the fact that none of these organizations provides a complete definition of the term "integrity", the concept of integrity, as referred to in sports statutes and regulations, encompasses principles such as fairness, honesty, ethics, fair play and adherence to rules, ensuring that the essential nature of sports is preserved.
In the effort of retrieving a pure definition of integrity, we can further refer to the etymology of the same word, whereby the term "integritas" *refers, in the Latin language, to something that is preserving intact its unity and nature, or that has not suffered any damage, injury, quantitative or qualitative diminution. The same term, referred to the moral dimension, indicates fairness, honesty, rectitude, thus recalling purity, the absence of any flaw or defect affecting the true essence.*
Following this short etymological research, the concept of integrity applied to sport means, therefore, that it will coincide with the true essence of sport itself. In other words, whatever tarnishes or affects the essence of sport, will be incompatible with the notion of integrity.
With this in mind, where is it possible to find a definition of the essence of sport? Once again, we have to refer to a fundamental pillar of sports law: the Olympic Charter, which states that "the practice of sport is a human right. Every individual must have access to the practice of sport, without discrimination of any kind in respect of internationally recognised human rights within the remit of the Olympic Movement. The Olympic spirit requires mutual understanding with a spirit of friendship, solidarity and fair play" *(the Olympic Charter's Fundamentals of Olympism, 4).*
Based on the above, we can come to a first conclusion: the essence of sport, and so the integrity of sport, is constituted by fundamental values such as fairness, honesty and respect. Equally, the essence of sport is based on the fundamental human right to compete, with no discrimination and in a spirit of fair play.
Once we have determined roughly the concept of integrity, it comes easier to identify the threats to the essence of sports, namely those situations which are incompatible with the concept of integrity and undermine the

fundamental principles of sportsmanship, for example: corruption, competition manipulation and doping. These threats are by nature linked to the concepts of cheating and fraud, or put more simply, they undermine the essence of sport by neglecting the fundamental values of fair play and compliance with the rules.

Competition manipulation and corruption

Corruption represents a significant threat to the integrity of sport. It can appear in different forms, depending upon the subjects involved, including fraud, money-laundering, abuse of authority, competition manipulation, illegal betting, wrongdoing during the organization and delivery of sports events, the transfer of athletes, and the ownership of sports organizations, often with transnational features. All these forms of corruption either constitute criminal offences or, at the least, are sanctioned by sports regulations. Amongst those, competition manipulation, also more known commonly as match-fixing, deeply affects the essence of sport and, namely, the principle of fair play. In this respect, according to the most complete and successful legal definition of this issue:
""Manipulation of sports competitions" means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others" *(Art. 3 (4) of the Council of Europe Convention on the Manipulation of Sports Competitions, commonly referred to as the "Macolin Convention").*
In most of the cases, competition manipulation is committed for sporting and/or betting-related purposes. In the first case, the manipulation is perpetrated in order to provide a sporting advantage, for example, to protect a team against relegation or to ensure a perceived advantageous competition draw. The latter, which is the most common one, is where the manipulation is perpetrated to ensure a predetermined outcome, on which a bet is placed, resulting in an undue financial advantage. For example, when a match is manipulated to guarantee that a certain team loses or that a given number of goals are scored at the end of the first half or at the end of the match (known as "spot-fixing" *and see, for example, the infamous 2010 case of three Pakistani cricketers who were convicted of spot-fixing during a Test Match against England at Lord's).*
In any event, we have witnessed different cases of match-fixing in sports, all of them sharing the very same nature, namely the removal of the true essence of sport: the fairness of the competition and the unpredictability of the course of a match and/or its result. In view of the seriousness of this issue, lawmakers have intervened – and are still intervening – to tackle match-fixing, at different levels:

a by means of international conventions: such as the United Nations Convention Against Corruption ("UNCAC"); the United Nations Convention Against Transnational Organized Crime ("UNTOC"); and, more specifically, on match manipulation, the Council of Europe Convention on the Manipulation of Sports Competitions ("Macolin Convention");
b by means of national legislation: namely the state provisions criminalizing match manipulation in a growing number of states;
c by means of sport regulations: such as the Olympic Movement Code on the Prevention of the Manipulation of Competitions and the regulations from international and national sports federations, which severely sanction all forms of match-fixing through long bans – even life-time – and hefty fines.

Equally, many sports organizations are establishing dedicated departments or independent units to protect the integrity of their sports and combat competition manipulations effectively, such as the International Tennis Integrity Agency (ITIA), the Athletics Integrity Unit, the Aquatics Integrity Unit and the ICC Anti-Corruption Unit for Cricket. These units usually have the authority to investigate and sanction violations of the respective anti match-fixing regulations and also to promote integrity by means of raising awareness initiatives and educational programmes for athletes, teams, leagues and all the relevant stakeholders in sport.
These kinds of initiatives are necessarily connected to the structural need for integrity in sport. Let us imagine, in fact, what would happen in a sport where competition manipulation is tolerated or, somehow, accepted. The consequences would be that:

1 the outcome or the results of the sport's competitions would be pre-determined;
2 the athletes would not compete/play with a view to doing their best, but rather in order to achieve a certain result decided in advance;
3 the unpredictability of the result, which is the essence of any sports' competitions, would be affected;
4 people and fans would most likely lose interest and passion for a sport where the result is pre-arranged and athletes are not performing at their best;
5 a further consequence connected to losing followers and spectators would be the decrease or even the absence of revenues from ticketing, media rights, merchandising and sponsors. In other words, the entire movement would be affected by an economic collapse of the system;
6 at the end of the process, the sport would have lost its essence: without athletes performing at their best and fans eager to attend and follow the competitions. Therefore, in this scenario, a sport without integrity would not be a sport anymore.

This is the reason why sports organizations are committed to promoting and preserving the integrity of their competitions, as they are conscious that the protection of integrity is not only necessary, from a moral standpoint, but is also key for their existence: without integrity, there would be no sport.

Doping and integrity

Another significant threat to the integrity of sport, undermining the principles of fairness, equality, and respect for the rules, is doping. The term "doping" refers to the use of prohibited substances or methods by athletes to enhance their performance artificially, thus with a view to obtaining

an undue advantage. The use of doping substances or doping methods to enhance performance is fundamentally detrimental to the overall spirit of sport and also harmful to an athlete's health and to other athletes competing in the sport. It severely damages not only the health of the athletes, but also the integrity of sport, irrespective of the motivation for the use of drugs to improve performance. In different contexts, there are also other forms of "doping"*, such as the* "financial doping"*. This kind of doping occurs when owners of clubs, also with a view to obtaining an undue advantage against other teams, circumvent financial regulations so to be able to invest more wealth in the management of the respective clubs/teams. Also in this case, it is clear how this form of doping constitutes a threat to the integrity of sport, by means of providing an undue advantage to perpetrators, distorting the nature of a fair competition and, thus, the integrity of sport. Going back to the most known form of doping, the organization which plays a fundamental role since 1999 is the World Anti-Doping Agency (WADA). WADA is an international independent agency, which was founded to lead a collaborative worldwide movement for doping-free sport and its primary role is to develop, harmonize and coordinate anti-doping rules and policies across all sports and countries. In this respect, the Agency's most significant contribution to the fight against doping is the World Anti-Doping Code (WADA Code), which is the document harmonizing anti-doping programmes in all sports and all countries. As highlighted in the WADA Code, the anti-doping programmes* "are founded on the intrinsic value of sport. This intrinsic value is often referred to as *"the spirit of sport"*: the ethical pursuit of human excellence through the dedicated perfection of each Athlete's natural talents" *(WADA Code, Preamble). Anti-doping programmes, therefore, seek to protect the health of the athletes and to provide them with the opportunity to compete on a* "level playing field" *without the use of prohibited substances and methods. Anti-doping programmes are the key to maintaining the integrity of sport and preserving the health of athletes. Interestingly, the definition of "doping", according to the WADA Code, is broader than the simple detection of a prohibited substance at a doping control. Art. 1 of the WADA Code states that "Doping is defined as the occurrence of one or more of the antidoping rule violations ("ADRV") set forth in Article 2.1 through Article 2.11 of the Code", namely:*

1 *presence of a prohibited substance in an athlete's sample;*
2 *use or attempted use by an athlete of a prohibited substance or method;*
3 *evading, refusing or failing to submit to sample collection by an athlete;*
4 *failure to file athlete whereabouts information and missed tests;*
5 *tampering with any part of the doping control process;*
6 *possession of a prohibited substance or method;*
7 *trafficking a prohibited substance or method;*
8 *administering or attempting to administer a prohibited substance or method to an athlete;*
9 *complicity, even if attempted, in an ADRV;*
10 *prohibited association with sanctioned athlete support personnel;*
11 *discourage or retaliate other persons from reporting relevant anti-doping information to the authorities.*

It is, therefore, clear how the fight against doping goes beyond the simple detection of prohibited substances, due to the devastating impact that doping can have not only on the integrity but especially on the health of the athletes. Also, with this threat affecting the essence of sport, it is evident why this kind of approach is needed: as already mentioned and cannot be overstated, not only would sport where doping is allowed lose its essential nature and followers but would also jeopardise the mental and physical health of the athletes involved as well.

Conclusions

The severity of the threats to the very essence and existence of sport demonstrates that integrity in sport is not merely an abstract concept, but it is the very foundation upon which the entire sporting world is built. This is the reason why sports organizations, through their statutes and regulations, unequivocally prioritize integrity, identifying it as a statutory aim and objective. Corruption, competition manipulation, and doping emerge nowadays as the primary challenges, each posing a significant risk to the authenticity and fairness that sport is supposed to embody. Match-fixing and other forms of competition manipulation strike at the heart of what makes sport captivating and meaningful: the unpredictability of the result and genuine and fair competition. The establishment of dedicated integrity units within sports organizations further exemplifies the commitment to preserving such integrity and ensuring that sport remains a true contest of effort and clean and fair competition. Doping, in particular, reveals its devastating impact not only on the integrity of sport but also on the health and well-being of athletes. As analysed, the role of WADA and the WADA Code is pivotal in providing a comprehensive framework for maintaining fairness and protecting athletes and sporting integrity. Doping, in its various forms, distorts the "level playing field" *that is essential for fair and true competition. Thus, the need for integrity in sport is undeniable and multifaceted. It is not only a moral imperative, but also a practical necessity for the survival of sport itself. Integrity ensures that sport remains a genuine expression of the human right to compete in a fair-play spirit, untainted by corruption, manipulation, or artificial enhancement. As various stakeholders in sport continue to uphold and enforce the principles of integrity, they safeguard the true essence of sport: its ability to inspire, to challenge, and to unite people across the world. Without integrity, sport would definitely lose its meaning, its appeal, and, ultimately, its existence. So, the continuous efforts to protect and promote integrity in sport are not just a formal/theoretical need on paper, but are also truly essential, in practice, to protect the aims and role of sport in our society."*

Few, we suggest, would disagree with these conclusions!

UEFA and Manchester City

A brief mention should be made of the latest developments in the long-running case against Manchester City Football

Club brought by UEFA, the governing body of European football, for alleged breaches of their Financial Fair Play Rules. We now have – and not before time – a timetable for dealing with the case, which began 18 months ago following a four-year investigation by UEFA. The club faces 115 charges, some of which date back to 2009, and the hearing of them, before an independent disciplinary commission, will take place in September. The outcome of the case is expected to be known in 2025. The club denies all the charges, stating that they have a *"body of irrefutable evidence"* against them. The manager of the club, Pep Guardiola, has remarked that *"I am happy that it starts soon and hopefully it finishes soon for the benefit of all of us."* And the chief executive of the English Premier League, Richard Masters, has commented that *"It is time now for the case to resolve itself."* And so, say all to that!

Articles in this issue

As you will see from the *Table of Contents* of this issue, we include a wide range of topical sports law and sports tax articles, which will engage our readers' attention and provide them with much "food for thought". On the sports law side, with the Paris Olympics fresh in our minds, we would draw your particular attention to the article by Ian Felice and Emma Labrador on the legal consequences of limited television coverage of the Paris 2024 Olympic Games. The background to and the aim of their article is set out in their introduction as follows:

"For many years, the Olympic Games have been considered a global event drawing billions of TV spectators around the world. But the way these Games are aired and enjoyed has changed significantly as a result of the quickly evolving media landscape. As the 2024 Paris Olympics have come to an end, discussions concerning content availability, broadcasting rights, and the laws controlling sports event distribution have been spurred by complaints about the limited television coverage experienced in these Games when compared to previous editions. In order to understand better the legal ramifications of these changes, this article will concentrate on three main areas: intellectual property rights; broadcasting rights; and potential challenges resulting from limited viewing access to sports' showcase event."

And they reach the following conclusions:

"The Paris 2024 Olympics marked a turning point in the history of sports broadcasting, as more regulated TV coverage and a major move towards digital platforms were implemented. Although this offers room for creativity and more freedom in terms of how content is consumed, it also raises a multitude of legal issues. To guarantee that the Games are open to everyone and that their legal risks are kept to a minimum, the IOC and broadcasters must negotiate a complicated legal environment that includes issues, such as the distribution of broadcasting rights, the enforcement of intellectual property, the effect on consumers, and the possibility of legal challenges. All of that whilst trying to accommodate evolving consumer preferences and complying with the values of the Olympic Movement!"

And on the sports tax side, we would mention the article in which Athena Constantinou provides a general guide on NIL taxation of collegiate athletes in the USA. In her introduction, she writes:

"In recent years, the landscape of collegiate athletics in the United States of America has undergone a significant transformation. A pivotal development has been the recognition of athletes' rights to their Name, Image, and Likeness (NIL). Historically, the NCAA (National Collegiate Athletic Association) imposed strict regulations prohibiting athletes from profiting from their NIL through the application and implementation of the so-called "amateurism criterion". However, a series of legal challenges and public pressure led to a seismic shift in policy, allowing collegiate athletes to monetize their NIL as of 1 July 2021. This newfound opportunity has opened up a myriad of income streams for athletes, including endorsement deals, sponsorships, social media promotions, merchandise sales, and appearances. These opportunities, whilst financially rewarding, also introduce a complex array of tax implications. With athletes now navigating contracts, managing income from diverse sources, and meeting tax obligations, the importance of understanding NIL taxation cannot be overstated."

She concludes her article as follows:

"This guide has explored the multifaceted aspects of NIL taxation for collegiate athletes in the United States. From understanding taxable income and deductions to navigating federal, state, and local tax obligations, athletes must approach their NIL earnings with a well-informed strategy. This guide has explored the multifaceted aspects of NIL taxation for collegiate athletes in the United States. From understanding taxable income and deductions to navigating federal, state, and local tax obligations, athletes must approach their NIL earnings with a well-informed strategy."

As always, we would welcome and value your contributions in the form of articles and topical case notes and commentaries for our journal and also for posting on the SLT dedicated website www.sportslawandtaxation.com. Please do not hesitate to send them to us!

So, now read on and enjoy the September 2024 edition of SLT.

Dr. Rijkele Betten *(Managing Editor)*
Prof. dr. Ian S. Blackshaw *(Consulting Editor)*

September 2024

South Africa:

Judicial review of decisions of sports associations

BY STEVE CORNELIUS[1]

Introduction

The high courts in South Africa have, since their inception, assumed an inherent power of judicial review under common law.[2] Today, this power is also conferred in section 6 of the Promotion of Administrative Justice Act[3].

In this context, it is important to keep in mind that the common law that applies in South Africa is essentially Roman-Dutch law, rather than English Common Law. However, due to the British colonial history of South Africa, the Roman-Dutch common law is also to some extent influenced by reception of some English Common Law rules into the law of South Africa. The result is that South Africa has a hybrid system which often portrays peculiarities of both civil law and English Common Law. Nowhere is this more evident than when it comes to the regulation of non-state actors, such as sports federations, clubs and associations in South Africa.

A logical consequence of the British colonial history is that South African administrative law, and the law relating to judicial review of administrative action, is largely derived from English Common Law. However, where English courts have always tended to restrict judicial review to state action, South African courts have followed the civilian tradition and also subjected non-state actors, such as sports federations, clubs and associations to judicial review in appropriate circumstances.[4]

Basis for judicial review

Although the South African Sports Commission and Olympic Committee (SASCOC), as well as national federations in South Africa receive some statutory recognition in terms of the National Sport and Recreation Act[5], participation in any form of organised sport still takes place in terms of a series of complex contractual relationships between the sports federation, sports league, sports club, organisers and players.[6] These contractual relationships are expressed, inter alia, in the rules or laws of the particular sport. Clubs and players are, therefore, subject to these rules or laws because they submit to the authority of the sports federations and agree to play in accordance with those rules or law. This is why a professional footballer in South Africa may be subject to the rules of the South African Football Association (SAFA) and the Professional Soccer League, but neither SAFA, nor the League has any business with friends kicking around a football in their back yard, nor with the volunteer who coaches a primary school football team.[7]

Schiek correctly warns that *"private actors cannot create the constitutionalisation processes necessary to elevate [their] rules and regulations to the status of law"*[8]. The fact remains that sports federations are merely associations composed of members and the constitution and the rules and regulations of any sports federation are consequently, in general, also only binding on the members of that federation.

"Speaking of private actor rulemaking, we refer to processes that engender ordering of human behaviour by normative settings. These settings are not produced through decisions channelled within the processes provided for by state-based rules, such as constitutions, international or supranational treaties. Instead, private rulemaking is based on (more or less) voluntary decisions by non-public actors, such as national and multinational enterprises, trade unions and employers' associations, collecting societies and networks of contractors

1 Bluris LLB (SA) LLD (Pret) FA Arb SA, M Acad SA. Professor and Head of the Department of Private Law, Co-Director of the Centre for Sports and Entertainment Law, Faculty of Law, University of Pretoria; Advocate of the High Court of South Africa.

2 *Johannesburg Consolidated, Investment Co v. Johannesburg Town Council* 1903 TS 111.

3 3 of 2000.

4 *Theron v. Ring van Wellington van die NG Sendingkerk in Suid-Afrika* 1976 (2) SA 1 (A); *Turner v. Jockey Club of South Africa* 1974 (3) SA 633 (A); *Mönnig v. Council of Review* 1989 (4) SA 866 (C).

5 110 of 1998.

6 *Rowles v. Jockey Club of South Africa* 1954 1 SA 363 (A) 364D; *Jockey Club of South Africa v. Transvaal Racing Club* 1959 1 SA 441 (A) 446F, 450A; *Turner v Jockey Club of South Africa* 1974 3 SA 633 (A); *Jockey Club of South Africa v. Forbes* 1993 1 SA 649 (A) 645B, 654D; *Natal Rugby Union v. Gould* 1999 1 SA 432 (SCA) 440F; *Johannesburg Country Club v. Stott* 2004 5 SA 511 (SCA).

7 *Cronje v United Cricket Board of South Africa* 2001 (4) SA 1361 (T).

8 Schiek, "Private rule-making and European governance issues of legitimacy" 2007 *Eur LR* 443 445.

creating general rules valid beyond single contracts."

The law of contract provides the only rational legal basis for private actors to create legally binding rules to which their members are bound. Contracts can be regarded as sources of ad hoc law that are created by private actors to deal authoritatively with certain matters inter partes.[9] However, courts in South Africa have long since recognised that, despite their voluntary nature, some associations are in a position to act just as coercively as public authorities and their decisions have far-reaching effects for the members of those associations, but often also for the public at large.

SAFA may not have any business with friends kicking around a football in their back yard, but those friends are also fanatical football fans who have a vested interest in proper governance of SAFA and the selection of representative teams that will carry their hopes at continental and global competitions. As the Johannesburg high court explained in Dawnlaan Beleggings (Edms) Beperk v. Johannesburg Stock Exchange[10]:

"Strictly speaking, a stock exchange is not a statutory body. However, unlike companies or commercial banks or building societies formed under their respective statutes, the decisions of the committee of the stock exchange affects not only its own members or persons in contractual privity with it, but the general public and indeed the whole economy. It is for that reason that the [...] *public interest [is] paramount: To regard the JSE as a private institution would be to ignore the commercial reality* [...] *It would also be to ignore the* [...] *public interest* [...]."

Therefore, under South African common law, administrative law also applies to certain voluntary associations, such as sports federations, clubs and associations, and they are, consequently, also subject to judicial review in appropriate circumstances.

In the Bill of Rights, which is contained in chapter 2 of the Constitution of the Republic of South Africa, 1996, section 33 provides that:

"(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons."

Section 8(2) of the Constitution provides that:

"A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right."

As a result, section 33 can also apply in respect of non-state actors, such as sports federations, clubs and associations in South Africa.

Furthermore, section 32(1) of the Constitution provides:

"Everyone has the right of access to –
(a) any information held by the state; and
(b) any information that is held by another person and that is required for the exercise or protection of any rights."

In addition, section 34 of the Constitution provides that:

"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

As a result, sports federations, clubs and associations in South Africa are subject to administrative law and judicial oversight in terms of the Constitution of the Republic of South Africa, 1996. This state of affairs is given further recognition in section 1 of the Promotion of Administrative Justice Act,[11] which defines "administrative action" as"

"*any decision taken, or any failure to take a decision, by –*
a an organ of state [...]
b *a natural or juristic person, other than an organ of state, when exercising a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect* [...]"

Section 1 also defines "empowering provision" to mean:

"a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which administrative action was purportedly taken".

Therefore, section 6 of the Act, which provides for judicial review of administrative action, also applies to sports federations, clubs and associations in South Africa.

Grounds for judicial review

Within the South African context, in the interpretation of statutes, there is a presumption that the legislator does not wish to deviate from the existing common law more than clearly indicated.[12] As a result, the constitutional and statutory regulation of administrative action and judicial review in South Africa does not replace or exclude the common law principles relating to fair administrative action and judicial review.

Under South African common law, a decision of a sports federation, club or association can only be taken on judicial review on limited grounds.

Firstly, a decision can be reviewed if the sports federation, club or association failed to act in accordance with the provisions of its own constitution, rules or policies. This

9 Voet, Commentarius ad Pandectas 18 1 27.

10 1983 (3) SA 344 (W) 360.

11 3 of 2000.

12 Devenish *Interpretation of Statutes* (1992) 159.

means that an administrator, committee or tribunal must be authorised to take the particular decision in terms of the constitution, rules or policies and must act, in accordance with those constitution, rules or policies, when it takes the decision.[13] A failure to abide by its own constitution, rules or policies means that a decision by an administrator, committee or tribunal, is unlawful and it can be set aside on judicial review.

Secondly, the administrative decision must be the result of due process or, to put it differently, it must be procedurally fair.[14] A process is procedurally fair if four requirements are satisfied:

- any person who may be adversely affected by an administrative decision, must be given an opportunity to be heard *(audi alteram partem)*;
- the administrator, committee or tribunal taking the decision must be unbiassed *(nemo iudex in sua causa)*;
- the administrator, committee or tribunal taking the decision must give due consideration to matter before it; and lastly
- the administrator, committee or tribunal taking the decision must provide reasons that accord with the decision taken.[15]

A failure to follow due process is fatal, even if the same decision could have been reached if due process had been followed.[16]

Thirdly, a decision of a sports federation, club or association can only bind someone if that sports federation, club or association has jurisdiction to exercise regulatory or disciplinary authority over the person concerned.

