MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA
& ASSOCIADOS
SOCIEDADE DE ADVOGADOS

NEWSLETTER

Nº 2 | FEBRUARY 2014

SPORTS LAW

FIFA CLUB PROTECTION PROGRAMME: brief analysis and eligibility conditions in light of the FIFA Technical Bulletin

Paulo Rendeiro
prendeiro@mlgts.pt

Milan, 15 November 2013. Italy vs. Germany. Friendly match. 65'. In a collision with Italian player Andrea Pirlo, German international Sami Khedira gets severely injured. Two days later worst-case scenario is confirmed: tear in the anterior cruciate ligament. Estimated recovery time: 6 months.

Amsterdam, 5 June 2010. Holland vs. Hungary. Friendly match. 86'. While attempting a backheel, Dutch international Arjen Robben trips himself and gets injured in the left hamstring. Three weeks later the player returns to play the last group stage game in the South Africa World Cup, and then all subsequent matches up to the final. The injury recurs and the player only returns in January, 2011.

What is the main difference between these two cases (besides the clear circumstantial ones)? The first injury is covered by the FIFA Club Protection Programme (the "Programme"). The second one happened about two years before the Programme entered into force and was one of the reasons that prompted the Programme's approval in May, 2012, during the 62nd FIFA Congress in Budapest.

Severe injuries to football players when playing for their national teams were for a long time a main subject of discussion between FIFA and the main European clubs. After Arjen Robben's injury and his absence from competition for more than 6 months, controversy nearly got to a cut-off point. After months of negotiations between all the interested parties, in May, 2012, FIFA finally approved a mechanism which allows clubs to be indemnified if their players are injured while on duty with senior men's representative "A" teams, determining its worldwide enforceability for the period between 1 September 2012 and 3 December 2014.

As per the FIFA Technical Bulletin (publicly available online in http://www.fifa.com/mm/document/affederation/footballgovernance/01/70/80/55/internet_technical_bulletin_2012_ee.pdf), the Programme shall cover all professional football players who are under an employment contract with a football club and are released to an association for international "A" matches (including friendly matches) on the dates of the FIFA international match calendar or on dates covered by the respective release period for such matches from the moment the football player starts his journey from his home or football club address to report for duty with his association until midnight local time on the day he returns to his home or football club from international duty, or 48 hours after leaving the "A" representative team, whichever occurs first.

The Programme provides coverage for temporary total disablement (sickness, permanent total disablement, and death are excluded) as a consequence of an *accident* (defined as when a football player suffers a bodily injury due to a sudden external force acting on his body or due to a sudden act of exertion) which entirely prevents the football player from playing for his club for more than 28 consecutive days.

If the football player returns and works for the football club for 30 or more consecutive days, no compensation will be payable by the Programme if that same specific injury reoccurs. Only injuries recurring within a period of less than 30 consecutive days shall be covered.

Furthermore, if a football player who is suffering from an existing injury plays for his association, the Programme will not compensate any loss caused by or consequent upon this existing injury. The exclusion shall be of course limited to the injured part of the body.

As an exception to this rule, in case participation is in the context of the World Cup or Confederations Cup and the player has fully recovered from the existing injury, the existing injury exclusion will no longer apply as from the moment of confirmation of recovery.

The compensation payable is based solely on the fixed salary that the football club pays directly to the football player at the time the accident occurs, including mandatory social security charges (all variable amounts, one-off payments, payments not made on a regular basis or any performance or signing-on bonuses or any amounts of a different kind shall be excluded).

The club has to submit the claim within 28 days of the accident at the latest. Any claims reported later than this time period will be rejected.

The compensation will only by applicable if the bodily injuries caused by the accident last for more than 28 consecutive days and shall be payable for a maximum of 365 days with a daily cap of €20,548.00 up to an aggregate amount of 7.5 million per player per accident.

Payment of compensation shall immediately cease as soon as the player is no longer suffering from temporary total disablement (i.e., when the player is able to resume full team training activities and/or participate in matches, whichever is the earlier) and also if the player dies or his professional football contract comes to an end.

For the years 2013 and 2014, FIFA determined as the aggregate annual limit of the Programme the amount of 70 million: if and when this maximum capacity is exhausted, all compensations will cease.

