

Professional Football Players' Contracts Under Turkish Law

■ by Anıl GÜRSOY*

A professional sportsman is a person who is specialized in a branch of sports and performs in exchange of a fee in competitions as a profession.¹

“Professional player” is a term that has been defined as “a *Professional is a player who has a written contract with a club and is paid more than the expenses he effectively incurs in return for his² footballing activity*” at Article 2 of the FIFA (Fédération Internationale de Football Federation) Regulations for the Status and Transfer of Players. The criteria for being a professional player have been set by the DRC (FIFA Dispute Resolution Chamber) and CAS³ (Court of Arbitration for Sports) in several cases. While deciding on a player’s status, the player’s profession, age, and ratio between his costs and remuneration play an important role.

A contract has been defined by the Turkish Code of Obligations⁴ Article 1 as “*Contract to be concluded, a manifestation of parties’ mutual consent required.*” Reduced to simple terms, a contract is an agreement between two or more parties that imposes some kind of obligation or responsibility on each.⁵

The most simple and appropriate definition of a professional player contract would be: “A contract which is concluded between a registered club as professional and a player whose intent is to serve his footballing activity under that Club for a period of time and fee.” As it can clearly be seen from the definition, amateur Clubs and players cannot be party to this agreement.

LEGAL CHARACTER OF PROFESSIONAL PLAYERS CONTRACT

According to most of the legislation throughout Europe, professional players’ contracts are subject to the Labor Law. On the contrary, in Turkish legislation sportsman are excluded from the Labor Code.⁶

Since there is no difference between physical, artistic, technical or scientific activities, all kinds of labor can be subject of an employ-

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¹ Stücheli, p.34.

² References to the male gender in this study in respect of players are for simplification and should be considered for both males and females.

³ See decisions; CAS 2005/A/838 FC Girondins de Bordeaux c/ Lyngby Boldklub et Lundtofte Boldklub and CAS 2006/A/1177 Aston Villa F.C. v/B.93 Copenhagen.

⁴ Turkish Code of Obligations, Law No 818, entered into force on 22 April 1926 (last modified on 2005) Adapted from Swiss Code of Obligations.

⁵ Dougherty & Goldberger & Carpenter; Sport, Physical Activity & the Law 2002, p.115, para. 10.

⁶ Labor Code, Law no 4857, entered into force on 22 May 2003, “Exceptions” heading Article 4/g.

ment contract;⁷ thus, professional players' contracts can also be considered to be an employment contract. In Article 313 of the Law of Obligations, an employment contract is defined as “. . . a contract whereby the employee is obligated to perform work in the employer's service for either a fixed or an indefinite period of time, and the employer is obligated to pay wages based either on time periods or on the work performed.”

Several arguments have been made by scholars about the legal character of a professional player's contract. Some of the scholars argue that although these contracts are excluded from the Labor Code, players are employees of the Clubs and some rights like the right to strike should be granted to players. It is my opinion that the contracts of the sportsmen cannot be classified as employment contracts since the Labor Code excluded sportsmen from its application. Another group argues that since the wages are astronomically high, players are “entrepreneurs.” However the criterion of being paid astronomically cannot lead us to such conclusion especially when we consider how wages vary among players playing in different leagues.

In its decision⁸ also, the Turkish Court of Appeals defined the contract as an employment contract.

According to Law of Establishment and Objectives of Turkish Football Federation (TFF) No 3813, the TFF has jurisdiction over disputes within the football family.⁹ The TFF is of the opinion that these contracts are also employment contracts as defined under the Code of Obligations. However, taking into consideration the specificity of football and by interpreting the laws, TFF has created a *sui generis* law for football disputes (e.g. special procedures to conclude and terminate the contracts.).

PROFESSIONAL PLAYERS CONTRACT UNDER TURKISH FOOTBALL FEDERATION'S REGULATIONS FORMATION OF A PROFESSIONAL PLAYERS CONTRACT

As the sole authority for football in Turkey, with the power from the Law of Establishment and Objectives of Turkish Football Federation, the TFF enacted several regulations.¹⁰ The Regulation for Professional Football and Transfer¹¹ (PF&T) intends to ensure that clubs form professional football teams, and to improve football and to set the principles of professional football. The relations between clubs and professional players are controlled under this regulation.