Since sports federations, clubs or associations are merely associations composed of members, the constitution and regulations of any sports federation, club or association is consequently, in general, also only binding on the members of that federation, club or association.[17]

The grounds for the establishment of regulatory and disciplinary authority are:

a *Affiliation*. Membership of a federation, club or association can provide the basis for regulatory and disciplinary authority of such federation, club or association.[18]

b *Participation*. Where an athlete participates in an event hosted by a federation, club or association, the athlete can be taken to have submitted to the rules and discipline of the federation, club or association through his or her participation.

c *Submission*. Where an athlete is faced with the regulatory or disciplinary authority of a federation, club or association, the athlete can submit to such authority and the athlete will then be bound as if the athlete had been a member of the federation, club or association all along. Mere participation in disciplinary proceedings may not, in itself, be adequate to establish submission to the regulatory and disciplinary authority of a federation, club or association.[19]

d *Party autonomy*. The doctrine of privity of contract and party autonomy also means that a party, in general, is free to decide with whom it contracts. A party can resolve that it, as well as its members, will not in future contract with a particular athlete or club, effectively imposing a ban on such athlete or club.[20]

As a result, this ground is not as strict as the other two and a federation, club or association has some room for improvisation.

As indicated above, a decision by a federation, club or association can also be taken on judicial review in terms of section 6 of the Promotion of Administrative Justice Act[21]. Section 6 provides:

"(1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.
(2) A court or tribunal has the power to judicially review an administrative action if –
(a) the administrator who took it –
(i) was not authorised to do so by the empowering provision;
(ii) acted under a delegation of power which was not authorised by the empowering provision; or
(iii) was biased or reasonably suspected of bias;
(b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
(c) the action was procedurally unfair;
(d) the action was materially influenced by an error of law;
(e) the action was taken –

13 Natal Rugby Union v Gould 1998 (4) All SA 258 (A).

14 *Elsworth v Jockey Club of South Africa* 1961 (4) SA 142 (W) 150; *Bell v Van Rensburg NO* 1971 (3) SA 693 (C) 727; *Turner v Jockey Club of South Africa* 1974 (3) SA 633 (A) 646; *Carr v Jockey Club of South Africa* 1976 (2) SA 717 (W) 723.

15 *Van Huysteen NO v. Minister of Environmental affairs and Tourism* 1996 (1) SA 283 (C).

16 *Traub .v Administrator, Transvaal* 1989 (1) SA 397 (W) 403D-H.

17 *Ibid.*

18 *Malan v. Ardconnel Investments (Pty) Ltd* 1988 2 SA 12 (A).

19 *Herbex (Pty) Ltd v. Advertising Standards Authority* 2016 5 SA 557 (GJ). See also *Medical Nutritional Institute (Pty) Limited v. Advertisings Standard Authority* (15/30142) [2015] ZAGPJHC 317 (18 Sept 2015).

20 *Cronje v. United Cricket Board of South Africa* 2001 4 SA 1361 (T). See also *Advertising Standards Authority v. Herbex (Pty) Ltd* 2017 6 SA 354 (SCA).

21 3 of 2000.

(i) for a reason not authorised by the empowering provision;
(ii) for an ulterior purpose or motive;
(iii) because irrelevant considerations were taken into account or relevant considerations were not considered;
(iv) because of the unauthorised or unwarranted dictates of another person or body;
(v) in bad faith; or
(vi) arbitrarily or capriciously;

(f) the action itself –
(i) contravenes a law or is not authorised by the empowering provision; or
(ii) is not rationally connected to –
(aa) the purpose for which it was taken;
(bb) the purpose of the empowering provision;
(cc) the information before the administrator; or
(dd) the reasons given for it by the administrator;
(g) the action concerned consists of a failure to take a decision;
(h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or
(i) the action is otherwise unconstitutional or unlawful."

As a result, the grounds for judicial review in terms of section 6 overlap, to a significant extent, with the grounds under common law, but section 6 is slightly more elaborate.

Consequences of judicial review

Under South African common law, the main outcome of a successful action for judicial review would be for the court to set aside the decision of the administrator, committee or tribunal and revert the matter back to the the administrator, committee or tribunal in question for proper reconsideration.[22]

However, sometimes a court may deviate from this principle and substitute its own decision for the decision of the administrator, committee or tribunal. This can occur where it would merely be a waste of time to order the administrator, committee or tribunal to reconsider the matter[23], where further delay would cause unjustifiable prejudice[24], where the court is in as good a position to make the decision itself[25] or where the original administrator, committee or tribunal exhibited bias or incompetence to such a degree that it would be unfair to revert the matter back to the body.26

If an action for judicial review is brought in terms of section 6 of the Promotion of Administrative Justice Act,[27] the court may make an order in terms of section 8 of the Act. Section 8 provides:

"(1) The court or tribunal, in proceedings for judicial review in terms of section 6 (1), may grant any order that is just and equitable, including orders—
(a) directing the administrator –
(i) to give reasons; or
(ii) to act in the manner the court or tribunal requires;
(b) prohibiting the administrator from acting in a particular manner;
setting aside the administrative action and –
(i) remitting the matter for reconsideration by the administrator, with or without directions; or
(ii) in exceptional cases –
(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or
(bb) directing the administrator or any other party to the proceedings to pay compensation;
(d) declaring the rights of the parties in respect of any matter to which the administrative action relates;
(e) granting a temporary interdict or other temporary relief; or
(f) as to costs.
(2) The court or tribunal, in proceedings for judicial review in terms of section 6,
(3) may grant any order that is just and equitable, including orders –
(a) directing the taking of the decision;
(b) declaring the rights of the parties in relation to the taking of the decision;
(c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties; or
(d) as to costs."

Once again, there is some overlap between the common law authority of the court and the authority provided in terms of section 8, but the court has wider powers to make a ruling in terms of section 8 than it has under common law.

Conclusions

Although courts in South Africa apply administrative law to sports federations, clubs or associations in terms of the Constitution of the Republic of South Africa, 1996, the Promotion of Administrative Justice Act[28], and the South African common law, actual cases, where courts have

22 *Johannesburg City Council v Administrator, Transvaal* 1969 (2) SA 72 (T) 75.

23 *Hartman v Chairman, Board of Religious Objection* 1987 (1) SA 992 (O) 935.

24 *SA Freight Consolidators v Chairman, National Transport Commission* 1988 (3) SA 485 (W).

25 *Theron v Ring van Wellington van die NG Sendingkerk van Suid-Afrika* 1976 (2) SA 1 (A).

26 *Oskil Properties v Chairman of the Rent Control Board* 1985 (2) SA 234 (SE); *Mahlala v De Beer NO* 1986 (4) SA 782 (T).

27 3 of 2000.

28 3 of 2000.

entertained actions for judicial review of decisions by sports federations, clubs or associations, are few and far between.

Reported cases have, primarily, dealt with reviews of decisions taken by disciplinary tribunals[29], decisions relating to the status or eligibility of players[30] or clubs[31], suspension of a national federation by the general assembly of SASCOC[32], with the odd one also dealing with election of senior office bearers of a sports federation[33].

Courts have, thus far, been reluctant to entertain cases dealing with team selections or the results of sports events.

Courts tend to follow a principle of minimal interference and would only entertain a matter if there are clear grounds for doing so!

29 *Elsworth v. Jockey Club of South Africa* 1961 (4) SA 142 (W) 150; *Bell v. Van Rensburg NO* 1971 (3) SA 693 (C) 727; *Turner v. Jockey Club of South Africa* 1974 (3) SA 633 (A) 646; *Carr v. Jockey Club of South Africa* 1976 (2) SA 717 (W) 723; *Cronje v. United Cricket Board of South Africa* 2001 4 SA 1361 (T).

30 *Ndoro v. South African Football Association* [2018] 3 All SA 277 (GJ).

31 *Tirfu Raiders Rugby Club v. SA Rugby Union* [2006] 2 All SA 549 (C).

32 *Chess South Africa v. South African Sports Confederation and Olympic Committee* [2024] ZAGPPHC 601 (25 June 2024).

33 *Natal Rugby Union v. Gould* 1998 (4) All SA 258 (A).

Exploring the role of stakeholders in safeguarding athletes' brain health and concussion management

BY GRETE-LEE SWANEPOEL[1][2]

Introduction

For many athletes, the terms *"shake it off"* and *"you're fine, get back out there"* were thought to instil a toughness that was simply an essential part of sport.

What the sporting world has learned in the past decade or two, however, is that athletes were often doing irreparable damage to their brains when they shook off head and neck injuries.[3]

Although the risk of injury is part of sport, injuries can be a result of someone's negligence or the wilful misconduct of another player. Therefore, it is important to ascertain whether there is a duty of care, as well as on whom this duty rests, to mitigate the possibility of injuries. By identifying the duty of care and precisely placing it on the various stakeholders, the risk of injuries in sport can be limited. It is essential to investigate whether this duty rests on the sports organisations and officials to set out and enforce the necessary rules to ensure player safety, or on players to adhere to these rules to prevent injuries, or jointly on all parties involved in sport and ensuring its safety. Whether these injuries are *delictual* or not, they must be managed and treated in the right manner to ensure that players can return to play safely and without the risk of aggravating the injury sustained.

In recent years, there has been a growing awareness of the risks associated with concussions in various sports. Athletes, particularly those engaged in contact or collision sports, are vulnerable to head injuries during training and competition.[4] This raises questions about player safety, medical protocols, and legal responsibilities.

Unlike with other causes of head injuries such as car accidents or falls, which are usually isolated events, athletes are continually exposed to the risk of concussion. Thus, repeat injury is common. Athletes are particularly vulnerable if the repeat injury occurs before they have fully recovered from a previous concussion, but even after recovery, athletes who have suffered one concussion are two to four times more likely to suffer another concussion at some point. A repeat concussion can also occur after a less severe impact than the impact of the initial concussion.[5]

Another risk factor that plays a significant role in traumatic brain injuries in sport is the occurrence of sub-concussive head impacts. There has been a growing concern over sports-related brain injuries and possible long-term consequences; however, there has been less of a focus on the cumulative effects of repetitive sub-concussive impacts. Sub-concussive impacts are defined as events similar to those giving rise to a concussion, or mild traumatic brain injury, but apparently involving insufficient impact forces or accelerations to produce symptoms associated with concussions.[6] These injuries can stem from a minor blow to the head, or even the nature of the game, such as soccer players repeatedly using their heads in play. Sub-concussive injuries can be more problematic than severe concussions as they occur more frequently, but they are asymptomatic; so, they go unnoticed and, therefore, untreated. Doctors are not able to diagnose sub-concussive injuries yet, but the risks associated with these impacts are severe, and, if not treated, can lead to more serious head injuries in the long run, as well as long-term effects on players' brain health, such as memory loss and depression,

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2 This article is based on a dissertation submitted in partial fulfilment of the requirements for the LLB degree at the University of Pretoria, prepared under the supervision of prof. Steve Cornelius.

3 https://neuraleffects.com/blog (accessed 27 August 2024).

4 Eric Anderson et al.,"Sport Structured Brain Trauma is Child Abuse"(), in: *Taylor & Francis Online*, 30 November 2023, available at www.tandfonline.com/doi/full/10.1080/17511321.2023.2284923 (accessed 27 August 2024).

5 Gordon Mao, "Sports-related Concussion", in: *MSD Manual,* February 2023, available at www.msdmanuals.com/professional/injuries-poisoning/traumatic-brain-injury-tbi/sports-related-concussion (accessed 27 August 2024).

6 Semyon M. Slobounov *et al*., "The effect of repetitive subconcussive collisions on brain integrity in collegiate football players over a single football season: A multi-modal neuroimaging study, in: *ScienceDirect*, 2017 , available at www.sciencedirect.com/science/article/pii/S2213158217300669 (accessed 27 August 2024).

even if they do not sustain an aggravating head injury.[7]

Problem statement and research objective

Whilst concussions and traumatic brain injuries represent significant health risks in sport, the legal landscape governing the management of them remains complex and multifaceted. Despite increasing awareness and efforts to address these issues, challenges persist in effectively implementing legal frameworks, establishing liability standards, and ensuring athlete safety. Therefore, there is a need to examine comprehensively the legal duties and responsibilities of various stakeholders to address, prevent, diagnose, and manage sports-related head injuries.

Stakeholders in concussion management

The effective management of concussions in sport involves the coordinated efforts of various key role players, each with distinct responsibilities and contributions. This section provides a comprehensive overview of the diverse stakeholders involved in concussion management, including sports organisations, coaches, medical professionals, the athletes themselves, and parents, guardians and educators. By understanding the specific duties and collaborative efforts required from each role player, we can better understand the approach necessary for preventing, recognizing, and treating concussions.

This collective responsibility is vital in promoting a culture of safety and ensuring the health and well-being of athletes at all levels of sport.

All stakeholders owe athletes a duty of care, which requires them to take reasonable steps to protect athletes from harm. This also includes informed decision making about participation in sports activities and understanding the risks of injuries such as concussions. By understanding their duty of care, they can implement appropriate safety measures, protocols, and procedures to mitigate the risk of concussions, and make informed decisions about risk management and informed consent.

Sports organisations

Sports organisations play a critical role in implementing concussion protocols and guidelines to protect athletes from the risks of concussions and promote a safe and healthy sports environment. By fulfilling their duties in concussion management, sports organisations can help minimise the incidence and severity of concussions and safeguard the well-being of athletes. They play a fundamental role in establishing and enforcing rules and regulations for different sports. By setting clear guidelines and standards, sports organisations ensure fair competition, maintain discipline, and protect the integrity of the game, as well as safeguarding athlete health and safety. They are responsible for regularly reviewing and updating the rules to adapt to changing trends and technologies.[8]

Duty of care owed by sports organisations to ensure player safety

Sports organisations are responsible for developing and implementing comprehensive concussion guidelines, policies and protocols for recognizing, evaluating, managing and preventing concussions. These protocols should be based on current medical standards and best practices in concussion management.

These policies typically outline procedures for recognizing and responding to concussions, medical evaluation and clearance requirements, return-to-play protocols, and education and training initiatives for athletes, coaches, and medical personnel. National, provincial, and individual sporting organisations should ensure that all stakeholders (including referees) are formally educated about concussions to encourage a safety-first environment for youth athletes.[9]

The necessity to include referees in the stakeholders that need to be educated by sports organisations becomes evident when considering that referees in collision and contact sports, have the power to stop the game if there is concern for player safety or a potential injury. This becomes vitally important in the initial management of concussions, as these injuries require immediate recognition and removal from play, to ensure proper assessment, treatment, and prevention of catastrophic conditions, such as second impact syndrome.[10]

Sports organisations must ensure that athletes have access to qualified medical professionals trained in concussion management for evaluation, diagnosis, and treatment. They should establish an athletic health care team to ensure that appropriate medical care is provided to all participants.[11] Together with ensuring access to medical care, organisations have a duty to promote equipment safety and minimise the risk of concussions using appropriate protective gear, such as helmets and mouthguards. They should also regularly inspect and maintain equipment to ensure its effectiveness in reducing the risk of head injuries.

7 M Rees "What is subconcussion and is it dangerous?", in: *MedicalNewsToday*, January 2024, available at www.medicalnewstoday.com/articles/subconcussive-head-impacts (accessed 27 August 2024).

8 William Carson Winter Haven, "The Role and Importance of Sports Organizations in the World of Sports", in: Medium, 2023, available at https://williamcarsonwinterhaven.medium.com/the-role-and-importance-of-sports-organizations-in-the-world-of-sports-5671615b3c01 (accessed 27 August 2024).

9 Colin King & Erin Coughlan, "Blowing the Whistle on Concussion Knowledge and Education in Youth Sport Referees" in: *Open Access Journal of Sports Medicine* 12, 2021, p. 109-117, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8349549/ (accessed 27 August 2024).

10 Paul McCrory *et al.*: "Consensus statement on concussion in sport – the 5th international conference on concussion in sport held in Berlin, October 2016", in: *British Journal of Sports Medicine* 51(11) (2017), p. 838-847, available at https://bjsm.bmj.com/content/51/11/838 (accessed 27 August 2024).

11 Jon Almquist *et al.*, '"Summary Statement: Appropriate Medical Care for the Secondary School-Aged Athlete", in: *Journal of Athletic Training* 43(4) (2008), p. 416-427, available at www.ncbi.nlm.nih.gov/pmc/articles/PMC2474822 (accessed 27 August 2024).

Sports organisations should regularly monitor and evaluate the effectiveness of their concussion protocols and guidelines in preventing and managing concussions. This may involve collecting data on concussion incidents, tracking adherence to protocols, and identifying areas for improvement to enhance athlete safety and to ensure that they align with the current best practices.[12]

Sports organisations have a duty to comply with applicable laws, regulations, and industry standards related to concussion management. This includes adhering to state or national concussion laws, as well as following guidelines established by governing bodies or sports leagues. As such, the observance of internal policies, external regulatory systems, and the formal rule of law is an essential element of governance practice, which ensures that sport organisations' behaviour is in line with normative standards of society.[13]

Beyond legal obligations, there are ethical considerations involved in promoting athlete safety and well-being. Organisations and their board of directors have the ethical responsibility not to encourage athletes to return rapidly to their sports activity independently of the degree of injury or whether some type of surgical intervention is required or to allow team physicians or medical professionals, for example, to use analgesics excessively, which allows the injured athlete to continue playing in a game that, at that moment, would appear to benefit the team but, in reality, would worsen the injury and, in the long-term, could have negative effects.[14]

Liability standards and legal implications

The failure of sports organisations to fulfil their duties regarding comprehensive concussion management can have significant legal implications. These implications arise from various legal theories, including negligence, breach of duty, and failure to comply with statutory requirements. If an organisation fails to implement appropriate concussion protocols, they may be found to have breached their duty of care. This breach can occur if the organisation does not follow current medical standards, fails to educate stakeholders (which can also amount to vicarious liability), or does not provide access to qualified medical professionals. For a successful negligence claim, the injured athlete must show that the breach directly caused their injury or exacerbated their condition. This includes failing to recognize, properly manage, or prevent concussions, which leads to further harm. Failure to provide a safe training and playing environment can result in litigation for injuries which can include compensation for medical expenses, pain and suffering and long-term health problems.

In the case of Noak v. Waverley Municipal Council, it was held that a rugby league player was owed a duty of care, both by the league and the club. in relation to an injury that he sustained during a fixture when he fell over a sprinkler protruding from the playing surface.[15]

Failure to comply with safety laws and regulations specific to concussion management in sport can result in punitive measures, such as legal penalties, fines, and increased liability.[16] Beyond legal consequences, failing to manage concussions properly and breaching ethical duties can severely damage an organisation's reputation. This can lead to internal conflicts, loss of sponsors, diminished fan support, and decreased athlete participation.

Coaches

Coaches play a vital role in recognizing and responding to concussion symptoms during practices and games. They are responsible for implementing concussion protocols, removing athletes from play when necessary, and facilitating appropriate medical care. Coaches also play a role in educating athletes about concussion risks and prevention strategies. As many as 50% of concussions are not reported. And, up to 80% of people, who have a concussion, do not know that they have one. It is crucial, therefore, that coaches are present to observe, evaluate, and manage appropriately suspected concussions when they occur.

According to the American Medical Association, coaches are recognized as allied healthcare professionals and their training and education in concussion management is comprehensive. In the high school sports setting, coaches are the first providers present to identify and evaluate injured student-athletes. They also serve as integral members of the post-injury concussion management team. Finally, as part of the concussion protocol, they are an important part of the return-to-play decision process. The presence of certified coaches is crucial at sports practices and games.[17]

12 Toronto Catholic District School Board, *Concussion Management Protocol* (2015), available at https://assets.tcdsb.org/TCDSB/2234372/S26-Related-TCDSB-Protocols-for-Concussions.pdf (accessed 27 August 2024).

13 Sungho Cho et al., "Regulatory Schemes and Legal Aspects of Sport Governance: Theoretical Perspectives and Conceptual Framework", in:*Journal of Global Sports Management*, 2023, available at www.tandfonline.com/doi/full/10.1080/24704067.2023.2249481 (accessed 27 August 2024).

14 Nancy Vargas-Mendoza et al., "Ethical Concerns in Sport: When the Will to Win Exceed the Spirit of Sport", in: (2018) *Behavioural Sciences (Basel, Switzerland) Journal* 8(9), 2018, p. 78, available at www.ncbi.nlm.nih.gov/pmc/articles/PMC6162520 (accessed 27 August 2024).

15 *Noak v. Waverley Municipal Council* (1984) Aust Torts Reports 80-200.

16 Krystal L Tomei *et al*., "Comparative analysis of state-level concussion legislation and review of current practices in concussion", in: *Neurosurg Focus*, 33(6) (2012), E11, available at https://thejns.org/focus/view/journals/neurosurg-focus/33/6/article-pE11.xml (accessed 27 August 2027).

17 The Center Foundation, *Concussion Protocol For Youth Sports*, available at www.centerfoundation.org/concussion-protocol (accessed 27 August 2024).

Duty of care owed by coaches to athletes under their supervision

In an American study[18], T.C. Schwarz classified thirteen legal duties for coaches that have been derived from court precedents and legal literature. Most of the duties set out by Schwarz are closely related to protecting athletes' health and preventing concussions during practice or play, and they include:

- to provide proper supervision;
- to warn athletes about the inherent risk of practice or competition;
- to provide adequate and proper instruction;
- to provide a safe environment and facilities;
- to provide safe equipment;
- to provide adequate and proper health care;
- to match properly and equate competitors for competition; and
- to teach and enforce rules and regulations.

Liability standards and legal implications
Although coaches are under no automatic legal liability merely because the injuries occurred under the coach's control, when an unexpected incident occurs on the playing field, the actions or inactions of the coach are possibly criticised or directly blamed.[19]

The source of civil liability is normally based on the theory of negligence. Negligence has been the most frequent basis for suits brought against the coach by plaintiff athletes, claiming that the coach should be held liable for injuries suffered during training. An athlete must prove, on a balance of probabilities, that the coach's action was careless. Negligence may be defined as the failure to exercise the degree of care demanded by the particular circumstances at the time of the charged act or omission.[20]

In cases of negligence, a cause of action from which liability will follow requires:

- a legally recognized duty of care on the part of the coach;
- a breach of this duty by the coach;
- resulting injuries or damages to the athlete; and
- a proximate causal connection between the breach of the duty and the resulting injury.[21]

Failure by coaches to recognize the risks within their sport and/or to enlighten athletes on how to control these risks could leave coaches defenceless to civil liability in the situation of an athlete's accident.[22]

Medical professionals

Medical professionals, such as team physicians and healthcare providers, are responsible for diagnosing, treating, and managing concussions. They play a crucial role in assessing the severity of concussions, providing medical clearance for return to play, and implementing rehabilitation plans. Medical professionals also contribute to the development and implementation of concussion protocols and policies.

