

## The Legal Nature of Definitive Contracts of Football in Iran's Right

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**Abstract:** Understanding the legal nature of definitive contracts between football players and clubs is one of the most important sports law issues in connection with football. The issue that has not been addressed as much as its competence and necessity and the nature of these contracts is always in an aura of ambiguity. Even transfer regulations approval and determining the status of players in May, one thousand three hundred and ninety-three by the Federation also failed to reduce the ambiguity, because it is silent on the nature of the players' contracts with clubs. On the one hand, converting football from an exercise activity to industry and development contracts with substantial change in this area requires lawyer tries to explain the nature of these contracts, because if these contracts are evidence of certain contracts, many of the provisions relating to them exist in legal provisions and can be helpful in the interpretation of vague. However, if this is not, the reference to solve many of these disputes will be the volition of contractor parties. Although we believe these contracts have similarities with individuals and work rental, but the existing fundamental differences between these contracts with football contract, stabilize their nature in terms of 10 Civil Law Article.

**Keywords:** Football, Definitive contracts, Legal nature, Player, Club

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## Introduction

In the most important sporting events, football can be noted. The sport that is not merely an exercise today and several million transactions for transferring players between clubs, existence of sponsors with huge funds, multi-million contracts of premier league for advertising around the ground and very high income from granting of contests broadcasting rights are the factors confirm football departure from a sports activity and its entry into the world of industry (Elahi et al. 1387, 20, Moradi Chalshty 1392, 119). But unfortunately, although the importance of this sport is increasing day to day, lawyers do not pay attention to the legal nature of football contracts and the nature of these contracts is in an aura of ambiguity. Football Federation also recently adopted the regulations entitled "Regulations transfers and determining the players' status", but it has been neglected from explaining the nature of these contracts and the discussion of legal doctrine is still opened.

### 1. Definition of definitive contracts of football players

Contracts are an agreement between two or more volition which is done to establish legal effects (Katouzian 1388, vol. 1, p. 15 and Emami, 1387, vol. 1, p. 159 and Shahidi 1390, 41). However, the concept of definitive contracts of football players need to determine a few points. The first point is description of parties in this contracts and the second is subject explanation.

#### 1-1. Definitive contracts parties of football players

Football players and clubs are the parties of these contracts. Section 7 of the bylaws definitions section defines football player as "Each football player who is allowed to compete by the Federation." Section 3 definitions also defines club as: "The club is an organization with a valid license which is founded according to the Ministry of Sports and Youth and is registered in the Companies Registration Office and is a member of the FA Cup and the league."

#### 1-2. Football contracts subject

About football contract, two basic assumptions can be reviewed. The first assumption is that football contract topic is acquiring interests of football player to the club. Thus, if the contract of football be assumed as acquiring interests of football player to club, in this case, a football contract is a contract in that football player acquires his interest to the club in a given period of time and serves in the club like a certain hired. However, nowadays experts believe that hiring in particular, does not acquire an interest. They believe that the current human rights cannot be committed against another and laws forced him to implement the commitment, but this person has no right to take another owner as the master himself (Katouzian 1391, 1: 572). For this reason, some of them use committed in definition of hired and they considered hired as a person who is committed to do activities against another (Adl 1373, 286).

In this way, acquiring the interest of the player to the club can't be the subject of the contract. So we must turn to the second hypothesis, which argues that football contracts subject is commitment of players and clubs against each other. Under this assumption, by signing these contracts, obligations arise for players and clubs that obligate parties to follow them. But the fundamental question is whether this commitment is the main element of the contract?