“*CONTRACT: ARTICLE 25 –*

Each professional player contract shall be drawn up in four copies on the basis of the uniform contract prepared by the Federation and shall be certified by a notary public and approved by the Federation.

Any contract that fails to comply with the uniform contract prepared by the Federation or with the related legislation shall not be approved by the Federation.”

⁷ Reisoglu, Hizmet Akdi, p.39; Semidt, p.330.

⁸ 10th Civil Chamber of Court of Appeals, 24.01.2974 docket no: 1974/199 decision no: 1974/1274.

⁹ OBJECTIVES OF THE BOARD OF ARBITRATION - ARTICLE 14- (Amended on 05.05.2005 – 5340-11) The Board of Arbitration examines and renders the final decisions upon the appeals lodged by the related parties on the decisions of the Executive Committee with respect to the disputes arises between Federation and clubs, the Federation and referees, the Federation and technical directors and coaches, clubs and technical directors, coaches, player agents and physiotherapists clubs and players, clubs and clubs and the appeals lodged against the decisions of the Disciplinary Committees.

¹⁰ Statute, Regulations for each league, Football Competition Regulation, Regulation for Professional Football and Transfer, Disciplinary Code, Appeals Committee Regulation, Club Licensing Regulation, Stadium Security Regulation, Accreditation Regulation, Broadcasting Regulation, Equipment Regulation, Anti-Doping Regulation, Player's Agent Regulation, Amateur Football Regulation, Technical Staff Regulation, Referee Committee's Regulation, Fair Play Regulation, Medical Staff Regulation.

¹¹ Regulation for Professional Football and Transfer, edition December 2006.

There are three main conditions which are set forth in the above mentioned article;

1. Pre-printed Uniform Contract

TFF has prepared a pre-printed uniform contract which has been discussed among stakeholders and lawyers.

According to Article 11 of the Code of Obligations, *"In order to be valid, a contract is only required to be in a particular form if the law so requires."* Article 314 of the same Code states that *"Unless otherwise provided for by Law, an employment contract requires no special form in order to be valid."* The uniform contract has been defined by TFF regulation; it is obvious that this is not a Law with respect to the hierarchy of laws concept in Turkey. However, the Law of Establishment and Objectives of Turkish Football Federation No 3813 has no article regulating professional players but gave full authority to the Federation to make all necessary regulations to organize football.¹² Therefore this regulation of uniform contract is accepted to be legal.

"Freedom of contract" is the main principle under both the Common Law and Continental Law systems. It is the underpinning of the theory of *laissez-faire* economics and is justified as a benefit to society.¹³ In simple words, *"freedom of contract"* is the idea that individuals should be free to bargain among themselves for the terms of their own contracts, without government interference.

This principle is the outcome of the liberalization period which began in the 19th century. However, the effects of the 1st and 2nd World Wars changed opinions about freedom of contract. Economic improvements, changes in the roles of Governments in economic life, population growth, new types of commerce, etc., brought new perspectives to the *"freedom of contract"* principle. Pre-printed uniform contracts followed.¹⁴

In Turkey, the first pre-printed uniform contracts were used in the service sector. The big department stores which had a dominant position in the markets began to offer pre-printed uniform contracts for their customers to make the payment in installments. Then credit card contracts entered into commercial life and others followed. The party which is in the dominant position does the *"offer"* with the pre-printed contract; by signing the contract the client does the *"acceptance,"* then the contract is concluded. In this contractual relation the client has no opportunity to discuss any article of the pre-printed contract. For this reason the application of *"freedom of contract"* principle in such contracts has become doubtful; for this reason, under the common law such contracts are called *"adhesive contracts."* However these pre-printed uniform contracts were prepared to meet the needs of the fast growing commercial world.

Therefore, the authorities tend to accept that these contracts do not affect the *"freedom of contract"* principle; since the parties concluding such contracts are willing to do so, there is therefore a freedom of choice at the very beginning. In addition they argue that the two main articles of the Code of Obligation should be applied to such contracts to draw the borders of a contract: Article 19 and 20.

¹² OBJECTIVES OF THE FEDERATION - ARTICLE 2 – The objectives of the Turkish Football Federation are as follows:

a) To monitor football activities, to promote the development and expansion of football throughout the country, in order to achieve these objectives to make all necessary regulations, take decisions and implement them...