A number of organisations have attempted to define the duties and qualifications of a team physician. The Team Physician Consensus Statement is such an effort by the American Academy of Family Physicians, American Academy of Orthopaedic Surgeons, American College of Sports Medicine, American Medical Society for Sports Medicine, American Orthopaedic Society for Sports Medicine, and the American Osteopathic Academy of Sports Medicine. It defines the duties of a team physician as follows:

"The team physician should possess special proficiency in the care of musculoskeletal injuries and medical conditions encountered in sports. The team physician also must actively integrate medical expertise with other healthcare providers, including medical specialists, athletic trainers, and allied health professionals. The team physician must ultimately assume responsibility within the team structure for making medical decisions that affect the athlete's safe participation."[23]

Duty of care owed by medical professionals to athletes under their supervision

Medical professionals have a duty to conduct thorough assessments and diagnosis of athletes who may have suffered concussions. This duty involves promptly recognizing and evaluating signs and symptoms of concussion, such as headache, dizziness, confusion, and loss of consciousness. Once a concussion is diagnosed, medical professionals have a duty to provide appropriate

18 TC Schwarz, *Coaches and liability: preventing litigation through the legal duties of coaches*. Doctoral dissertation (Washington State University, 1996).

19 Kevin M Guskiewicz and Steven E. Pachman "Management of Sport-Related Brain Injuries: Preventing Poor Outcomes and Minim. izing the Risk for Legal Liabilities", in: *Athletic Training and Sports Health Care 2*(6) (2010), p. 248-255, available at https://journals.healio.com/doi/10.3928/19425864-20101021-01 (accessed 27 August 2024).

20 Stuart M. Speiser, *The American Law of Torts, Second edition* (Lawyers Co-operative Pub, 1985).

21 Hamidreza Mirsafian, "Legal Duties and Legal Liabilities of Coaches toward Athletes", in: *Physical Culture and Sport Studies and Research* (University of Isfahan, 2016), available at www.researchgate.net/publication/292678138_Legal_Duties_and_Legal_Liabilities_of_Coaches_toward_Athletes (accessed 27 August 2024).

22 Geneviève A. Mageau and Robert J. Vallerand, "The coach-athlete relationship: a motivational model" (2003) *Journal of Sport Sciences*, 21(11) (2003), p. 883-904, available at www.tandfonline.com/doi/abs/10.1080/0264041031000140374 (accessed 27 August 2024).

23 Steven M. Kane and Richard A. White, "Medical Malpractice and the Sports Medicine Clinician", in: *Clinical Orthopaedics and Related Research* 467(2) (2009), p.: 412-419, available at www.ncbi.nlm.nih.gov/pmc/articles/PMC2628504 (accessed 27 August 2024).

treatment and management strategies to athletes. This may include advising on rest, monitoring symptoms, managing pain, and implementing a gradual return-to-play protocol in accordance with established medical guidelines.

Medical personnel, with training in the diagnosis, treatment and management of concussion, will be present at all competitions. The physician's ethical duty to safeguard all athletes, particularly younger ones, from the risks of additional concussions increases with each injury. Medical professionals must ensure that athletes, or their legal guardians, if applicable, provide informed consent before receiving medical treatment or participating in return-to-play decisions.

This involves explaining the risks, benefits, and alternatives of proposed treatments, as well as any potential consequences of returning to play after a concussion. Regardless of the athlete's acknowledgement that there is a potential risk of neurologic impairment, which may be permanent, physicians should be sensitive to the many factors motivating an athlete to return to sport.[24]

Confidentiality is a critical element of the doctor–patient relationship. Patients freely disclose information to their doctors because they trust that the information will be held in confidence.[25] Medical confidentiality and privacy laws protect athletes' medical information and treatment records. Medical professionals are required to maintain confidentiality when diagnosing and treating concussions, disclosing information only as necessary for athlete safety and compliance with legal requirements.

The team doctor acts as an agent of the club and may handle information differently. Team physicians dealing with professional sports, as club employees, typically have contractual obligations to share important information related to the athlete's health with team management.[26] The team physician has ultimate responsibility for the following duties:
- ensuring proper preparation for safe return to participation after an illness or injury;
- developing a chain of command, with the team physician at the top;
- coordinating preparticipation screenings, examinations, and evaluations;
- managing on-the-field injuries;
- providing medical management of injury and illness;
- coordinating rehabilitation and return to participation;
- integrating his or her medical expertise with that of other health care providers, including medical specialists, athletic trainers, and allied health professionals;
- providing appropriate education and counselling regarding nutrition, strength and conditioning, ergogenic aids, substance abuse, and other medical issues that could affect the athlete;
- ensuring proper documentation and medical record keeping;
- educating athletes, parents or guardians, spouses, administrators, coaches, and other necessary parties of concern regarding the athletes;
- planning and training for emergencies during competition and practice; and
- addressing equipment and supply concerns.[27]

Liability standards and legal implications

There are many ethical and legal issues that physicians face when evaluating and managing athletes with sports-related concussions. Some of these ethical considerations include professionalism, informed decision-making while respecting autonomy, beneficence and nonmaleficence, conflicts of interest and distributive justice.[28] A breach of the duty of care occurs when a medical professional fails to act in accordance with established medical guidelines, protocols, or standards of practice in assessing, diagnosing, treating, or managing an athlete's concussion.

Breaching the duty of care owed by medical professionals to athletes under their supervision can have significant legal implications and may result in liability for negligence.

In the American case of Speed v. State, it was held that a physician is liable for injury to a patient caused by failure of the physician to apply that degree of skill, care, and learning ordinarily possessed and exercised by other physicians in similar circumstances.[29]

In addition to establishing a breach of duty, plaintiffs must demonstrate that the medical professional's breach of duty caused or contributed to the athlete's injury or harm. This requires establishing a causal link between the medical professional's actions or omissions and the athlete's concussion-related injury, symptoms, or complications. In a legal case of negligence, the athlete

24 Michael Turner et al., "Consent, capacity and compliance in concussion management: cave ergo medicus (let the doctor beware)", in: *British Journal of Sports Medicine* 2020-102108, available at https://pubmed.ncbi.nlm.nih.gov/32788296 (accessed 27 August 2024).

25 Andrew M. Tucker, "Ethics and the professional team physician", in: *The American Journal of Bioethics* 23(2) (2004), p.:227-241, available at https://pubmed.ncbi.nlm.nih.gov/15183569/ (accessed 27 August 2024).

26 I. Waddington and M. Roderick, "Management of medical confidentiality in English professional football clubs: some ethical problems and issues", in: *British Journal of Sports Medicine* 36(2) (2002), p. 118-123, available at www.ncbi.nlm.nih.gov/pmc/articles/PMC1724470/pdf/v036p00118.pdf (accessed 27 August 2024).

27 Ron Courson *et al.*, "Inter-Association Consensus Statement on Best Practices for Sports Medicine Management for Secondary Schools and Colleges", in: *Journal of Athletic Training* 49(1) (2014), p. 128-137, available at www.researchgate.net/publication/260115920_Inter-Association_Consensus_Statement_on_Best_Practices_for_Sports_Medicine_Management_for_Secondary_Schools_and_Colleges (accessed 27 August 2024).

28 Matthew P. Kirschen *et al.*, "Legal and ethical implications in the evaluation and management of sports-related concussion", in: *Neurology*, 9 July 2014, available at https://pubmed.ncbi.nlm.nih.gov/25008394 (accessed 27 August 2024).

29 *James R. Speed v. State of Iowa*, 240 N.W.2d 901 (Iowa 1979).

must prove by a preponderance of the evidence that the breach was in fact the legal cause of the injury.[30]

Actual cause is established if the athlete can prove that the medical professional's actions were a considerable determining factor in the damage claimed. When treating an athlete with a concussion, actual cause can be an act, such as the act of clearing an athlete to participate, or an omission of an act, such as a failure to conduct reasonable objective tests to assess the athlete's condition or failure to obtain informed consent for medical treatment or return-to-play decisions.

If the athlete cannot prove the actual cause, he or she must prove the proximate cause. Proximate cause occurs when the action of the medical professional foreseeably leads to harm or injury to the athlete. Team physicians can share liability, for example with coaches, if more than one person, other than the athlete, contributed to the injury.[31]

Athletes

Athletes are at the centre of concussion management. They hold legal duties pivotal to their own safety and that of their peers, entailing a profound responsibility in upholding concussion protocols and promptly reporting potential head injuries. From the imperative of self-recognition to the obligation of honest communication and adherence to medical advice, players navigate a complex legal landscape where their actions and decisions can profoundly impact, not only their own well-being, but also the legal liability of themselves and their sports organisations.

Failure to fulfil these duties not only poses risks to individual health but also carries significant legal liabilities.

Concussion affects athletes at all levels of sport from the part-time recreational athlete through to the full-time professional. It is important that they are equipped with the knowledge and tools to help them have a long and healthy sporting career.[32]

Duty of care owed by athletes to themselves, their coaches, teammates, and opponents

Players should educate themselves about the signs and symptoms of concussions to be able to self-recognize when they or their teammates may have sustained a concussion. Common symptoms include headache, dizziness, confusion, nausea, and sensitivity to light or noise. By being aware of these symptoms, players can self-report potential concussions and seek appropriate medical evaluation.

Players have a responsibility to report immediately any suspected concussions to their coaches, team medical staff, or designated officials. Self-reporting of concussion is essential to appropriate intervention, and failure to report concussion-like symptoms is a significant issue.[33] Honest communication is essential for facilitating appropriate medical evaluation and decision-making regarding return-to-play. If a player suspects a concussion, it is important to be evaluated by a healthcare professional trained in the diagnosis and management of concussion; they should not try to judge the seriousness of the injury themselves.[34]

After medical evaluation, players must follow the advice and recommendations of medical professionals regarding concussion management and return-to-play decisions. This may include adhering to rest and recovery protocols, refraining from physical activity until medically cleared, and gradually reintroducing activity under medical supervision. Players should prioritise their long-term health and well-being over the desire to return to play prematurely.

Players also owe a duty of care to each other, because of the close physical proximity in which sport is often played.[35] They must adhere to the rules enforced by sports organisations and officials to prevent negligent injuries to themselves or other players.

Players have ethical responsibilities to their teammates and the broader sports community and are expected to prioritise health and safety over competitive desires, setting an example for others in the sports community, but players often decide to prioritise performance over their health and safety.[36]

30 Jon C. Weistartand Cym M. Lowell, *The Law of Sports* (Bobbs-Merrill Co., Indianapolis,1979).

31 Barbara Osborne, "Principles of Liability for Athletic Trainers: Managing Sport-Related Concussion" Journal of Athletic Training 36(3) (2001), p. 316-321 ,available at www.ncbi.nlm.nih.gov/pmc/articles/PMC155425 (accessed 27 August 2024).

32 Australian Sports Commission, *Concussion in Australian Sport*, available at www.concussioninsport.gov.au (accessed 27 August 2024).

33 Darryl W.H. Stephenson, "Canadian Football League Players' Reporting of Concussion Symptoms", in: *Forum: Qualitative Social Research* 22(2) (2021), available at www.ssoar.info/ssoar/bitstream/handle/document/74610/ssoar-fqs-2021-2-stephenson_et_al-Canadian_Football_League_Players_Reporting.pdf?sequence=1&isAllowed=y (accessed 27 August 2024).

34 University of Michigan Health, "Concussion in Athletes", available at www.uofmhealth.org/conditions-treatments/brain-neurological-conditions/concussion-athletes-neurosport (accessed 27 August 2024).

35 Pauline Sadler and Robert Guthrie, "Sports injuries and the right to damages" (Curtin University of Technology, School of Business Law), available at www.researchgate.net/publication/268185579_Sports_Injuries_and_the_Right_to_Damages (accessed 27 August 2024).

36 Yanbing Chen et al., "Managing the Wellbeing of Elite Rugby Union Players from an Occupational Safety and Health Perspective", in: *International Journal of Environmental Research and Public Health* 19(19) (2022), p. 12229, available at www.mdpi.com/1660-4601/19/19/12229 (accessed 27 August 2024).

Liability standards and legal implications
When players fail to uphold their responsibilities, not only does it have reputational consequences affecting their careers and marketability, making teams and sponsors less willing to be associated with them, but it also gives rise to several legal and ethical consequences.

Players may be held liable for negligence if their actions or inactions contribute to their own injury or the injury of others. Negligence requires demonstrating that the player owed a duty of care, breached that duty, and caused harm as a result. In the English case of Condon v. Basi[37], the plaintiff's leg was broken as the result of a "foul" sliding tackle applied by the defendant during a soccer match. The defendant, Basi, was found liable, and damages of £ 4,900 were awarded against him. Sir John Donaldson said in that case, in relation to the standard of care required, the standard is objective, but also objective in a different set of circumstances for each different sport and league or division in which the sport is played.

In the context of concussion management, this could include failing to report symptoms or ignoring medical advice, leading to further injury. For players under professional contracts with specific clauses related to health and safety, this can also lead to fines, disciplinary actions, or termination of contracts.

A player's failure to report concussion symptoms or adhere to medical guidelines can also impact the legal liability of the team or sports organisation. Given the expansion of vicarious liability beyond the conventional employer-employee relationship, it is foreseeable that vicarious liability could be applied against governing bodies or amateur sporting organisations.[38]

Parents, guardians, and educators

Parents, guardians, and educators are important stakeholders in concussion management, especially for youth athletes. They play a critical role in the management of concussions in youth sports, serving as essential advocates for the health and safety of young athletes. Their involvement is pivotal in recognizing concussion symptoms, ensuring appropriate medical evaluation, and supporting the recovery process.

By understanding their legal and ethical obligations, such as prompt reporting and adherence to medical guidelines, parents, guardians, and educators can better protect young athletes, foster a culture of safety, and contribute to effective concussion management practices within schools and sports organisations. Through their active participation, these stakeholders not only help prevent long-term health issues but also ensure that young athletes receive the care and support that they need to return safely to their sports activities. Parents/guardians have the potential to influence their child-athlete's care seeking behaviour if they sustain a suspected concussion through the pressure athletes experience related to continued play with concussive symptoms.[39]

Legal duties of parents, guardians, and educators towards athlete safety and well-being
Parents have a legal duty to learn the signs and symptoms of concussion and review them with their children. In case of a possible concussion, they have the responsibility of ensuring that the athlete is assessed by a medical doctor or nurse practitioner, as soon as possible, and collaborate with medical professionals to manage the diagnosis appropriately.

Parents also have to support and encourage their concussed child with their recovery and reinforce the importance of following the school or organisation's safety procedures as well.

Parents and guardians have a legal duty to report any concussion history on medical forms. In certain cases, it is the parent or guardian's responsibility to request any accommodations needed in accordance with their child's diagnosis and recovery process.[40]

In the context of youth sports, educators and school personnel are key stakeholders in concussion management. They play a role in recognizing and responding to concussions that occur during school-based activities, such as physical education classes, recess, and school sports events. Educators also have a responsibility to communicate with parents and medical professionals about any concussion incidents involving students.

Educators are not only responsible for educating young athletes on the prevention and treatment of concussions and advocating for the care and support that they may need,[41] but emphasis has also been placed on providing concussion education to parents due to the fact that they play a pivotal role in concussion education and management prior to a concussion, immediately after a concussion and throughout the recovery process.[42]

37 Condon v. Basi [1985] 2 All ER 453.

38 Victoria Curran, "Vicarious liability of amateur sports teams for player on player injuries", in: *Browne Jacobson*, 15 September 2023, available at www.brownejacobson.com/insights/vicarious-liability-of-amateur-sports-teams-for-player-on-player-injuries (accessed 27 August 2024).

39 Hong Zhou *et al.,* "Parent-Child communication about concussion: what role can the Centers for Disease Control and Prevention's HEADS UP concussion in youth sports handouts play?", in: Brain Injury 36(9) (2022), p. 1133-1139, available at www.ncbi.nlm.nih.gov/pmc/articles/PMC9481704/ (accessed 27 August 2024).

40 Note 27 above.

41 "Supporting a student with concussion: Your role as a teacher", Living Guideline for Pediatric Concussion Care, available at https://pedsconcussion.com/wp-content/uploads/Living-Guideline-Resource-Teacher.pdf (accessed 27 August 2024).

42 Kylie D. Mallory et al., "Concussion Education in the School Setting: A Scoping Review", in: *The Journal of School Health* 92(6) (2022), p. 605-618, available at www.ncbi.nlm.nih.gov/pmc/articles/PMC9311225/pdf/JOSH-92-605.pdf (accessed 27 August 2024).

Liability standards and legal implications
Although many sports organisations and schools are implementing concussion protocols to protect better their athletes, the responsibility ultimately falls on parents to advocate for their children's safety and make informed decisions about their participation in contact sports.[43]

According to Gluckstein Lawyers, any adult supervising a child owes them a duty of care to keep them reasonably safe from dangers and injuries. If that adult has been negligent, they could be liable for the child's injury.[44]

Negligence on the part of a parent, guardian, or educator can manifest itself through uninformed decision-making regarding participation in certain sports, withholding any medical information on forms or indemnity waivers and the failure to inform adequately the child or athlete under their supervision of the risks associated with concussions in sport, as well as the strategies for prevention.

Conclusions

The management of concussions in sport is a complex issue that requires the collaboration of various stakeholders to ensure the safety and well-being of athletes. Legal frameworks, international guidelines, national regulations, and organisational policies collectively shape the landscape of concussion management.

Sports organisations are at the forefront, establishing protocols and standards that are informed by the latest medical research and best practices. Their duty extends beyond mere compliance with laws; it involves an ethical commitment to prioritise athlete health over competitive success.

Coaches, as direct supervisors of athletes, bear significant responsibility in recognizing and responding to concussion symptoms. Their legal duties include proper supervision, education, and the implementation of safety protocols.

Medical professionals play a critical role in the accurate diagnosis, treatment, and management of concussions. Their expertise ensures that athletes receive the necessary care and are only allowed to return to play when it is safe to do so. The failure of medical professionals to adhere to established standards can lead to severe legal consequences, highlighting the importance of their role in concussion management.

Athletes themselves are not exempt from responsibility. They must be educated about the risks of concussions, recognize symptoms, and communicate honestly with medical staff and coaches. Their actions and decisions can significantly influence their own health and the legal liability of their teams.

Parents, guardians, and educators are crucial, especially in youth sports. They must be vigilant in recognizing concussion symptoms and advocating for appropriate medical care. Their involvement is essential in creating a supportive environment for young athletes during recovery.

The effective management of concussions in sport hinges on a comprehensive understanding of the legal and ethical duties of all stakeholders involved. By fostering a culture of safety, adhering to established protocols, and ensuring open communication, we can better protect athletes from the risks of concussions and promote their long-term health and well-being.

Addressing concussions in sport requires a holistic approach that integrates legal safeguards, medical best practices, and robust risk management strategies. By understanding and fulfilling their legal duties, sports organisations can protect athletes, reduce liability exposure, and uphold the highest standards of safety and care.

As the landscape of sport continues to evolve, continuous refinement of these strategies will be essential to meet emerging challenges and ensure the long-term well-being of athletes. There are several ways in which we can address the complexities surrounding sports-related concussions and further enhance player safety and address the legal complexities surrounding concussions in sport.

The development of concussion education programs, covering the risks, symptoms and management of concussions, for athletes, coaches, medical staff, and parents, will improve awareness and understanding of concussion risks, leading to a better recognition of symptoms and adherence to appropriate management protocols. Enhanced education can reduce the incidence of undiagnosed and mismanaged concussions, ultimately improving athlete safety.

A good example of educational programs is a system in Oklahoma. Oklahoma state law requires all game officials and team officials, for example, coaches, assistant coaches, managers, to complete annual concussion training. Records of completed training must be maintained and must be readily available upon request.

The Centers for Disease Control and Prevention (CDC) and the National Federation of State High School Associations (NFHS) offer free online concussion training. Trainings from other organisations may be substituted to meet the requirements of the law, but the content of the training must be comparable to that offered by CDC and NFHS.[45]

43 Elizabeth Pieroth, "Kids' Concussions: Whose Responsibility is it Anyway?", in: *Ivanhoe Newswire*, 22 May 2024, available at www.ivanhoe.com/family-health/children/kids-concussions-whose-responsibility-is-it-anyway (accessed 27 August 2024).

44 "Who is accountable or liable following a pediatric concussion?", in: *Gluckstein Lawyers*, 20 December 2022), available at www.gluckstein.com/faq/who-is-accountable-or-liable-following-a-pediatric-concussion (accessed 27 August 2024).

45 https://oklahoma.gov/health/health-education/injury-prevention-service/concussions/schools-and-sports-organizations.html (accessed 27 August 2024).

Establishing and enforcing standardised concussion assessment and management protocols across all levels of sport will ensure consistency in concussion management, reducing variability in care and minimising the risk of improper treatment. This will enhance the effectiveness of concussion management and support safer return-to-play practices. These protocols should include clear guidelines for immediate assessment, removal from play, and return-to-play procedures.

Advocating for the development and implementation of more rigorous legal frameworks and regulations specific to concussion management in sports, including updating existing laws to align with current best practices and ensuring enforcement, is essential to provide clearer guidelines for managing concussions, improving compliance amongst sports organisations, and enhancing accountability. This will reduce legal uncertainties and protect both athletes and organisations.

It is vital for researchers, sports organisations, and healthcare professionals to invest in research and data collection on the long-term effects of concussions, the effectiveness of management protocols, and the impact of legal interventions. This will provide valuable insights into the effectiveness of current practices and inform future improvements, as well as contribute to evidence-based decision-making and the development of more effective concussion management strategies.

By proactively aligning with legal requirements, sports academies can sidestep potential legal entanglements that can be costly and damaging to reputation. Fostering a culture of safety and transparency within sports organisations by encouraging open communication about concussion risks and management, including promoting reporting of symptoms and incidents, without fear of stigma or repercussions, will lead to more proactive management of concussions, reducing the likelihood of concealed injuries and promoting timely intervention. This will improve overall athlete well-being and safety.

To enhance further this culture of safety, organisations should establish healthy support systems for athletes recovering from concussions. This includes access to medical care, psychological support, academic accommodations for student-athletes, and resources for their families.

Integrating technological advancements, such as wearable devices and impact sensors, to monitor and manage concussions more effectively, can provide real-time data and early warning signs of potential injuries.

By implementing these recommendations, sports organisations can enhance their approaches to concussion management, reduce legal and health risks, and create a safer environment for athletes. Continuous evaluation and adaptation of these strategies will be essential to address emerging challenges and maintain high standards of safety and care.

Insights from Switzerland and Italy

Women's soccer: charting the economic landscape

BY LUCIEN VALLONI AND SARA BOTTI[1]

Introduction

In the collective imagination, the world of women's soccer is defined by a before and an after; and the watershed date is July 2023.

The FIFA World Cup 2023 in Australia and New Zealand has turned the world's spotlights on women's soccer, increasing attention to the sport, but also to female players in terms of sponsors, image rights and economic opportunities.

The global expansion of women's soccer owes its momentum to a confluence of international tournaments, professional leagues, media spotlight, and a burgeoning public engagement. This surge is paralleled by a heightened acknowledgment of female athletes' impact on the football landscape and concerted endeavours to advance gender parity within the realm of sports.

Women's engagement in football has surged worldwide. Entities like FIFA, FIFPRO and national federations and national players' unions are actively advocating for women's football through youth initiatives, competitions, and campaigns aimed at bolstering female involvement.

Key events, such as the FIFA Women's World Cup and the Olympic Games, have been instrumental in advancing women's football. These competitions draw substantial media coverage, amplifying global interest in women's soccer.

