

## ETHICAL AND LEGAL IMPLICATIONS OF A GLOBAL HEALTH CRISIS ON SPORTS LAW: from the ebola threat to covid-19

*IMPLICACIONES ÉTICAS Y JURÍDICAS DE UNA CRISIS SANITARIA GLOBAL EN EL DERECHO DEPORTIVO: de la amenaza del ébola a la covid-19*

*Elena Atienza Macías\*<sup>1</sup>*

University of the Basque Country (UPV/EHU)

*Aitziber Emaldi Cirióñ<sup>2</sup>*

University of the Basque Country (UPV/EHU)

### Abstract:

The emergence of COVID-19 has been spreading around the world at a vertiginous growth rate. The generality of the countries of the world is affected, and the great majority of them have decided to postpone and/or suspend their sporting events. Without a doubt, the more relevant postponement has been that of the Tokyo 2020 Olympic Games. The health and ethical-legal effects of COVID-19 are extremely high.

Keywords:

global health crisis, covid-19, sports law, *force majeure*.

### Resumen:

La aparición de la COVID-19 se ha extendido por todo el mundo a un ritmo de crecimiento vertiginoso. La generalidad de los países del mundo se ve afectada, y la gran mayoría de ellos han decidido posponer y/o suspender sus eventos deportivos. Sin duda, el aplazamiento más relevante ha sido el de los Juegos Olímpicos de Tokio 2020. Los efectos en el ámbito de la salud y ético-jurídicos que la COVID-19 ha implicado son extremadamente altos.

**Palabras clave:**

crisis sanitaria global, covid-19, Derecho deportivo, fuerza mayor.

## 1 STATE OF THE ART

The coronavirus pandemic (COVID-19)<sup>3</sup>, currently in an acute phase worldwide and the resulting crisis has acquired a multidimensional character affecting the various areas of the

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<sup>1</sup> PhD. in Law from the University of Deusto, Comillas Pontifical University (ICADE) and Ramon Llull University-ESADE "Juan de la Cierva" Postdoctoral Research Fellow, Ministry of Science, Innovation and Universities at the Chair in Law and the Human Genome Research Group, University of the Basque Country UPV/EHU (Bilbao, Spain). Orcid: <https://orcid.org/0000-0002-4275-7170>

<sup>2</sup> Permanent Lecturer of Constitutional Law at the University of Deusto - Member of the Research Ethics Committee at the University of Deusto - Researcher at the Chair in Law and the Human Genome Research Group, University of the Basque Country UPV/EHU (Bilbao, Spain). Orcid: <https://orcid.org/0000-0001-5034-6956>

<sup>3</sup> It is worth highlighting the Report of the Spanish Ministry of Health —from the ethical and legal point of view—, coordinated by Carlos María ROMEO CASABONA entitled "Informe del Ministerio de Sanidad sobre los aspectos éticos en situaciones de pandemia: el SARS-CoV-2, Spain, 2020. In this regard, on 2 April 2020, the Ministry of Health published the Report on ethical aspects in pandemic situations: the SARS-CoV-2, in which the *ad hoc*

social framework. Sport, as part of the recreational spectrum —both in its professional and amateur aspects— has not been immune to this virus.

Since the early stages of 2020, we have witnessed, with perplexity, constant and pervasive changes in the national and international regulatory landscape. Variations in the rules of the game have meant that, what some have already called "Ius coronavirus", has become the winner of an autonomy and entity of its own as a legal discipline, specifically in the field of Sports Law where the so-called "coronavirus clauses"<sup>4</sup> have been gaining ground in certain contracts.

Sport at a professional level was, without a doubt, a breeding ground for the virus to play with its spreading effect with two incandescent elements: an audience made up of large crowds and the physical contact inherent in sporting activity.

It is true that the sports industry built on live events, where large crowds of spectators gather to watch professional sports leagues, has seen the *domino effect* of canceling, suspending or postponing current or upcoming seasons. The interaction and physical contact required in all sporting disciplines<sup>5</sup> has meant that the vast majority of competitions are suspended *sine die* pending minimum health conditions.