¹³ See also; Dr. E. Younkins, *Freedom to Contract*; <http://www.quebecoislibre.org/younkins25.html>.

¹⁴ Dr. Ayrancı, *"Sözleşme Kurma Zorunluluğu"*, Ankara Üniversitesi Hukuk Fakültesi Dergisi, 2003/1, p.229-252.

Article 19 of the Code of Obligations states that *“The content of a contract can, within the limits of the law, be established at the discretion of the parties. Agreements deviating from what is provided for by law are valid only if the law does not contain mandatory provisions which may not be modified, or where such deviation does not violate public policy, boni mores or basic personal rights”*

Article 20; *“A contract providing for an impossibility, having illegal contents, or violation boni mores, is null and void. If such defect only affects particular parts of the contract, however, then only those parts shall be null and void, unless it is to be presumed that the contract would not have been concluded without the defective parts.”*

In conclusion, pre-printed uniform contracts do not interfere with the “freedom of contract” principle, however judicial bodies have a tendency to interpret such contracts in favor of weak party.

When the TFF’s uniform contract is compared with other types of uniform contracts, it is clear that it has different characteristics. The parties are free to agree on and put any condition that is not against the Regulations of the TFF and the basic principles of Law in these contracts. The core idea of mandatory pre-printed uniform contracts is to create a “fill in the blanks” type of contract in order to ensure the essential elements of a contract are covered.

It is a fact that the professional players who play in the leagues other than the top league of their country are more numerous than those who are playing in the top league. Unfortunately this majority needs more legal assistance than the top league players – since their talents are limited, their profession and service are more open to abuse.

UEFA’s (Union des Federations Européennes de Football) Circular Letter No. 32 of 18 May 2007 is proof of this theory. With this circular letter, UEFA promotes the European Professional Player Contract Minimum Requirements and encourages the member associations to adopt those requirements into their systems. In this circular letter, the basic form and elements of a professional player contract has been defined.

When this circular letter and TFF’s uniform contract and the transfer system thereof are compared, it will be clearly recognized that TFF’s procedure and regulations totally meets the criteria set by UEFA.

2. Notary Public

The parties to the professional players’ contract shall sign the contract before a notary public. If a contract is not signed before a notary public, the TFF would not approve and issue a license to the player. Therefore it has been argued whether the notary public condition is a validity or formal condition.

As mentioned above,¹⁶ a contract shall solely be required in a particular form if the law requires so. In Turkish legislation, there are a few types of contracts which have been required by law to be in a particular form; if the parties fail to do so, the agreement would be null and void. However, if the parties fail to sign the professional football

¹⁶ Turkish Code of Obligations, Article 11.

player contract before a notary public, this contract would be a valid contract before Law but will not be approved by the TFF.

The sole concern of the TFF in requiring the signature before notary public is to verify the signatures of the parties in order to avoid the denial thereof in the future. Requiring this condition and avoiding such objections ensure the stability of football.

When the contract is concluded before a notary public, the notary public also certifies the actual date of effectiveness. Since the professional players' contract would be effective at the moment when the parties conclude the contract before a notary public, the importance of effective date could be understood better.

As a conclusion, notary public approval requirement is not a validity condition but a formality condition.

3. Registration of Contracts and Issuance of License

“REGISTRATION OF CONTRACTS AND ISSUANCE OF LICENSE: ARTICLE 26-

All amateur and professional players must be registered under the Federation in order to be eligible to play in any organized match or is subject to the permit of the Federation.

...

In order for a professional player's contract to be registered, the following documents must be submitted to the Federation:

- a) Three copies of the notarized contract,*
- b) A health committee report stating that the player can play football,*
- c) A receipt evidencing that the amount, which shall be set and announced by the Federation prior to the first transfer and registration period every year and collected in the form of a life insurance for players from each club on behalf of players during transfer and approval transactions, has been deposited in the bank account of the Federation's Social Support and Solidarity Foundation,*
- d) The receipt evidencing that the transaction and approval fees determined by the Federation prior to the first transfer and registration period every year and payable during the registration of player contracts has been paid to the Federation's bank account, and*
- e) All other documents as may be requested by the Federation”*