In numerous nations, professional women's football leagues have emerged, exemplified by the Women's Super League (WSL) in England, the National Women's Soccer League (NWSL) in the United States, and Division 1 Féminine in France, amongst others, which have garnered considerable renown and triumph.

The amplification of media coverage for women's football is evident, with an increasing number of matches being televised and streamed online, fostering heightened interest and cultivating a broader fan base.

Certain female players have ascended to global icon status, catalysing the elevation of women's football onto a prominent stage. Their prominence serves as inspiration for countless young girls eager to participate in the sport.

In expanding nations, the trajectory of women's football is on the rise. National federations are allocating resources towards nurturing young female prospects and establishing developmental initiatives aimed at enhancing the calibre of women's football within their borders.

The influence of women's football extends beyond the field of play, exerting a constructive effect on societal issues by championing gender parity and fostering female empowerment through athletic endeavours. In numerous locales, women's football serves as a vehicle for challenging entrenched gender norms and advocating for inclusivity.

Despite its rapid global growth, women's soccer continues to grapple with a persistent economic disparity compared to men's soccer, presenting a challenge that appears daunting to overcome in the immediate future.

This article seeks to delve into the salary dynamics for female players, focusing on their contractual agreements with clubs, with specific emphasis on the Swiss and Italian contexts. The central aspect under scrutiny is not merely the absolute wage figures, but rather the structure of their income and the feasibility of accessing alternative revenue streams.

In essence, excluding leagues buoyed by substantial funding and sponsorships, along with clubs capable of offering moderate to high salaries, can women soccer players perceive their athletic prowess as a sustainable occupation?

Is it feasible for them to sustain themselves solely through playing soccer, or must they seek supplementary employment? And if the latter, is it legally permissible?

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How is the income of a female football player composed? The FIFA response

In April 2024, FIFA released the "Multiple Jobholding in Elite Women's Football" report, a collaborative effort with FIFPRO, the global representative organization for professional footballers, and Edith Cowan University in Australia as the academic partner. This report examines the feasibility of footballers participating in multiple jobs or occupations whilst pursuing their careers in football.

However, the emerging data presents a complex picture. Whilst professional football can, indeed, be recognized as a legitimate occupation, the income available from football alone is often insufficient to sustain female football players, necessitating the pursuit of alternative sources of income.

The report conducted surveys among players from twelve member associations spanning all six confederations. Female footballers from Australia, Botswana, Brazil, Chile, England, Fiji, Korea Republic, Mexico, New Zealand, Nigeria, Sweden, and the United States provided anonymous contributions to the study.

In the survey, 736 female football players, with an average age of 25.6 years, were interviewed, with 71.5% confirming their status as professional players. Amongst the respondents, 52% indicated that their earnings from athletics fall short of covering the expenses associated with playing.

Of greater concern, however, is the revelation that 51.9% of their total income – more than half – is derived from secondary employment, whilst football contributes only 38% to their overall earnings. This underscores that, for many players, a second job is not a choice but a requirement, necessitating legal frameworks to support this reality.

The employment contract of Swiss women football players

In Switzerland, the women's football landscape operates under the jurisdiction of the Swiss Football Association ("SFV-ASF") and encompasses various leagues, including the Women's Super League, the National B League, and three amateur divisions.

Much like its global counterpart, women's football in Switzerland is experiencing an upward trajectory in terms of its reach, popularity, and the establishment of professional structures. The country has witnessed a consistent rise in the participation of women and girls in football.

To bolster female involvement, the SFV-ASF has implemented initiatives aimed at fostering growth, such as youth tournaments and programmes designed to advocate for football within educational settings. These efforts signify a concerted push to advance the presence of women's football throughout Switzerland.

In contrast to countries boasting highly professional women's leagues, female players in Switzerland often contend with comparatively lower salaries. Many find themselves seeking supplementary income through alternative employment or part-time work to meet their financial needs. The disparity in wages among women players is considerable and hinges on factors such as the club and the level of competition.

Moreover, sponsorship opportunities and financial backing remain limited in comparison to the resources available to male football counterparts, exacerbating the income gap between genders within the sport.

Whilst women's football players in Switzerland operate under employment contracts akin to those in men's football, discrepancies exist due to the less professionalized nature of the sector. Nevertheless, overarching terms and conditions of employment for non-amateur players within SFV-ASF clubs provide a framework for their engagement in the sport.

The most recent version of these regulations, dating back to 2017, delineates the responsibilities of both the club, acting as the employer, and the player, functioning as the employee.

Pertaining to supplemental income activities, it explicitly stipulates that the player is prohibited from engaging in any additional gainful employment without prior written consent from the club, save for professional training. Any alterations to the player's supplementary employment must also be sanctioned by the club in writing. This framework affords the club considerable authority in regulating the player's ancillary activities.

In essence, the player is expected to abstain from any conduct that could significantly compromise their physical or mental performance capabilities in the short, medium, or long term. This includes refraining from engaging in other sports or activities, particularly those with inherent physical risks (such as downhill skiing, snowboarding, bobsleighing, paragliding, parachuting, horse riding, canyoning), or participating in organised sports (including football) with other clubs or groups without prior written approval from the club, even during periods of vacation.

Moreover, from a promotional standpoint, the player is obligated to partake in all reasonably sustainable advertising and commercial endeavors as requested by the club, without expecting additional remuneration beyond the agreed-upon salary. The player is not entitled to any portion of the club's income.

However, with the club's written consent, the player may independently exploit their image without compensating the club for such usage.

From a communication perspective, the player must obtain prior written consent from the club or affiliated parties under contract before initiating any regular collaboration with the media (including television, radio, press, digital media, and so on). Additionally, personal advertising or sales activities by the player require explicit written authorization from the club.

Regarding salary arrangements, the club disburses

the player's basic salary on a monthly basis, along with any supplementary benefits they may offer. Remuneration is subject to deductions for statutory social security contributions, including AHV, IV, IPG, AC, UVG, BVG, and others.

In terms of vacation entitlements, the player is entitled to four weeks of paid holiday per year, or five weeks up to the age of 20. A minimum of two weeks' holiday must be consecutive, with the club responsible for setting the holiday dates, taking the player's interests into fair consideration.

From a technical standpoint, the employment contract governed by Swiss law for a female football player does not inherently impose restrictions on the pursuit of a secondary job, except with the explicit agreement of the club.

Under Labour Law ("LL"), engaging in diverse activities is, generally, permissible. However, it is imperative to adhere to all provisions of LL comprehensively, ensuring compliance with all activities undertaken and rectifying any conditions that contravene legal requirements.

In Switzerland, there exists a fundamental principle outlined in art. 9 of the LL and art. 2 of the Ordinance on Labour Law 1 ("OLL 1"), stipulating that the maximum duration of the workweek varies, based on the nature of employment:

For workers in industrial enterprises, office personnel, technical employees, and sales staff at large retail establishments, the maximum workweek duration is set at 45 hours.

For all other workers, the maximum workweek duration is extended to 50 hours.

Furthermore, a provision for flexibility (as per art. 22 of OLL 1) is established for companies susceptible to work disruptions caused by inclement weather or significant seasonal fluctuations. In such cases, the maximum workweek duration of 45 or 50 hours may be extended by a maximum of 4 hours, provided that it does not exceed the six-month average.

The Italian case: the fresh acquisition of professional status and the employment contracts of women football players

Over the past decade, women's football in Italy has experienced remarkable growth and advancement, garnering heightened attention and support from both fans and institutions alike. The Italian Football Federation ("FIGC") has been actively engaged in promoting the women's game, signalling a commitment to its development.

A significant milestone was reached on 1 July 2022, as women's Serie A soccer players attained professional status. This landmark achievement marks a substantial improvement in the working conditions of female players, who were previously regarded more as enthusiasts than professionals.

The professionalisation of Serie A Femminile is poised to catalyse increased investment, enhanced facilities, and heightened competitiveness among teams. This evolution holds the potential to attract top talent from across the globe, consequently elevating the level of competition within Italian women's football.

As the sport continues its expansion, the anticipated rise in media coverage and sponsorship opportunities promises to amplify exposure and bolster fan engagement within women's soccer in Italy.

Sustaining and nurturing young female talent remains paramount for the enduring growth of the sport. The FIGC's ongoing investments in grassroots' initiatives and academies underscore a concerted effort to fortify the talent pipeline.

With heightened competition domestically, Italian teams are poised to make significant strides in UEFA competitions, potentially enhancing the global standing of Italian women's soccer.

Overall, the outlook for women's soccer in Italy appears promising, buoyed by positive momentum and a burgeoning interest from fans and stakeholders alike.

On 30 June 2022, the Assembly of Women's Serie A clubs, Assocalciatori, and Assoallenatori, finalized a collective agreement, effectively greenlighting the transition to professionalism for women's soccer in terms of labour contracts, marking a pivotal milestone in the sport's evolution.

The advent of professionalism in women's soccer signifies significant shifts in the remuneration structures for female players. The recently inked collective agreement, spanning a three-year duration, serves as the cornerstone for regulating the economic and normative aspects of the employment relationship between clubs and registered female players.

Under this agreement, a minimum salary is guaranteed for all female players, with no upper limit imposed. Instead, the negotiated amount is contingent upon prevailing market conditions and individual negotiations between players and their respective clubs.

These provisions extend essential protections to female players, akin to those afforded to any female employee, encompassing areas such as sickness benefits, maternity leave, and contributions. Existing contracts are slated for revision in accordance with the terms outlined in the new agreement, ensuring alignment with the evolving landscape of professionalism in women's soccer.

The minimum guaranteed salaries are delineated based on age or specified within the context of the first contract. For players aged 24 and above, the minimum salary stands at € 26,664 gross, corresponding to € 19,750 net. Conversely, for younger age brackets, the minimum salary ranges from € 14,397 gross,

equivalent to € 11,405 net, for players aged 16 to 19.

For the 2022-2023 season, female soccer players born from 1997 onwards are eligible to enter into bona fide labour contracts, subject to free negotiation, with a maximum duration capped at 5 years. Additionally, there exists a technical training contract, a distinct type of agreement signed by female soccer players, albeit not constituting an employment contract *per se*.

In Italy, having two jobs is legally permissible, contingent upon specific conditions, and thus entirely lawful. However, both activities must adhere to legal requirements and regulations to maintain legality.

Various combinations are authorized by law, including holding a position as an employee alongside a self-employed endeavour. Simultaneously, individuals can engage in either two employee roles or two self-employed activities. As long as each activity complies with legal standards, individuals have the freedom to pursue multiple professional avenues within the bounds of the law.

The first principle that we will explore is the duty of loyalty, enshrined in art. 2105 of the Italian Civil Code, which states:

"The employee shall not conduct business, whether on their own behalf or on behalf of third parties, that competes with the employer's interests. Furthermore, the employee shall refrain from disclosing information regarding the organisation and production methods of the enterprise or utilising such information in a manner that could harm the employer."

This principle emphasises the employee's obligation to prioritise the interests of the employer and refrain from engaging in activities that may undermine or compete with the employer's business. Additionally, it underscores the importance of maintaining confidentiality regarding sensitive company information and preventing its misuse to the detriment of the employer.

Regarding working hours, regulations dictate that an individual cannot exceed 48 hours of work per week over a span of four months. An employee, who neglects to disclose additional work hours from another employer, may face disciplinary measures, which must be commensurate with the infraction.

To safeguard the well-being of workers, art. 4 of Legislative Decree 66/2003 imposes a cap on the maximum duration of weekly working hours under employment contracts. Specifically, across seven consecutive days, the maximum limit stands at 48 hours, encompassing any overtime worked.

Indeed, according to the Decree, each employee is entitled to a minimum of 11 consecutive hours of rest within every 24-hour period, as outlined in art. 7. Additionally, art. 9 stipulates the obligation for employees to observe a day of rest, comprising 24 consecutive hours, each week.

Based on these legal provisions, it is not permissible to enter into more than one full-time employment contract, as each contract would typically entail a 40-hour workweek. However, it is feasible to hold two part-time employment contracts simultaneously, provided that the combined weekly hours across both contracts do not exceed the limit of 48 hours, thus ensuring compliance with the statutory rest and working time regulations.

In the collective agreement concerning Italian women's soccer, it is explicitly stated that Italian players are prohibited from engaging in secondary employment without prior approval from their respective clubs. Additionally, any activities, including entrepreneurial pursuits, that could potentially jeopardize the physical well-being of the players, are strictly forbidden. In the event of conflicts between athletes and their clubs, an arbitration body will be designated to resolve disputes.

Furthermore, the club is responsible for making social security contributions on behalf of the players, who are entitled to weekly rest and an annual leave period of 30 days. Additionally, provisions are made for marriage leave and protection for female players during pregnancy and postpartum periods, recognizing these significant life events and ensuring appropriate support and accommodations.

Conclusions: key takeaways on women's soccer contracts, a final comparison between Italy and Switzerland

The Swiss agreement is the same agreement as for men. However, in the man field the players of the first division do earn much more and are able to maintain the living costs without any additional employment job.

Women are in need of a second job to maintain the living costs.

That is the reason why, in our opinion, the club is not allowed to say no to a second job of a women player if the money earned in the women football employment agreement is too low.

Hence, the employment agreement must be different. Be it, that in case of a low salary (below CHF 4,000) the football employment agreement cannot be for a 100% job, but must be below 100% to enable the player to earn at least a minimum salary of CHF 4,000 or that it generally allows the player to have an additional job without prior written approval of the club.

Furthermore, as long as the salary is lower than CHF 4,000 also the very strict rules concerning the image rights should be drafted more in favour of the players to allow them to generate additional income.

Apart from that, what is missing in the standard player contract is the new FIFA rules for the protection of pregnant women. These FIFA rules already now for more than two years should have been implemented

in the employment agreement, which is not the case in Switzerland, and which is extremely important.

Based on these FIFA rules, the women do have the right to come back after pregnancy and do have the right to get a different 100% job during pregnancy if the women so wish.

The Italian contract, on the other hand, unlike the Swiss one, is specifically dedicated to women and has a value that can be defined as political/social as well as economic.

The advent of professionalism in Italian women's soccer is a turning point of civilization and an attempt to actualise the vision of equality between men and women.

Perhaps more could have been done, but having openly indicated that any discrimination based on gender, sexual orientation or personal opinions is prohibited in the employment of female athletes, in accordance with current national legislation, in order to guarantee human rights and fundamental freedoms in accordance with the provisions of the Code of Equal Opportunities between Men and Women and Legislative Decree No. 216 of 9 July 2003, with particular attention to the protection of women during pregnancy and motherhood, including adoptive motherhood, and respect for their rights, is a huge step forward for female athletes.

The normalization of the state of pregnancy and puerperium is, in fact, regulated and provides a reference to the general norm that affects all working women in Italy, art. 16 of Legislative Decree 151 of 2001, extending protection to professional female soccer athletes.

Regarding the economic nature of the agreement, it must be said that, in Italy, the minimum wage is not stipulated by law, but left to collective bargaining, and the Italian economic agreement is an important first step, a starting point that hopefully can soon be revised and adapted to the women's soccer market, which is expanding worldwide.

India:

Esports – navigating the gridlock and charting the path ahead!

BY PROF. SUBHRAJIT CHANDA[1] AND KAIRAV SHAH[2]

Introduction

In the current world, the emergence of Information Communications and Technology ["ICT"] enables faster and more efficient communication and information exchange for individuals, groups, businesses, organisations, and governments[3]. On the basis of this, the exponential growth of esports signals a mainstream, global phenomenon, which has demonstrated phenomenal popularity in filling the live sports void produced by the COVID-19 pandemic.[4]

Esports engages youthful viewers and participants through live events in stadiums and streaming on platforms like YouTube and Twitch, which are currently more popular than traditional media. Entertainment is the most popular content amongst next-generation consumers.[5] Hence, esports combines the volatility, competitiveness, and high performance of sports with fascinating material, resulting in longer and more frequent consumption than traditional forms of entertainment.

The gaming environment in India has changed dramatically in recent years, with increased involvement in online gaming across the country. Esports has experienced a growth in the Indian market, with organisations, such as Jet Syntheses, Krafton, Nodwin Gaming, Tencent, and Nazara, investing heavily in the industry due to its widespread popularity.[6]

Smart phones and the internet, paired with the surge in disposable incomes, the rise of gaming culture in India may be attributed to a variety of causes, most notably the expansion of broadband connection in Tier-II and Tier-III towns, as well as lower data costs and affordable smartphones, which have increased gaming accessibility to a wider audience.[7] During lockdown, the majority of people streamed and viewed online gaming as an alternative to OTT consumption and social media. According to the FICCI-EY Study for 2022, transaction-based gaming revenues increased by 39% from 2021 to exceed INR 100 billion.[8] Indian gamers are increasingly paying for online games, with the percentage of first-time paying customers were expected to reach 67% by 2022.[9]

In India, every second Internet user is a gamer, and every third user making online transactions is a paid gamer. This has made online gaming segment as the fourth largest segment of the Indian media and entertainment sector. However, although the Constitution of India does lay down regulations to safeguard privacy and freedom of its citizens, there are still some areas which require government intervention.[10] Esports and games is one such underlying technology that poses serious

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3 Valentina Ndou, "E-government for developing countries: Opportunities and challenges", in: *The Electronic Journal of Information Systems in Developing Countries* 18.1 (2004), p. 1-24, available at www.researchgate.net/publication/309428370_e_-_government_for_developing_countriesopportunities_and_challenges (accessed 28 August 2024).

4 Ahmet Emre Fakazlı, "The effect of COVID-19 pandemic on digital games and eSports", in: *International Journal of Sport Culture and Science* 8.4 (2020), p. 335-344 available at www.researchgate.net/publication/346971652_The_Effect_of_Covid-19_Pandemic_on_Digital_Games_and_eSports (accessed 28 August 2024).

5 Wooyoung William Jang et al., "Mediating effect of esports content live streaming in the relationship between esports recreational gameplay and esports event broadcast", in: *Sport, Business and Management: An International Journal* 11.1 (2021), p. 89-108, www.researchgate.net/publication/343774761_Mediating_effect_of_esports_content_live_streaming_in_the_relationship_between_esports_recreational_gameplay_and_esports_event_broadcast (accessed 28 August 2024).

6 *Ibid.*

7 Aditya Deshbandhu, *Gaming culture(s) in India: Digital play in everyday life* (Routledge India, 2020).

8 Dewangi Sharma, "Gaming Culture in India: A Rising Phenomenon", in: *Invest India*, 8 December 2023, available at www.investindia.gov.in/team-india-blogs/gaming-culture-india-rising-phenomenon (accessed 28 August 2024).

9 *Ibid.*

10 Vatsal Gaur, "Laying the perfect pitch: There is a need to recognise and regulate Esports in India", in: *Financial Express*, 10 July 2020, available at www.financialexpress.com/opinion/laying-the-perfect-pitch-there-is-a-need-to-recognise-and-regulate-esports-in-india/2019083 (accessed 28 August 2024).

concerns on issues such as anti-trust, corruption and privacy rights.[11] This following article will dismantle the existing need for improvement in the esports system.

Critique of the current esports governance system

The gaming industry is currently booming at a rapid pace in India. Gambling, betting and online games are evolving industries with a complicated legal landscape in India. The regulations are diverse and differ across states and central governments. The lack of uniformity, the difficulty in distinguishing between skill and chance games, the fragmentation and inconsistency of regulation, and so on all call for a standardised authority to address the issue.[12]

The central government has the jurisdiction to control some parts of internet gaming, betting, and gambling. This authority stems from Entry 97 of List I, which addresses matters not particularly covered in List II or List III of the Concurrent List. There are data points which show that India has around 400 gaming-related start-ups.[13] India has risen to the top five mobile gaming markets in the world as a result of the advent of low-cost smartphones, 5G networks, local and foreign investment, and marketing efforts.

The lack of a clear and standard regulatory framework, at both the state and national levels, is the root cause of the many dangers and uncertainties in the online gambling industry.[14] Due to the lack of a legislative framework, complex legal challenges have arisen that affect many different sectors of the economy, including licensing, advertising, taxation, and consumer protection. This ambiguous legal framework not only restricts the industry's potential, but also poses significant obstacles and risks to players seeking a safe and regulated gaming environment. As a result, it is becoming increasingly evident that, in order to overcome these legal challenges, both the federal government and the states must implement a comprehensive and coordinated regulatory policy.

According to the Indian Constitution, the federal government and each state have their own legislative bodies. According to the Seventh Schedule of the Constitution, each state has complete authority to enact "gambling and betting" legislation within its borders. Uttar Pradesh, Madhya Pradesh, Punjab, and Haryana are among the states that have adopted The Public Gambling Act of 1867[15], a colonial or pre-independence legislation that is still in existence, with certain post-independence revisions. The Public Gambling Act has been amended in numerous states' legislation to govern gaming and gambling. Major parts of these gambling rules were in place before the internet was developed. They are thus restricted to practical companies known as *"gaming houses"* or *"common gaming houses"*. Nagaland, Meghalaya, and Sikkim are three states that have upgraded gaming legislation and licensing processes for online games. Only persons who live outside Sikkim and Meghalaya's respective states can buy online games and sports games. For *"mere skill"* games, the majority of state laws include explicit exclusions. According to the law, games that rely largely on talent rather than chance are those that fit within the criteria of *"mere skill"*.

The Indian Contract Act of 1872[16], Section 23 states that:

"The consideration or object of an agreement is lawful, unless it is prohibited by law; or, is of such a nature, if permitted, would defeat the provisions of any law."

Whereas Section 30[17] states that a wagering agreement is *"invalid and unenforceable"*.

However, because such agreements are not outlawed by law, they cannot be considered illegal if carried out. However, such agreements cannot be enforced through the courts. There are certain cases related to the Telangana Gaming Act of 1974[18] and the Andhra Pradesh Gaming Act of 1974[19] that are now being considered in their respective regional high courts. In August 2021, the Madras High Court in the case of *All India Gaming Federation v. State of Tamil Nadu*[20], found the aforementioned changes to the Tamil Nadu Gaming Act, 1930, to be invalid. The Karnataka High Court struck down the state's previously mentioned modifications to the Karnataka Police Act of 1963.[21] According to the Kerala High Court, the state government's aforementioned notification prohibiting online rummy for stakes or money in the case of *Play Games 24x7 Private Limited v. State of Kerala* (2021)[22] was invalid because it was arbitrary, illegal, and violated constitutional rights, specifically the right to trade, business, profession, and occupation. However, a centralised legal authority is of the utmost necessity

11 Cem Abanazir, "Institutionalisation in E-Sports", in: *Sport, Ethics and Philosophy* 13.2 (2019), p. 117-131, available at www.academia.edu/45606949/Institutionalisation_in_E_Sports (accessed 28 August 2024).

12 Stoyan Todorov, "Growing Momentum of Indian Esports Requires Regulation", in: Gambling News, 12 April 2021, available at www.gamblingnews.com/news/growing-momentum-of-indian-Esports-requires-regulation (accessed 28 August 2024).

13 Albert Garrich Alabarce, *Regulating e-entertainment? An ethno-corporative approach to the governance frames for videogame and esports industries* (The Hong Kong Polytechnic University, 2019), available at https://theses.lib.polyu.edu.hk/bitstream/200/10246/1/99102228950880 3411.pdf (accessed 28 August 2024).