Overall, the explosive spread of the COVID-19 virus around the world and the frenetic struggle of states to face this battle and find a solution soon, has dramatically affected the sports industry. Two major events in the summer 2020 sports calendar have been dramatically

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Working Group that prepared it (coordinated by Prof. ROMEO CASABONA), made a series of recommendations, along the same lines as the Spanish Bioethics Committee, aimed at guaranteeing the preservation of fundamental rights. This relevant report is available at: [https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/200403-INFORME\\_PANDEMIA-FINAL-MAQUETADO.pdf](https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/200403-INFORME_PANDEMIA-FINAL-MAQUETADO.pdf)

<sup>4</sup> Indeed, the new contracts that the National Football League (NFL) teams that are presenting to players who want to get into the free agent market have included clauses related to the coronavirus. These clauses contemplate that a physical failure would mean the loss of the signing bonus money. In this sense, in a more conventional year in the NFL, a physical exam is required to consummate a deal. Vid. HAISLOP, Tadd, "New coronavirus clauses in NFL free agency contracts could cost players millions," *SportingNews*, March 19, 2020. Available at: <https://www.sportingnews.com/us/nfl/news/coronavirus-clauses-nfl-free-agency-contracts/1gjc7nydyhrk16jsdpepbteav> [Last accessed: April 12, 2020].

<sup>5</sup> With the exception of this point and because every crisis brings with it the search for opportunities, Singapore finds its niche in golf. In this sense, golf clubs saw their reserves increasing as the sport has been perceived as "safe" (or relatively safe) during this outbreak, as it is a sport practiced outdoors. Infectious disease specialist Leong Hoe Nam indicated that it is relatively safe as an outdoor sport and because viruses (this particular COVID-19) "hate" the sun (some experts estimate that high temperatures would end the outbreak of coronavirus). Vid. "Coronavirus: Boom time for golf in Singapore with courses full; spending time outdoors seen as 'safe'", *The Politician*, 1 April 2020 and GLEASON, Patrick, "Golf in a time of coronavirus", *Forbes*, April 6, 2020. Available at: <https://www.forbes.com/sites/patrickgleason/2020/04/06/golf-in-a-time-of-coronavirus/#7f6421a52d8c> [Last accessed: April 12, 2020].

affected: UEFA (Union of European Football Associations)<sup>6</sup> Euro 2020 and the Tokyo 2020 Olympic Games. Doubts, polemics and a final postponement have characterized the actions of the International Olympic Committee (IOC) regarding the immovable mark "Olympic Games Tokyo 2020" which, however, will be held in 2021.

For its part, at the amateur level, sports clubs put in place all the necessary sterilisation measures at first, but finally they were later forced to temporarily close their facilities, with the legal consequences that this entailed.

## 2. LEGAL IMPLICATIONS OF SPORT AS A SOCIO-ECONOMIC SECTOR

### 2.1 Impact on Sport as an industry

There are many questions about the consequences of this health crisis on the legal, economic and social framework that underpins the all-powerful sports industry. We are undoubtedly facing an unforeseen pandemic, the durability of which is unpredictable and which has required the adoption of a "legal package" of urgent measures.

The economic impact<sup>7</sup> was foreseeable in the short term with the first of the approved decisions on holding matches behind closed doors (i.e. stadiums without spectators) and/or suspending competitions. This measure, accepted by the vast majority of national and world Leagues and Federations, clearly affects the income of the stakeholders in sport.

The first challenge has fallen on the sports entities and the search for protection of their players, therefore, workers, who have had to analyze their contracts to adapt them to the exceptional situation that is taking place. Along these lines, the clubs have opted for the optimisation of players' salaries, in some cases asking them to reduce their salaries, which would reduce costs and consequently generate savings, or in other cases establishing the reduction directly<sup>8</sup>.

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<sup>6</sup> Vid. "COVID-19, networks and sport", *Managing Sport and Leisure*, March 2020.