In 2012, the first year of the Programme, FIFA registered in its financial records as costs associated with the Programme the amount of 18 million dollars. Information regarding 2013 is still not publicly available and shall only be divulged next June in São Paulo during the 64th FIFA Congress.

For the present year of 2014 FIFA has estimated the amount of 114 million dollars as costs potentially applicable to the Programme.

There is still no confirmation that FIFA will continue to implement and support the Programme after 2014. This will certainly be one of the main subjects in São Paulo. While nothing is yet decided, one can hardly imagine how FIFA would cease to support the Programme. We must not forget that Robben's case is still very fresh in everyone's memory. ■

Severe injuries to football players when playing for their national teams were for a long time a main subject of discussion between FIFA and the main European clubs. After Arjen Robben's injury related controversy and months of negotiations between all the interested parties, in May, 2012, FIFA finally approved the FIFA Club Protection Programme, a mechanism which allows Clubs to be indemnified if their players are injured while on duty with senior men's representative "A" teams, determining its worldwide enforceability for the period between 1 September 2012 and 3 December 2014

Notes from the V International Congress on Football Law and recent changes in the UEFA Disciplinary Regulation

José Maria Montenegro
jmm@mlgts.pt

On the 25th and 26th of October, 2013, one of the most important forums for debate in the area of football law was held in Madrid, a forum that takes place every two years at the headquarters of the Spanish Football Association and brings together lectures from more than 50 countries, members and representatives of FIFA and UEFA, National Associations, Clubs and Sports Companies, Agents, Players, Managers, and the most prestigious and active law firms in this area of football.

It was no different this time, and MLGTS was once again present, represented by its Senior Associates Paulo Rendeiro and Jose Maria Montenegro.

Under discussion were the burning issues of football management and Law, especially the news in the Procedure Rules of the Court of Arbitration for Sport (CAS), the Investment Funds and the limitations to the participation of some investors – an issue that is far from the necessary consensus – as well as the changes introduced in the UEFA Disciplinary Regulations.

It is regarding this last issue – which benefitted from a remarkable presentation by Emilio Garcia Silvero (Head of UEFA Disciplinary and Integrity, and former Director of the Legal Department of the Spanish Football Federation) – that we intend to list some of the most relevant news in debate.

First and foremost, it is important to understand the context that led to the changes made on the aforementioned Regulations. On one hand, UEFA wanted to underline the importance attributed to the values of «*respect*», especially in relation to the fight against racism, but also against the so-called «*match fixing*», corruption and disrespect for the authority of referees. On the other hand, UEFA faces an exponential increase – which has been progressive over the last 15 years – of disciplinary procedures, appeals to the Appeals Body and CAS Proceedings. It was urgent, therefore, to deter behaviors that repeatedly lead to litigation and, at the same time, simplify the procedural rules applicable to an increasing number of proceedings.

Concerning the fight against racism, the main changes relate to the fact that an explicit reference was made to «racism» (previously considered part of the general concept of «discrimination») and to the aggravation of the applicable penalties[1]: thus, for example, to the first offense now corresponds a minimum penalty of 10 matches suspension, and not only 5 matches; in case of relapse, the applicable monetary penalty doubled to €50,000 and an additional sanction of a match behind closed doors was established.

In regards to the «*match fixing*» subject, the main novelty is that it is now stipulated that in cases of serious violations, UEFA has always jurisdiction even when its National Association does not file any claims or does so improperly[2].

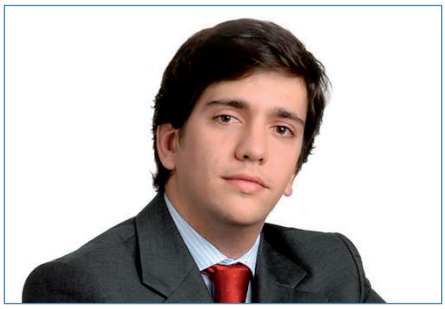
Following the same pattern, and in order to reinforce a message of protection of referees and their authority, the penalties – as a rule, match suspension – doubled[3] compared to the previous version of the Regulations.

Already in line with the purpose of simplification, but nevertheless still and always in connection to the «respect» matter, it was now made mandatory that all decisions, agenda and other information regarding disciplinary proceedings are made public, and thus are subject to publication[4], notwithstanding the reservation as to confidential information.

