

SPORTS MAGAZINE

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# Melanie Schärer charts her course in football law

Melanie Schärer, in a chat with ISMO Sports, says she believes that reputation is enhanced by doing the job in a professional, energetic and efficient way

**A**part from dancing and travelling, which are Melanie Schärer's favourite pastimes, she developed interest in different cultures and languages at a young age, and had no intention of venturing into sports law during her university days.

The turning point in Schärer's career was when she saw an advertisement from an unnamed Zurich-based organisation looking for a multilingual lawyer for international arbitration work while working as an independent practitioner. She had no idea that the work would involve international football.

In 2005, she joined FIFA and was initially uncertain if it was the right field for her. The Swiss lawyer who was born and raised in a small village close to Lake Zurich was soon inspired to learn everything about sports law and specialised in it.

Within a short time, she was promoted to head a team of international lawyers dealing with all kinds of disputes between the stakeholders of FIFA and she was invited to lead legal seminars at different football associations worldwide.

Later, she decided to broaden her horizons, and her interests in music, design, film and the arts prompted to a return to her roots as an attorney, this time with a large law firm specialising in entertainment law. After gaining experience there, she decided to realise another of her dreams, which was to be her own boss, and so she dared to set up her own law firm (MS Entertainment Law) in 2010.

Having developed a detailed insight in 'football law' with the game's world governing body, it goes without saying that her core competence is representing players, coaches, clubs and agents as well as associations, leagues and players' unions worldwide in football-related matters both in and outside of the courts.

## **What role does MS Entertainment Law play in the world of sports?**

MS Entertainment Law is a fusion of legal knowledge, passion for football and

a big piece of MS (Melanie Schärer). As I'm running MS Entertainment Law by myself at the moment, it is a small player in the sector but a unique one, because

each and every one of my clients receives a service that is tailored to his or her needs. MS Entertainment is a service hub where all stakeholders within the football family can seek advice in numerous different situations, for example, they might be involved in a dispute, wish to prevent or initiate claims or disputes, need a contract reviewed or want to draft a contract, statutes or regulations.

## **Does your work focus on certain sports? And if so, why do you choose to limit yourself?**

Yes, my core competence is football law. That's only natural after having spent several years with FIFA. I see it as a specialisation rather than a limitation. Law can be compared to medicine. There are so many different areas of knowledge and experience that it is advisable to consult an expert rather than a generalist if you have a specific problem. If I was suffering from severe chest pain, I would much prefer to consult a cardiologist than a general practitioner. It is the same when it comes to football. It's wiser to speak to a 'football' lawyer with specialist expertise than a friend of a friend who's a





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general law practitioner or an expert in criminal law, although he might come in handy too one day – we all know what a wild sport football can be (laughing).

**In a male-dominated field, what are chances of women gaining recognition?**

I believe a football lawyer can gain recognition by being, first of all, a good listener. It's important to understand the needs of your client and not to assume anything. Secondly, your reputation is enhanced by doing the job in a professional, energetic and efficient way. These are the keys to success in my opinion and they apply equally to men and women. However, it might be that women still have to listen and perform better to receive the same recognition as men. I hope this will change soon, because I see women as being very well-suited to the field of football law. Apart from the fact that male and female lawyers receive exactly the same legal training, some people think that women are able to provide clients with a better service due to their female characteristics; for example, a female lawyer may be considered more trustworthy, more willing to help her clients, have greater empathy and intuition and better soft negotiation skills, yet at the same time, where necessary, she will fight for her clients like a lioness defending her new-born cubs. Having said that, I'm convinced that the more women enter the legal side of football, i.e. the business side, the better chance football has of becoming a 'cleaner' business.

**How do you view the state of legal issues in sports?**

Football has become a global business machine where lots of money is made. And wherever lots of money is made, lots of lawyers are needed. It's kind of a 'law of nature', I suppose. Football has lots of areas where laws and regulations must be respected and the football business is governed by lots of contracts, including sponsorship deals, TV rights contracts, stadium construction contracts, player

contracts, commission contracts, match agreements and statutory work for associations and clubs, to name just a few. On top of that, there is a lot of litigation. Where people come together, disputes arise and have to be resolved. Every year, the judicial body of FIFA rules on almost 2,000 disputes and 1,000 minor registration requests from all over the world. And the numbers are increasing, as is the legal complexity of these cases. So it pays to know a good football lawyer.

**What are training compensation and solidarity contributions?**

Training compensation and solidarity contributions are two mechanisms for rewarding clubs that invest in the training and

ing club(s) when a player signs his first contract as a professional and each time a professional is transferred up until the end of the season of his 23rd birthday. Under the solidarity contribution mechanism, if a professional is transferred before the expiry of his contract, any club that has contributed to his education and training receives a proportion of the compensation paid to his former club, a so-called solidarity contribution.

**Are the principles of training compensation and the solidarity contribution truly being implemented and what are your observations?**

Yes and no.