<sup>7</sup> Vid. RISHE, Patrick, "Coronavirus impact upon sports industry most felt by hotel, restaurant industries and sports venue service workers", *Forbes*, march 12, 2020. <https://www.forbes.com/sites/prishe/2020/03/12/coronavirus-impact-upon-sports-industry-most-felt-by-hotel-restaurant-industries-and-in-venue-service-workers/#516cb6e85bc6> [Last accessed: April 12, 2020].

<sup>8</sup> They are an example of this, the NBA team of the Philadelphia Sixers, lowering salaries by 20%. Vid. HELIN, Kurt, "Philadelphia 76ers staff faces temporary 20 percent paycuts due to coronavirus fallout", *NBC Sports*, 24 march, 2020. Available at <https://nba.nbcsports.com/2020/03/24/philadelphia-76ers-staff-faces-20-percent-paycuts/> [Last accessed: April 12, 2020].

Despite these efforts, it seems difficult to find the ideal option in the interest of cost reduction for clubs. The match day accounts for approximately 15-40% of the clubs' income and is one of the parties most affected by the sudden extension of COVID-19. Both the suspension of leagues and the holding of matches behind closed doors lead to unforeseen costs for clubs: firstly, for the compensation of tickets and season tickets, followed by the cleaning and disinfection of areas, losses due to the closure of shops linked to clubs' licensed products, sponsorship and supplier costs, among others. It is true that, behind closed doors, matches can still be broadcast, but even if costs are reduced, it is no less true that there are still losses for the clubs. This would in any event be one of the most consistent measures, bearing in mind that television accounts for nearly 90% of the income of most clubs. In any event, the negative impact on television broadcasting rights and advertising contracts is clear.

But the situation is having its positive effects, which are exemplified in the solidarity of sportsmen and sportswomen and sports entities, such as donations<sup>9</sup>, voluntary salary reductions, charity tournaments, among others. In addition, many clubs are also focusing on the social aspect for the loyalty of their followers by developing the virtual market through social networks, competitions, work from home for daily management of telematics, among other measures.

In this situation, the question is whether it will have a specific legal effect or, more specifically, whether it will create precedents or be subject to exceptional measures for this specific situation (since, as we announced at the beginning, "coronavirus clauses" are already being included in contracts). What seems certain is that there will be a remodelling of the sports business.

## **2.2. On the cancellation of sports events**

### *2.2.1. The tricky concept of "force majeure" in private law*

Attempts to combat the spread of the coronavirus have led to the cancellation of numerous sporting events in the world of sport and, for their part, the companies affected by

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<sup>9</sup> Donations from football stars like Lionel Messi or tennis stars like Roger Federer. "Roger Federer joins FC Barcelona legend Lionel Messi in making big donation to help coronavirus fight", *Tennishead*, march 26, 2020. Available at: <https://tennishead.net/roger-federer-joins-fc-barcelona-legend-lionel-messi-in-making-big-donation-to-help-coronavirus-fight/> [Last accessed: April 12, 2020].

the cancellations to review their contracts and, in particular, to examine the widely used "force majeure" clause.

The provisions on force majeure, as a phenomenon of exoneration from contractual liability of a party for a breach due to circumstances beyond its control, deserve special attention since a coronavirus outbreak presents a *sui generis* situation consisting of a natural element (the virus itself) and of an element of government action (which refers to quarantines, cancellations and other mechanisms set up in response to the outbreak) <sup>10</sup>.

From the Latin *vis maior* meaning superior force, it refers to an event that triggers an exception to the principle of liability for duty to perform, whether contractual or non-contractual. It is based, in fact, on the Roman principle of "vis maior", which was described as an act of God and limited to causes arising from nature. However, the principle of force majeure soon extended to man-made events.

To better illustrate, force majeure refers to an extraordinary event, such as natural disasters of all kinds, i.e., storms, earthquakes, floods, epidemics, volcanic eruptions, as well as fires, traffic accidents, wars, riots, terrorist attacks, kidnappings, revolutions and strikes. Force majeure could generally be described as an unforeseeable event affecting contractual relations and is inevitable despite extreme efforts by the parties.

