
CHAMBERS GLOBAL PRACTICE GUIDES

Sports Law 2024

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Chile: Law & Practice
Pablo Mettroz Holley
Parmars



CHILE



Law and Practice

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Contents

1. Regulatory p.5

- 1.1 Anti-doping p.5
- 1.2 Integrity p.5
- 1.3 Betting p.5
- 1.4 Disciplinary Proceedings p.6

2. Commercial Rights p.6

- 2.1 Available Sports-Related Rights p.6
- 2.2 Sponsorship p.7
- 2.3 Broadcasting p.7

3. Sports Events p.8

- 3.1 Relationships p.8
- 3.2 Liability p.8

4. Corporate p.9

- 4.1 Legal Sporting Structures p.9
- 4.2 Corporate Governance p.10
- 4.3 Funding of Sport p.11
- 4.4 Recent Deals/Trends p.12

5. Intellectual Property, Data and Data Protection p.12

- 5.1 Trade Marks p.12
- 5.2 Copyright/Database Rights p.13
- 5.3 Image Rights and Other IP p.13
- 5.4 Licensing p.14
- 5.5 Sports Data p.14
- 5.6 Data Protection p.15

6. Dispute Resolution p.15

- 6.1 National Court System p.15
- 6.2 ADR (Including Arbitration) p.16
- 6.3 Challenging Sports Governing Bodies p.16

7. Employment p.17

- 7.1 Sports-Related Contracts of Employment p.17
- 7.2 Employer/Employee Rights p.17
- 7.3 Free Movement of Athletes p.18

8. Esports p.18

8.1 Esports Overview p.18

9. Women's Sport p.18

9.1 Women's Sport Overview p.18

10. Non-fungible Tokens (NFTs) p.19

10.1 Non-fungible Tokens (NFTs) p.19

11. Regional Issues p.20

11.1 Regional Issues Overview p.20

12. Artificial Intelligence (AI) p.20

12.1 AI Overview p.20

13. The Metaverse p.21

13.1 Metaverse Overview p.21

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is regularly sought out by football federations and other sporting institutions from around the world. In addition, **Parmars** provides legal and business consultancy for football clubs, and sporting federations worldwide, structuring sporting leagues, with some simple examples being the facilitation of the first club partnership in England for a top ten South American football club, establishing an academy relationship in India for a League One club and advising Premier League footballers on transfers and contracts.

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1. Regulatory

1.1 Anti-doping

Currently, doping per se is not a criminal offence under Chilean law. However, there is currently a debate in the National Congress on the need to transform it into a criminal offence. The *Comisión Nacional de Control de Dopaje* (National Doping Control Commission – CNCD) is the national anti-doping organisation in Chile, created and regulated, by virtue of Law 19.712 on Sport and its Regulations, by the Ministry of Sport. Its purpose shall be the implementation, evaluation and modification of measures to implement the World Anti-Doping Code and international standards governing doping control in sport, and the application of all other national and international anti-doping regulations in force in the country in respect of all persons and sports organisations.

The same sports legislation creates another entity called the Expert Panel, which is a collegiate body, whose purpose is to hear and decide cases involving anti-doping rule violations and therapeutic use exemptions in accordance with the World Anti-Doping Code and international standards. In view of the approaching 2023 Pan American Games, the Sports legislation was amended to bring it in line with the rules of the World Anti-Doping Code, in particular, among other elements, that national anti-doping organisations must be independent in their activities and operational decisions from governments and sports entities.

Most Relevant Cases

Potentially the most striking case in the recent past has been that of tennis player Nicolás Jarry, currently Top 20 in the ATP ranking, who, despite proving his innocence, served an 11-month ban since December 2022 as ligandrol and stanozolol metabolites were found in some contaminated vitamin tablets.

Similarly, in 2019 the Olympic shot putter Natalia Ducó was suspended for three years by the CNCD for having consumed GRPH. Fortunately, both athletes have successfully reinvigorated their respective professional careers and have returned to top-level competition.

1.2 Integrity

Currently in Chile, there is no law to sanction and punish activities that affect the integrity of sports competitions. However, since the end of 2023, the Sports Commission of the National Congress has been working on a draft law that would criminally sanction cases of sports fraud. In the case of professional football, the ANFP Code of Ethics prohibits the manipulation of football matches. It also makes a complaints channel available to industry players, for the ANFP to initiate an investigation process and determine whether the reported event is a breach of the Code of Ethics. In mid-2023, Cobreloa striker David Escalante denounced in an interview on Directv that many of his teammates gambled permanently, even on matches in which Cobreloa played.

This is in addition to the fact that, at the end of 2022, Cobreloa lost a home game 5–0 to Copiapó in the final match for promotion to the First Division, and the team's other striker, Axl Ríos, was sent off after 20 minutes of the first half. Weeks later, Ríos signed a contract for Copiapó. The ANFP decided to sanction Escalante with two matches for his comments, following a complaint filed by Copiapó. It should be recalled that the ANFP Code of Ethics obliges industry players to denounce information in the event that they become aware of facts that could constitute match-fixing.

1.3 Betting

Betting and gambling are, as a rule, an activity prohibited by the legal system, which is evident both in the area of criminal law and civil law.

On one hand, Article 277 of the Criminal Code punishes the owner of a gambling house with imprisonment and a pecuniary fine, while the following article (Article 278 of the Criminal Code) punishes persons who attend gambling with the same penalty. In civil law, in turn, the article states that debts incurred by bets from games of chance are not enforceable.

The exception to the aforementioned rules lies in the existence of special laws that expressly and exclusively authorise certain actors to develop the activity of casinos and betting on games of chance, subject to the supervision of the Superintendence of Gaming Casinos. In professional football, the ANFP Code of Ethics prohibits players from participating in sports betting and from having any kind of relationship with sports bookmakers.