Finally, it should also be pointed the increase of the minimum amount that allows the access to the jurisdiction of the Disciplinary Committee (now from €10,000) and of the Appeals Body (now from €25,000)[5], which reveals a clear effort to decrease the huge number of proceedings that UEFA is called to settle every year. ■

The UEFA Disciplinary Regulation reveals a great concern in strengthening the fight against racism, *match-fixing* and disrespect for the authority of referees, by increasing the disciplinary and pecuniary penalties applicable. At the same time, UEFA made an important effort in order to introduce rules that streamline and avoid the growing of disciplinary proceedings.

1 Article 14th of UEFA Disciplinary Regulation.
2 New article 23rd of UEFA Disciplinary Regulation.
3 Article 15th of UEFA Disciplinary Regulation.
4 Article 45th of UEFA Disciplinary Regulation.
5 Articles 23rd and 24th of UEFA Disciplinary Regulation.



The Constitutional Court, The Court of Arbitration for Sport and the appeal to the State Courts

João Lima Cluny
jlcluny@mlgts.pt

On the last 20th of November 2013, the Portuguese Constitutional Court declared, once again (by its Decision no. 781/2013), the unconstitutionality, with general binding effect, of Article 8, no. 1 and 2, combined with Articles 4 and 5 of the Portuguese Court of Arbitration for Sport's Law (adopted in annex to the Law no. 74/2013, of the 6th of September). The Portuguese Constitutional Court based its decision on the violation of the right of access to the courts, as set out in Article 20, no. 1, in conjunction with the principle of proportionality, and infringement of the principle of effective judicial protection provided for in Article 268, no. 4, of the Portuguese Constitution.
This Decision followed one other Decision of the same Court (Decision no. 230/2013, of the 24th of April) which declared the unconstitutionality of Article 8, no. 1, of annex I to the Decree no. 128/XII of the Portuguese Parliament (the first attempt to create the Court of Arbitration for Sport) combined with Articles 4 and 5 of the same Annex.
In fact, it was this first Decision that gave place to the changes made to the Decree no. 128/XII of the Portuguese Parliament and originated Law no. 74/2013, which, even though promulgated by the Portuguese President, was sent by the latter to constitutionality review.

After Decision no. 781/2013 of the Portuguese Constitutional Court, the possibilities for the Legislator to avoid the implementation of an appeal of the decisions of the Court of Arbitration for Sport to the State Courts are almost unfeasible. We must now wait for a new solution and analyse if it is able to answer the Portuguese Constitutional Court's fears and, at the same time, maintain the great advantages that we recognize in the Court of Arbitration for Sport.

Both Decisions dealt with a major issue: the (im)possibility of access to State Courts in cases of mandatory arbitration.
In its recent Decision, the Constitutional Court stated that Law no. 74/2013 solved the constitutionality issue of Decree no. 128/XII (total impossibility of appealing to State Courts from the decisions of the Court of Arbitration for Sport in cases of mandatory arbitration), but that its new solution was, nevertheless, unable to fully comply with the Portuguese Constitution.
With Law no. 74/2013, the Portuguese Legislator created a possibility of appeal to the State Courts, namely by means of an appeal of review to be presented before the Supreme Administrative Court. This appeal of review could be filed of *"decisions granted by the appeal chamber (…) whenever is a stake a subject that, for its juridical or social relevance, is of fundamental importance or whenever the analyses of the appeal is clearly necessary in order to achieve a better application of the Law"*. To decide on the possibility of said appeal of review, the provisions of the Code of Administrative Courts' Procedure on its own appeal of review should apply, with the necessary adaptations.
This Law no. 74/2013 was the answer of the Portuguese Legislator to the unconstitutionality problems declared by the Portuguese Constitutional Court regarding Decree no. 128/XII.
However, in its new Decision no. 781/2013, the Portuguese Constitutional Court declared that Law no. 74/2013 also faces constitutionality issues, mainly for the following reasons:

- In what regards mandatory arbitration, Law no. 74/2013 empowers the Court of Arbitration for Sport with exclusive competence to solve disputes that arise from acts or omissions of Federations or Professional Leagues As sociations in respect with their public powers of authority, which means that said disputes are no longer under the rules of administrative litigation and the competence of administrative courts;
- Neither the possibility of challenging the arbitration decision based on the grounds and pursuant to the proceeding established by the Voluntary Arbitration Law, nor the appeal to the Portuguese Constitutional Court, can be considered as mechanisms of access to a State Court for purposes of an arbitration decision' review before a State Court;
- The possibility of appeal to the chamber of appeal of the Court of Arbitration for Sports is very limited (only for cases of decisions on disciplinary infractions set forth by the Law or the applicable disciplinary regulations or that are against other final decisions, issued by an arbitration court or the chamber of appeal, applying the same Law or regulation, on the same fundamental question of Law, unless it is in accordance with a subsequent decision on the same matter already issued by the chamber of appeal);
- The possibility of an appeal of review under Law no. 74/2013 (already limited by the necessity of a previous appeal to the chamber of appeal), as it is also only applicable to exceptional cases, does not guarantee the right of access to State Courts when interpreted in conjunction with the principle of proportionality, namely regarding necessity and just measure.

In fact, the Portuguese Constitutional Court decided that the appeal of review (besides the mentioned limitations that do not permit the access to the State Courts whenever no previous appeal is presented before the chamber of appeal) is an absolutely exceptional appeal, which main purpose is the defence of common interests and not the defence of legal rights and interests of the individuals. As a matter of fact, taking into consideration the regime established for the appeal of review under the Code of Administrative Courts' Procedure, the Portuguese Constitutional Court declared that the case law has been very restrictive on the admission of said kind of appeal, requiring that the question in discussion reaches a fundamental relevance or that the analysis of the matters under judgement be relevant for a better application of the Law.
Given the above, and as said appeal of review also does not allow a new analysis on the merits of the previous decision (as for what concerns the decision on facts), the Portuguese Constitutional Court decided that the mechanisms for accessing State Courts foreseen in Law no. 74/2013 are still inadequate; according to said Court, this inadequacy is disproportionate also because of the establishment of sports *res judicata*, which reduces the relevance of the urgency regarding the final settlement of the dispute.
After this Decision no. 781/2013, it is now up to the Legislator to decide what are the new steps needed to accomplish the goal of establishing a Court of Arbitration for Sport in Portugal. Anyway, one thing seems now certain: whether we agree or not with the position of the Portuguese Constitutional Court, the truth is that, in the current scenario, it becomes increasingly difficult to escape the need to establish an effective way to appeal to State Courts. ■

SPORTS AND ANTITRUST

Spanish Competition Authority applies a €15 million fine to Mediaproducción, S.L., Real Madrid CF, FC Barcelona, Sevilla FC and Real Racing Club de Santander

Dzhamil Oda
d.oda@mlgts.pt

Background[1]

Following the assessment of the concentration under case no. N-06094 *Sogecable/AVS*, the Spanish Competition Authority (the "SCA") initiated an inquiry procedure concerning cooperation agreements entered into between Sogecable, Audiovisual Sports S.L., Mediaproducción S.L. and Televisió de Catalunya S.A. During this investigation, the SCA found several agreements concluded between audio-visual operators and Spanish football clubs, related with the acquisition and exploitation of broadcasting rights of the Spanish football league (*La Liga*) and the King's Cup (*Copa del Rey*) and which could be contrary to national and EU antitrust laws.

As a result of the abovementioned inquiry, on 14 April 2010, the SCA Council issued a decision determining that the contracts entered into between audio-visual operators and Spanish football clubs, related with the acquisition and exploitation of broadcasting rights of the Spanish football league (*La Liga*) and the King's Cup (*Copa del Rey*) (except for the final match), with a duration of more than three football seasons, are agreements between undertakings prohibited pursuant to Article 1 of the Spanish Competition Law (Law no. 15/2007, of 3 July, as amended – the "SCL") and Article 101 of the Treaty on the Functioning of the European Union (the "Decision").

In accordance with the Decision, the SCA considered that the excessive duration of the abovementioned agreements restricted competition in the Spanish market of acquisition and exploitation of broadcasting rights of football competitions and in the downstream resale and exploitation markets, having regard that such practice created a certain risk of foreclosure to other potential buyers.

Thus, the SCA ordered the concerned audio-visual operators and Spanish football clubs to cease the anticompetitive practices and to refrain concluding new agreements with a duration of more than three football seasons. The monitoring of the compliance with the Decision was carried out by the Investigation Directorate of SCA.