The conditions justifying a party's failure to comply are also recognised in both English<sup>11</sup> and American law<sup>12</sup>. It has been defined in private law in relation to the effects of obligations, configuring it as a cause that prevents the fulfilment of an obligation and that is a

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<sup>10</sup> Vid. VV.AA., "Managing the commercial impact of the coronavirus: implications for the sports & entertainment industry", *The National Law Review*, march 13, 2020. Available at: <https://www.natlawreview.com/article/managing-commercial-impact-coronavirus-implications-sports-entertainment-industry> [Last accessed: April 12, 2020].

<sup>11</sup> A key issue in many of these potential disputes will be whether the outbreak of Covid-19, or the mandatory measures imposed on sports event organizers to cancel, delay or play them behind closed doors, will release a party from its contractual obligations. Common law has developed its own responses to this problem, often in the context of events with large numbers of spectators. The first is the common law doctrine of "frustration" which will take effect when an event occurs, which the parties have not foreseen in their contract, which makes the performance of the contract impossible and which does not occur as a result of the failure of one of the parties to perform. The second is the inclusion in contracts of "force majeure" clauses, in which the parties expressly provide that they are released from their obligations by the occurrence of a certain event beyond their control. The position with respect to force majeure differs in different jurisdictions, but in England it is for the parties, when negotiating a contract, to decide which events will constitute force majeure and the consequences of their occurrence. DE MARCO, Nick, "Coronavirus, sport & the law of frustration and force majeure", *Sports Law Bulletin*, march 13, 2020. Available at: <https://www.sportslawbulletin.org/coronavirus-sport-law-frustration-and-force-majeure/> [Last accessed: April 12, 2020].

<sup>12</sup> In American law, force majeure (the illustrative "Act of God" is stated in similar terms: PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, *Force Majeure in the wake of the coronavirus (COVID-19)*, march 3 2020. Available at: <https://www.paulweiss.com/practices/litigation/litigation/publications/force-majeure-in-the-wake-of-the-coronavirus-covid-19?id=30746> [Last accessed: April 12, 2020].

cause beyond the will and control of the obligor, which is why the law exonerates him from responsibility for the non-fulfilment derived from the cause of force majeure.

A constant question in recent months for the sports-legal framework is whether the coronavirus situation constitutes force majeure. According to the general opinion<sup>13</sup>, the coronavirus pandemic is included in force majeure as long as it meets the three criteria of externality, unpredictability and irresistibility, and has made the fulfilment of the players' contracts at least partly impossible. At first sight, it might seem that it is only the athletes who cannot fulfil their contractual obligations - since they cannot train or compete - while the obligation of the clubs to pay is not impossible as such. However, the problem certainly needs to be examined more broadly, as the financial losses of clubs and other stakeholders are significant for the same external reason. It would be appropriate for the fundamental principles of fairness, honesty and good faith to prevail in these relationships.

### 2.2.2 *The Court of Arbitration for Sport (CAS) and "force majeure" cases*

The jurisdiction of the Court of Arbitration for Sport in Lausanne has ruled with respect to the "force majeure" clause, and within its broad casuistry the cases that have reported on this point, a greater legal significance, are referred to below.

In the case of TAS Alexandria Union Club *versus* Juan José Sánchez Maqueda & Antonio Cazorla Reche, the Court declared that the Egyptian civil war which ended the 2012-13 football season and which, as is known, occurred on 1 April 2013, constituted a case of force majeure<sup>14</sup>. .

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<sup>13</sup> Vid. MILANOVIC, Luka / BERGANT RAKOCEVIC, Vesna, "COVID-19: the impact on players' contractual rights & obligations (key principles from case law)", *LawInSport*, march 30 2020. Available at: <https://www.lawinsport.com/topics/item/covid-19-the-impact-on-players-contractual-rights-obligations-key-principles-from-case-law> [Last accessed: April 12, 2020].