The main case of recent times lies in the determination of the Ministry of Justice, which oversees the ANFP due to its legal nature, to force it to terminate the contract it entered into with the sports betting company Betsson within a period of one month from the notification of the determination. The case was serious since a contract was in full execution, especially if the naming rights of the first division and Primera B championships (first and second divisions of Chilean professional football) were granted to this company with no domicile in Chile, and the effect in case of non-compliance would have been the cancellation of the legal personality of the ANFP by the Ministry of Justice. Furthermore, weeks after the communication from the Ministry of Justice, the Chilean Supreme Court decreed the illegality of the operations of the sports bookmakers, which are not domiciled in Chile, and forced the blocking of their websites in Chilean territory.

1.4 Disciplinary Proceedings

The CNCD is the entity, under the Chilean Sports Law, that receives notification from the relevant laboratory of the existence of a non-negative sample from the athlete and proceeds to bring the charge against the athlete before the Doping Control Board, regardless of the sport, test or federation of which the athlete is a member. It must also support its arguments at the hearing held for this purpose. One of the effects of the notification of the existence of a non-negative sample is the provisional suspension, by means of an administrative act, of the payment of the *Beca para Deportistas de Alto Rendimiento* or “Scholarship for High Performance Athletes” (Beca PRODDAR), for the duration of the process. There is no system for investigating and sanctioning cases of betting or integrity, although it should be noted that many National Sports Federations have an Ethics Committee that is supposed to hear and resolve complaints made against an official for any breach of sporting ethics as outlined within the rules or the statutes of that specific discipline.

2. Commercial Rights

2.1 Available Sports-Related Rights

The 2023 Pan American and Parapan American Games were the largest sporting events in the history of sport in Chile, surpassing other major sporting events such as the 1962 World Cup, the 1987 and 2008 FIFA World Youth Championships and the 2015 *Copa América*. The success of the Games included merchandising sales, and particularly the marketing of products from the mascot of the sporting event. All the competition and event venues had a physical shop, while the official Games website, made it possible to purchase official products remotely. In relation to amenities for VIP guests, the VIP boxes at

Universidad Católica's new stadium, *San Carlos de Apoquindo*, which will be inaugurated at the end of 2024, stand out. The stadium will have multiple amenities for its spectators, not only when *Católica* plays its home games but also for concerts and other associated events.

On the other hand, historically, the resale of tickets for sporting events of great public interest was a common practice, as it is today for cultural and musical events. It should be noted that the resale of tickets is not formally prohibited in Chile and would not even have a tax impact if it were a non-regular activity. In the case of sporting events, and particularly professional football matches, the limit to this action is given by security reasons, not by economic or tax reasons. The individualisation of the ticket to a given person, for example, by indicating the full name and identification number, and the implementation of technology associated with the absence of physical tickets, and replacing them with virtual tickets, have been the main methods of combating the secondary ticketing market.

2.2 Sponsorship

The adoption of technology and the implementation of new marketing strategies in sport has resulted in brands discovering new ways to reach potential and existing customers. Sports retail brands, sports clubs, and associations, among others, have developed new strategies to approach their target audience. In practice, sending promotional emails using the database of a commercial partner, generating activations in places other than sports activity centres, or sponsoring major sporting events, are some of the ways in which brands have gained visibility.

On the other hand, sports organisations already see their supporters' contact details as a marketable asset that they can offer to sponsoring

brands. It is now common to receive emails from brands related to the club you are a fan of, or offers related to marketing campaigns. There are some successful cases of naming rights sales in cultural and sports venues, such as the *Movistar Arena Santiago*, which has already become a powerful and easily recognisable brand. In the coming months, we will come to know which company has been awarded the naming rights for the *San Carlos de Apoquindo Stadium*, which is currently under renovation. Nevertheless, there is room for growth in this area, which will surely be reflected in the coming years with new examples.

2.3 Broadcasting

Just over 20 years ago, one person's vision led to a boom in television rights for professional football in Chile, which resulted in a significant increase in television revenues for member clubs. The *Canal del Fútbol* or "Football Channel" (CDF) was created in 2003 and was characterised by the fact that it was owned by the professional football clubs themselves, who each had a 1/32 shareholding. The development of the CDF's pay-per-view system, coupled with the explosive increase in the number of subscribers every year, as the rights included not only professional football but also the broadcasting of national team matches, meant that the clubs saw their revenues increase, and could afford to pay better salaries to players.

On the other hand, the lack of incentive to invest in strengthening the structure of the clubs has meant that for a very significant number of professional football clubs, this item constitutes over 90% of their monthly income. The ANFP has made available to the public in recent years a yearbook analysing the financial state of professional clubs and therein, this concerning trend can be discerned. Warner's acquisition of

CDF, later spun off into TNT for approximately USD2.2 billion, meant that each club received around USD3.2 million in cash, a fortune for the smaller clubs. TNT Sports has continued the pay-per-view model and subscription system with basic, premium and HD signals, simulcasting matches from the two highest divisions of the Chilean football pyramid.

In recent years, some free-to-air TV channels have acquired the rights to broadcast Primera División matches, for one match a week, making it possible to watch the local league without having to be a TNT Sports subscriber. TNT Sports, on the other hand, broadcasts all Primera División and Primera B matches both on TV, in normal and HD signal, as well as via streaming.