14 Tobias M. Scholz, "Stakeholders in the eSports Industry", in: (Springer International Publishing, 2019), p. 43-99.

15 The Public Gambling Act,1867.

16 The Contract Act, 1872, s. 23.

17 The Contract Act, 1872, s. 30.

18 The Telangana Gaming Act, 1974.

19 The Andhra Pradesh Gaming Act, 1974.

20 *All India Gaming Federation v. State of Tamil Nadu* (2023).

21 The Karnataka Police Act of 1963.

22 *All India Gaming Federation v. State of Tamil Nadu* (2021).

since there are a number of problems which have cropped up in light of these technological advancements.

Firstly, legitimacy is one of the main concerns of the esports regulatory framework. The current regulations are crowded with many federations to regulate the industry. However, these federations lack the essential enforcement tools for esports laws and regulations.[23] Furthermore, these federations are autonomous coalitions or private non-profit organisations, not endorsed by the government and not recognised as legitimate.

Secondly, since esports is not a single sport and includes multiple sports there are various stakeholders and owners involved in the esports competitions. The stakeholders do not take the federation as authorities and, therefore, there is no consensus on what rules need to be applied, creating confusion.

Thirdly, esports games are more vulnerable to hacking, match-fixing, and boosting than traditional sports due to their online format. It is still uncertain on what will work best to prevent such interventions during the games. This leads to an increasing corruption.

Fourthly, the esports industry in India is affected majorly because of gambling.[24] Currently, the distinction between gaming and gambling is blurred. Esports relies heavily on in-game goods such as betting money. Tracking these transactions is a tremendous task. Thus, it remains a serious concern for regulatory bodies to either prohibit or control it for the benefit of users.

Lastly, in esports, important units include teams, fans, broadcasters, and professional players. In esports, the upstream market consists of publishers, whilst the downstream market includes lower-level organisers and broadcasters. Moreover, publishers have exclusive rights that allow them to influence downstream behaviour. The main problem of anti-trust arises when the gamers get a monopoly of the game that they are playing. Hence, they need access to intellectual property rights.[25]

Although the intellectual property rights do not directly acknowledge the anti-trust problems, but it is noted that publishers can easily exclude exhibitors to increase their commercial interests. The esports business relies heavily on intellectual property, but it is unclear who owns whose rights. To address this issue, it is necessary to set clear regulations for intellectual property rights.

Currently, it is unclear who owns the intellectual property rights for tournaments, whether organisers or publishers. Sportspersons want appropriate compensation for their contributions in the game, expanding the scope of intellectual property rights beyond sports and media. With the expansion of investment in and popularity of esports, the emergence of conflicts is unavoidable. If these disputes go through the Court of Arbitration for Sport ("CAS"), the industry will acquire some precedent on how intellectual property rights must be managed in this complicated sector.

Identifying key challenges in esports in India

With the growth of esports in India, the country has experienced a significant increase in gaming quantity and duration, resulting in the popularity of games such as LudoKing, PUBG, Valorant, FreeFire, FAU-G, and Raji, amongst others.[26] Certain studies categorised and established that gaming fans are more dedicated and engaged with esports' material than conventional sports lovers.[27] Furthermore, fans crave the communal, social, and knowledge-sharing aspects of esports. Although the Indian esports' sector has a strong following amongst the country's gaming enthusiasts, esports, on the other hand, are very new in India and have a limited worldwide reach compared to traditional sports.

Firstly, esports suffer techno-economic challenges, which include insufficient internet access, old gaming technology, and inadequate peripherals. Financial challenges include poor income, lack of sponsorship, and expenses for travel and housing tournaments.

Secondly, more than half of India's population lacks access to the internet, which is essential for gaming, player connectivity, and fan internet[28] connection. Most gamers report that unstable and sluggish internet severely impacts their games.[29] Poor infrastructure limits the opportunities for aspiring gamers from small cities to pursue gaming seriously. Also, lack of governance and institutional support is a challenge. According to research conducted, gamers in India believe that the

23 Jacqueline Martinelli, "The Challenges of Implementing a Governing Body for Regulating ESports", in: *University of Miami International and Comparative Law Review* 26 (2018), p. 499, available at https://repository.law.miami.edu/umiclr/vol26/iss2/8 (accessed 28 August 2024).

24 Tobias M. Scholz, "Stakeholders in the eSports Industry", in: *eSports is Business: Management in the World of Competitive Gaming* (Springer International Publishing, 2019), p. 43-99.

25 Jehnytssa Zetino, "Out of Their League: An Antitrust Analysis of Esports Players Associations and Attempts at Unionization", in: *Houston Law Review* 58 (3) (2021), p. 777, available at https://houstonlawreview.org/article/19367-out-of-their-league-an-antitrust-analysis-of-esports-players-associations-and-attempts-at-unionization (accessed 28 August 2024).

26 Dentsu, "For The Game: Data fusion sheds a new light on players" (2022), available at www.dentsu.com/nl/en/for-the-game (accessed 28 August 2024).

27 Mateusz Felczak, "Local eSports media analyzed through the circuit of culture framework: Onet-RAS case study", available at https://ceur-ws.org/Vol-2637/paper18.pdf (accessed 28 August 2024).

28 Christine Williamson, "The Infrastructure That Will Power Esports Technology", in: *Belden*, 6 February 2020, available at https://www.belden.com/blogs/smart-building/infrastructure-that-powers-esports (accessed 28 August 2024).

29 Tanushree Basuroy, "Internet penetration rate in India from 2014 to 2024", in: *Statista*, 15 May 2024, available at https://www.statista.com/statistics/792074/india-internet-penetration-rate/ (accessed 28 August 2024).

government's taxation of game profits under gambling regulations is unjust and should be revised to promote the growth of esports. India won bronze in the 2018 Asian Games, marking the first-time gaming was featured as a showcase event. Despite this accomplishment, gamers have complained that their transportation and administrative demands are not met. Gamers were also of the opinion that the generation gap is one plausible reason for older politicians not to take the esports industry seriously.

Thirdly, In India, gaming is still shunned as gamers often express dissatisfaction with the perception of video gaming as a waste of time with no career-related benefits. Indian parents view gaming as dishonest and unprofessional, as it takes away time and energy from other activities. There are important endeavours, such as school or employment. Young gamers often struggle to persuade their parents to allow them to prioritise gaming over education.[30] According to Thompson, Blair, and Henrey (2014), gamers tend to have better reflexes and skill sets at this age. Skilled gamers often lose out on early opportunities that may not be available again. Many parents and guardians are sceptical of organisation offers for many reasons, including lower salary.

Fourthly, the Indian Pro Gaming community has a common sentiment of having a successful gaming career without the requirement of game skills. The competitive nature of esports might lead to a lack of cooperation amongst community members. Star gamers are aware of the risk of being replaced by new talent, therefore, their mood towards upcoming players may be hostile. A lack of peer-group mentoring implies that potential pro-gamers miss out on critical information. Gaming is an individual pursuit. Gamers report a lack of role models in the nation due to the majority being first-generation pro gamers. Achieving pro gaming status is a goal for many gamers. Most pro gamers struggle to achieve the same level of self-motivation as experienced ones.

Future directions for improvement and collaborations of esports in India

The increased number of events, along with government funding, has resulted in several sponsorships and chances for brand promotion. This is really excellent news, as sponsorships and marketing efforts help to establish infrastructure, investments, and professionalism, all of which contribute to the growth of a strong ecosystem. A prominent example of a big collaboration is the relationship between global powerhouse PUMA and the Indian organisation Revenant Esports.[31] In the future, we may expect to see many more collaborations like this. Experts believe that, if the government formally acknowledges the sport, it will draw both domestic and foreign investment into India's esports ecosystem. Brands would try to form long-term collaborations with Indian organisations because of the region's significant potential for esports' growth.

India's mobile gaming industry is set to flourish further. With the increasing availability of affordable smartphones, more players will join the gaming community. This presents a massive market for game developers and publishers.[32] Esports in India are reaching a tipping point. Indian teams are making an impact at the world level. As infrastructure and funding grow, the future offers greater competitions, increased viewership, and worldwide recognition for esports.[33] Game development in India has progressed beyond its early stages. Studios are developing games that reflect the country's rich history and culture. The titles inspired by Indian mythology have captivated both Indian and foreign audiences.

With the prominence of sites like YouTube, Discord, Twitch, and Facebook Gaming, the country's esports fandom is expanding. According to projections, by 2025, there will be over 85 million spectators of esports events across 20 various platforms, making India one of the fastest-growing countries for esports viewership. These figures have propelled esports into the mainstream, including established OTT players. Then again, in recent years, the government has recognised the importance of esports and gaming as an economic driver and a platform for skill development. Some major examples of government acknowledgment include the following.

1 On 23 December 2022, the Ministry of Youth Affairs and Sports classified esports as multisport events.

2 Indian esports made its debut as an official medal sport at the 2022 Asian Games in Hangzhou.

3 On 11 April 2024, Prime Minister Narendra Modi had a roundtable discussion with prominent gamers in the country to discuss challenges affecting the gaming sector and esports in general.

4 Corporate sponsorships and alliances will play an important role in moulding the future of esports in India. As the industry grows, organisations from all industries recognise the enormous benefit in partnering with India's fast expanding esports ecosystem. For example, consider the recent alliance between Indian esports team SOUL and iQOO. This collaboration was a watershed moment in Indian esports, and it benefits both sides. This collaboration strengthens iQOO's position as an

30 Isha Bihari and Debashis Pattanaik, "Challenges in esports: interview study of professional gamers in India", in: Sport in Society 26 (12) (2023), p. 1935-1956, available at www.tandfonline.com/doi/full/10.1080/17430437.2023.2223510 (accessed 28 August 2024).

31 Vaishnavi Sharma, "Esports in India and its Potential for the Future", in: Vilay Sports, 12 August 2023, available at https://vilaysports.com/esports-in-india-and-its-potential-for-the-future (accessed 28 August 2024).

32 Noopur Mahi, "What Is The Future of Esports In India?", in: *Melt*, 25 April 2024, available at www.readytomelt.com/what-is-the-future-of-esports-in-india (accessed 28 August 2024).

33 Akhilesh Swaroop Joshi and Amritashish Bagchi, "Esports as a Career in the Indian Context", in: *Natural Volatiles & Essential Oils Journal* 8 (4) (2021), p. 10653-10661, available at www.nveo.org/index.php/journal/article/view/2185/1931 (accessed 28 August 2024).

active contributor to India's esports ecosystem and helps it reach the next generation of gamers, whilst also allowing SOUL to continue its successful esports journey.

5 From the days when gaming was deemed undesirable to the inclusion of esports in the school sector, India has gone a long way. As esports becomes more popular in academia, certain institutions are providing courses and programmes in gaming and esports management. This might help esports become more professional and widespread in India. According to IMARC Group, the Indian esports market would develop at a 21.1% CAGR from 2023 to 2028.[34] With the clear development of esports, it is critical for the government to launch educational efforts to promote it. Promoting esports in schools may provide students with more hands-on experience, improve learning possibilities, and help them build strategic abilities.

Advocating for change and implementing global best practices

There are over 3 billion gamers worldwide. However, the gaming industry has evolved dramatically over the last 25 years, due in large part to the increased accessibility of the internet. Gaming, whether mobile, console, or desktop, has one of the world's largest user bases with a market size that exceeds that of movies and music combined.[35] Official tournaments for the most popular games may attract millions of viewers, and professional esports teams can earn millions of dollars in sponsorships and prize money for participating at the top levels. Gaming has been a popular form of entertainment for decades, yet there are still many misunderstandings regarding its effects on well-being. Some individuals argue that gaming wastes time, encourages sedentary behaviour, and can lead to addiction and other bad consequences. However, recent study has shown that gaming may have a good influence on mental health and wellness, particularly when there is a focus on purpose and results, as well as proper time management.[36] In the next alinea, we will look at how gaming may improve well-being and present some evidence-based insights into its positive impacts.

One of the most major advantages of gaming is its capacity to instil a sense of accomplishment and purpose. Many games have defined goals and objectives that players must meet, which may provide a sense of success when they succeed. This sense of accomplishment can help to boost self-esteem and confidence, and it can be especially beneficial for people who do not have a specific area of expertise or who are more comfortable in a virtual environment where they can fail without fear of repercussions or being judged for their ability. However, the major problem with online gaming is safety and, if the profiles are genuine, although this is improving as registrations to devices and user accounts get more stringent, and in many games, particular servers have limits if you want to play in a safer environment online.[37] Many games and gadgets also include parental controls, which allow one to set and stop specific functionality. When the proper processes and standards are followed, possible hazards are reduced, which is why promoting esports leagues via schools would give a secure and pleasant outlet for students to connect with online gamers both locally and internationally.

Conclusions

From the above points, it can be established that India's booming esports industry brings both huge prospects and serious obstacles. The industry's rapid expansion, fuelled by technological breakthroughs, improved internet connectivity, and altering consumer preferences, highlights its potential as a popular entertainment platform and economic engine. However, the existing legal framework, technological limits, socio-cultural attitudes, and infrastructure deficits all offer significant barriers to the long-term development of esports in the country.

To overcome these hurdles and realize esports' full potential, multiple parties, including the government, commercial sector, academics, and the gaming community, must work together. Establishing a consistent regulatory framework, at both the local and national levels, increasing institutional support, developing cooperation amongst industry participants, and incorporating esports into the educational curriculum are all critical steps towards building a growth-friendly climate.

Lastly, it can be recommended that India can follow the example of the All-India Gaming Federation ("AIGF"), a non-profit organisation that does research, advocates for policies, and hosts forums for discussion in the esports' sector. There are several stakeholders in the gaming business. It might develop a regulatory paradigm in collaboration with government bodies. AIGF can use its industry experience to govern esports' gaming sponsorships, determine broadcasting frameworks, organize league tournaments in India, engage with publishers, and establish rules for competitive play and promotion in India.

34 Noopur Mahi, "What Is The Future of Esports In India?", in: *Melt*, 25 April 2024, available at www.readytomelt.com/what-is-the-future-of-esports-in-india (accessed 28 August 2024).

35 Baz Nijjar, "Gaming and esports can have a positive impact on your wellbeing", in: *GESS Global Education Supplies and Solutions* (2023) , available at www.gesseducation.com/gess-talks/articles/gaming-and-esports-can-have-a-positive-impact-on-your-wellbeing (accessed 28 August 2024).

36 Christian M. Jones et al., "Gaming well: links between videogames and flourishing mental health", in: *Frontiers in Psychology* 5 (2014), p. 76833, available at www.ncbi.nlm.nih.gov/pmc/articles/PMC3978245 (accessed 28 August 2024).

37 Imrul Kayes and Adriana Iamnitchi, "Privacy and security in online social networks: A survey", in: *Online Social Networks and Media* 3-4 (2017), p. 1-21, available at https://fardapaper.ir/mohavaha/uploads/2018/10/Fardapaper-Privacy-and-security-in-online-social-networks-A-survey.pdf (accessed 28 August 2024).

Paris 2024 Olympic Games:

The legal consequences of limited television coverage

BY IAN FELICE AND EMMA LABRADOR[1]

Introduction

For many years, the Olympic Games have been considered a global event drawing billions of TV spectators around the world.

But the way these Games are aired and enjoyed has changed significantly as a result of the quickly evolving media landscape. As the 2024 Paris Olympics have come to an end, discussions concerning content availability, broadcasting rights, and the laws controlling sports event distribution have been spurred by complaints about the limited television coverage experienced in these Games when compared to previous editions.

In order to understand better the legal ramifications of these changes, this article will concentrate on three main areas: intellectual property rights; broadcasting rights; and potential challenges resulting from limited viewing access to sports' showcase event.

How we got here: the Olympics' need for TV

The success of the Olympic Games – both in terms of drawing in viewers and in generating revenues – has always depended heavily on extensive broadcasts, principally on "traditional", public service, open TV. The International Olympic Committee ("IOC") has historically sold the exclusive right to broadcast the Games to major television networks and channels, guaranteeing extensive coverage on a variety of platforms. Although these contracts have historically proved profitable for the IOC, the media environment has drastically changed in the last ten years. Traditional broadcasting strategies have been shaken by the advent of social media, on-demand viewing and digital streaming platforms. As a result of this, the IOC has had to modify its approach to safeguard its financial interests and guarantee that the Olympics remain accessible to a worldwide audience.

In this sense, the Paris 2024 Summer Olympics have marked a major turning point. Compared to prior editions, the general public saw more limited television coverage throughout, whilst seeing an increased focus on digital streaming services. The exclusivity of broadcasting rights and the ramifications for customers who have been denied access to the content they had requested, as well as those who located the contents but were disconnected prior to the conclusion of the event or match, are amongst the legal issues raised by this change.

Digital platforms and the transition of broadcasting rights

One of the most important components of the Olympics' business strategy is the sale of television rights. According to IOC records, in previous editions of the Games, television rights generated more than half of the organisation's revenue. Networks fought hard to gain exclusive access to the Games and these broadcasting rights were usually sold to the highest bidder, who often were the national, public service broadcasters like the UK's BBC or Spain's RTVE.

Nonetheless, the nature of these transactions has altered due to the growing trend towards digital platforms. The IOC has, in recent times, prioritized agreements with streaming platforms, as they provide more customized and adaptable viewing experiences, particularly to younger audiences who shun the traditional TV offering.

One glaring illustration of the trend change was the NBC agreement with Peacock for the Tokyo 2020 Olympics. The company that broadcasts the Olympics in the United States of America, NBCUniversal, used its streaming service Peacock to broadcast Olympic footage from Tokyo 2020. Peacock provided live and on-demand coverage of the Games, featuring highlights, original programmes and reruns of entire events. The service was marketed as additional to NBC regular television shows with some events only accessible on Peacock. The action was a part of the NBCUniversal larger plan to incorporate its digital platforms with traditional broadcasting, in light of the shifting viewing preferences of consumers towards streaming. Although specifics about the financial terms and extent of exclusivity have not been made public, the strategic alliance between NBC and Peacock

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signified a major change in the way Olympic content was disseminated. Although this action meets the increasing need for digital content, there are also questions raised by it.

The possible breach of antitrust laws, which may involve actions that restrict competition or establish monopolies, is one of the main legal issues at hand. By way of example:

- exclusive contracts: it may be considered anti-competitive activity if a broadcaster obtains exclusive rights and then utilizes them to prevent rivals from accessing any programming;
- tying agreements: another possible infraction might be if a broadcaster makes viewers pay for other services or goods in order to view Olympic programming;
- market allocation: it may be illegal for broadcasters to agree not to compete in other's markets for Olympic rights.

Although these investigations have usually centred on domestic sports leagues rather than international events, like the Olympics, the Department of Justice in the USA has investigated sports leagues like the NFL for antitrust breaches linked to broadcasting rights. Therefore, exclusive broadcasting agreements with digital platforms could be perceived as restricting competition, especially if traditional networks are not allowed to participate in the bidding process. Legal issues may arise from this, particularly in areas such as the European Union, the USA, the UK and Australia, which have severe antitrust laws:

- European Union: the EU has a strong system in place to enforce antitrust laws, especially through the European Commission, which routinely looks into and penalizes businesses that engage in anti-competitive behaviour;
- USA: with laws governing competitive tactics like the Clayton Act and the Sherman Act, the USA has a lengthy history of enforcing antitrust laws;
- UK: with a long history of looking into anticompetitive behaviour, the Competition and Markets Authority (CMA) of the UK is in charge of enforcing antitrust laws;
- Australia: matters concerning media markets and broadcasting are subject to the enforcement of competition law by the Australian Competition Consumer Commission (ACCC).

Additionally, there is the issue of rights for consumers. To guarantee public access, major sporting events, including the Olympics, must be televised on free-to-air (FTA) networks in numerous nations. Examples of these laws and regulations are as follows:

United Kingdom: free-to-air television is required to carry a list of so-called "crown jewel" events, which includes the Olympics (enshrined in the BBC's constitution). Ofcom is in charge of this.

Australia: the country has anti-siphoning regulations that mandate that before pay-television channels may purchase the rights, some important sporting events must be made available to FTA broadcasters.

Germany: the country's broadcasting rules have comparable regulations that guarantee the public access to important sporting events on FTA channels.

France: there are laws in France that ensure public attendance at major athletic events, such as the Olympics.

These regulations are intended to keep huge groups of people from being excluded from events that they otherwise might not be able to view because of technological budgetary constraints. The transition to digital platforms may violate these legal frameworks, resulting in legal conflicts between the IOC, authorities and broadcasters.

Intellectual property and broadcasting content

The handling of intellectual property ("IP") rights is a key legal concern that has arisen from the limited television coverage of the Olympics in Paris in 2024. All Olympic content, including event broadcasts, the use of Olympic emblems, and the dissemination of associated media, is owned exclusively by the IOC. For the IOC, this IP management is essential since it helps preserve the integrity of the Games, guarantees that revenues are maximized and protects the brands of the IOC main sponsors, who would take severe action, for example, in the case of the type of "ambush marketing" that Nike made famous in the 1996 Atlanta Games.

The growing usage of digital platforms, however, makes it more difficult to enforce these intellectual property rights. Digital platforms enable a considerably wider and more dispersed dissemination of content than traditional broadcasting, which distributes it through a restricted number of channels. As a result, it may be difficult to keep an eye on and regulate how Olympic intellectual property is used, especially when it comes to unauthorized streaming and the usage of Olympic material on social media. Unauthorised streaming is a particularly troublesome issue. The likelihood of illicit streaming rises as more people watch the Olympics on online platforms. This not only dilutes the value of the broadcasting rights but also presents a major enforcement headache for the IOC. Recently, the IOC has taken legal action against several platforms and individuals for unauthorized use of Olympic content; however the sheer scale of the internet makes it increasingly difficult to eliminate completely this problem.

The IOC has, however, taken proactive measures to safeguard its intellectual property and enforce its legal rights over the unlawful use of Olympic content. The IOC has taken strong legal action in recent years against internet streaming services that have improperly aired Olympic competitions. The IOC and Olympic Broadcasting Sites ("OBS") have collaborated closely with national authorities in several nations to shut down unapproved streaming sites that were disseminating Olympic content unlawfully during the Tokyo 2020 Olympics. Pre-action letters, court orders to restrict websites, and lawsuits against the owners of these platforms were all part of the IOC vigorous legal strategy. The IOC has had no choice

but to do this – its sponsors and rights holders surely demand it as part of their considerable investment.

In addition, the IOC has taken legal action against social media sites that permitted the unlawful dissemination of Olympic content. The IOC took aim at social media sites, like Facebook, Twitter, and YouTube, during the Rio 2016 Olympics because users had posted and shared footage from Olympic events without the required broadcasting rights. The Digital Millennium Copyright Act ("DMCA") takedown requests and subsequent legal procedures were among the enforcement measures taken by the IOC in case the content was not removed in a timely manner. In addition, the IOC has filed lawsuits against those who shared illicit Olympic content on their own social medial platforms. Legal warnings, for example, were sent to a number of athletes and influencers for releasing Olympic footage on Instagram or other platforms without authorisation, in violation of IOC strict guidelines. To stop Olympic broadcast piracy, the IOC has partnered with national broadcasters and local governments around the globe. In order to combat illicit streaming websites, the IOC collaborated with the UK's Intellectual Property Office and other law enforcement organisations during the 2012 London Olympics. The IOC even obtained injunctions against internet service providers to prevent access to these websites. This was one of the largest well-coordinated IOC attempts to safeguard its content during a big event.