<sup>14</sup> A similar approach was taken by the Basketball Arbitration Tribunal (BAT) in its case of Anis Georges Feghali v. Cercle sportif maristes, club of Champville. According to BAT, the club established the existence of a force majeure " ... by having disrupted and negatively affected its organisation and activities during at least the first half of the 2013-2014 season, that is to say from August to December 2013, as the club had no responsibility for and no control over the postponement of the Lebanese first division basketball championship during that period. Vid. BAT 0529/14, *Anis Georges Feghali v. Cercle sportif maristes, Champville club*, award of 31 July 2014, paras. 50 et seq., Available at: <https://www.fiba.basketball/en/Module/85132837-66aa-4ff3-a063-8cdf44ea14d/0ada486c-0343-423f-9c18-58e83fe4ea8a> [Last accessed: April 12, 2020].

However, other CAS cases reflect extremely different views. For example, it is worth mentioning case CAS 2015/A/3920<sup>15</sup> in which the Court of Lausanne ruled that the Royal Moroccan Football Federation (RMSF) did not have the right to postpone the Africa Cup of Nations tournament in 2015 because of concerns about the Ebola virus. CAS determined that Ebola was not a force majeure event because it did not make the organization of the tournament impossible, but only difficult. Caution must be exercised with regard to this case given its highly specific nature in fact: it depended partly on expert evidence suggesting that, at the time, Ebola was transmitted by direct contact with organic liquids and there was no evidence that it could be transmitted by air or touch. In addition, CAS was sympathetic to the legitimate fears of the WRF about Ebola and, although it did not agree that it was a case of force majeure, it allowed the WRF to appeal against the strong financial and other sanctions imposed on it by the Confederation of African Football<sup>16</sup>.

### **3 THE POSTPONEMENT OF THE TOKYO 2020 OLYMPIC GAMES AND ITS EFFECTS**

#### **3.1 Significant precedents<sup>17</sup>**

This is not the first time that a global health crisis has impacted on sport on a global scale. From HIV to SARS to avian flu and Ebola<sup>18</sup>, the world of sport has already been through a similar trance, if not on such a large scale.

##### *3.1.1 Avian Influenza and SARS and the 2008 China Olympics*

SARS, which was recognized as a global threat in March 2003, was believed to be caused by a type of coronavirus and was of particular concern to the scientific community because its structure made it very easy for the virus to mutate. Avian influenza also emerged in

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<sup>15</sup> CAS 2015/A/3920 *Fédération Royale Marocaine de Football v. Confédération Africaine de Football*, Award of 17 November 2015. Available at: [https://www.tas-cas.org/fileadmin/user\\_upload/Bulletin\\_2016\\_1.pdf](https://www.tas-cas.org/fileadmin/user_upload/Bulletin_2016_1.pdf) [Last accessed: April 12, 2020].

<sup>16</sup> *Vid.* BÔNE, Nicolas, "CAS 2015/A/3920 *Fédération Royale Marocaine de Football v. Confédération Africaine de Football*, Award of 17 November 2015", *Yearbook of International Sports Arbitration 2016*, DUVAL, Antoine / RIGOZZI, Antonio (Eds), T.M.C. Asser Press, The Hague, Netherlands, 2017.

<sup>17</sup> SKINNER, James / SMITH, Aaron, CT, "Coronavirus: not the first global health crisis to impact sport", *The Conversation UK*, march 18, 2020. Available at: <https://theconversation.com/coronavirus-not-the-first-global-health-crisis-to-impact-sport-133318> [Last accessed: April 12, 2020].

<sup>18</sup> Relating to the African Cup of Nations, originally scheduled to take place in early 2015 in Morocco.

late 2003 as another potential global health problem. The new strain was capable of infecting humans and countries were urged to maintain a high level of vigilance and not to relax their surveillance and detection efforts.