In order for a professional player's contract to be registered and for the player to be issued a license, the above-mentioned requirements must be fulfilled. The most important ones are:

- a) Three copies of the notarized contract*

The professional players' contract must be signed by both the club's authorized representative and the player in 4 copies before a notary public. The original contract shall be kept by the notary public, while the remaining three copies shall be submitted by the club to the Federation before the deadline set for the transfer and registration of players. Two copies of the registered contracts will be kept by the Federation. One of these copies shall be forwarded to the Inland Rev-

enue Authority, Ministry of Finance. One of the copies registered by the Federation shall be sent to the club.

b) A health committee report stating that the player can play football

There is also a health report form which is prepared by the Medical Committee of the TFF. Players must be examined by a group of specialized doctors.¹⁷

c) Insurance

It is a kind of insurance which guarantees the players retirement and payments to successors in case of death.

DUTIES AND OBLIGATIONS OF THE PARTIES

Duties and Obligations of Club

Article 27 of PF&T regulates the duties and obligations of Club. The main obligation of the Club is to pay the fees of the player; other subparagraphs reflect the best practice. The health insurance and healthcare costs are the most important issues. For the last two seasons, the TFF has undertaken the health insurance obligation of the Clubs in order to avoid player grievances and disburses the health insurance premiums of all professional players.

The most important subparagraphs of Article 27 are:

“DUTIES AND OBLIGATIONS OF CLUBS: ARTICLE 27-

Any club which signed contracts with professional players shall:

a) Pay the players the fees (monthly salaries and transfer fees) written in the contract in accordance with Article 25 of these Regulations;

b) Safeguard its players' health and take all measures necessary for matches, training activities, camps and travels in accordance with the provisions regarding health and injuries;

...

h) In cases where it imposes a fine on any of its players, provide such player and the Federation with a notarized copy of its decision to do so, the amount of such fine, together with the reasons thereof, within 10 days of the date of such decision (decisions not transmitted to the player and the Federation within the said time limit shall not be valid);

...

j) Take out insurance from its professional players from private insurers, which are determined by the Federation, against risks of permanent and partial injury, accident and death that may be incurred during matches, training activities to be performed, whether in Turkey or abroad, and during travels to and from the venues of such matches;

The premiums for such insurances shall be paid by the Federation and debited to the account of the club. Such premiums paid by the Federation may be deducted from the club's receivables from the Federation.

¹⁷ Cardiovascular, respiratory, ear-nose and throat, digestive, genitourinary, nervous, muscle-skeleton, neurology, ophthalmology systems shall be examined by specialists and they shall decide whether the player is eligible to play football or not.

The Federation determines and announces the required private insurance coverage amounts prior to the first transfer period every year;

...

m) In the event such professional player dies, pay all existing and future fees and benefits payable to such player to his legal successors;

n) Withhold all taxes deductible from his players' fees (whether salaries or transfer fees) at the time of payment and pay such taxes to the related tax office (all fees and other charges payable to the Federation shall be deducted net of any withholdings; taxes shall be deducted by the club);

o) The validity of a transfer contract may not be made conditional upon the positive results of a medical examination. The player's prospective new club shall be responsible for making all necessary inquiries and medical examinations before signing the contract, otherwise it shall be liable to pay all the amounts payable to the player's former clubs and the player arising from the contract even if the contract is not registered by the Federation."

The consequences of a breach of contract by Clubs will be explained below.

Duties and Obligations of Player

Article 28 of PF&T regulates the duties and obligations of Player. The main obligation of a player is to give his footballing service in good faith.

The most important subparagraphs of Article 28 are:

"DUTIES AND OBLIGATIONS OF PLAYERS: ARTICLE 28 –

Professional players shall;

a) Be aware of and observe all the lawful orders, instructions, regulations and rules issued by the Federation and/or their club;

...

d) Attend all training programs and other footballing activities of their club regularly;

e) Not be engaged in any sports activity without the prior written consent of their club;

...

i) On and off the pitch, avoid engaging in any offensive behaviour against his team mates, opponents and match officials that could give rise to a complaint and sanction;

...

l) In the case of illness or injury, transmit their health and injury reports to their club and the Federation within five days (any player failing to do so shall not be entitled to claim any rights arising from such illness or injury)."