3. Sports Events

3.1 Relationships

As a rule, the organiser of the sporting event is, at the same time, also the owner of the rights to the event. Events such as professional football, the Pan American Games and ATP tournaments are owned by their organisers. From this property right, the organisers have the potential to market it in various forms, such as television broadcasting and static advertising. In **2.3 Broadcasting**, the author has already explained how broadcasting rights are marketed. On the other hand, the press, by virtue of Law 19.733 on Freedom of Opinion and Information and the Practice of Journalism, authorises the media to access images of sporting events that are of general interest, with the aim of informing the population.

Law 19.496 on the Protection of Consumers' Rights is also applicable. In 2023, the National Consumer Service (SERNAC) sent an official

notice to professional football clubs and the ANFP, inviting them to comply with the law, especially with regard to respecting the conditions offered to consumers, ensuring adequate security conditions at the entrance and exit of the venue, or trying not to resell tickets, among other actions. The case of professional football has distinctive elements, since, by statute, the owner of the rights is the ANFP, but it entrusts the organisation of each of the matches to the home clubs, as well as making it responsible for any infringement contained in the Tournament Rules and Regulations.

3.2 Liability

In recent years, large-scale sporting events, particularly professional football, have been affected by notorious acts of violence by a small group of people that affect the safety and experience of the rest of the spectators. Since 2011, the authority has been implementing a method called the Safe Stadium Plan, which regulates from a security point of view all acts prior to and during a professional football sporting event. The Plan takes advantage of the application of Law 19.327 on Rights and Duties at Professional Football Events, commonly referred to as the original 1994 Stadium Violence Act.

Each professional football match requires the authorisation of the Intendant, the highest regional authority, following a report from *Carabineros de Chile* (the Police), in order to take place. The Law indicates the deadlines, the permits required, the categories of matches (in view of the risk of violence) and the preventive control measures in order to avoid acts of violence. It also establishes special offences in connection with professional football sporting events. The Intendant has a series of measures he can impose to allow the match to take place, for example:

- limiting the capacity of the stadium;
- prohibiting sales to supporters of the visiting team; and
- prohibiting the attendance of the public.

In order to attend a professional football match, every person must register themselves in a register maintained by the authority, for which the full name and identity number are recorded. Persons who have previously infringed the law may be subject to sanctions that may temporarily or permanently prevent them from attending further professional football matches. The application of this law is not only applicable to spectators but also to players, coaches, officials and, in general, to all persons inside the sports venue. The Intendant may order the imposition of fines on host clubs in the event of infringements of the law, the amount of which varies according to the category of the game and may be increased depending on whether there is a repeat offence.

The ANFP also has the authority, through the Disciplinary Tribunal, to impose administrative sanctions on clubs whose fans or supporters are involved in acts of violence. In the Supercopa 2024, played a few weeks ago at the Estadio Nacional between Colo-Colo and Huachipato, serious incidents took place in the gallery of Colo-Colo fans resulting in damage and destruction of the stadium. The Disciplinary Tribunal, based on the match referee's report, decided to sanction the 12,820 people registered in the gallery sector with a ban from the next five matches played by Colo-Colo.

4. Corporate

4.1 Legal Sporting Structures

Traditionally, clubs and other sports bodies have been legally structured as foundations or corporations. Their main characteristic is that they are

non-profit entities and as such, the profits generated are reinvested in their corporate purpose. The applicable law regarding the same is Book XXXIII of Title One of the Civil Code (Article 545 et seq). Law 19.712, the Sports Law of 2001, went on to create and define a series of entities, generically called Sports Organisations, whose constitution, operation, modification of statutes and dissolution must comply with this law.

Sports Organisations, according to Article 32 of the Sports Law, are the following:

- sports clubs;
- sports leagues;
- local sports associations;
- local sports councils;
- regional sports associations;
- sports federations;
- national sports federations;
- sports confederations; and
- the Chilean olympic committee.

It also recognises the quality of sports organisations to foundations and corporations that have been constituted by virtue of its special law, without prejudice to the fact that for them to enjoy the benefits offered by the Sports Law, mainly the right to obtain donations and other resources of public and private origin, they must adapt their statutes to it.

The big change in professional sport came with the entry into force of Law 20.019 Regulating Professional Sports Corporations of 2005, mainly motivated by the financial precariousness of professional football clubs generated by the administrative irresponsibility of many of their managers.

The Law obliged clubs (foundations or corporations) that carry out professional activities,

strictly speaking professional football clubs, to choose between the following.

- Incorporate as professional sports limited companies.
- Establish a professional sports limited company for the purpose of professional football administration.
- Establish one or more Professional Sports Funds.

In addition, it temporarily opened the option for open joint-stock companies to also be regulated by this law. In practice, only Colo-Colo and Universidad de Chile opted for this model. Professional sports corporations are governed by a board of directors, chaired by their president, while professional sports funds are governed by a sports commission, composed of the president of the corporation or foundation, who chairs it, and four directors. Law 18.046 on Corporations is subsidiarily applicable only to Professional Sports Corporations, except in the case of incompatibilities to be a director, which rule is also applicable to professional sports funds.

Thus, the Law on Professional Sports Corporations forced professional football clubs to redirect their corporate purpose to a profit-making one, except in the case of professional sports funds. In practice, in the professional football universe, there are two open joint-stock companies (Colo-Colo/Blanco y Negro S.A. and Universidad de Chile/Azul Azul S.A.), one professional sports joint-stock company trading on the stock exchange (Universidad Católica/Cruzados S.A.D.P.), 40 professional sports joint-stock companies and three professional sports funds (Cobresal, Curicó Unido and Puerto Montt, although the latter is in the process of transformation into a professional sports joint-stock company).