Both diseases emerged around the time Beijing was preparing to host the 2008 Olympic Games. The effects were strongly felt in 2005, although three years before the event, and past mismanagement and new cases cast doubt on the country's ability to host the games. As a result, a number of sporting events, which Beijing hoped would demonstrate its readiness for the Olympic Games, were cancelled or moved to other countries.

As the games approached, with millions of visitors and unprecedented global press coverage, fears arose that another outbreak of avian flu could prove disastrous. As a precaution, thousands of hospital beds were kept empty during the Beijing Olympics to deal with the possibility of an outbreak.

### 3.1.2 The "zika" virus outbreak and the Brazil 2016 Olympic Games

With regard to the outbreak of "zika" virus infection in Brazil, there was even a controversy about the convenience of delaying or relocating the Olympic Games<sup>19</sup>. The year 2016 began with the disturbing news of a possible "zika" virus pandemic in America. The epidemic of this virus caused great concern among world health authorities, due to the fact that the Olympic Games were being held in Rio de Janeiro, Brazil. At the same time, a heated international controversy<sup>20</sup> would arise about the continuation of the games with a debate based on the principle of social responsibility and health according to the Universal Declaration of Bioethics and Human Rights<sup>21</sup>.

A clear parallel with this situation has been the one experienced on the stage of the Tokyo 2020 Olympic Games, this time because of the COVID-19.

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<sup>19</sup> VV.AA., "Zika virus infection during the Olympic Games in Rio: A fear or an actual risk?", *Revista Clínica Española*, No. 3, Vol. 217, 2017, pp. 155-160.

<sup>20</sup> The disagreement within the international scientific community intensified in May 2016 when a group of 177 scientists, mostly from the areas of bioethics and public health, from 28 different countries, including one from Brazil, sent an open letter to the WHO. The authors of the letter, led by Amir Attaran, argued that holding the Games in Rio would be "unethical" and proposed that "in the name of public health" the 2016 Olympic Games should be transferred from the country or postponed due to uncertainties regarding the threat of the Zika. *Vid. ATTARAN, Amir, "Off the podium: why public health concerns for global spread of Zika virus means that Rio de Janeiro's 2016 Olympic Games must not proceed", Harvard Public Health Review, No. 10, Special Edition – ZIKA, 2016.*

<sup>21</sup> VV.AA., "Social responsibility and global health: lessons from the Rio Olympics Zika controversy", *Indian Journal of Medical Ethics*, march 30, 2018.



### 3.1.3 HIV/AIDS and the paradigm shift

The AIDS crisis, at its peak in the late 1980s and early 1990s, had a different effect. Rather than impacting on individual events, it changed the way the game was played. Because it is transmitted by blood, WHO worked with sports medicine professionals to allay concerns about how the disease is spread and developed a set of guidelines for dealing with blood-related injuries. As a result, for ethical and legal reasons, many sports do not require HIV testing of athletes or other game personnel for fear of lawsuits resulting in an invasion of privacy. Several governing bodies, particularly in contact sports, have adopted practices to address blood-related injuries, for example, the NBA and FIFA instituted a rule requiring a player with an open wound to leave the game until he receives treatment.

All in all, the Tokyo Olympics have already been postponed. The lessons of this outbreak are not yet clear, but it is not risky to say that the severity of COVID-19 will have a lasting impact and set a precedent, as it did with the AIDS crisis.

## 3.2. Cancellation versus postponement of the Olympic Games

### 3.2.1 *The controversial decision of the International Olympic Committee*

At first, the IOC, still in the midst of a host of suspensions and postponements of sporting competitions around the world, stood firm in its non-deferral of the major event, scheduled to take place between 24 July and 9 August 2020. The decision of the organization presided over by Thomas Bach to go ahead, despite the global pandemic, generated immediate controversy<sup>22</sup>. Some positions were in fact aligned with the IOC and others called for an Olympic extension given the difficult circumstances generated.

A few reasons come to mind. Firstly, the health crisis itself and the fact of watching over people's health, that is, reasons based on Public Health (avoiding possible contagion among athletes). This reason is obvious and does not require much detail or assessment.

