

Sports disputes and COVID-19: a comparative analysis between Italy and England

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1. Introduction

As the scale of the COVID-19 crisis became apparent in the early part of 2020, Courts and Tribunals around the world recognised that existing systems had to adapt in order to continue to operate amidst the resultant disruption to aspects of everyday life that had previously been taken for granted. A careful balancing act is required between, on the one hand, establishing replacement procedures such that swift and efficient dispute resolution mechanisms remain available and, on the other, ensuring that such procedures are able to provide justice. Some jurisdictions have favoured the former, quickly implementing protocols dealing with certain essential factors relevant to remote hearings including witnesses, media access to hearings and e-bundles⁴. Other jurisdictions have adopted a more cautious approach, perhaps out of a concern that the use of technology to attempt to replicate traditional hearings may fail to provide fair outcomes⁵.

In sports disputes, the majority of which are determined before tribunals appointed according to the rules of the sport’s governing body, there is unlikely to be one universal procedure adopted whilst the impact of COVID-19 continues to be felt throughout the world. Nevertheless, in circumstances where there is likely to be an increase in sports disputes

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⁴ See for example, the protocol for remote hearings dated 26 March 2020 implemented in England and Wales https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1-1.pdf. A similar approach has been taken also in Italy (see footnote 10). Moreover in Italy, independently from the actual emergency, e-proceedings are held from a number of years for civil matters and more recently for administrative ones.

⁵ For example, in many states across the USA, civil trials were suspended, sometimes indefinitely, with video-conferencing facilities appearing to remain an exception rather than becoming the norm.

consequent upon the postponement, curtailment or cancellation of competitions, it is imperative that adequate procedures are in place for their resolution. This article examines certain proposals that have been adopted and/or put forward in two countries in which substantial numbers of sports disputes may be expected in the coming months, namely England and Italy.

2. England

a. Sport Resolutions

Sport Resolutions is the UK's leading provider of arbitration and mediation services for sport. The rules of many of the UK's governing bodies provide for dispute resolution before a Sport Resolutions panel and/or in accordance with its rules. On 15 May 2020, Sport Resolutions adopted a number of measures applicable to international and national arbitrations, mediations and investigations including:

1. All filings are to be made electronically, including bundles;
2. Hearings are to be conducted by videoconference, except for good reason. Where a good reason requires that the hearing take place in person, the hearing is to be adjourned to a future date;
3. The conduct of the remote hearing is to be determined during a directions and/or preliminary hearing with the tribunal chair.

Whilst e-filings and remote hearings are now mandatory under the Sport Resolutions procedure, panel members and lawyers familiar with Sport Resolutions procedure should be comfortable with these changes, given that in the 12 months prior to May 2020, more than 100 hearings and meetings were conducted remotely before Sport Resolutions and filing documents electronically was already commonplace.

b. LawInSport Report on COVID-19 and dispute resolution in sport

Whilst the measures adopted by Sport Resolutions are mandatory, parties (whether their dispute is being resolved under the Sport Resolutions umbrella or not) may also consider other procedural measures that may assist the swift and effective resolution of their disputes.

In early May 2020 an ad hoc group of experts⁶ were brought together to consider the impact of COVID-19 on sports disputes, with a view to publishing a report and draft proposals on how best to navigate the difficult circumstances created by the pandemic. A first report was published on 12 June 2020 (the “**Report**”)⁷. In circumstances where the English Courts had set out its draft protocol in mid-March, some might criticise sports lawyers for being slow to the party. However, any such criticism would be unfair, given the thorough and sophisticated nature of the Report and, moreover, the fact that a number of the proposals in the Report may provide a framework for more efficient and cost-effective resolution of sports disputes in the future (regardless of the extent to which COVID-19 continues to impact everyday life).

The Report covers a range of interesting proposals from the availability of interim remedies to more broad topics such as the mental wellbeing and education of parties and their representatives. However, we focus below on two specific elements of the report, namely:

- i. The procedure for remote hearings; and
- ii. Mediation.