Online marketplaces, such as eBay, were the target of legal action taken by the IOC in relation to the sale of unlicensed Olympic products, which included video recordings and other intellectual materials. In order to get these products taken down and prevent the sale of goods that violated Olympic trademarks and copyright, the IOC filed a lawsuit. These instances show the IOC's extensive legal approach to safeguarding its valuable content, which includes bringing civil actions, as well as working with law enforcement and other institutions to make sure Olympic information is not utilized without permission. The IOC works to uphold the integrity and uniqueness of the Olympic brand in addition to safeguarding its financial interests.

Another set of difficulties arises when Olympic content is used on social media. As previously mentioned, sites, like Facebook, Instagram, and Twitter (now X), offer challenges for unauthorized use of intellectual property, even though they are useful tools for interacting with fans and promoting the Games. These actions may lessen the IOC's intellectual property value, which inevitably results in legal strife.

The impact of consumers and access to content

The effect on consumers is one of the most controversial aspects of the move to digital media for Olympic programming. Accessibility issues are brought up by digital streaming, even though it gives users greater flexibility and options, especially those who might not have access to the required technology or internet connectivity to watch the Games. Throughout the Paris 2024 Olympics, where it was clear that traditional television coverage was less extensive than in past Games, this problem was especially pertinent. Large sections of the public were denied access to the content, either because "paywalls" prevented them from accessing it or because they lacked access to digital platforms.

This has led to a great deal of backlash, with social media (ironically) abuzz with lamentations about how easy, at least in the UK, it had all been with the famous red button. In terms of the law, this raises questions about the fairness and equity of the IOC broadcasting strategy. In many countries, there are regulations that require certain major sporting events to be broadcast on free-to-air channels to ensure that they are accessible to all. The shift to digital platforms, particularly if it involves exclusive deals with subscription-based services, could, therefore, be seen as a violation of these regulations.

There is also the matter of consumer protection. If watching the Olympics requires having multiple platform subscriptions, fans may wind up spending a lot more than they would for traditional television coverage. Consumer protection organisations may file a lawsuit in response to claims of unfair business practices.

Legal disputes and regulatory challenges

Legal problems have already arisen as a result of the limited television coverage of the Paris 2024 Olympics, and further regulatory challenges are expected. There are already a number of court proceedings involving intellectual property rights, athlete image rights, broadcaster and consumer rights, and other related issues.

To defend its trademarks and uphold the Olympic brand's commercial integrity, the IOC has filed lawsuits against unaffiliated businesses using unapproved symbols and branding. In response to businesses that engage in "ambush marketing" or unauthorized advertisements that falsely imply an affiliation with the Olympics, the IOC has taken both proactive measures and reactive litigation.

In relation to the use of their image rights, athletes have also been at the heart of legal challenges. Following the Games, a number of disputes involving athletes or their representatives contesting the unlawful use of their likenesses in advertising campaigns by non-Olympic corporations came to light. Complex talks over monetary remuneration for the use of athletes' images are frequently at the centre of these conflicts, particularly when it comes to improperly capitalized advertising of athletes' Olympic accomplishments.

More importantly, as this article has explored, disputes over the extent and exclusiveness of broadcasting rights have led to legal issues between broadcasters and the IOC. Significant legal cases have resulted from disputes over the internet broadcasting of Olympic events, especially when specific sites have permitted unlicensed broadcasts.

Consumer complaints over the quality and accessibility of Olympic broadcasts have abounded and, in several

circumstances, these complaints have led to legal action against streaming services or broadcasters. These court cases bring to light the intricate legal environment that surrounds major international athletic competitions, such as the Olympics, where broadcasting agreements, intellectual property rights, and athlete representation are strictly controlled and often subject to dispute.

Mitigation of legal risks: strategies for the IOC and broadcasters

The IOC and broadcasters must act quickly to reduce the dangers involved with the limited television coverage of the Paris 2024 Olympics, given the variety of legal difficulties that have come with it. This could entail a variety of tactics, such as creating strong IP protection enforcement systems and making sure local laws and regulations are followed. Ensuring that the distribution of broadcasting rights is equitable and transparent should be a primary priority. To see that antitrust issues are handled and that the interests of all stakeholders are taken into consideration, the IOC have to think about incorporating regulators into the process. This can entail establishing precise rules for the bidding procedure and making sure that established networks are given the chance to compete for rights alongside digital platforms.

Enhancing the enforcement of intellectual property rights is a crucial additional approach. In order to avoid unlawful use of Olympic content on social media and to monitor and remove unauthorised broadcasts, the IOC should collaborate closely with digital platforms. This will inevitably entail working closely with tech firms to create more advanced monitoring systems and coordinating the law enframement to take legal action against IP rights violators. Ultimately, it is imperative that the IOC and broadcasters guarantee the fairness and transparency of their pricing plans. This could entail making material available on free-to-air channels in countries where it is mandated, as well as providing tiered payment alternatives to guarantee that viewers with varying economic levels can access the content they choose.

Conclusion

The Paris 2024 Olympics marked a turning point in the history of sports broadcasting, as more regulated TV coverage and a major move towards digital platforms were implemented. Although this offers room for creativity and more freedom in terms of how content is consumed, it also raises a multitude of legal issues. To guarantee that the Games are open to everyone and that their legal risks are kept to a minimum, the IOC and broadcasters must negotiate a complicated legal environment that includes issues, such as the distribution of broadcasting rights, the enforcement of intellectual property, the effect on consumers, and the possibility of legal challenges. All of that whilst trying to accommodate evolving consumer preferences and complying with the values of the Olympic Movement!

The Yala Bolasie case

Beware! "Net" may not actually mean "after tax"

by dr. iur. alara efsun yazicioglu[1]

Introduction

From an employee's perspective, the "net" amount that he or she is entitled to receive under his/her employment contract may simply mean the amount after taxes. The Yala Bolasie case puts this general assumption to the question.

After an overview of the facts, this article describes the relevant aspects of the Turkish tax legislation, given the fact that certain specificities of the legislation concerned formed an important component of the decision rendered by the Court of Arbitration for Sport ("CAS") in the Bolasie case. Then, the decisions rendered by the FIFA Dispute Resolution Chamber ("FIFA DRC") and CAS in relation to the case are summarised.

This article concludes with a comment on the case, incorporating the author's personal opinion.

Overview of the facts

Yala Bolasie, a professional football player of Congolese nationality, entered into an employment agreement with Çaykur Rizespor A.S., a professional football club based in Türkiye, in August 2021. The employment agreement was initially concluded for two seasons, namely 2021-2022 and 2022-2023, with a possibility to extend for a third season, 2023-2024.

The contract stated that the club shall pay a fix payment to the player within 7 days following its signature, a certain amount of salary in ten monthly instalments, a specified amount per each league game as well as bonus payments. Each sub-clause of the clause of the contract relating to the payments specified that the amount concerned was "net"[2] and a general sub-clause included in the clause concerned emphasised that all the amounts stated in the agreement were "net"[3].

In July 2022, upon the completion of the first season covered by the employment contract, Bolasie became aware of the fact that sportspersons employed in Türkiye earning an annual income exceeding a certain threshold are required to file an annual income tax declaration. Upon receiving this information, the player engaged the services of a local tax expert and filed a late tax declaration for the year 2021, since the deadline for filing income tax declarations expires on 31 March in Türkiye. On the basis of the declaration filed by the player, the Turkish tax authorities issued an accrual slip, including a penalty for late filing and stamp duty. The amount was due on 13 August 2022.

On 2 August 2022, the player, via his counsels, requested the club to cover the accrued taxes as well as to reimburse the legal fees that he had to bear in relation to this procedure. The club rejected the player's request, on the same date, stating, in particular, that "[f]ootball clubs are only obligated to pay withholding tax for the Players" and that "[a]ll the amounts stated in the Employment Contract [were] paid in net to Mr. Bolasie's bank account".

On 8 August 2022, the player put the club in default, on the basis of art. 12bis of the FIFA Regulations on the Status and Transfer of Players, regulating overdue payables. The player's legal team specified, amongst other things, that *"The contract is explicit that the amount Mr. Bolasie will receive under the contract is the amount "net". In plain English, and as would be universally understood within the football industry, that means that the amount the Player would receive following deduction of all taxes is the "net" amount"*.[4]

With a response sent on 12 August 2022, the club indicated that, since the amount concerned did not form one of its financial obligations, it would not fall within the scope of art. 12bis. The club encouraged the player to pay the amount assessed by the Turkish tax authorities to avoid the payment of further interest. Moreover, on 19 August 2022, the club obtained a written explanation from the local tax authority regarding the issue. The statement explained the applicable law and underlined the annual income tax declaration for wage income must be filed by sportspersons and not by the club.

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2 For instance, the sub-clause relating to fix payment states: *"Club shall pay [...] EUR ([...] Euros)* ***in net*** *as fix payment"* (emphasis added by the author).

3 Sub-clause 3.4.

4 CAS 2023/A/9438, *Yala Bolasie v. Çaykur Rizespor* A. , para. 14.

Following a penalty notice received on 25 August 2022 and allegedly after negotiating a reduction of the tax liability with the Turkish tax authorities, the player paid the amount due on 6 September 2022. On the same date, the player put the club in default and finally on 21 September 2022, the player lodged a claim before the FIFA DRC.

Examination of the case in the light of the relevant Turkish tax legislation

In relation to the case at hand, three aspects of the Turkish tax legislation need to be briefly described:

1 all income obtained by sportspersons are deemed to form "income from employment"[5] regardless of their genuine nature;
2 sportspersons had been benefitting from a specific income tax regime since 1994, which was partially abrogated in December 2019; and
3 the tax administration is not bound by private agreements concluded between the parties.

Characterisation of the income earned by sportspersons

Under the Turkish Income Tax Law ("ITL"), all payments made and value-in-kind benefits offered in consideration of personal services rendered under an employment agreement are qualified as "wages".[6] The Law contains a specific provision on sportspersons, according to which, all payments made and value-in-kind benefits offered to sportspersons are deemed to form "wages", regardless of whether they have been made under an employment agreement or not.[7]

This aspect does not necessitate any detailed explanations in the context of the Bolasie case, since the dispute relates to the employment agreement concluded between the player and his club Çaykur Rizespor. The income obtained by the player constitutes, therefore, "wages" under the ITL.

Specific income tax rate for sportspersons

Under the Turkish income tax system, as a general rule, individuals fully liable to tax obtaining an income should file an annual tax return in March and are subject to a progressive tax rate. It is to be noted that wages are declared by employers and the income tax due on this particular type of income is also collected by employers through a withholding. As per art. 103 of the ITL, the tax rate varies between 15 and 40%. In 2024, all individuals obtaining an income exceeding 3 million Turkish liras (approximately € 84,000) are subject to the maximum rate of 40%.

Sportspersons had been granted a significant tax advantage since 1994, to the point where it was frequently stated, both in the literature and in the press, that Türkiye constituted a *"tax haven for sportspersons"*.[8] Despite vivid criticism, including the violation of the ability to pay principle, sportspersons benefitted from a fixed income tax rate of 15% regardless of their annual income from 1994 to 2007. Whilst different tax rates were adopted for premier league players, second league players, other league players as well as sportspersons competing in sports branches that do not incorporate a league system and sportspersons taking part in international sports competitions as a member of the national team as of 2008, sportspersons continued to benefit from a fixed rate regardless of their actual annual income and the rate concerned did not exceed 20%.

The filing obligations were incumbent upon sports clubs as well, along with the withholding and payment of the tax. This particular aspect did not constitute a deviation from the general system, since wages are declared by employers under the Turkish income tax system.

Accordingly, sportspersons neither fulfilled any income tax related obligations nor actually "paid" an income tax in Türkiye for almost three decades. Employment contracts were always concluded on the basis of "net amounts", that is, all tax-related burdens fell upon sports clubs, in accordance with the well-established practice, especially in the field of football.

This special regime was modified in a significant manner in December 2019. As per the modified legislation, which applies to employment contracts concluded on or after 1 November 2019,[9] sports clubs are under the obligation to withhold an income tax on behalf of sportspersons at the following rates: for sports branches following a league-system:

– 20% for the premier league players, 10% for the second league players and 5% for the players of the other leagues;
– 5% for sportspersons competing in sports branches that do not incorporate a league system and sportspersons taking part in international sports competitions as a member of the national team.[10]

To the extent where the annual income of a sportsperson exceeds the amount provided for the fourth tax bracket in art. 103 of the ITL regulating the tax rates, the sportsperson is under the obligation to file a tax return. In other words, should the annual income of the sportsperson fit within the tax bracket corresponding to the rate of 40%, the sportsperson will be under the obligation to file a tax return and will not be benefitting from the special tax rate. The amount already withheld by the sports club throughout the year will be deducted from the tax concerned.

For instance, for 2024, a premier league football player

5 The term used in the applicable legislation is *"wages"*.

6 Art. 61(1) of the ITL.

7 Art. 61(3)(6) of the ITL.

8 It is to be noted that the special regime was temporarily abrogated from 1999 to 2003.

9 Temporary art. 91 of the ITL.

10 Temporary art. 72(1) of the ITL.

earning less than 3 million Turkish liras (approximately € 84,000) benefits from the special regime provided by temporary art. 72 of the ITL and the 20% of his earnings withheld by the sports club constitutes the final amount of tax. The sportsperson is not under the obligation to file an annual tax return for the year concerned. On the other hand, a premier league football player earning 5 million Turkish liras for the same year, is under the obligation to file a tax return. The rate of 40%, as provided by art. 103 of the ITL, is applicable to his earnings. The amount of the tax withheld by the sports club during 2024, is credited from the final amount of the income tax due.

Bolasie and Çaykur Rizespor entered into a pre-contract on 21 August 2021 and signed a Professional Player's Contract on 27 August 2021.[11] During the 2021-2022 season, to which the dispute relates, the club was competing in the Turkish premier league. Since the contract was concluded after 1 November 2019, the club was under the obligation to withhold 20% of the wages it paid to the player. To the extent where the income of the player exceeded the amount provided for the fourth tax bracket in art. 103 of the ITL (650.000 Turkish liras for 2021, amounting to approximately € 66,325 on 31 March 2021[12]), the player should have filed an annual income tax return and paid an income tax at the rate of 40%. The amount already paid by the club would have been deducted from the amount of the final income tax due by Bolasie.

It is to be noted that the amendment of the special tax regime had occurred almost two years prior to the conclusion of the contract between Bolasie and Çaykur Rizespor. The amendment concerned was especially popular in the press around July 2021, a month prior to the conclusion of the contract between the parties, due to an alleged lack of compliance of football players with the new tax regime.[13] It was indicated that, despite the modification of the legislation, in practice, the tax burden continued to be borne by sports clubs as per employment agreements entered into between sportspersons and sports clubs.[14] It is known that this general tendency continues to exist to this day.

The tax administration is not bound by private agreements concluded between the parties

As is known, tax administrations are not bound by private agreements entered into by the contracting parties. Qualification of the income, apportionment of the compensation received between different services and other relevant details may be reinterpreted by tax administrations in accordance with the economic reality for tax law purposes.

The Turkish tax legislation contains a specific provision on this issue. As per arti. 8(3) of the Tax Procedure Law ("TPL"), private law contracts relating to tax obligations of taxpayers or third parties held responsible of tax-related obligations by the legislation are not binding on the tax administration. For instance, should a third party held responsible of a tax-relating obligation in a private agreement, such as paying the income tax on behalf of the person designated as the taxpayer by the legislation, fail to fulfil its obligations, the taxpayer is held responsible for the failure concerned by the tax administration. The taxpayer may then seek compensation on the basis of the contract it entered into with the third party, in compliance with the available private law remedies.

As per the applicable legislation, Yala Bolasie is the taxpayer and Çaykur Rizespor is the third party held responsible to collect a 20% withholding tax on all payments (salary, bonus, and so on) it makes to the player. As already mentioned, to the extent where the income of the player exceeded the amount provided for the fourth tax bracket in art. 103 of the ITL (650.000 Turkish liras for 2021, amounting to approximately € 66,325 on 31 March 2021[15]), an annual income tax return should have been filed and an additional amount of income tax should have been paid. Whilst the submission of the annual tax return and the payment of the additional amount of tax is incumbent upon the player under the applicable law, the parties may agree on shifting the tax burden onto the club. As a matter of fact, such shifting of the tax burden forms the general practice in Türkiye in the field of football. Should such an agreement be reached, the player remains responsible vis-à-vis tax authorities; however, should he have to personally pay any amount of income tax, he can require the club to reimburse the amount concerned in accordance with the contract concluded between the parties. Should the club fail to fulfil its obligation, the player can have recourse to the available private law remedies.

The existence of an agreement between the player and the club in relation to tax matters forms the core of the Bolasie case. In a nutshell, according to the player since the clause of the contract relating to the payments specified that the amount concerned was "net"[16] and a general sub-clause included in the clause concerned emphasised that all the amounts stated in the agreement were "net"[17], not

11 CAS 2023/A/9438, *Yala Bolasie v. Çaykur Rizespor A.S*, para. 7-8.

12 According to the currency exchange rate announced by the Central Bank of the Republic of Türkiye: www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Istatistikler/Doviz+Kurlari/Gosterge+Niteligi ndeki+Merkez+Bankasi+Kurlarii (accessed 28 August 2024).

13 See, for example, the article published by NTV (available only in Turkish): www.ntv.com.tr/spor/futbolcular-vergiden-habersiz-super-ligden-sadece-15-futbolcu-beyanname-verdi,yfAWD_K9no2WrWljOcYCEQ (accessed 28 August 2024).

14 See, for example, the article published by *Fanatik* (available only in Turkish): www.fanatik.com.tr/futbol/turkiyede-futbolcular-vergi-odemek-istemiyor-2229009 (accessed 28 August 2024).

15 According to the currency exchange rate announced by the Central Bank of the Republic of Türkiye: www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Istatistikler/Doviz+Kurlari/Gosterge+Niteligi ndeki+Merkez+Bankasi+Kurlarii (accessed 28 August 2024).

16 For instance, the sub-clause relating to fix payment states" *"Club shall pay [...] EUR ([...] Euros)* ***in net*** *as fix payment"* (emphasis added by the author).

17 Sub-clause 3.4.

only the withholding tax but also the additional amount of the income tax should have been borne by the club. On the other hand, the club argues that the reference to the "net amount" should be construed as referring to the amount received after the deduction of the withholding tax of 20% and that the additional amount of the income tax, if any, was entirely incumbent upon the player.

Overview of the decisions rendered by the competent authorities

Prior to mentioning the key points of the decision rendered by the CAS on the Bolasie case, the decision rendered by the FIFA DRC on the issue will be briefly summarised.

Decision rendered by the FIFA Dispute Resolution Chamber

In its decision, the FIFA DRC underlined that the relevant clauses of the employment agreement indeed specified that the remuneration payable to the Player should consist of a "net amount". The FIFA DRC also took note of the fact that the agreement did not contain any provisions referring to the payment of the applicable taxes, and, therefore, no specific tax liability could be deduced from the agreement. Since it remains uncontested that the amounts stipulated in the agreement were paid in full by the Club to the Player, the DRC held that the Club acted in accordance with the contract concluded between the parties and that the Player failed to meet the burden of proving that he was entitled to a reimbursement of his tax bill.[18]

Decision rendered by the Court of Arbitration for Sport

The dispute resides in the interpretation of the term "net" employed in the contract. Since the agreement does not contain any definition of the term "net" and the parties do not dispute that they did not discuss the meaning of the term concerned during their negotiations, the interpretation had to be effectuated by the CAS panel.

In this regard, the panel noted that the agreement should be interpreted in accordance with the principles of Swiss law. As per art. 18 para. 1 of the Swiss Code of Obligations ("SCO"), the form and terms of a contract must be ascertained in accordance with the true and common intention of the parties, without taking into consideration any inexact expressions or designations that they may have used either in error or in view of disguising the true nature of the agreement. On this point, the panel noted that, in accordance with the provisions of art. 18 para. 1, the parties' subjective will has priority over any contrary declaration in the text of the contract and that in case a common subjective will of the parties cannot be ascertained, the content of the contract must be determined by application of the principle of mutual trust.[19]

In determining the parties mutual and common understanding of the meaning of the term "net" employed in the agreement, the panel noted that neither the player nor his advisors *"apparently had sufficient knowledge of the Turkish tax system"* to understand that the player had the obligation to file a personal tax declaration and to pay an additional amount of income tax on that basis to the extent where the conditions provided by the ITL were fulfilled. The panel also underlined that the club was clearly aware of such an obligation during the negotiation and contract drafting process, but it did not inform the player accordingly. As a matter of fact, the club did include tax-related provisions in employment agreements concluded with other professional football players. Such provisions defined the term "net" and shifted the burden of the tax onto the club. According to the club, such a provision was never requested by the player and the matter was not discussed between the parties. On this basis, the panel concluded that the parties did not reach a mutual and common understanding of the meaning of the term "net" in the employment agreement.[20]

The panel then examined the meaning the parties could and should have given to the term "net" in accordance with the rules of good faith. On this issue, the panel emphasised that the player could have understood the term "net" as referring to the amount after the payment of all relevant taxes and that the club should have expected this to be the case. According to the panel, this observation holds especially true, since the club did include provisions regulating this very issue in its employment agreements with other professional players; the club must have understood that the player would only accept a *"net offer"*, and the club chose not to discuss the issue directly with the player before the conclusion of the contract.[21]

However, the panel also underlined that, if the player had been advised sufficiently by his advisors on the issue of the personal income tax pursuant to the Turkish tax regime before signing the agreement, he could not *"in good faith have expected that the term "net" would automatically mean that he was to be reimbursed by the Club for any private payable income tax originating from this contractual remuneration from the Club"*. The panel put forward that this was even more true since no definition of the term "net" was included in the agreement. The panel argued that the player's ignorance of the Turkish income tax regime should not put him in a more favourable position than would have been the case if the player had engaged an advisor with sufficient knowledge of the Turkish tax system prior to the conclusion of the employment agreement. This held even more true, according to the panel, since the player was already represented by lawyers, even if they were qualified in other jurisdictions.[22]

On the basis of these observations, the panel concluded that the club's possible lack of diligence in ensuring that the player was in full understanding of the club's interpretation of the term "net" in the employment agreement based on the Turkish tax rules was mirrored

18 CAS 2023/A/9438, *Yala Bolasie v. Çaykur Rizespor A.S*, para. 30-35.

19 *Ibid*., para. 82-85.

20 *Ibid*., para. 87-91.

21 *Ibid*., para. 94-95.