Yes, because the mechanisms are in place

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education of young players. These mechanisms were introduced by FIFA in 2001 based on an agreement that was reached between FIFA/UEFA and the European Commission that March. New jurisprudence had changed the football business in such a way that clubs were no longer allowed to claim compensation from the club to which a player was transferred upon expiry of his contract. Consequently, to ensure clubs were not left without any remuneration for the work they put into training and educating young players and to encourage the clubs to keep investing in player development, FIFA introduced a system to reward clubs. According to the mechanism of training compensation, compensation is paid to a player's train-

and for several clubs in this world they bring a welcome addition to the annual budget. Brazilian and Argentine clubs in particular are receiving payments from European clubs as part of international transfers involving their former players. As for the amounts that a club can receive based on this mechanism, it is difficult to give figures because the range is so huge, from 200 euros up to as much as 2.5 million euros, if by chance your club trained and educated a world beater.

No, because only a very small percentage of the clubs that would be entitled to receive compensation are aware of their entitlement or, even when they are aware, they lack the perseverance to obtain it after a single failed attempt or because they lack



the knowledge about how to claim this remuneration. There are two major problems in this respect. One is prescription. Claims for payment of training compensation and solidarity contributions must be lodged within two years of the player being registered for his new club. Training clubs often don't keep track of their players as they are transferred around the world, so this two-year period can pass quickly. The second obstacle is missing documentation. It goes without saying that without proof that a club trained and educated a certain player, it is difficult to make a claim for compensation. Keeping a record of your players is a key task. However, for those who are aware and know how to claim, these mechanisms can without doubt make a significant financial contribution to clubs that are doing such important development work.

**Do you think athletes' legal issues are being addressed properly?**

No, not really. Many players believe that their agents and managers are taking care of their legal affairs. However, based on my experience, agents might be brilliant door-openers to clubs, so get opportunities for the players, but very often they give too little attention to contract work. I've noticed that they often don't check whether a contract has been translated correctly, they do not properly dissolve the contract with their client's former club before he signs with a new club, they neglect jurisdiction and the choice of law clauses, or they even sign clauses that are contradictory to FIFA regulations. Something that I also often see is that agents also take what I would consider to be a disproportionately large share of the player's income in commission. All these things make lawyers happy, of course, because they bring us a lot of work. However, I'm happy to advise my clients before they sign contracts to avoid legal issues like these at a later date.

**There are frequently disputes between athletes/coaches and their employers.**



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**What can be done to curtail this?**

Apart from the 'disputes' involving clubs claiming training compensation and/or solidarity contributions, which I mentioned already, the disputes I deal with mainly concern outstanding wage claims by players or coaches, and outstanding commission claims by agents. I also see many claims for compensation due to termination of contracts without just cause. Sometimes these claims are from players or coaches whose salaries have not been paid or who have been 'kicked out' of a club. At other times, it is clubs who approach me because players have walked

out in breach of legally binding contracts. Likewise, clubs often contact me because other clubs have failed to adhere to the terms of transfer agreements that they have signed. To sum up, disputes between the stakeholders of football most often concern non-compliance with contractual agreements.

**Legally, what structure would you advise sports federations to put in place to assist development?**

A key aspect for the development of football is that clubs are rewarded for their work so that they have the financial

means to continue to train and educate players. To this end, it's important that associations have a national system in place to reward clubs. This can either be based on the FIFA system but be adapted to the characteristics and requirements of the country in question or it can be a different system altogether, set up specifically for that country. What is important, however, is that the system is respected and that the associations help to implement and enforce the rules.

Another useful tool would be to set up an arbitration body that can be addressed by registered clubs, players and coaches when they have contractual disputes. Such an arbitration body should represent the interests of clubs and players equally to ensure equal treatment and fair judicial proceedings.

Finally, I think it is important that the association itself establishes statutes and regulations that are in line with the FIFA regulations and also comply with general principles of law, such as the principle of separation of powers. It's also essential that qualified personnel are employed in order to raise levels of professionalism. In addition to that, I think it is necessary that the people working for the associations are rewarded appropriately for the important work they do. The workload of the associations is immense, so I think that it would be justified to allocate a share of training compensation and solidarity contribution claims or of the transfer fees affiliated clubs are entitled to receive to the association to compensate the huge amount of administrative work carried out by the association's employees.

**Presidential elections in sport often turn into bitter contests leading to legal action. What is the legal situation in these cases?**

This question reminds me of an appeal the Liberia Football Association (LFA) sent to the Court of Arbitration for Sport (CAS) concerning the African football confederation's presiden-



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tial election in Mahe, Seychelles last September. When I read the CAS press release saying that the appeals procedure had been terminated because the LFA had not complied with the requirements of the CAS regulations as it did not file an appeal brief to confirm its prior statement of appeal, I found myself thinking that CAS would have considered the case if the LFA had only worked with a football law expert who knew how to lodge an appeal correctly. Of course, this is only one example to

underline the importance of a good legal adviser; I did not follow the case in detail. What is clear is that presidential elections are about politics, a very delicate topic. Ultimately, the most qualified person should be elected by a process that adheres to the electoral code. Sadly, politics are sometimes stronger than the law and this is the case in all areas of human life, not just in sport. One tool to combat this problematic issue might be the limitation of a president's term of office.