(i) *Remote Hearings*

The Report suggests that “*the overriding aim underpinning any remote hearing should be (a) to emulate the substantive elements of a traditional physical hearing in so far as it is possible to do so; and (b) to ensure that the hearing meets the essential requirements of fairness and equality and, so far as it is possible to do so, to ensure that the participants, particularly athletes, identify the hearing as being fair and equal.*”⁸

To that end, the Report encloses at Appendix 4 a draft Dispute Resolution Protocol (the “**DRS Protocol**”). The DRS Protocol is split into five sections, which can be summarised as follows:

⁶ Primarily from London, but also including representatives from Italy, Brazil, Australia, Switzerland and the USA

⁷ <https://www.lawinsport.com/topics/covid19-impact/item/the-impact-of-covid-19-on-procedures-in-sport-disputes-resolution-first-report-12-june-2020>

⁸ The Report, page 34 at [104]

1. “Cooperation” – parties should cooperate with each other in making arrangements for a fair hearing, seek to narrow the issues in dispute, and should not use difficulties caused by COVID-19 to gain a tactical advantage;
2. “Case Management” – the chair of the tribunal should actively manage cases and make procedural orders necessary to achieve an overriding objective of a binding, fair and speedy resolution of the Proceedings;
3. “Format for hearings” – the default position is that hearings should take place by video-conference. If a party considers that it is necessary in the interests of justice for the hearing to be in person, then it should make an application to the Tribunal, supported by evidence and with arrangements for a safe in-person hearing;
4. “Preparation for hearing” – the presumption is that parties will use e-bundles, the contents of which should be agreed by the parties in advance and a test hearing should take place at least 24 hours before the scheduled hearing to familiarity with the platform to be used and to remedy any problems; and
5. “Conduct of hearing” – this deals with a number of practical matters, the most important of which concerns witnesses being required to confirm either that they are on their own or that there is someone present in the room with them as they give their evidence.

(ii) *Mediation*

The Report places great emphasis on the usefulness of mediation in sports disputes, particularly given the “*uniquely personal element – such as an established and valuable relationship between broadcaster and sport, between club and player, between sector and athlete, between governing body and participant*”⁹ and the fact that mediation offers a less adversarial mechanism of resolving a dispute which may also preserve or repair relationships. The Report does not go as far as to suggest that mediation should be mandatory. Such an inflexible rule would unnecessarily increase costs in cases where mediation is unsuitable and could lead to abusive tactics by parties. Nevertheless, the Report is correct to encourage legal representatives to consider the viability of mediation in a given case and whether it is in the best interests of the clients to attempt it.

The Report sets out, at Appendix 5, a draft mediation protocol (the “**Mediation**

⁹ The Report, page 31 at [92]

Protocol”), which establishes proposals for among other things a mediation agreement, the nomination of the mediator, confidentiality, the structure of the mediation session and termination of the mediation.

3. Italy

This section focusses on how the COVID-19 emergency has been addressed in Italy in dispute resolution in sport. In particular, an overall insight is provided by listing the measures adopted by the various sports disputes bodies which have, in general, been inspired by those adopted at a national level in Court proceedings¹⁰.

a. Collegio di Garanzia dello Sport (“CGS”)

The CGS is a juridical body competent to adjudicate on a variety of matters¹¹.

During the emergency, via multiple decrees, the President of the CGS ordered the suspension of all the procedural terms from 13 March 2020 until 11 May 2020: from a practical standpoint, this means that no new proceedings have been initiated in that time frame and that the pending proceedings have adjourned.

Proceedings which had already been commenced prior to 13 March 2020 (before the suspension of the procedural terms) have been held without oral submissions and the decisions have been issued by assessing the written submissions already filed by the parties. Only in extraordinary circumstances have the parties been granted a remote hearing.

¹⁰ See art. 83.2 Law Decree No. 18/2020 and art. 36.1 Law Decree No. 23/2020 which have suspended the procedural terms from 9 March 2020 until 11 May 2020 for all the civil proceedings (save for exceptions). See also arts. 83.7.(f) and 83.7.(h) Law Decree No. 18/2020 which have promoted remote hearings and the use of written submissions in lieu of the oral discussion before the Court for all the civil proceedings.

¹¹ The CGS (established by the Italian National Olympic Committee, “CONI”) is indeed the highest body of justice being competent with all the sports disputes, save for antidoping proceedings (dealt with by Anti-Doping National Tribunal). In particular, all the appeals against the second-degree decisions of all the federal bodies of justice are brought before the CGS. Similarly with the Italian Supreme Court of Cassation, the CGS is empowered to review decisions of lower bodies only in relation to issues of law and legal interpretation. In addition, the CGS has further tasks among others: to deal with disputes arising out of CONI’s measures; to administer arbitral proceedings concerning UEFA Club Licensing and arbitral proceedings among agents, clubs and athletes. Under the Law Decree No. 34/2020, the CGS has been invested also with the competence to deal with disputes concerning the Federations’ measures on the respective leagues to tackle with the spread of the COVID-19 (see the following page).