The infringement[2]

Following the Decision and during the monitoring procedure carried out by the SCA, this authority found that the company Mediaproducción S.L.[3] and the football clubs FC Barcelona, Sevilla FC and Real Racing Club de Santander entered into new agreements related with the acquisition and exploitation of broadcasting rights of the Spanish football league (*La Liga*) and the King's Cup (*Copa del Rey*) (except for the final match), which had a duration longer than three football seasons, thus prohibited in accordance with the Decision issued by the SCA.

Pursuant to Article 62, (4), par. c) of SCL, non-compliance with a resolution of the SCA Council is considered a serious infringement and, therefore subject to sanctions provided for in the law.

Under these circumstances, the SCA initiated a new infringement procedure, which also included Real Madrid CF. As a result, this competition authority sanctioned Mediaproducción S.L., Real Madrid CF, FC Barcelona, Sevilla FC and Real Racing Club de Santander a total of €14.93 million for not complying with the former SCA Decision, imposing the following fines:

(i) Mediaproducción S.L. – €6.573 million;
(ii) Real Madrid CF – €3.9 million;
(iii) FC Barcelona - €3.6 million;
(iv) Sevilla FC – €900,000;
(v) Real Racing Club de Santander - €30,000.

In accordance with Mediaproducción S.L. press release, dated of 2 December 2013[4], this company argued that the agreements entered into with the abovementioned football clubs comply with the provisions of the Spanish General Law of Audiovisual Communications (*Ley General de la Comunicación Audiovisual*), which foresees a maximum duration of four years for such contracts. Thus, this company considers that the sanction applied by SCA is disproportioned and announced that it will appeal against this decision and require interim measures to suspend the payment of the fine.

Barcelona FC also announced, in its press release of 2 December 2013[5], that it will appeal against the decision of SCA.

> The €15 million fine imposed by the Spanish Competition Authority may be considered as an important precedent for further investigations in the markets of broadcasting rights of football competitions across the European Union, thus particular attention is required by the European companies active in these markets and to football clubs in structuring such agreements.

Conclusion

The decision of the Spanish Competition Authority may be considered an important precedent for further investigations in the markets of broadcasting rights of football competitions across the European Union. From now on, special attention is required by the European companies active in these markets and to football clubs in structuring the agreements concerning broadcasting rights of football competitions.

This decision may potentially have particular relevance to the Portuguese case, by providing some guidance to the Portuguese Competition Authority in the assessment of complaints related with the national market of broadcasting rights of football competitions. ■

1 Please see SCA Council decision, of 14 April 2010, accessed and available at http://www.cnmc.es/es-es/competencia/buscadores/expedientes.aspx?num=S/0006/07&ambito=Conductas&b=%22S/0006/07%22&p=0&ambitos=Concentraciones,Recursos,Sancionadores%20CCAA,Vigilancia,Medidas%20cautelares,Conductas,Ley%2030&estado=0&sector=0
2 Please see SCA press release, accessed and available at http://www.cnmc.es/Portals/0/Ficheros/notasdeprensa/2013/2013%2012%2002%20NOTA%20PRENSA%20SNC%20Mediapro%20Clubs%20de%20Futbol.pdf
3 Mediaproducción S.L. is a supplier of technical services for the audiovisual industry, film production and distribution, sports rights management and distribution and production of current affairs and light entertainment programmes.
4 Please see Mediaproducción S.L. press release, accessed and available at http://www.mediapro.es/eng/press.php
5 Please see Barcelona FC press release, accessed and available at http://www.fcbarcelona.es/club/detalle/noticia/el-fc-barcelona-presentara-recurso-a-la-sancion-de-la-comision-nacional-de-la-competencia

MATTOS FILHO > Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados

SPECIAL CONTRIBUTION
MATTOS FILHO ADVOGADOS

Marcos Joaquim Gonçalves Alves
marcosjg@mattosfilho.com.br

BRAZIL
The true and constitutional legacy of the Games

Law No. 12.868, of 2013, has revolutionized the Sports National Framework, brought hope for future generations and became the true legacy of the Great Sports Events.

Since June last year, the Brazilian society takes to the streets to democratically challenge the actions and the moral values of the constituted powers of our State concerning the conduct of the political process, the quality of provision of public services and, in particular, the implementation of the public spending and priorities related to the world games to be hosted by Brazil in 2014 (Football World Cup) and in 2016 (Olympic and Paralympic Games).