4.2 Corporate Governance

In Chile, there is no specific code of governance dedicated to sports organisations. Depending on the legal nature of the organisation in question, the rules contained in its special laws apply. Sports organisations covered by the Sports Act have governance rules in Title III of the Act, as well as in its Regulations, while open joint stock companies whose object is participation in sports competitions, professional sports joint-stock companies and professional sports funds are governed by the rules contained in the Professional Sports Joint Stock Companies Act, and in the Joint Stock Companies Act on a supplementary basis, in the manner previously indicated in 4.1 Legal Sporting Structures.

It should be noted that Article 21 of the Professional Sports Joint Stock Companies Act states that a shareholder of a professional sports joint-stock company that holds a percentage equal to or greater than 5% of the voting shares of a professional sports joint-stock company may not hold a percentage greater than 5% of the voting shares of other professional sports joint-stock companies involved in the same activity and sporting category. This rule is also recognised in Article 9 of the Statutes of the National Professional Football Association (ANFP). There is no prior examination for owners and owners in the sports industry in Chile.

Finally, Article 40 S of the Sports Act provides for the possibility for the National Sports Arbitration Committee to apply sanctions for infringements committed in a competition organised by the sports entities listed in the Act, including the sanction of deduction of points in the competition where the infringement occurred. In professional football, the ANFP's legal system also provides for the sanction of loss of points in the event that participating clubs incur any

of the offences indicated in the Code of Procedure and Penalties. Likewise, the ANFP Statutes provide for the sanction of loss of three points in the tournament where the infringement was committed, in respect of clubs that have been sanctioned by the Court of Patrimonial Matters or the Disciplinary Court and have not complied with such sanction within 15 days after the decision has become enforceable. This time limit does not apply if the decision of the Tribunal is to amend the statutes of the offending Club, in which case the Tribunal shall grant a reasonable period of time. The rules of the various professional football tournaments 2024, both men's and women's, also provide for sanctions of deduction of points in case of infringement of a series of conduct contained therein.

4.3 Funding of Sport

The Sports Law has created a mixed system of financing sport in which, on the one hand, the state participates through the designation of resources under the Budget Law and those that the National Sports Institute (IND) allocates from its assets, and the private sector, through donations that enjoy a tax rebate benefit. This system expressly excludes organisations created under the Law on Professional Sports Corporations (*Ley de Sociedades Anónimas Deportivas Profesionales*).

Title IV of the Law (Article 41 and following) contemplates the different mechanisms by means of which the Treasury and the private sector (both legal and natural persons, who comply with the requirements established in Article 62 of the Law) can contribute to the financing of sport, covering all areas of the activity. There are five types of contributions, generically called "Sports Promotion".

- National Fund for the Promotion of Sport – these are public resources provided by the

Treasury under the Budget Law and by the IND. It contemplates a wide variety of activities that may be subject to this kind of promotion, such as recreational, competitive and high-performance activities, amongst others. These are administered by the IND.

- Sports Infrastructure – the purpose of this type of promotion is to provide public resources for the construction of sports facilities, in accordance with the regulatory and urban planning schemes, which must include areas for the practice of sport and recreation.
- Sports subsidy – this type of subsidy provides for the direct contribution of public funds for the acquisition and construction of sports facilities, as well as the acquisition of real estate for sports purposes. The state provides public funds that complement the necessary prior savings that the beneficiary must have.
- Concessions – the National Institute of Sport grants a concession of its real estate and sports venues to the concessionaire for use and enjoyment for sports purposes for a maximum period of 40 years.
- Donations for sporting purposes – natural and legal persons that meet the requirements indicated in Article 62 of the Law may donate money to the IND to be used for sporting purposes, both nationally and regionally. The main incentive to donate for sporting purposes is to obtain a tax credit of up to 63.5% of the amount donated for legal entities or up to 70% for individuals, or to accept the amount donated as a tax expense. Donors must have previously submitted a project to the IND, which accepts it.

Article 63 states that only sports organisations, high performance corporations and municipal sports corporations can be recipients of resources, both public and private, under the Act. Exceptionally, there is a case in which lim-

ited companies whose corporate purpose is the development of professional football are eligible for public funds. The second transitory article of Law 21.426 on the Recruitment of Professional Female Football Players by Professional Sports Joint Stock Companies states that sport organisations that meet the requirements set out in the Law may apply for and obtain the benefits of the National Fund for the Promotion of Sport and Donations for Sports Purposes, contained in the Sports Law, for a period of five years from the entry into force of Law 21.426. The resources obtained may only be used for the development of women's professional teams.

4.4 Recent Deals/Trends

Since the end of the pandemic to date, one sport has grown exponentially. The padel industry has increased its numbers exponentially with regard to the number of courts available throughout the country, the amount of money spent on equipment, and the use of booking apps to access the courts, among other things. The interest in the sport has reached such a point that in 2023 Santiago hosted for the first time, with resounding success, a date of the World Padel Tour. It was also revealed that the A1 Circuit will have a date in Santiago in April 2024. Within the Chilean Padel Federation (FEPACHI), the number of clubs has increased by 300% and the number of players exceeds 100,000. After the boom effect following the pandemic, the number of clubs offering padel courts increased by 160%.

5. Intellectual Property, Data and Data Protection

5.1 Trade Marks

All trade marks, in order to be recognised and protected in the territory of the Republic of Chile, must be registered with the *Instituto Nacional de Propiedad Industrial* or “National Institute

of Industrial Property” (INAPI). The process of applying for and obtaining the right to have a trade mark registered is regulated by Law 19.039 on Industrial Property, as amended by Law 21.355, as well as its Regulations. Similarly, the National Institute of Industrial Property is regulated by Law 20.254, which establishes the National Institute of Industrial Property, as amended by the aforementioned Law 21.355.