22 *Ibid*., para. 96-97.

by the player's possible lack of diligence by not engaging an advisor with sufficient knowledge of the Turkish tax system, in order to safeguard his interests in the upcoming employment relationship and ensuring that he fully understood the consequences of the agreement's terms.[23]

The panel underlined that it was the player's responsibility to discharge the burden of proof to establish that it was agreed between the parties that the club should reimburse the player for any personal income tax originating from his contractual remuneration from the club and payable by him. The panel found that the player failed to adequately discharge this burden of proof.[24] In this respect, the panel further noted that the employment agreement concluded between the parties contained neither a definition of the term "net" nor any provision regarding a possible reimbursement by the club of any taxes or other expenses incurred by the player in relation to the employment relationship.[25] Moreover, the panel stated that, whilse it appreciated that the grammatical understanding/ interpretation of the term "net" in the field of football was generally construed as without any deduction of taxes, charges and expenses, the term "net" was also employed in clause 3.22 of the employment agreement regarding the player's buy-out in a manner where an understanding of the term as *"without any deduction of taxes, charges and expenses"* did not make particular sense to the panel; to the extent where the parties' intentional use of the term in the agreement could be questioned.[26]

On the basis of these arguments, the panel concluded that there was no sufficient basis for the club to be responsible for reimbursing the player for the *"private income tax"* payable by the player pursuant to the applicable Turkish tax rules.[27]

Comments

As also mentioned by CAS,[28] according to art. 18 para. 1 of the SCO, the form and terms of a contract must be ascertained in accordance with the true and common intention of the contracting parties. When the mutual and common will of the parties cannot be established, the judge must ascertain their presumed will through the interpretation of their declarations of intent in accordance with the principle of trust[29] *(principe de la confiance, Vertrauensprinzip*). This interpretation, referred to as *"objective interpretation"*, consists of seeking the meaning that each of the parties could and should reasonably have attached to the other party's declarations of intent, by taking into account the terms used as well as the context and the overall circumstances in which the declarations concerned have been effectuated.[30] The principle of trust entails that a person who makes a declaration of intent addressed to another person is bound by the sense that the addressee can and must attribute to that declaration in good faith in the light of all the circumstances.[31] The principle of trust allows imputing to a party the objective meaning of its conduct, even if such meaning does not correspond to the party's inner (subjective) will.[32]

In the context of the Bolasie case, the mutual and common will of the parties cannot be established, since the parties disagree on the interpretation that should be given to the term "net" used in the relevant clause of the employment agreement. Therefore, their presumed will should be established through the interpretation of their declarations of intent in accordance with the principle of trust. To this end, the meaning that each of the parties could and should reasonably have attached to the term "net" should be sought, by taking into account the terms used as well as the context and the overall circumstances in which the declarations of intent have been effectuated.

As already underlined[33], under the Turkish tax legislation, the tax due on wages is withheld by employers. In other words, employees receive the net amount of their wages at the end of each month (or at any other intervals that may have been agreed upon between the parties). It remains clear that the burden of the tax does not lie upon the employer, which simply acts as a third party designated by the legislation to fulfil the duty of declaring and collecting the tax. The parties may, however, agree that the employee is entitled to a "net" amount. It is also to be noted that the term "net" is used as referring to the amount after all deductions, including all taxes and expenses, in Türkiye, just as in most countries.

The same withholding mechanism held true for sportspersons for a long period of time as explained above.[34] However, with the modification of 1 November 2019[35], the tax collection mechanism was modified to a certain extent. As per the new mechanism adopted, sports clubs are still under the obligation to withhold an

23 *Ibid*., para. 98.

24 *Ibid*., para. 102-104.

25 *Ibid*., para. 106.

26 *Ibid*., para. 107.

27 *Ibid*., para. 108.

28 See above under "Decision rendered by the Court of Arbitration for Sport".

29 Referred to as *"the principle of mutual trust"* by the panel.

30 See, for example, the decision rendered by the Swiss Federal Tribunal on 25 May 1999, ATF 125 III 305, para. 2.b.

31 See, for example, the decision rendered by the Swiss Federal Tribunal on 7 August 2000, ATF 126 III 375, para. 2.e.aa.

32 See, for example, the decision rendered by the Swiss Federal Tribunal on 21 May 2001, 4C.43/2000, para. 2.c.

33 See above under "Specific income tax rate for sportspersons".

34 See above under "Specific income tax rate for sportspersons".

35 Temporary art. 91 of the ITL.

income tax on behalf of sportspersons on all their wages;[36] nonetheless, sportspersons themselves may also have tax-related obligations. To the extent where the annual income of a sportsperson exceeds the amount provided for the fourth tax bracket in art. 103 of the ITL regulating the tax rates, the sportsperson is under the obligation to file a tax return and pay an additional amount of income tax. The amount already withheld by the sports club throughout the year is deducted from the additional amount concerned. It remains clear that both the amount paid by the sports club and the additional amount that may be paid by the sportsperson at the end of the fiscal year relate to the income tax due on the sportsperson's wages. The amounts concerned do not form separate taxes; rather, the collection mechanism differs to a certain extent.

As already emphasised[37], sportspersons neither fulfilled any income tax related obligations nor actually "paid" any income tax in Türkiye for almost three decades. Employment contracts were always concluded on the basis of *"net amounts"*, that is all tax-related burden fell upon sports clubs, in accordance with the well-established practice, especially in the field of football. The tax burden continued to be borne by sports clubs as per employment agreements entered into between sportspersons and sports clubs despite the modification of the legislation. It is known that the majority, if not all, of the employment agreements concluded in the field of football, especially in the premier league, contain a specific clause to this end.

It remains undisputed that, instead of the mere use of the term "net", it would have been more prudent and desirable to include a precise and straightforward clause, indicating that all amounts to be received by the sportsperson should be free of any tax liabilities, deductions or similar charges and that all such amounts would be borne by the sports club. Nevertheless, in the author's opinion, the use of the term "net" in the field of football in a country known to form *"a tax haven"* for sportspersons, partly due to its legislation but also partly to the well-established practice in the field, the player could in good faith and in accordance with the principle of trust, have interpreted the term "net" as free of any tax liabilities and other similar charges arising from the employment agreement. As a matter of fact, albeit not having the possibility to confirm with certainty, the author remains convinced that there are only a handful of players competing in the Turkish premier league, who had to bear the burden of their own income tax so far; one of whom is Bolasie.

The fact that the player's legal team did not choose to hire a local tax expert may certainly be interpreted as a lack of diligence, as noted by CAS;[38] but it is also indicative of the fact that the player was convinced that he did not have to take any steps in relation to his tax liability in Türkiye, since he was to receive "net" amounts. Also, clauses shifting the tax burden are systematically included in employment agreements in the field of sports and tax experts are generally not consulted during this process, given the fact that the employment agreement forms a private agreement between the parties, which does not necessitate any particular knowledge of the local tax laws. The fact that the Turkish domestic law provides for a specific collection mechanism to the extent where certain conditions are fulfilled, should not justify per se the expectation of an additional diligence from the sportsperson.

In the case at hand, the club based its legal arguments on a technicality of the Turkish tax legislation, which was clearly and reasonably ignored by the sportsperson. The fact that the club never raised this issue, during the contract negotiation or during the time the sportsperson was employed by the club so that he could avoid the payment of any tax penalties, does indeed constitute a lack of diligence, as also mentioned by the CAS panel.[39] The club representatives are clearly aware of the Turkish tax legislation, as well as the general tendency reigning in the field of football, so that they should be able to understand that the player is referring to the shifting of the income tax burden onto the club by the use of the term "net". To the extent where they had any doubts as to the scope of the term "net", they could have sought clarification during the contract negotiation.

On this point, the author finds it rather surprising that the panel noted that the term "net" is also applied in another clause of the contract in a manner where an understanding of the term meaning *"without any deduction of taxes, charges and expenses"* does not make particular sense, which to some extent *"questions the parties' intentional use of the term"* in the employment agreement.[40] Should the parties not have used the term "net" intentionally, the club should have deducted the amount of the tax withheld from the wages paid to the player throughout the year as well. As a matter of fact, as per the applicable legislation, the club is under the obligation to declare and withhold the tax on all wages it pays to the player, and not to bear the financial burden of the tax. The fact that the club assumed the financial burden of the tax indicates that the term "net" was indeed used in its everyday meaning.

Last but not least, the author is not of the opinion that *"if the player had been advised sufficiently by advisors hired by him on the issue of the personal income tax pursuant to the Turkish tax regime before the signing of the Contract, the Player could not in good faith have expected that the term "net" would automatically mean that he was to be reimbursed by the Club for any private payable income tax originating from his contractual remuneration from the Club"*, as observed by the panel.[41] First of all, there is only one income tax due by

36 Temporary art. 72(1) of the ITL.

37 See above under "Specific income tax rate for sportspersons".

38 CAS 2023/A/9438, *Yala Bolasie v. Çaykur Rizespor A.S*, para. 98.

39 *Ibid.* It is to be noted that the panel refers to a *"possible"* lack of diligence.

40 *Ibid.*, para. 107.

41 *Ibid.*, para. 96.

the player, and such tax cannot be distinguished as private and non-private on the basis of the collection mechanism put in place by the applicable legislation. Secondly, a *"net amount"* refers to an amount free of any taxes, charges and deductions in Türkiye, regardless of the fact that it would have been desirable for the agreement to contain a more precise wording. Thirdly, should the player had been advised by tax advisors in Türkiye, he would be aware of the fact that the tax burden is being systematically shifted to sports clubs in the field of football and he would not have agreed on paying a part of the income tax himself.

Overall, the author is of the opinion that, in line with the principle of trust, the clause of the employment agreement relating to the compensation, should have been interpreted as shifting the income tax burden onto the club. Bolasie seems to have been held liable for hiring non-Turkish qualified lawyers and the club, which is by default represented by Turkish-qualified lawyers, is given the advantage to base its legal arguments on a tax technicality that the other party could have easily, and in good faith, ignored.

Conclusion

Lawyers are known, and constantly criticised for, writing lengthy documents that "no one can fully read and understand". The Bolasie case demonstrates the relevance of such writing. Instead of merely referring to "net", should the employment agreement have included a clause stating, "The club shall pay all taxes, charges and other similar deductions as required by the applicable legislation inherent to all payments deriving from this agreement", the dispute would simply not have arisen. It remains undeniable that the inclusion of such a clause would not have discouraged Çaykur Rizespor from entering into an employment agreement with Yala Bolasie, since such shifting of the tax burden is in compliance with the common practice in Türkiye in the field of professional football.

That being said, a specific collection mechanism implemented in a national legislation should not be construed as modifying the meaning of the universally understood term "net". Shifting of the tax burden is common in employment agreements entered into in the field of professional football; and such provisions are generally included without having recourse to a detailed tax law research, given the fact that they do not effectively relate to the applicable tax legislation.

A guide to NIL taxation of collegiate athletes in the USA

BY ATHENA CONSTANTINOU[1]

Introduction

Overview of NIL (name-image-likeness) rights

In recent years, the landscape of collegiate athletics in the United States of America has undergone a significant transformation. A pivotal development has been the recognition of athletes' rights to their Name, Image, and Likeness (NIL). Historically, the NCAA (National Collegiate Athletic Association) imposed strict regulations prohibiting athletes from profiting from their NIL through the application and implementation of the so-called *"amateurism criterion"*.

However, a series of legal challenges and public pressure led to a seismic shift in policy, allowing collegiate athletes to monetize their NIL as of 1 July 2021.

This newfound opportunity has opened up a myriad of income streams for athletes, including endorsement deals, sponsorships, social media promotions, merchandise sales, and appearances. These opportunities, whilst financially rewarding, also introduce a complex array of tax implications.

With athletes now navigating contracts, managing income from diverse sources, and meeting tax obligations, the importance of understanding NIL taxation cannot be overstated.

Purpose of the article

This article aims to provide a general guide on NIL taxation for collegiate athletes in the United States. By delving into the nuances of taxable income, deductions, credits, and tax planning strategies, this guide will equip athletes with the basic knowledge needed to navigate their tax obligations effectively. Whether athletes are high-profile athletes, with significant endorsement deals, or mid-level athletes, earning modest NIL income, understanding these tax principles is crucial for their financial success and compliance.

Understanding NIL Income

Definition and examples of NIL income

NIL income refers to the earnings athletes receive from leveraging their personal brand. This income can come from various sources, including:

- *endorsement deals:* payments from companies for promoting their products, for instance, a sports shoe company might pay an athlete to wear and advertise their shoes;
- *sponsorships:* financial support from brands in exchange for visibility and association with the athlete, for example, a beverage company sponsoring an athlete for public appearances;
- *social media promotions:* earnings from sponsored posts and partnerships on platforms like X (formerly Twitter), Instagram, TikTok, and YouTube; influencers and athletes often collaborate with brands to create promotional content;
- *merchandise sales:* profits from selling branded apparel, equipment, or other products; athletes can create their own merchandise line or partner with existing brands;
- *royalties or fees* earned through licensing or merchandizing agreements or NFTs (non-fungible tokens);
- *appearances and autographs*: fees for public appearances, signings, and events; this can include being paid to attend events, sign autographs, or give speeches;
- *free products or services* that an athlete receives in exchange for endorsing a brand or business;
- *payments received from NIL collectives*.

Each of these income streams has unique tax implications that athletes must consider. Properly categorizing and reporting this income is essential for compliance and optimizing tax benefits.

How NIL income is earned

Athletes enter into contracts with businesses and organizations to earn NIL income. These agreements outline the terms, including payment amounts, duration, and scope of the partnership. For example, a contract might specify that an athlete must post a certain number of social media posts per month or make a set number of public appearances. The income can vary significantly based on the athlete's popularity, performance, and marketability. High-profile athletes might secure lucrative

1 Sports image rights advisor, The Sports Image Rights Expert Limited, Nicosia, Cyprus. Website: https://sportsimagerightsexpert.com. E-mail: athena@apc-sport.com.

deals with major brands, whilst others might earn income through local businesses and smaller-scale promotions.

Understanding the terms of these contracts and the nature of the income earned is important for accurate tax reporting. Athletes should keep detailed records of all contracts and payments received to ensure that they are well prepared for tax filings.

Basics of U.S. taxation

Federal income tax

The United States operates a progressive federal income tax system, meaning the tax rate increases as income rises. Federal income tax rates and brackets are established by the Internal Revenue Service ("IRS") and are subject to change annually. All U.S. citizens and residents are required to file a federal income tax return if their income exceeds certain thresholds. Tax returns are typically due by 15 April each year.

For 2024, the federal income tax brackets for individuals are as follows:

- 10% on income up to $ 11,600 (single filers) or $ 23,200 (married filing jointly).
- 12% on income over $ 11,600 (single filers) or $ 23,200 (married filing jointly).
- 22% on income over $ 47,150 (single filers) or $ 94,300 (married filing jointly).
- 24% on income over $ 100,525 (single filers) or $ 201,050 (married filing jointly).
- 32% on income over $ 191,950 (single filers) or $ 383,900 (married filing jointly).
- 35% on income over $ 243,725 (single filers) or $ 487,450 (married filing jointly).
- 37% on income over $ 609,350 (single filers) or $ 731,200 (married filing jointly).

Understanding these brackets helps athletes estimate their tax liability and plan accordingly.

State income tax

In addition to federal taxes, many U.S.states impose their own income tax. State tax rates and brackets vary widely, and some states, such as Florida, Texas, and Washington, do not have a state income tax. Athletes must file state tax returns based on their residency and where their income is earned. This can become complex for athletes earning income in multiple states.

For example, an athlete residing in California (which has a progressive state income tax) but earning income from events in Texas (which has no state income tax) would need to understand the tax implications in both states. States like California have high tax rates, whilst states like Florida have none, which can significantly impact an athlete's net income.

It is very important for student athletes to determine where their tax residence is. States that impose a personal income tax, generally tax residents on all their income regardless of its source. The state of residence of students is usually where they grew up and where their family resides. Usually, the various states consider a college student to be a temporary resident whilst attending college and recognize that their state of tax residency is their home state. Therefore, student athletes earning NIL revenue have a tax obligation in their home state.

However, even if student athletes file a state tax return in their home state, they may still be liable to file additional tax returns in other states as well, depending upon where their NIL income has been earned. States that tax residents on their income, often tax non-residents on income earned within their borders. Of course, to avoid double taxation, the state of residence will provide a credit for taxes paid to other states on the same income. Student athletes should bear in mind that usually income earned from NIL deals results from performing some kind of personal service. Personal service income is usually sourced where the service is performed. In the case of licensing income, however, such income is usually deemed to be sourced to the state of the student athlete's tax domicile.

Local taxes

Some cities and counties also levy local taxes. For example, New York City imposes a local income tax on residents. Athletes must be aware of these additional tax obligations, particularly if they reside or earn income in areas with local taxes.

Local taxes add another layer of complexity. An athlete living in New York City, for instance, must pay federal, state, and city income taxes. Understanding the specific tax rates and filing requirements for each locality is critical to avoid penalties and ensure compliance.

Tax obligations for collegiate athletes

Taxable versus non-taxable income

NIL income is generally considered taxable by the IRS. This includes payments from endorsements, sponsorships, social media promotions, merchandise sales, and appearance fees. Non-taxable income might include scholarships and grants used for tuition and educational expenses, provided that they meet IRS criteria.

Under IRS rules, some athletes are required to file a federal tax return to report self-employment income and pay federal taxes if they have net earnings of $ 400 or more in self-employment income from NIL deals, or if their income exceeds the standard deduction. Self-employment income of $ 600 or more is reportable on Form 1099.

If a student is filing a tax return to report NIL income from self-employment, they will need to complete the following:

- Schedule C, Profit or Loss from Business;
- Schedule E, Supplemental Income and Loss, if they earned money from royalty payments.

These forms will need to be attached to the student's Form 1040 to determine their taxable income for the year.

Once a student athlete's income from NIL deals exceeds a certain threshold, they can no longer be claimed as a dependent on their parents' tax return.

It is important for athletes to distinguish between taxable and non-taxable income. For example, a scholarship covering tuition is typically non-taxable, but a stipend for living expenses may be taxable. Understanding these distinctions helps in accurate tax reporting and compliance.

Self-employment tax

Many collegiate athletes earning NIL income will be classified as self-employed for tax purposes. This means that they are responsible for paying self-employment tax, which covers Social Security and Medicare contributions. As of 2024, the self-employment tax rate is 15.3%, consisting of 12.4% for Social Security and 2.9% for Medicare. Athletes must report self-employment income on Schedule C (Form 1040) and pay self-employment tax using Schedule SE (Form 1040).

Self-employment tax can significantly impact an athlete's tax liability. For instance, an athlete earning $ 10,000 in net NIL income would owe $ 1,530 in self-employment tax alone. Proper planning and quarterly estimated tax payments can help manage this burden.

Quarterly estimated taxes

Athletes with substantial NIL income must make quarterly estimated tax payments to avoid penalties. The IRS requires these payments to cover both income tax and self-employment tax. Estimated tax payments are due on 15 April, 15 June, 15 September, and 15 January of the following year. Athletes can use Form 1040-ES to calculate and make these payments. If athletes expect to owe more than $ 1,000 in taxes, they should make estimated tax payments.

Failing to make quarterly payments can result in penalties and interest charges.

Athletes should estimate their annual income and divide the total tax liability into four payments. Keeping up with these payments ensures compliance and avoids surprises during the tax season. Athletes should usually set aside about 25% to 30% of their NIL income to cover these quarterly payments.

Deductions and credits

Business expenses

Athletes can deduct ordinary and necessary business expenses related to their NIL activities. Common deductible expenses include:

- *travel:* costs for travel to events, appearances, and meetings; this includes airfare, lodging, and meals;
- *marketing:* expenses for promoting the athlete's brand, including social media advertising, website costs, and promotional materials;
- *training:* costs for training, coaching, and related activities; this can include gym memberships, personal trainers, and specialized training camps;
- *equipment and supplies:* purchases of sports equipment and other supplies needed for training and performance.

Accurate record-keeping is essential to substantiate these deductions. Athletes should maintain receipts, invoices, and detailed records of all business-related expenses. For example, if an athlete travels to an event, they should keep records of flight costs, hotel bills, and meal receipts.

Education-related deductions and credits

Athletes may also be eligible for education-related tax benefits, such as:

- *Student loan interest deduction:* deduction up to $ 2,500 of interest paid on student loans; this deduction can reduce taxable income and lower overall tax liability;
- *American Opportunity Tax Credit ("AOTC"):* a credit of up to $ 2,500 per eligible student for qualified education expenses, including tuition, fees, and course materials; the AOTC is partially refundable, meaning athletes can receive a refund;
- *Lifetime Learning Credit:* a credit of up to $ 2,000 per tax return for qualified tuition and related expenses. This credit is available for any year of post-secondary education and can be used for an unlimited number of years.

Understanding these credits and deductions can help athletes minimize their tax burden and make the most of their educational investments.

Other relevant deductions and credits

Additional deductions and credits that may apply include:

- *health insurance premiums:* self-employed athletes can deduct premiums paid for health insurance; this deduction can significantly reduce taxable income;
- *retirement contributions:* contributions to retirement accounts, such as a Simplified Employee Pension (SEP) IRA, are deductible. Athletes can contribute up to 25% of their net earnings from self-employment, up to a maximum limit. This not only reduces current taxable income, but also helps in long-term financial planning.

Tax planning strategies

Choosing the right business structure

Athletes should consider the most appropriate business structure for their NIL activities. Options include:

- *sole proprietorship:* this is the simplest structure but offers no liability protection; income is reported directly on the individual's tax return, on Schedule C – Profit and Loss from a business and it is taxed at individual tax rates;
- *limited liability company (LLC):* provides liability protection and flexibility in taxation; an LLC

can choose to be taxed as a sole proprietorship, partnership, or corporation. This structure is usually used by mid to high profile student athletes with a regular flow of NIL revenue;
– *S corporation:* offers potential tax benefits but requires more administrative work. S corporations can provide savings on self-employment taxes by allowing owners to take a salary and dividends. High profile student athletes with considerable revenue may opt for this type of business structure.

Each structure has its pros and cons, and athletes should consult with a tax professional to determine the best fit. For example, an LLC might offer flexibility and protection, whilst an S corporation could provide tax advantages.

Record keeping and accounting

Maintaining accurate records is important for managing NIL income and expenses. It is advisable that athletes use tools and software to track income, expenses, and tax obligations as well generate the reports needed for tax filings. Proper accounting practices will help ensure compliance and facilitate efficient tax filings. Keeping detailed records also helps in case of an IRS audit.

Working with tax professionals

Given the complexities of NIL taxation, working with a Certified Public Accountant ("CPA") or tax advisor can be highly beneficial. A tax professional can provide personalized advice, assist with tax planning, and ensure accurate and timely tax filings.

A CPA can help athletes navigate the intricacies of self-employment tax, quarterly estimated payments, and deductions. They can also provide strategic advice to minimize tax liability and ensure compliance with all tax laws.

Case studies and examples

Let us now look at three different cases, to demonstrate how taxes apply to three broad categories of NIL-earning athletes.

Case study 1: high-profile athlete

A high-profile collegiate athlete, such as a star quarterback, may earn significant NIL income from endorsements, sponsorships, and appearances. This athlete would need to:

– file federal and state tax returns, as well as local tax returns if applicable;
– pay self-employment tax;
– make quarterly estimated tax payments;
– deduct business expenses, such as travel and marketing;
– consider creating an LLC or an S Corporation; and
– consult with a tax professional to optimize tax planning strategies.