In this rich environment of ideas and questioning, the Brazilian society discusses the true legacy of the Great Sports Events, notably the benefits that such Events may promote and influence in the public policies of education and sports health, in the adequate incentive to high performance sports and, especially, in the administrative and political restructuring of our National Sports Framework.

In this rich environment of ideas and questioning, the Brazilian society discusses the true legacy of the Great Sports Events, notably the benefits that such Events may promote and influence in the public policies of education and sports health, in the adequate incentive to high performance sports and, especially, in the administrative and political restructuring of our National Sports Framework.

Thus, it has not been understood (and accepted) by the Brazilian society that the legacy of the Great Sports Events would be merely circumscribed to new stadiums and, even less, to the construction works necessary to urban mobility of the host cities. The modernisation of the sports practice administration is claimed and demanded, in order to adapt sports management and its manifestations to the current scenario of policy making, in particular regarding the professionalization and qualification of sports managers.

However, all current draft legislation in the Parliament which introduced such modifications in the Sports' National Framework had a pre-determined destination: the unconstitutionality of the claims. Such result is related to the provisions of Article 217 of the Federal Constitution of 1988 ("F.C."), which foresees the duty of the State to observe "the autonomy of sports entities, managers and associations regarding their organisation and functioning."[1].

As a consequence, the Brazilian constitutional provisions of Article 217 contributed to the *status quo* of the delay and mismanagement of sports administrations: sports managers elected for terms of 15, 20 and even 30 years; public resources allocated for sports federations without any supervision regarding the proper use of money; transactions concerning acquisition of athletes made *via* confidential and highly questionable contracts and documents; prohibition of the participation of athletes in the electoral process and in the implementation of rules and

calendars concerning the sport they practice, among many other *absurdities* that have been perpetuated for decades.

Facing this medieval setting of fief, delay and sports servitude, we coordinated and advised, at the request of the organisation Athletes for Brazil (*Atletas pelo Brasil*) – constituted by world and Olympic champions, such as Ana Moser (volleyball), Hortência (Basketball) and Rai (Football) –, the elaboration of a new legal solution, which fortunately was victorious in the Parliament and the Government, yielding the current Law No. 12.868, of 2013.

The drawn up legal solution sought to obey to Article 217 of the F.C. – since otherwise it will be deemed unconstitutional – by interpreting it alongside other constitutional provisions which impose on the State the duty to dispose of its resources in an orderly, correct, legal and constitutional manner.
In this context, the purpose was not intervening in sports entities (which would violate Article 217 of the F.C.), but to establish rules governing tax exemption (conditional exemption) and conditions for the release of resources by the Direct Public Administration (the Union) and Indirect Public Administration (municipalities, foundations, public and semi-public companies), similar, for instance, to the case of tax exemptions of Free Zone of Manaus or the case of funding/borrowing of the National Bank for Economic and Social Development (*Banco Nacional de Desenvolvimento Econômico e Social - BNDES*).

Having regard the foregoing, Law No. 12.868, of 2013, which resulted from the legislative proposal that we coordinated and which was suggested and approved by the Brazilian Parliament, is constitutional because (i) it did not intervened in the sports entities, and (ii) it established rules for good and proper management of public funds.

Thus, the new Law of Sports foresaw transparency rules for administrative proceedings, as well as improved accountability mechanisms, in line with current trends of professionalization of sports management and the new Law on Access to Information, concerning entities that use public resources. We believe that these mechanisms can contribute to a more efficient management of funding aimed at fostering sports, which tends to prevent frauds and reduce transaction costs, benefiting, ultimately, the society and the State itself.

In this setting, the criteria for the disbursement of State and public and semi-public companies resources and the exemption for the payment of taxes on income and profit are subject to the following modern, transparent and democratic sports governance rules: (i) periodical and time-limited election; (ii) participation by the athletes in the electoral process; (iii) representation of the category of athletes in the respective sports discipline in the bodies and technical boards responsible for the approval of competitions regulations; (iv) transparency in the economic and financial data; (v) autonomy of the Audit Committee; and (vi) full allocation of the financial results to the maintenance and development of its social purposes, among others advancements[2].