Article 20 of the Industrial Property Law indicates which elements cannot be registered as trade marks. Some examples that can be found in the law are the coats of arms or emblems of states, scientific names, the names of natural persons who are alive, or those that mislead as to the origin or quality of the goods or services, and so on. The process of applying for and obtaining the right to registration is both written and digital, ie, it is done entirely through INAPI's website, including the right to file an appeal to the Industrial Property Court.

The advantage of a registered trade mark is that it enjoys protection with respect to the commercial exploitation of the trade mark for a period of ten years from the date of registration. The owner of the trade mark has the right to apply for renewal, for equal periods, in the period from six months before and up to six months after the expiry of the right to trade mark registration. The owner of the registered trade mark also has the right to oppose the application for registration of another trade mark that is similar to his own in the categories of goods or services for which his trade mark has been registered.

At the beginning of 2022, Chilean fifth division club Santiago City received a communication from Manchester City to desist from using its name. Beyond the similarity of the name of the two sporting institutions, the main concern of the City Group was the obvious resemblance

between the two emblems, with the Chilean club taking advantage of the fame of its English counterpart. Santiago City undertook to modify the crest so that it would not be misleading, which to date has not happened.

5.2 Copyright/Database Rights

Law 17336 of 1970 on Intellectual Property, as amended by Law 20.435, regulates copyright matters, as well as Regulation 1.122 of 1971 and Decree 277 of 2013. The applicable legislation does not cover rights related to sports but to literary, artistic and scientific works and related rights. The author's right includes the use, authorship and integrity of the work for his or her benefit. Protection lasts for the life of the author and for 70 years after the author's death. The most relevant rights associated with copyright are the right to permit or prohibit the dissemination of his or her productions, and to be remunerated for the public use of his or her productions. The Department of Intellectual Rights, under the National Service of Cultural Heritage, which in turn is part of the Ministry of Cultures, Arts and Heritage, oversees the Intellectual Property Registry in Chile.

As an exception to copyright, insofar as it is vested in a specific person or group of persons, there is a concept called common cultural heritage, which refers to works whose protection is extinct, whose author is unknown, among other cases provided for by law. The law also allows the inclusion in a work of short fragments of a protected work, without the need for the approval or remuneration of the author of the work.

Artistic gymnastics athlete Tomás González, a participant at the London 2012 and Rio 2016 Olympic Games, has a vault named after him, "González", by the International Gymnastics Federation (FIG). The vault, a back somersault

with three and a half twists, was performed by González at the 2003 Anaheim World Championships, and since 2018 has been named after her in the scoring code. However, in accordance with the points stated in the first paragraphs, it is not recognised as a copyright under Chilean law.

5.3 Image Rights and Other IP

It is appropriate to begin this chapter by stating that the Right of Image is a fundamental right enshrined in Articles 1 and 19 N°24 of the Political Constitution of the Republic. Within the Chilean Labour Code, the Statute of the Professional Sportsman provides for the express recognition of the Right of Image of sportsmen and workers who exercise an activity related to the activity of professional sport.

Thus, Article 152 bis letter f of the Code recognises that the use and commercial exploitation by the employer of the employee's image for a purpose other than the main purpose of the employment contract concluded, requires an express manifestation of will on the part of the employee. It also indicates that the pecuniary benefits received by the worker must be in accordance with what is agreed in the employment contract or in the collective bargaining agreement, if any. This is reflected in the standard federative contracts that the ANFP provides to the clubs to conclude with the athletes.

Therefore, it can be understood that the legal system, on the one hand, recognises the right of sportsmen and sportswomen and professionals exercising related activities to commercially exploit their image rights and, a contrario sensu, recognises the right of the employer to commercially exploit their image, to the extent that such exploitation is related to the main purpose of the sports employment contract.

Finally, it should be noted that although it is not directly related to a commercial purpose, Law 19.733 on Freedom of Opinion and Information and the Practice of Journalism would present a limit to the right of image of sportsmen, as the third paragraph of article one indicates the “right of persons to be informed about facts of general interest”. Ordinary Opinion 4884/34 of the *Dirección del Trabajo* or “Directorate of Labour”, dated September 2021, gives as an example of facts of general interest related to sports activities, press conferences or interviews at the edge of the pitch.

5.4 Licensing Athletes

The aforementioned Ordinary Opinion 4884/34 defines the right of image as “the power vested in the human person to dispose of, authorise or prevent the capture, reproduction or dissemination of the graphic representation of his physical figure or of the elements that make up his personality...” It also recognises its quality as a fundamental right and, therefore, it is “unrenounceable, inalienable and imprescriptible, as it is a representation of the external being of the human person”. Thus, the law does not prevent the commercial exploitation of the athletes’ image, as long as the athlete’s life is not limited, for example, by not being able to freely use his or her own name.

Sports Bodies

Sports legal entities do have the right to commercially exploit their brand, logo, name, nicknames, and colours. Nowadays, there are many sports bodies, professional or not, that licence their trade mark, with the aim of obtaining greater sources of income. In industrial property matters, the limit to the registration of trade marks, and therefore their protection that allows the protected right to be commercialised, is found in

three grounds of prohibition indicated in Article 20 letter k) of the Industrial Property Law 19.039:

- public order;
- morality; and
- good customs.

This prohibition does not prevent the rights from being used in the private sphere, nor is it protected by trade mark legislation.

5.5 Sports Data

It is increasingly common to see clubs in various sports using statistical information on sporting performance, both to improve the various indices in their own training (and to regulate workloads and thus avoid injuries), and to study future opponents and be better prepared for the next competition or match. In addition, the relatively new sports secretariats make use of the information that is available to monitor athletes who might be attractive for future recruitment.