For example, if the athlete earns $ 500,000 from various endorsements and appearances, they must carefully track all income and expenses, pay estimated taxes quarterly, and ensure compliance with state and federal tax laws. A tax professional can help them maximize deductions and credits to reduce their overall tax liability.

Case study 2: mid-level athlete

A mid-level athlete might earn a moderate amount of NIL income through social media promotions and smaller endorsement deals. This athlete should:

– track all income and expenses meticulously;
– deduct eligible business expenses;
– ensure compliance with federal, state, and local tax laws; and
– consider forming an LLC for liability protection.

For instance, if this athlete earns $ 75,000 annually, they should keep detailed records of all income and related expenses, such as travel and marketing. Forming an LLC might offer liability protection and potential tax benefits. Consulting with a tax professional can help ensure that all deductions are claimed correctly.

Case study 3: lower-profile athlete

A lower-profile athlete might have minimal NIL income, perhaps from a few local sponsorships. This athlete should:

– report all NIL income on their tax return;
– deduct any business-related expenses; and
– stay informed about their tax obligations to avoid penalties.

Even with smaller earnings, accurate reporting and record-keeping are essential. For example, an athlete earning $ 10,000 from local endorsements should track all income and expenses and ensure timely tax filings. This ensures compliance and avoids potential penalties.

Potential pitfalls and common mistakes

Failure to report income

Failing to report NIL income can lead to severe consequences, including penalties and interest charges. Athletes must ensure that all income is accurately reported on their tax returns.

For instance, if an athlete receives payments through PayPal or other online platforms, they must report this income to the IRS. Keeping detailed records and reporting all earnings prevents issues with the IRS and ensures compliance. In addition, if the athlete receives products or other non-monetary compensation, such as paid trips or free meals, these are considered taxable at their fair market value. Normally, if the fair market value exceeds $ 600, the student athlete will receive a form 1099 that reports the value of such products or services.

Misunderstanding deductions

Misinterpreting what constitutes a deductible expense can result in disallowed deductions and potential audits. Athletes should familiarize themselves with IRS guidelines or seek professional advice.

Common mistakes include attempting to deduct

personal expenses or failing to keep proper documentation for business expenses. Consulting with a tax professional ensures that only eligible deductions are claimed, and proper records maintained.

Ignoring state and local tax obligations

Overlooking state and local tax requirements can lead to unexpected liabilities. Athletes must stay informed about the tax laws in their state and any states where they earn income.

For example, an athlete earning income from events in multiple states must understand the tax obligations in each state. Filing state tax returns and paying any required state and local taxes ensures compliance and avoids penalties.

Future of NIL taxation

Potential changes in legislation

The landscape of NIL taxation is still evolving. Proposed legislative changes could impact how NIL income is taxed in the future. Athletes should stay informed about potential changes and be prepared to adapt their tax strategies accordingly.

For example, there could be changes in federal tax laws that affect self-employment income or new state regulations specifically addressing NIL earnings. Staying informed about legislative developments ensures that athletes can adapt their strategies to remain compliant and optimize their tax situations.

Long-term implications for athletes

Understanding and managing NIL tax obligations is crucial for the athletes' long-term financial health. Proper tax planning can help athletes maximize their earnings, minimize tax liabilities, and lay a solid foundation for their financial futures.

Long-term planning includes setting aside funds for taxes, investing in retirement accounts, and seeking ongoing professional advice. By adopting a proactive approach to tax planning, athletes can ensure financial stability and success beyond their collegiate careers.

Conclusion

Recap of key points

This guide has explored the multifaceted aspects of NIL taxation for collegiate athletes in the United States. From understanding taxable income and deductions to navigating federal, state, and local tax obligations, athletes must approach their NIL earnings with a well-informed strategy.

Final advice for collegiate athletes

As collegiate athletes embark on their NIL ventures, seeking professional guidance and staying proactive about their tax obligations is essential. By leveraging the knowledge and strategies outlined in this guide, athletes with the help of their professional tax advisors, can ensure compliance with tax laws and optimize their financial outcomes.

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- State-specific tax authority websites.

The Netherlands:

Tax credit of U.S. income tax paid by a Netherlands resident individual shareholder over income earned by a U.S. LLC

BY DR. RIJKELE BETTEN[1]

The facts of the case

In 2017, the taxpayer was a resident of The Netherlands, held the Netherlands nationality and acted as a DJ all over the world. He is sole shareholder of a Netherlands resident BV and earns a wage from this BV of 213,007. He is also the sole shareholder of an LLC established under the laws of the State of Delaware. According to art. 13 of the LLC Agreement, the taxpayer is fully entitled to the revenues of the LLC:

*"**13. Profits and losses:** The entire net income, gain, net loss, loss, tax credits and any items thereof (collectively "profits and losses") shall be allocated entirely to the Member* (...)."

In 2017, the profit of the LLC amounted to € 748,7942, the taxable profit of the LLC which was taxed in the hands of the Netherlands resident taxpayer amounted to € 739,316. Since for U.S. purposes the LCC is transparent3 the DJ was himself taxed by the U.S. on this income and he paid U.S. federal income tax in the amount of € 253,581.

In his 2017 Netherlands income tax return, he declared as foreign income from employment an amount of € 497,042. After some specific deductions, the taxable income was determined at the amount of € 574,715.

As regards foreign income, the DJ asked for an exemption for € 3,502 of Netherlands income under the tax treaties concluded by The Netherlands with Spain and Thailand. Also, he asked for an exemption for the U.S. income from employment for an amount of € 497,042.

It is not clear how the calculation was made to arrive at these figures. It seems that the taxable profit of the LLC was reduced with the U.S. tax paid, and that the net result was reported as income from foreign employment in the 2017 tax return. By asking for an exemption for this income, effectively hardly any Netherlands income tax would have been payable on this income. The tax authorities did not agree with the claimed exemption for U.S. foreign employment, so that in The Netherlands an amount of € 289,027 was due. The taxpayer did not agree with this hefty tax burden, and he went to an appeal.

The Court of First Instance[4]

The issue before the Court, in particular, was whether the taxpayer is entitled to a deduction for the avoidance of international double taxation according to the 1992 tax treaty concluded between The Netherlands and the United States of America.

The taxpayer stated that the interposition of the LLC is to limit his civil law liability for his U.S. activities, that for U.S. purposes the LLC is transparent and, hence, the individual pays U.S. tax on the taxable profit of the LLC. Now that The Netherlands tax authorities levy again Netherlands income tax on the reported income, his tax burden on the U.S. income amounts to around 75%, and the taxpayer claims a deduction of U.S. tax from his Netherlands income due, on the basis of art. 18 and 25 of the U.S.-Netherlands tax treaty. The taxpayer no longer claimed an exemption, as he did in his filed tax return, but correctly now demanded an ordinary credit of U.S. tax.

The tax authorities took the position that the LLC should have been subject to Netherlands corporate income tax, probably because the effective management of the LLC was located in The Netherlands and that the U.S. tax authorities should not have imposed withholding tax and/or income tax on the revenues of the LLC. As a

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2 The amounts in € as included in the decision are mentioned here.

3 Single-member LLCs are treated as disregarded entities by default, with income reported on the owner's personal tax return.

4 Court of Appeal of Zeeland-West-Brabant, decision of 9 June 2022, case AWB-21_170.

secondary position, the tax authorities argued that the tax, levied at the level of the LLC, cannot be credited against personal income tax due by the shareholder.

The Court reasoned as follows: it is not disputed that the taxpayer is a resident of The Netherlands and can also be classified as an artist as mentioned in art. 18 of the U.S.-Netherlands tax treaty.

1 Notwithstanding the provisions of **art. 15** (Independent Personal Services) and **art. 16** (Dependent Personal Services), income derived by a resident of one of the states as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other state, may be taxed in that other state, except where the amount of the gross receipts derived by such entertainer or athlete for the taxable year concerned, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed US$ 10,000 or its equivalent in euros on 1 January of the taxable year concerned. In the latter case, the exemption can be applied by means of a refund of tax which may have been levied at the source. An application for such refund has to be lodged after the end of the taxable year concerned and within three years after that year.

2 Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of **art. 7** (Business Profits) and **art. 15** (Independent Personal Services), be taxed in the state in which the activities of the entertainer or athlete are exercised, unless it is established that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipts of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

During the Court proceedings, the tax authorities accepted that the income came from personal activities performed by the DJ in the United States. The Court then held that the DJ was directly or indirectly entitled to the entire income and himself paid federal income tax in the United States. The Court did mention that this is an important distinction from the situations in previous Netherlands case law[5] where the U.S. tax was actually imposed on the LLC.

The Court then did allow an ordinary credit for U.S. tax to a proportionate amount of € 18,553, and set itself the tax due at € 10,474.

The tax authorities did not accept this outcome and went to appeal.

The Court of Appeal[6]

The Court of Appeal reiterated the facts as determined by the Court of First Instance. It stated that the issue was whether the taxpayer was entitled to the application of a measure for the avoidance of double taxation, and, if so, how to determine that needed to be included in the Netherlands taxable income of the DJ. Two approaches were mentioned: either the revenue received by the LLC (€ 748,794) or the amount taxed by the U.S. in the hands of the DJ (€ 739,316).

As regards the last issue, the Court chose for the first amount, that is, the specific U.S. tax provision that resulted in a slight reduction of the revenue did not have to be followed by The Netherlands. So, the revenue of the LLC was considered as net foreign profit.

It is interesting that, in the published decision, the U.S. income of the DJ is no longer classified as income from foreign employment but as business income. There is no mention of the grounds for this change, apparently both parties accepted this during the proceedings.

The Court applied the Netherlands tax law to the various income components of the DJ and, due to the higher taxable income, the Court could now credit the entire U.S. tax as credit against the Netherlands income tax due. Effectively, the Netherlands income tax due was determined at € 111,823.

From oral information from the Court of Appeal, it has been learned that no request for cassation has been filed.

Comments

The income tax position of DJs has been the subject of quite some case law in The Netherlands. One of the debated issues is whether corporate income tax, levied from foreign companies, can be credited against Netherlands income tax due by the DJ. The Netherlands Supreme Court has refused to accept this, even though tax treaty provisions, that are comparable to art. 17 of the OECD Model, do provide that income may be taxed in the hands of the artiste, even if paid to another taxpayer. Another contested issue has been the residence of DJs. Since they are often active abroad during long periods, it becomes, for tax purposes, attractive to consider becoming resident in another more tax efficient country. In several cases, the DJ did not really cease, for income tax purposes, to be resident of The Netherlands and then this set-up has led to corrections and fines.

In this case, another issue was at hand. In the U.S. in 2017, LLCs were, for tax purposes, considered to be transparent, and the profit of the LLC is then taxed in the hands of the DJ himself. In the 2017 tax filing that was treated by the Court of First Instance, the choice was made to report the net result (profit of the LLC minus the U.S. tax paid by the DJ) as income from foreign employment and to claim an exemption for the avoidance of international double taxation. The tax inspector, in that case, refused the exemption; the Court of First Instance did allow a

5 Decision of the Supreme Court of 24 September 2021, ECLI:NL:HR:2021:1352; see 4.4.

6 Decision of the Court of 's-Hertogenbosch of 27 March 2024, ECLI:NL:GHSHE:2024:1049.

deduction in relation to the foreign income and reduced the tax assessment to an amount of € 107,474.

The Court of Appeal took the at first sight more appropriate approach and first included the entire revenue of the LLC in the taxable income as entrepreneurial profit. The Court then applied beneficial tax provisions for business profits and allowed for an ordinary credit of the U.S. tax levied from the DJ. The income tax due was determined at € 11,823. Considering the different approaches followed by the courts, it is quite remarkable that the outcomes are so close. One wonders whether this small difference really justified another court procedure and another two years of uncertainty for the taxpayer. The first positions taken by the tax authorities were that the LLC should have been taxed only by The Netherlands and that the United States had no right to tax the income realised by the DJ in the U.S. It is hard to conceive that the tax authorities really expected these positions to hold before the court and one may wonder why this position was taken. During the proceedings before the Court of First Instance, these positions were apparently no longer taken.

An issue is the residency of the LLC. Apparently, the United States attributed, for federal income tax purposes, the revenues of the LLC to the DJ, even though one may, indeed, wonder whether the LLC was, indeed, resident in the United States. Anyhow, the United States were entitled to tax the income realised by the DJ in the United States, and, therefore, the place of residence of the LLC can be held not to be relevant.

In the author's view, it seems that the fundamental decision taken by the Court of Appeal is really that, for Netherlands income (and corporate income) tax purposes, working through a foreign non-transparent company can be sort of neglected, so that the yearly distributed income is taxed in the hands of the individual taxpayer residing in The Netherlands. I would submit that it is key that the entire result is each year distributed to the shareholder of that entity. This is to be applauded, since the only reason for interposing an LLC seems to be to protect against liability.

Brand partnerships: a new frontier?

BY JONATHAN TAYLOR[1]

Introduction

Athletes are increasingly becoming major influencers in the world of marketing and advertising, with brand partnerships forming a significant part of their income.

Traditional earnings alone are often insufficient to meet the financial needs of these high-profile individuals. From endorsement deals with global corporations to promotional contracts with emerging brands, these partnerships can be highly lucrative.

However, the financial rewards of such arrangements come with complex tax obligations that require careful planning and management. Understanding the tax implications of brand partnership deals is crucial, therefore, for athletes to maximise their earnings and remain compliant with tax laws.

This article delves into various aspects of brand partnerships for athletes, examining the tax considerations associated with different types of deals; the importance of strategic tax planning; and how athletes can navigate the complexities of tax compliance in this domain.

The evolution of brand partnerships in sports

Brand partnerships have evolved significantly over the decades. Historically, athletes primarily earned their income through salaries and prize money. However, with the rise of social media and the globalisation of sports, athletes' marketability has extended beyond the traditional. Today, athletes are not just competitors; they are brands in their own right, wielding the power to influence consumer behaviour on a massive scale.

Endorsements, sponsorships, and other brand partnerships have become substantial revenue streams for many athletes – sometimes even surpassing their earnings from sports. For instance, top athletes like LeBron James, Serena Williams, and Lionel Messi earn millions annually through brand deals with companies such as Nike, Coca-Cola, and Adidas. These deals can range from wearing specific gear during competitions to promoting products on social media.

Types of brand partnership deals

Before delving into the tax implications, it is essential to understand the various types of brand partnership deals available to athletes. These partnerships typically fall into several categories, each with distinct characteristics.

Endorsement deals

Endorsement deals are perhaps the most common form of brand partnership for athletes. In these agreements, an athlete consents to endorse or promote a product or service in exchange for compensation. This compensation can take the form of cash payments, free products, or a combination of both. Endorsement deals often involve the athlete appearing in advertisements, wearing branded apparel during events, or posting about the product on social media.

Sponsorship agreements

Sponsorship agreements involve a brand providing financial support to an athlete or a sports team in exchange for promotional benefits. This could include the brand's logo being displayed on the athlete's gear, in the stadium, or on other promotional materials. Sponsorships can be long-term, covering an entire season or career, or short-term, focused on a specific event or campaign.

Royalty-based deals

In a royalty-based deal, an athlete earns a percentage of sales from products associated with their name or brand. For example, a basketball player might have a signature shoe line and receive royalties based on the number of units sold. These deals can be particularly lucrative if the product becomes popular, generating significant ongoing income.

Licensing agreements

Licensing agreements involve an athlete granting a brand the right to use their name, image, or likeness for specific products or services. In return, the athlete receives a fee, which could be a lump sum or a percentage of sales. Licensing deals are common in merchandise, such as clothing lines or video games.

Appearances and speaking engagements

Athletes may also enter into agreements for appearances

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at events or speaking engagements. These deals typically involve the athlete being paid to attend a corporate event, conference, or charity function to boost the event's profile. The compensation for these appearances can vary widely based on the athlete's popularity and the nature of the event.

Tax implications of brand partnerships

Whilst brand partnerships can be financially rewarding, they also introduce several tax challenges that athletes must address. The following sections outline the key tax considerations associated with these deals.

Income classification and taxation

The income earned from brand partnerships is generally classified as ordinary income and is subject to both federal and state income taxes. However, the nature of the income can vary depending on the type of deal, leading to different tax treatments.

Cash payments
Most brand deals involve cash payments, which are straightforward to classify as taxable income. The amount received from the brand must be reported on the athlete's tax return and is subject to the appropriate income tax rates. Depending on the athlete's overall income, this could place them in a high tax bracket, potentially resulting in significant tax liability.

Non-cash compensation
In many cases, athletes receive non-cash compensation as part of their brand deals. This can include products like clothing, equipment, cars, or even luxury items. The fair market value of these non-cash items must be reported as income. For example, if an athlete receives a luxury watch valued at £ 10,000 as part of a brand partnership, they must include this amount as income on their tax return.

Royalty income
Royalty income, derived from product sales associated with an athlete's name or brand, is also taxable. The tax treatment of royalties can be complex, depending on whether the income is classified as passive or active. Active royalty income, where the athlete is involved in the marketing or promotion of the product, is generally subject to self-employment taxes. Passive royalty income, where the athlete has no active role in the product's sales, may not be subject to these taxes but is still taxable as ordinary income.

Residency and tax jurisdiction
Athletes often compete and reside in multiple countries throughout the year, each with different tax rules. Generally, tax authorities in an athlete's country of residence have the right to tax their worldwide income, including earnings from brand deals.
For example, if a British athlete endorses a U.S. brand and receives payment for activities conducted in the U.S., U.S. tax authorities may levy taxes on that income. The athlete would then need to determine whether their home country offers tax credits or relief under a double taxation agreement ("DTA") between the two countries. This has become further complicated by brands utilising social media for promotion. Often, photos and videos can be taken anywhere, in any jurisdiction, making it more important than ever to work with a close-knit team of international advisors.

Self-employment taxes

Athletes can be classified as independent contractors when it comes to brand partnerships, rather than employees of the sponsoring brand. As independent contractors, athletes are responsible for paying self-employment taxes.

To mitigate the impact of self-employment taxes, athletes may consider forming a business entity, such as a limited company (in the UK) or an equivalent LLC in the United States. These entities can provide more flexibility in managing income and expenses, potentially reducing overall tax liability. Corporate tax rates are generally more favourable compared to personal income tax rates in many jurisdictions.

Deductions and business expenses

Athletes can deduct certain expenses related to their brand partnerships, which can help offset their taxable income. However, it is important to understand which expenses are deductible and how they should be reported.

Travel and accommodation expenses
If an athlete travels for promotional events, photo shoots, or other activities related to their brand partnership, they can typically deduct these travel expenses. This includes airfare, hotel accommodations, meals, and other incidental expenses. However, the expenses must be directly related to the business activity, and proper documentation, such as receipts and travel logs, is essential. Be aware that If the brand covers travel or other expenses for the athlete these payments might could considered a form of income. This is because the brand may be seen to be providing the athlete with something of value, this could be taxable as part of gross income. Most tax authorities will often view payments or reimbursements for personal expenses as income. However, again if the travel and expenses are directly related to business or work activities like a meeting with the brand, the expenses may be deductible. For example, if the athlete is a self-employed individual, they can generally deduct these costs as business expenses, reducing taxable income. The brand's payment might offset this income, or if they reimburse you, the reimbursement could be non-taxable.

Legal and professional fees
Legal fees incurred in negotiating and drafting brand partnership agreements are generally deductible. Additionally, fees paid to agents, financial advisors, tax advisors, and accountants who assist in managing the athlete's brand partnerships can also be deducted as business expenses.

Marketing and promotion costs
Athletes may incur marketing and promotion costs as part of their brand partnerships, such as creating promotional materials, maintaining a website, or

hiring a social media manager. These expenses are typically deductible as they are directly related to generating income from the brand partnership.

Image and brand maintenance
Costs associated with maintaining the athlete's public image, such as personal grooming, fitness training, and public relations services, may be deductible if they are directly tied to the athlete's brand partnerships.

Case study: shares in exchange for promotion/brand ambassadorship

We have seen a growing number of clients who have been offered brand ambassadorships where payment comes in the form of shares in the company, with the hope that the share value will grow during the period of ambassadorship, typically 3-5 years. Whilst this may seem like a win-win for the athlete, there is the potential for a large initial tax bill unless careful planning is put in place. Below are key areas to consider.

These deals generally include an international element, often involving the USA and UK. The following case study occurred where a U.S.-based brand sought to expand into the UK market by setting up a UK subsidiary. The athlete was offered shares in this company in exchange for five years of their services as a brand ambassador. Duties included posting on social media, with no limitations placed on the number of posts or where they could be posted. However, at the brand's discretion, they could request the client to post at a location of their choosing. Neither the client nor the brand wanted the athlete to become a direct employee of the company.

Key tax considerations

Income tax charge
The shares received are typically considered taxable income. The value of the shares at the time they are received or vested is usually subject to income tax, and the athlete must pay taxes on this amount. HMRC may seek to tax this immediately, and advisors should be wary of this. In some cases, clients are so convinced by the potential of the brand that they are willing to pay this initial tax bill.

Capital gains tax
If the shares are held for a period and then sold, any increase in their value will likely be subject to capital gains tax. The rate of capital gains tax can depend on how long the shares are held (short-term vs. long-term) in some jurisdictions.

Valuation and timing
Accurately valuing the shares at the time of receipt is crucial for determining the tax liability. If the shares are not publicly traded, this can be complicated, and an independent valuation may be required. It goes without saying that records must be kept if an independent advisor is being used, and this should be done before any deal is signed.

International aspects
Advisors need to work with local experts when cross-border deals with international brands are involved. Has any promotion occurred outside the country of tax residence? Will tax credits be available? Will the local jurisdiction look through to the individual and ignore any attempted corporate structure?

Solutions

Director or employee status
To remove the initial income tax obligation that could arise, there may be scope for the athlete to become a director or employee of the UK subsidiary. If the share option is granted as part of the remuneration package in the agreement, it could be treated as an employment-related security option for the individual. No upfront tax charge for income iax would arise; rather, tax would arise on exercise. **However**, consideration must be given to the implications this would have on the company.

Non-executive director (NED) appointment
As they are taking on an ambassador role, a non-executive director ("NED") appointment can be explored. This would need to be a real appointment, meaning they could fulfil the ambassador role while being a NED. There is a need for this to be a genuine relationship with the business, and relevant options must be awarded for carrying out this NED role and not for any other reason. The brand must ensure the athlete is fully aware of their duties as a NED before this is agreed.

Joint Eelection under Section 431 ITEPA 2003
Entering into a joint election with the company they are an officer of under section 431 ITEPA 2003 (Income Tax (Pensions and Earnings) Act 2003) can protect both the athlete and the brand's company from future income tax and NIC charges.

Conclusions

Brand partnerships offer athletes substantial financial opportunities, but they also come with complex tax obligations that require careful management.

Understanding the tax implications of different types of deals, from endorsement contracts to royalty agreements, is essential for athletes to optimise their earnings and remain compliant with tax laws.

Effective tax planning, including forming business entities for brand income, appointed roles in a business, and accurate record-keeping, can help athletes minimise their tax liabilities and avoid potential pitfalls.

The need to create a close-knit team of lawyers, tax advisors, financial advisors, and, in some instances, other family members has never been more vital.