Having regard the foregoing, we are certain that Law No. 12.868, of 2013, has revolutionized the Sports National Framework, brought hope for future generations and became the true legacy of the Great Sports Events. However, the envisioned revolution shall only be felt and experienced a few years from when, effectively, sports managers of the sports administration entities (Confederations and Federations) shall be legitimated in their respective offices by virtue of the democratic elective process and by the administration structure adjusted to the rules of governance and transparency introduced by the new legislation. ■

The new Law of Sports foresaw transparency rules for administrative proceedings, as well as improved accountability mechanisms, in line with current trends of professionalization of sports management and the new Law on Access to Information, concerning entities that use public resources.

1 Article 217. It is State's duty to promote sports formal and non-formal practice, as everyone's right, provided that the following is observed:
I – the autonomy of sports entities, managers and associations, regarding their organisation and functioning;
II – the allocation of public resources for priority promotion of the educational sport and, in specific cases, for the promotion of high performance sport;
III – the differential treatment for professional and non-professional sport;
IV – the protection and incentive to national origin sports manifestations.
§ 1º - The Judiciary Power shall only allow legal actions regarding discipline and sports competitions after exhausting the sports justice instances, as governed by the law.
§ 2º - The sports justice shall have a maximum period of 60 days from the date of the commencement of proceedings to render a final judgment.
§ 3º - Public Authorities shall encourage leisure as a way of social promotion.

2 "Article 18-A. Without prejudice of the provisions of Art. 18, non-profit entities comprising Sports National Framework, referred to in sole paragraph of Art. 13, shall only be able to receive funds from the direct and indirect federal public administration if:
(Production of Effects)
I – their president's or top director's electoral mandate does not exceeds four years, being only permitted one reelection;
II – they meet the provisions of paragraphs "b" to "e" of § 2º and § 3º of Art. 12 of Law No. 9.532, of 10 December 1997;

III – they fully allocate the financial results to the maintenance and the development of their social purposes;
IV – they will be transparent in their management, including with regard to economic and financial data, contracts, sponsors, image rights, intellectual property and any other management issues;
V – they guarantee the representation of the category of athletes in the respective sports modalities in the bodies and technical boards responsible for the approval of competitions regulations;
VI – they assure the existence and the autonomy of their audit committee;
VII – they foresee in their statutes:
a) defining principles of democratic management;
b) instruments of societary control;
c) transparency in the management of the movement of resources;
d) internal supervision;
e) alternation in the exercise of executive positions;
f) approval of the annual accounts by the management board, preceded by the opinion of the audit committee; and
g) participation of athletes in the management board and in the election for positions in the entity; and
VIII – they guarantee to all the associates and members, as well as to those related to the management of the respective sports administration entity, unrestrictive access to documents and information concerning accounts, which shall be published in *extenso* in the website of this entity.
§ 1º Sports entities are exempted from the requirements provided for in:
I - subparagraph V of the *caput*;
II – paragraph "g" of the subparagraph VII of the *caput*; and
III – subparagraph VIII of the *caput*, regarding commercial contracts concluded with confidentiality clause, without prejudice, in this case, of the supervision powers of the audit committee and the obligation of a correct accounting of revenues and expenses arising of such contracts.
§ 2º The Ministry of Sports shall be responsible for the monitoring of the fulfillment of the requirements contained in subparagraphs I to VIII of the *caput* of this Article.
§ 3º For the purposes of the provisions of subparagraph I of the *caput*:
I – shall be respected the elective term of the president or top director elected before the entry into force of this Law;
II – are not eligible the spouse and blood relatives or relatives to the second degree or by adoption.
§ 4º From the sixth month following the publication of this Law, the entities referred to in the *caput* of this Article shall only be entitled to the provisions of Art. 15 of Law No. 9.532, of 10 December 1997, and Arts. 13 and 14 of Provisional Measure No. 2.158-35, of 24 August 2001, provided they meet the requirements foreseen in subparagraphs I to VIII of the *caput*.".

Morais Leitão, Galvão Teles, Soares da Silva
& Associados
Sociedade de Advogados

www.mlgts.pt

Lisbon
Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

Luanda, Angola (in association)
Angola Legal Circle Advogados

Porto
Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Porto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

Maputo, Mozambique (in association)
Mozambique Legal Circle Advogados

Madeira
Avenida Arriaga, 73, 1º, Sala 113
Edifício Marina Club – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

Macau, Macau (in association)
MdME | Lawyers | Private Notary

Member
LexMundi
World Ready