Thinking about the followers of the different sports, in Chile there has not been a deepening of the supply of quality statistical information. In general, there has been no innovation in the quality or quantity of information related to the competition or the match, with more focus going into the spectator’s experience using augmented reality to make the broadcast more attractive.

In terms of professional football clubs, there are few that make use of the information that their own supporters offer them, such as the behaviour in the merchandising purchase process, in the loyalty through email communication, or in the resulting interaction with the club and the brands present on match day. There is a lot of progress to be made in this area, with a general lack of understanding on how to maximise and create activations with the use of such data.

5.6 Data Protection

The right to privacy and the protection of personal data is a fundamental right guaranteed by the Constitution in Article 19 number 4. Currently, Chile has a special law on the protection and processing of personal data, Law 19628 on the Protection of Privacy. However, the National Congress is currently discussing a new law to replace it, given that it dates from 1999 and does not respond to current needs, given the advance of technology. The bill includes the creation of a Personal Data Protection Agency, which will aim to ensure the protection of people's personal data.

In commercial matters, the main challenge for the authority will be to control and supervise the traffic of information and personal data circulating between companies, with the aim of contacting the public and offering their goods or services. This is, unfortunately, a bad practice that is currently occurring. In the field of sport, although some clubs and brands have developed a strategic plan to bring their customers closer to them, in general it is not a very developed field in its own right, with the protections afforded to this area being those outlined in the national law as stated.

6. Dispute Resolution

6.1 National Court System

Article 1 of the Constitution recognises and protects "intermediate groups" as the basis of the organisation and structure of society and guarantees them "adequate autonomy to fulfil their own specific purposes". Autonomy, among other things, includes the power of self-determination or to establish mechanisms for resolving disputes that arise within these entities. Likewise, the Chilean Fundamental Charter enshrines in

Article 19 number 3 the equal protection of the law in the exercise of the rights of individuals, as well as the right to legal defence.

The Chilean legal system recognises matters of exclusive competence of the courts of justice, and other optional matters, which can be submitted to arbitration or alternative dispute resolution mechanisms.

In labour matters, the Chilean legal system mandates that all disputes of this nature, in which the parties are employer and employee, be heard and resolved by the corresponding labour court.

In civil matters, the civil courts are competent to hear any dispute of a patrimonial nature. However, considering the specificity of conflicts in the field of sport, added to the slowness in the development and culmination of the processes known by the ordinary courts of justice, which do not respond to the need for speed in this area, the different sport stakeholders tend to avoid filing claims using the regular judicial system.

Finally, without prejudice to what the author will analyse in the following section, every person in Chile has the right to file an appeal for protection before the corresponding Court of Appeals, given that one or more of the fundamental guarantees enshrined in Article 19 of the Constitution are being affected or threatened. The Sports Law provides for the existence of two Commissions that hear and resolve sports-related disputes:

- the National Sports Arbitration Committee;
- and
- the Panel of Experts on Doping.

Despite their source in the Sports Law and the fact that their resources come from public sources, they are administrative in nature and cannot

be considered as part of the ordinary Chilean judicial system.

6.2 ADR (Including Arbitration)

In general terms, disputes of a civil nature, including those involving one or more sports entities, can be heard and resolved through arbitration.

On the other hand, in purely sporting matters, the Sports Law obliges sports organisations to have disciplinary and ethics bodies to hear and resolve disputes or conflicts of this nature that arise within them.

With regard to the decisions of these bodies, in the matters indicated in Article 40 letter P of the Law on Sport, it is possible to lodge an appeal for review before the *Comité Nacional de Arbitraje Deportivo* or National Sports Arbitration Committee (CNAD), which is a body also created by this Law, and attached to the Chilean Olympic Committee. The CNAD exercises disciplinary authority over the National Sports Federations, except for the Football Federation, and over all sports organisations in matters of harassment, sexual abuse, discrimination and ill-treatment. Despite being conflicts of a sporting nature, its decisions are not subject to appeal to CAS.

On the other hand, the Chilean Olympic Committee (COCh) indicates in its statutes the existence of a Court of Honour and hears matters submitted to it by the Assembly of Delegates or the Board of Directors, taking special care not to intervene directly or indirectly in those matters that are or may be subject to the jurisdiction of the Federations affiliated to the COCh, or of the National Sports Arbitration Committee, unless these or the parties involved, statutorily and/or voluntarily, submit to its decision. The decisions of the COCh Court of Honour may be appealed to CAS.

As for professional football, it has several internal administrative tribunals, depending on the subject.

- The *Tribunal de Asuntos Patrimoniales* or “Property Affairs Tribunal” (TAP) hears and decides on property disputes arising between the various parties involved in the activity if they are not of a labour nature. As a rule, clubs submit disputes over unpaid obligations between themselves arising from player transfers to the TAP. Since 2023, it has included disputes involving agents.
- The *Tribunal de Disciplina* or “Disciplinary Tribunal” (TD) hears and decides on complaints made against acts in breach of the Code of Procedure and Penalties, Statutes, and other internal rules of the ANFP.
- The *Tribunal de Honor* or “Honour Tribunal” (TH) hears and resolves complaints lodged against ANFP officials or clubs for breaches of sporting ethics.

6.3 Challenging Sports Governing Bodies

From the Chilean legal system perspective, and as pointed out in **6.1 National Court System**, every person has the right to file an appeal for protection in the event that one or more fundamental rights enshrined in the Constitution, including the decisions of sports governing bodies, are violated.

Professional football has a body that is not seen in other national federations, which aims to ensure the responsible administration of clubs: the *Unidad de Control Financiero* or “Financial Control Unit” (UCF), which is a body that monitors and advises clubs on economic and financial matters. The UCF has the power to file a complaint before the Disciplinary Tribunal against clubs that have infringed the economic

and financial obligations contained in the statutes and regulations of the ANFP.