On the other hand, the reason for the forced isolation as a measure to stop the spread of the coronavirus should be addressed in greater depth, assuming, as is the case, for example in

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<sup>22</sup> Vid. VV.AA., "The COVID-19 outbreak and implications for the Tokyo 2020 Summer Olympic Games", *Travel Medicine and Infectious Disease*, February 2020.

Spain, that it is impossible for athletes to train under normal conditions. In other words, a not inconsiderable reason for the postponement refers to the equality of conditions for participants or fair play insofar as some professional sportsmen and women lack optimal conditions for training and others do. We are basically talking about the principle of equality. Specifically, in Spain, the regime of isolation since the Spanish government declared a state of alarm on 14 March 2020 has raised an issue regarding the preparation of sportsmen and women, in order to be able to carry out part of their profession, such as training. Confined to their homes, like the rest of society obviously, they have had to devise formulas to be able to maintain their physical condition (note that confinement does not affect all sporting disciplines equally). Many people think that the Spanish government did not take into account the Olympic athletes in the Royal Decree that declared the State of Alarm. In other countries, however, such as France and Italy (and this is where the aforementioned principle of equal opportunities plays a role) where the fight against the disease is also being virulent, they have indeed found solutions for their athletes. Even Italy, the epicentre of the coronavirus in Europe, has authorised Olympic athletes to train in the open air while complying with the security measures for other citizens (i.e., distance of one and a half metres from others and prior medical control).

One aspect (which is the third we are addressing) that has not received the attention it deserves in relation to the postponement of the Olympic Games concerns the impossibility of doping controls. The lack of doping controls would be an additional reason for the postponement of the games. Without competition, with athletes confined and borders closed, anti-doping was paralysed in most countries and sports. Closing borders as a preventative measure is also key for two main reasons. The first relates to compliance with whereabouts<sup>23</sup> reporting obligations (athletes are required, among other things, to be physically present at the place where they indicate that they are located) as international mobility has clearly decreased dramatically. The second reason is the practical impossibility of sending Samples to specialized laboratories located abroad (many of which have temporarily suspended their operations) due to closed borders and lack of transportation.

Finally, the decision taken, by common agreement, by the IOC and the Government of Japan was to postpone the Olympic (and Paralympic) Games to 2021 because of the world

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<sup>23</sup> Vid. ATIENZA MACÍAS, Elena, "Algunas consideraciones sobre la protección de datos en el tratamiento de muestras biológicas y datos de salud con finalidad de control antidopaje en el ámbito deportivo: el Pasaporte Biológico", *Ius et Scientia. Revista electrónica de Derecho y Ciencia*, No. 2, Vol. 3, 2017, pp. 14-36.

health crisis by COVID-19<sup>24</sup>. The lack of knowledge about the evolution of the pandemic and the health of athletes and fans has been the main reason why the games will not be held on their scheduled date for the third time in history (the two previous ones were held during World War I and II).

To illustrate the situation. In an official statement<sup>25</sup>, the IOC explained that the reasons taken into account for the choice of these new dates for the Olympic Games were: 1) To protect the health of athletes and all persons involved in the Games, as well as to promote the containment of the coronavirus; 2) To safeguard the interests of athletes and Olympic sport; and 3) The global international calendar of all sports.

### 3.2.2 Effects of the postponement<sup>26</sup>

It is clear from the above that the cancellation of the Tokyo Olympics was not a decision to be taken lightly. Without going any further, for economic impact<sup>27</sup> it seems that it will reduce, according to some estimates, Japan's annual GDP growth by 1.4%<sup>28</sup>. Not surprisingly, one of the major criticisms surrounding the initial hesitations about the decision to cancel the Olympic Games was that monetary issues had taken precedence over the protection of public health.

The IOC's decision to postpone the games has a number of practical and commercial consequences, including the impact on athletes, ticketing, sponsorship and broadcasting obligations, insurance payments and the wider issue of brand reputation.