Following the resumption of the procedural terms, the President of the CGS ordered that all the hearings are to be heard remotely until 31 July 2020, unless the parties request that a decision be rendered on the basis of an assessment of written submissions alone.

Due to COVID-19 emergency, art. 218.1 of Law Decree No. 34/2020 has entrusted the various sporting Federations with the power to adopt measures concerning the cancellation, resumption and termination of the relevant competitions and the leagues, both professional and amateur, for the 2019/2020 season, as well as the consequent measures for the 2020/2021 season.

The related litigation is dealt with by the CGS within a mandatory 15-day term running from the filing of the complaint under art. 218.2 of Law Decree No. 34/2020. CONI has therefore adopted a special procedural regulation concerning such litigation. The procedural rules do not differ from those mentioned above: the decision shall be issued by assessing the written submissions of the parties, save for the fact that there remains the possibility of obtaining a remote hearing in exceptional circumstances and following receipt of a reasoned request.

Experience to date shows that the overall measures are generally deemed adequate to ensure effective participation of the parties in the hearings without any undue delay when requested and, more generally, the right to be heard.

b. Federal bodies of justice

Each Federation has set specific measures to address the COVID-19 emergency by reference to its bodies of justice¹².

The procedural measures which have been set down are similar among the Federations, even though there are some differences which may depend on the substantive measures adopted within each Federation (for instance, the resumption *versus* the early termination of the league could have impacted the regulation of the relevant federal proceedings).

¹² From a very general standpoint, the federal bodies of justice are competent with technical (i.e. sporting rules), disciplinary, economic and administrative disputes concerning parties who are registered with the federation to which the relevant body of justice belongs to.

By way of example, reference can be made to the measures adopted within the Italian Football Federation (“*FIGC*”) whose leagues have been partially resumed¹³ and the Italian Volleyball Federation (“*FIPAV*”) whose leagues have been terminated early.

FIGC: by way of multiple orders, the FIGC has ordered the suspension of all the procedural terms from 9 March 2020¹⁴ until 17 May 2020 in relation to all the proceedings before all the federal bodies of justice.

To date, hearings have been held, if possible, remotely.

From a review of all the decisions issued by FIGC judicial bodies since the resumption, it can be seen that most decisions issued relate to financial matters which arguably have a more immediate need for speedy resolution.

FIPAV: by way of a sole order, the FIPAV has ordered the suspension of all the procedural terms from 19 March 2020 until 31 May 2020 in relation to all federal proceedings, save for interim measures and related proceedings.

Additionally, the FIPAV has provided for all hearings to be held remotely. Since the resumption, however, there has been some delay in scheduling the hearings and consequently in the management of the federal proceedings.

4. Conclusions

By analysing the approach followed in England and Italy to tackle with the COVID-19 emergency in relation to sport disputes, it can be seen that measures have been adopted in both Countries to incentivise remote hearings and, more generally, the use of technology to limit, where possible, the need to suspend proceedings. This in line with measures adopted in Court proceedings both in Italy and in England.

In Italy, whilst, initially, certain proceedings were suspended, it appears that efforts have been made to recommence those proceedings as soon as possible and to enable speedy resolution to those disputes where it is necessary in the interests of justice (for instance,

¹³ In particular, Serie A and Serie B leagues have been resumed.

¹⁴ For the proceedings before some federal bodies of justice (“*Giudice Sportivo Nazionale*”, “*Giudici Sportivi Territoriali*” and “*Corte Sportiva di Appello*”) the suspension was issued starting from 2 April 2020.

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disputes concerning the cancellation, resumption and termination of leagues; disputes concerning financial matters relating to football). To that end, whilst the need for efficiency may impact on the traditional power of the parties to the proceedings to argue their cases as fully as they may have previously done so, in general, the right to be heard has not been prejudiced by these measures.

Conversely, in England very few proceedings have been adjourned or suspended, albeit parties may argue that it is necessary for a hearing take place in person (in which case, the hearing is adjourned to a future date, thereby, in practical terms, suspending the proceedings). More generally, the approach in England could be said to be less rules-based in that parties are able to refer to non-mandatory guidance such as that contained in the LawInSport Report on COVID-19. That report contains a number of proposals on how to manage sports-disputes, which parties may seek to adopt in order to permit more efficient and cost-effective resolution of sports disputes. It remains to be seen whether the impact of these proposals will continue to be felt in the future, even as the real-world effects of the Covid-19 emergency subside.

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