Both the Court of Patrimonial Matters and the Disciplinary Court of the ANFP have the power to sanction with points deductions and fines according to the nature and seriousness of the infringement. A recent reform of the ANFP statutes now allows recourse to CAS, once the instances within the Association have been exhausted, or there is an express mention of CAS in the statutes or internal regulations.

7. Employment

7.1 Sports-Related Contracts of Employment

In practice, in Chilean labour law, only football players are considered professional sportsmen and sportswomen. There is an entire chapter in the Chilean Labour Code called “On the contract of professional sportsmen and sportswomen and workers performing related activities”, also commonly known as the “Statute of the Professional Sportsman”, which, despite its general name, states in Article 152 bis A that it applies only to professional footballers and those performing related activities.

Professional football clubs are the employers of sportsmen and sportswomen in the employment relationship with them. The general labour law allows minors aged 16 years and older to validly conclude an employment contract.

However, beyond professional football activity, there are many high performance athletes in the country who live exclusively on training and competition professionally, by virtue of the model of the state’s contribution to sport. The state contributes to athletes through a system called *Sistema de Becas para Deportistas de*

Alto Rendimiento (PRODDAR) (Scholarship System for High Performance Athletes). It is a system that places athletes (categorised according to whether they participate in individual or collective sports), coaches and trainers in categories, so that the higher the ranking, the greater the monthly contribution they receive. Athletes, coaches and trainers move up or down in categories according to their performance in the competitions they participate in.

Returning to professional football, while there is no salary cap per se, there is an institution called *Unidad de Control Financiero* or “Financial Control Unit” (UCF) which ensures that clubs do not spend more than 70% of their income on salaries for first team men’s players, so indirectly the UCF prevents that clubs spend more resources than they produce.

7.2 Employer/Employee Rights

Chilean labour law is a legal system that has traditionally sought to even up the historical imbalance that has existed between employer and employee. From Article 5 of the Labour Code, labour law is classified as a public policy rule, ie, the parties (especially the employee) cannot waive the rights set forth therein.

Furthermore, the applicable law in the employment relationship between an employer and an employee in Chile is Chilean labour law. Likewise, disputes arising between the parties will only be resolved by the labour courts, not allowing the resolution of the conflict through arbitration. Exceptionally, the legal system allows the intervention of an arbitrator in cases of disputes between the employer and a trade union organisation.

Women’s football has developed significantly in recent years. However, cases of violation of

women's footballers' rights have constantly come to light.

A striking case was the lawsuit filed by four female players against the club *Everton de Viña del Mar*. The sportswomen asked for recognition of their employment relationship with Everton and the violation of rights to which they were subjected, despite the fact that they did not have a written contract. The Labour Court of Valparaíso concluded that the players had indeed provided their services as footballers and the club had indeed violated their rights as workers since Everton prevented them from working at another club, withholding their registration. In addition, the club was ordered to pay the players' remuneration for a period of two years back-dated, counted from the filing of the lawsuit.

7.3 Free Movement of Athletes

In relation to the freedom of movement of professional footballers, Chilean professional football, following FIFA guidelines, has transfer windows within which athletes can be registered in the ANFP Register. If the transfer windows may well be considered as a limit to the players' freedom of work, the specificity of the sport has led to the estimation that this is positive for the industry in general terms. Furthermore, ANFP rules allow only three new players to be signed in the mid-season transfer window, except for players returning to their home club after a loan spell.

Additionally, prior to the start of the 2024 Tournament, the ANFP Presidents' Council (which brings together the presidents of all the clubs in the first two divisions of professional football) agreed to increase the number of foreign player quotas in professional football squads. This decision led to the threat and subsequent implementation of a strike by the *Sindicato de Futbolistas Profesionales* or "Professional Footballers' Union" (SIFUP).

After several days of uncertainty, the Presidents' Council resolved to maintain the six quotas for registered foreign players but limited to a maximum of five foreign players on the pitch at any one time. Currently, there are many professional sportsmen and women working in Chile. Although it can take six months or more to obtain a visa, Chilean migration law allows foreign sportsmen and women to work validly in Chile with a work permit with a pending visa, in accordance with Law 21.325 on Migration and Foreigners.

8. Esports

8.1 Esports Overview

Esports activity in Chile is steadily increasing, although there are still significant challenges to overcome. As of this date, esports are still not recognised as a sport by the Chilean Ministry of Sport and, therefore, their organisations cannot be constituted in accordance with the Sports Law, nor enjoy its benefits.

All in all, the Santiago 2023 Pan American Games attracted 120 gamers from 25 countries in Dota 2 and eFootball 2023, in both men's and women's categories. This participation marked the debut of esports at the Pan American Games.

9. Women's Sport

9.1 Women's Sport Overview

The development of women's football in Chile has grown exponentially in the past 15 years, mainly since the organisation of the U-20 Women's World Cup in 2008, with a strong investment in infrastructure by the state of Chile, which materialised with the construction of new stadiums as part of the Bicentennial Stadium Network plan.

Currently, there are two women's football divisions in the adult category, in addition to two other categories of youth football (under 16 and juvenile). Only clubs affiliated to the ANFP can participate in women's football tournaments in Chile.

In 2022, Law 21.436, which requires the conclusion of a contract, under the terms indicated, between professional sports corporations and the athletes who are part of the national women's football championship, generated an important change in the ecosystem of women's football, as it set a deadline for professional clubs to gradually build their squads with players who have employment contracts so that by the third year they have 100% of their players under an employment contract. In addition, the law allows clubs, the vast majority of which are for-profit legal entities and therefore not subject to apply to the National Fund for the Promotion of Sport and Donations for Sporting Purposes under Law 19.712, to do so for the sole purpose of resourcing their adult women's teams.