The consequences of breach of contract by Player will be explained under “Termination of Contract” heading.

TERMINATION OF CONTRACT

The conditions for the termination of a contract are foreseen in Articles 31 and 32. Any notice of termination served by any party in violation of the provisions of these Regulations or the time limits and procedure given below shall not be considered and registered by the Federation.

Termination by the Club

“TERMINATION BY THE CLUB: ARTICLE 31 –

A club shall be entitled to serve a notice of termination on a player, in the event that:

a) Such player’s illness, or rest period, not connected with his footballing activity exceeds a period of six months and that such player has not contacted the club for five days consecutively or for ten days or more interruptedly for any reason whatsoever,

b) Such player has been banned from exercising his certain rights or suspended for a period of six months by the Professional Football Disciplinary Committee,

c) Such player heavily violates his obligations specified under Article 28,

d) Such player has been permanently banned from exercising his certain rights (however, if such ban is lifted fully or partly and the club wishes to continue the contract, the club must, within fifteen days following the lifting of that ban, notify such player through a notary public of its intention to continue the contract. If the club fails to notify such player duly, then the club shall release such player’s registration, provided that such player returns such portion of the transfer fee corresponding to the time period during which he did not perform under the contract), or

e) Such player has been convicted of an infamous crime, for which the upper limit of imprisonment period exceeds 6 months pursuant to the related law in force.

The club shall exercise its right to terminate the contract within 15 days from the date it becomes aware of any such event. If the club fails to exercise its right of termination within the said time limit, then the club shall fulfill all of its obligations and pay all the fees and benefits the player may be entitled to under the contract.”

A club wishing to exercise its right to terminate the contract with one of its players in accordance with these Regulations must serve a notice of termination upon such player through a notary public and transmit a copy of such notice of termination to the Federation for information purposes.

In the event a club serves a notice of termination upon one of its players, the contractual relationship between such club and the player shall cease upon receipt by the Federation of such notice of termina-

tion, provided that the rights of such parties as to the consequences of such termination are reserved.

In the event of any such notice of termination, the Federation shall ask the affected parties (by fax or certified mail) to declare, within seven days, whether they have claims with regards to such termination. The parties shall notify the Federation of their claims (compensation for termination of without just cause, imposition of sporting sanctions, etc.), if any, within seven days following the date of receipt of the notice from the Federation. Otherwise the related party shall lose their right to claim compensation and sporting sanctions.

2. Termination by the Player

“TERMINATION BY PLAYER: ARTICLE 32 –

In the event that any fee or other payments due to a player under his contract and these Regulations has not been paid within seven days following the date on which such fees and benefits are due, such player shall be entitled to terminate his contract within 15 days following the expiry of the said seven days.

If a player proves that he appeared in less than 10% of the official matches in which the club has been involved in throughout one season, he shall be entitled to terminate his contract for sporting just cause. The existence of sporting just cause shall be considered on a case-by-case basis. Due consideration shall be given to the player's circumstances [based on his injury, suspension, field position, position in the squad (substitute goalkeeper, etc.), age and previous career, including but not limited to his reasonable expectations].”

A player may only serve a notice of termination for sporting just cause within 15 days following the last official match of the season involved.”

A player wishing to exercise his right to terminate his contract with his club in accordance with these Regulations must serve a notice of termination upon his club through a notary public and transmit a copy of such notice of termination to the Federation for information purposes.

In the event a player serves a notice of termination, the Federation shall, upon receipt of such notice, notify the affected club (by fax or certified mail with return receipt requested) of such notice of termination. The date of such notice given by the Federation to the club shall be deemed to be the date on which such notice of termination is registered by the Federation and the contractual relationship between such club and player shall be deemed to have been terminated, provided that the rights of such parties as to the consequences of such termination are reserved.

In the event of any such notice of termination by a player, the player may not sign any contract with any other club until the Federation shall have considered and decided on such notice of termination. If requested by such player, the Federation may, depending on the nature of the case concerned, permit such player to sign a contract with a club within transfer and registration period.

“Sporting just cause” which is mentioned at the last two paragraphs of Article 32, has been adopted from Article 15 of the FIFA Regulations for the Status and Transfer of Players. While adopting this Article, the TFF tried to set criteria to be followed. While interpreting a termination for sporting just cause, a player’s injury, suspension, field position, position in the squad, age and previous career, etc., shall be evaluated.

