When sports is the most important utterly non-important thing in the world

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I am writing this from my home, like many of you doing my best to help limit the spread of the Covid-19 virus and “flatten the curve”. I must admit that my mind is not foremost on sports law these days. Everyday private and professional concerns take a lot of energy and attention, and the uncertainty about the future is taxing. In comparison with these challenges, sports and legal issues relating to sports appear quite trivial. To the extent that I think about law, I foremost worry that that the corona crisis can be used as an excuse to roll back the rule of law. History warns us that authoritarians can exploit emergencies and that extreme measures justified by extreme circumstances in the short-term can be hard to remove and used as precedents in the future.

This is an unprecedented period in sports that no doubt will leave its mark on sports history. Essentially, all sporting events have been cancelled across the entire globe. The Tokyo 2020 Olympics, the UEFA EURO 2020 tournament, and the Copa America are a few of the major events that have been postponed so far. Meanwhile football, motor-sports, basketball, baseball, tennis, rugby, and ice-hockey are some examples of sports where national and international competitions have been either cancelled or indefinitely suspended. In many sports, 2020 will mark the first time that champions were not crowned, at least since the end of World War II. The decision to effectively pause the entire world of sports in the interest of saving lives is undoubtedly the correct one. Things that seemed to matter mere weeks ago, such as Liverpool F.C. winning the Premier League or Paris Saint-Germain F.C. finally making it to a Champions League quarter-final, no longer do.

However, at the same time, it is unfortunate that sports need to be cancelled at a time when we can all benefit from a little escapism. One major motivation for following sports is that it for a brief period of time allows us to escape the

struggles of everyday life.¹ While we should not use sports as an excuse for not doing all that we can, escapism is not necessarily or inherently bad. One of sports’ many benefits is that fully devoting our attention to the competition offers relief and using sports for escapism can have psychological benefits.² Covid-19 has made it clear, perhaps more clear than ever before, what an important role sports play in many people’s lives as fans, leagues, and broadcasters seek to fill the vacuum left. The great sports pause has provided an occasion for revisiting historic games and moments in sports history. It has also acted as an impetus for advanced experiments in the usefulness of electronic sports competitions, esports, as a stand-in for the physical kind.³

It will take considerable time before it is possible to fully gauge the impact of Covid-19 on sports, but it is possible to see some possible and significant consequences and related legal issues that will follow in the wake of the virus. As often, most of these are related to the commercial aspects of sports and there are both short- and more long-term issues.

While some events can be rescheduled and seasons shortened, some of the economic consequences will be difficult to mitigate. Like other businesses, professional clubs’ incomes have been drastically reduced. Most clubs and leagues are heavily reliant on sales of broadcasting rights. Rights and tickets have been sold to competitions that will never take place, and the significant resulting costs will need to be allocated. One business that will be thriving is lawyers specialized in force majeure. Clubs are trying to slash their costs, largely by reducing player and staff pay. While some are happy to contribute, some employees and employee unions may challenge the legality of these actions. With the support of sports governing bodies, government, and the public, most clubs will be able to meet their obligations, but some

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¹ See, e.g. Segrave (2000); Wann et al. (1999).

² Stander (2016).

³ For example, the FIA is organizing the F1 Esports Virtual Grand Prix featuring current Formula 1 drivers. Also, even though Euro 2020 has been postponed eEuro 2020 (www.euro2020.com) is proceeding as planned.

will likely not be able to overcome their economic challenges. It is conceivable that bankruptcies and the actions taken to avoid them will become the subject of legal actions in many sports and countries.

In the medium term, decisions to cancel unfinished seasons will cause successful clubs not to receive the financial rewards that follow a promotion, whereas others will receive windfalls compared to their sporting performance. Considering how significant those rewards are in some sports, legal disputes and adjudication is likely to follow in the near future.⁴

There are also some possible, significant long-term economic effects of Covid-19 on sports. Like other sectors, the sports economy is guaranteed to slow down, and this is particularly problematic in sports that are economically large and have grown quickly. One example of this is football where commentators have for some time warned about the signs of a bubble in the transfer market.⁵ Clubs' needs to tighten their budgets are likely to hamper big-money transfers which, in turn, put a strain on the prevailing economic model.⁶ The ability to transfer players to other clubs for considerable fees constitutes a central element in many football clubs' business models. The growing football transfers market has in part been financed by clubs taking on debt from each other: in 2018, European clubs owed each other a total of €5.1 billion in transfer-related debt.⁷ As noted by UEFA, this is a vulnerability to the entire system: "any delay or non-payment can have a knock-on effect on the carefully planned cash flow of many clubs along a chain of transfer balances".⁸

Also, "[w]ith non-wage operating costs at such a high level, clubs obviously need to make profits from player transfers in order to balance their books".⁹

There will be a time after Covid-19 when we will have the luxury of focusing on such relatively trivial problems as those in sports law. But even in the meantime, we hope that this issue of the International Sports Law Journal and the great insights offered by the contributors can provide both knowledge and some needed distraction.

On a final note, the ISLJ invites papers for a special issue on legal aspects of fantasy sports. Authors are invited to submit contributions from all jurisdictions and areas of law until 15 November 2020.

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⁴ See, e.g. BBC, "Coronavirus: All football below National League to end", 26 March 2020. <https://www.bbc.com/sport/football/52052351>.

⁵ Brennan (2017).

⁶ See, e.g. ESPN, "FIFPro warns days of big money transfers are over amid coronavirus crisis", 3 April 2020.

⁷ UEFA, Club Licensing Benchmarking Report: Financial Year 2018, p. 99. This is equivalent to 24% of European clubs' revenues, up from 18% the year before. *Ibid.*

⁸ *Ibid.* p. 99.

⁹ *Ibid.* p. 105.