While there is significant room for growth in the industry, particularly given the reluctance of the clubs themselves to invest in it, there are matches that have been played in front of more than 20,000 people in the stands. The Chilean national team, in turn, has also played in front of more than 17,000 in the stands and has generated a boom among the younger generation of girls who already have powerful and easily recognisable role models. The Chilean market is not yet one in which players are transferred for a price, so the global market itself has not yet recognised the value of Chilean football.

Within the women's football ecosystem, there are a number of stakeholders that have acquired great notoriety for their contribution to the development of the industry. Entities and indi-

viduals such as ANJUFF, the women's footballers' organisation that has developed under the umbrella of SIFUP, media specialising in women's football such as *Contragolpe*, or the leadership of national team leaders, such as world-class goalkeeper, Christiane Endler, or former players who have successfully moved into club administration, have contributed to the transition of the activity from a totally amateur level to one with greater structure, more competitiveness and more resources.

10. Non-fungible Tokens (NFTs)

10.1 Non-fungible Tokens (NFTs)

Up to March 2024 Chile lacks direct regulations regarding NFTs, and Law 21.521 colloquially known as the "Fintech Law" is the only legislation that, in some sense, speaks on this concept. This law recognises cryptocurrency as a method of payment for products and services facilitating, consequently, the development of products related with crypto, like NFTs. Nonetheless, it is important to remark that the law does not recognise crypto as an official currency.

Different football figures have sold NFTs. A good example is Universidad Católica, which was the first Chilean club to join Sorare, a fantasy game that uses NFTs integrated in an Ethereum blockchain. Several Chilean football players partnered with institutions in order to create and sell NFTs. This was the case with Arturo Vidal and Tiane Elder, who sold their NFTs through StartFi and Shirtum respectively.

An interesting case is the one involving the Chilean Chess Great Master Pablo Salinas, who got involved in a NFT project in order to receive an additional income to finance his career. The use of NFTs was popular in Chile during the years 2021 and 2022. Since then, its utilisation has

diminished. It is unknown how “traditional” sports in Chile are planning to integrate this technology again in order to maximise their profits.

11. Regional Issues

11.1 Regional Issues Overview

Chile is a relatively small market, although it has a great interest in sport and, in general, in the development of the activity at various levels. However, the development of sports law in the country has been scarce, and its practice has been the privilege of very few. On the other hand, sports organisations are not yet mature enough to be aware of the need for specialised legal advice. The number of law firms that have a sports law department is tiny compared to the number of law firms that offer more traditional legal services.

This leads to a lack of intellectual and theoretical debate at a national level, which in turn leads to a lack of new sports lawyers. Universities are timidly opening up to have courses and academic programmes on the subject, some from a sports management approach, some from a more administrative approach, and others from a commercial one.

The reflection that the author would like to share is that currently, the development of Sports Law is not in line with the economic reality of the country in general. Despite this, there is a lot of interest from law students and young lawyers to pursue and practise this area of law. For this reason there should be optimism that the sports law industry will develop in the short term, hand in hand with the adoption of greater resources, and greater professionalisation in other areas of the sports industry.

12. Artificial Intelligence (AI)

12.1 AI Overview

Up to March 2024, Chile lacks regulations concerning artificial intelligence (AI). Nonetheless, since 2021, there exists a National Policy called “Decree 20” published by the Ministry of Science, Technology, Knowledge and Innovation, regulating this phenomenon and currently the country is in the process of regulating several bills. Among others, Bill 15.935 intends to criminally persecute the wrong use of artificial intelligence, Bill 16.021 wants to incorporate the use of artificial intelligence as an aggravating circumstance whilst committing a crime and finally, Bill 15.869 wants to regulate AI, robotic and connected technologies.

As it is a relatively novel technology, the Chilean sports sphere is starting its use in order to improve the sports in the country. An example is Scout Advisor, a tool that intends to improve football scouting, providing more complete data for the professionals involved in the sector. The Pan American Games, which were celebrated between 20 October and 5 November 2023 also used AI in order to improve the transportation mechanisms during its celebration, consequently achieving the reduction of fuel usage by more than 30%.

Finally, the XVI International Congress Oritel included a session wherein the use of AI for the rehabilitation of people was discussed. As the lecturer can imagine, this is a very important topic in sports and would increase the health of the athletes. The use of AI is a new reality that came to stay. It is expected that during the next months or years it will become an essential part of Chilean sports improving several aspects like, for instance, the VAR system, improving match and athletes’ data.

13. The Metaverse

13.1 Metaverse Overview

Up to March 2024, Chile lacks regulations applicable to metaverse activities. Nonetheless, it does not mean that the country does not recognise the importance of this area. On 16 and 17 March 2023, an international seminar called “Opportunities and Challenges of the Metaverse” in which new metaverse policies for the country were discussed.

Despite the lack of legislation, a significant number of companies have decided to dive into the metaverse. A good example of this is one of the most important football teams in the country, Colo-Colo, which registered several terms related to the team in the Industrial Property Institute of Chile: “Meta-Albo”, “Meta Colo-Colo” and “Meta Cacique”. There were also projects initiated outside the football world, like the one led by the racing driver Nicolás Pino who is aiming to connect the blockchain platform CSport, which he owns, to the metaverse.

As the reader can observe, the metaverse situation in Chile is still commencing. Nonetheless, the country has begun to take its first steps. Some institutions and sports professionals have begun their individual projects whilst awaiting a major doctrinal discussion which will lead to the first set of regulations in Chile that will affect the metaverse.

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