Compensation

According to Article 34 of PF&T¹⁸, when the contract is unilaterally terminated, the terminating parties’ cause will be evaluated and determined by TFF whether it is based on just or unjust cause.

In the event of termination without just cause, the Federation may, upon request of the party not in breach, calculate the amount of compensation for such unjust cause by taking into account all objective criteria such as the fees and other benefits paid and payable under the existing contract, the remaining term of the contract, the rate of return to the club of the payments through the player’s performance, and whether the breach involved occurred within the time limits defined in Article 29, and order the party in breach to pay the compensation so calculated. In cases where an amount of compensation for unjust termination is stipulated in the contract, then such amount of compensation shall be applicable to the case.

If a professional player is required to pay compensation for unjust termination, then the player and his new club shall be jointly and severally liable for such compensation. Entitlement to compensation may not be assigned to any third party.

Sporting Sanction

Sporting Sanction is also adopted from FIFA Regulations for Status and Transfer of Players and it foreseen in Article 35 of the PF&T. The TFF may decide to impose a sporting sanction only if requested by the parties and applicable to the merits of the case.

“SPORTING SANCTIONS ARTICLE 35 –

Other than in exceptional cases, sporting sanctions for unilateral breach of contract without just cause or sporting just cause shall:

1- In the case of a player:

a) If the breach occurs at the end of the first or the second year of contract:

Be a restriction on his eligibility to play in official matches for four months as from the beginning of the national championship of his new club;

b) There shall be no sporting sanction for unilateral breach occurred at the end of the third year (or, in the case of a contract signed after the age of 28, at the end of the second year) of contract; However, if no notice of termination is given in due time after the last match of the season, a proportionate sanction shall be imposed.

¹⁸ “COMPENSATION FOR TERMINATION WITHOUT JUST CAUSE - ARTICLE 34 – Upon a unilateral termination notice, Federation’s Executive Committee shall determine the party in breach. In the event of termination without just cause, the Federation may, upon request of the party not in breach, calculate the amount of compensation for such unjust termination by taking into account all objective criteria such as the fees and other benefits paid and payable under the existing contract, the remaining term of the contract, the rate of return to the club of the payments through the player’s performance, and whether the breach involved occurred within the time limits defined in Article 29, and order the party in breach to pay the compensation so calculated. If a professional player is required to pay compensation for unjust termination, that player and his new club shall be jointly and severally liable for such compensation. Entitlement to compensation may not be assigned to any third party. In cases where an amount of compensation for unjust termination is stipulated in the contract, then such amount of compensation shall be applicable. The training compensation stipulated in Article 20 hereof shall be applicable separately from any compensation for unjust termination.”

c) *In the case of aggravating circumstances such as failure to give notice or recurrent breach, sporting sanctions may go up to, but not exceed, an effective period of 6 months.*

2- *In the case of a club in breach of contract:*

a) *Be a ban from registering any new players, either domestically or internationally, if such breach has occurred at the end of the first or the second year of contract. In all cases, no ban for unilateral breach of contract may exceed a period of 12 months following the breach or inducement of the breach;*

b) *No sporting sanction shall apply to any unilateral breach occurred at the end of the third year (or, in the case of a contract signed after the age of 28, at the end of the second year) of contract; However, if no notice of termination is given in due time after the last match of the season, a proportionate sanction shall be imposed.*

c) *A club seeking to register a player who has unilaterally breached a contract during the Protected Period as defined in Article 29 will be deemed to have induced a breach of contract. In all cases, the sanction defined in paragraph (a) above may, without prejudice to the time limits stipulated above, be imposed, either in part or in full, on a club inducing a termination for unjust cause.*

d) *The Federation's Executive Committee may, in addition to the sporting nature defined above, impose other penalties including, but not limited to:*

- *Fines,*
- *Deduction of points,*
- *Exclusion from competition.*

These sanctions may be appealed to the Federation's Board of Arbitration.

3- *In the case of a players' agent involved in such breach:*

Sanctions may also be imposed by the Federation's Executive Committee on any players' agent who has been involved in a breach of contract. These sanctions may be appealed to the Federation's Board of Arbitration."