It is worth remembering that the IOC is not just any sports body. The organization requires significant public funding from the host country organizing the games. The contract between the IOC and the host city, in this case Tokyo, is equally demanding. It is worth noting

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<sup>24</sup> The official decision is available on the IOC website: <https://www.olympic.org/news/health-and-safety-paramount-as-ioc-executive-board-agrees-to-continue-scenario-planning-for-the-olympic-games-tokyo-2020> and <https://tokyo2020.org/en/news/tokyo-2020-postponement-task-force-launched> [Last accessed: April 12, 2020].

<sup>25</sup> <https://www.olympic.org/news/ioc-ipc-tokyo-2020-organising-committee-and-tokyo-metropolitan-government-announce-new-dates-for-the-olympic-and-paralympic-games-tokyo-2020> [Last accessed: April 12, 2020].

<sup>26</sup> ANDERSON, Jack, "Why haven't the Olympics been cancelled from coronavirus? That's the A\$20bn question", *The Conversation*, march 17, 2020. Available at: <https://theconversation.com/why-havent-the-olympics-been-cancelled-from-coronavirus-thats-the-a-20bn-question-133445> [Last accessed: April 12, 2020].

<sup>27</sup> Vid: <https://iusport.com/art/104317/el-coi-reconoce-el-golpe-economico-que-ha-causado-aplazar-los-jjoo> [Last accessed: April 12, 2020].

<sup>28</sup> Vid: "Canceling Olympics would reduce Japan's GDP by 1.4%, study says", *The Japan Times*, march 7, 2020. Available at: <https://www.japantimes.co.jp/news/2020/03/07/business/economy-business/canceling-tokyo-olympics-gdp/#.XpGycMgzBIU> [Last accessed: April 12, 2020].

Clause 71 of the contract<sup>29</sup>, which provides that if any provision of the contract poses an undue hardship to the Tokyo organizing committee that could not be foreseen at the time of signature, it may request IOC to consider changes in circumstances that are reasonable. The only caveat is that such changes will not adversely affect the Games or IOC. Thus, any changes are also at the final discretion of the IOOC, and they are not obliged to consider, agree or otherwise accommodate such changes.

the decision to cancel or postpone the games is ultimately a decision of the IOC. And, as other clauses in the contract make clear, any liability arising from a cancellation will be assumed by the host city's organizing committee. Normally, when a sports body is forced to cancel a match or suspend a season, it will have to apply cost-cutting measures to compensate for the loss of ticket receipts, season ticket and pre-paid ticket refunds, and potentially, the loss of revenue from broadcasting and sponsorship arrangements. One way to reduce costs in sport is to reduce player salaries. The contractual basis for this is the so-called "adverse change" (or force majeure) clause, which refers to sudden, unexpected or unavoidable circumstances that prevent a contract from being fulfilled. These could include natural disasters and presumably a pandemic such as the coronavirus. In contrast, the IOC does not have this particular problem in that it does not pay athletes. The thorny issue for the IOC is with regard to its sponsors and broadcasting partners.

#### **4 CONCLUSIONS**

The emergence of COVID-19 has been spreading around the world at a vertiginous growth rate. The generality of the countries of the world is affected, and the great majority of them have decided to postpone and/or suspend their sporting events. Without a doubt, the more relevant postponement has been that of the Tokyo 2020 Olympic Games. The economic effects on the sports industry that COVID-19 has involved are extremely high. In fact, perhaps the most worrying issue is whether sports associations, teams and athletes will be able to recover (at least partially) their current losses.

Nevertheless, we can conjecture that this health crisis, like other previous ones, could become an economic reservoir for the sports market, becoming the new cybernetic scenario of

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<sup>29</sup> "The Host City Contract 2020" is available at the TOKIO 2020 official website: <https://gting.tokyo2020.org/image/upload/production/rtd40rja1u5m4p7oifej.pdf> [Last accessed: April 12, 2020].

Sport in a substantial source of income. And this challenge could also be the basis for the future strategy of sports associations since the world could stop being the same after this health emergency. The internet of things, bigdata, algorithms would probably also have come to sport to stay.

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