In our opinion, football contract is a discussion beyond the commitment of the player and the club to each other. Player by signing contracts will be a member of the club and takes parts of his prestige and reputation from this club. He will be nurtured in this club and its sports facilities and his skill and talent will be added every day. Hence, football contract subject must be considered "in becoming a member of a special club." Membership element can justify this strong link better than anything. In particular, contract effect is never bound to make a commitment in Islamic Jurisprudence and legal effect of Iran. In Islamic law, contract sometimes causes to create and transmission of objective right

and sometimes is the basis of legal personality creation and sometimes transfers and voids commitments (Katouaian 1391, 1:19). So, this is not erroneous, if we consider "subscription" as the main subject of contracts between clubs and players and we know "club membership" as the main effect of such a contract. Some regulations and contract sample form of clubs and football players also confirmed our opinion. Accordance with paragraph 1 of Article 40 of the bylaws "if the professional club stocks be transferred, the status of existing contracts would not be changed." It can very well manifest that unbreakable bond between player and club is derived from the membership element. Also, the Article 2 of sample contract refers to being "member" of player in the contract definition more than anything. In this matter, football contract includes "using the player as a member of the club ..." Also in Section 4.1 of the contract, the first and most important task of the club to player is "Respect for the player personality as an element of human structure of the club" and regulations define the previous club as a club in that the player has been registered in.

Now, after identifying the parties and football's definite contract subject, comprehensive definition of this contract can be proposed. So the definitive contract includes "The contract which is signed between the member clubs of the Football Federation and football players according to regulations and the status of players, according to which the player receives a certain amount of fee and using for technical and training services of club for a certain time and committed to take responsibilities."

## **2. The legal nature of definitive contracts in football**

Once familiar with the definition of a football contract, it is the time to recognize its nature from the other natures. This discussion is not important just in theoretical perspectives, but its practical result is striking. If a definitive contract in football is a certain contract, so many of its provisions are determined by law and this issue can be path finding in analyze and explain the duties and obligations of the parties, formation of the contract and dissolution and make an exact criterion for the researchers. While if those contracts are anonymous, then parties' Volition or some related rules are the only source of commentary and analysis.

To answer this question two assumptions may be raised. First, it is assumed that the definitive contract between football players and clubs be typical individual leases. Each player like a hired commits to be available for a certain time and performs sports activity. However, some people may believe, these contracts should consider a clear example of the employment contract. Second, we survey the second assumption below and at the end we express our chosen terms.

### **2.1. People leasing**

As noted above, some may consider definitive contract of football players as people leasing. Thus, we need to first determine whether these two contracts have a common denominator or not? In the following distinguishable points should be searched, so that we answer this question whether definitive contracts of football are lease of people referred to in Article 512 of the Civil Code or not?

#### **2-1-1. Similarities of people leasing with definitive contracts of football players**

The most important similarities of people leasing and definitive contracts of football players can be summarized in being temporary and permanent. In accordance with Article 514 and 515 of the Civil Code, lease contract is temporary contracts. In this regard, Article 19 of the regulations also acknowledges "Contract duration of professional players (1) is maximum five sports season at least at the start date to the end of that season" and in paragraph 4 of Article 3 it declare one sport season for the amateur players. In other words, determining the duration of each contract is considered as contract components and clears and specifies the scope of the commitment of the people. For this reason, even if the time not be mentioned in any contracts, contracts will be voided. (Shahidi, 1388, 88)

Also, people leasing and football players' contracts are continuous contracts. Continuous contract is a contract in which, contract subject must be done during a certain period and in the face of this contract, there is immediate contract in that contract effect is attained at the moment that parties have chosen and its subject is not flow during the term of the contract (Amiri Gem Maghami, 1353, 87: 2). Gratuitous is one of the commonality of two contracts.

### 2-1-2. Differences of people leases (2) with football players contracts

Jurists and legal scholars are disagreed about the effect of people leases (3), however, the effect of people leases is not out of owned or covenant state and the third effect of this contract is not mentioned. However, in our opinion, contract subject of football players is "Player membership in a club" and it can be the main effect of this contract. Some of the materials of bylaws and sample forms of contracts with the clubs also support our opinion. Accordance with paragraph 1 of Article 40 of the bylaws "If the professional club stocks be transferred, the status of existing contracts would not be changed." It can very well manifest the unbreakable bond between players and club resulted by membership. Also, Article 2 of the sample contract (4) in definition of football contracts refers to the player "membership" more than anything. In this article, football contract includes "using players' services as a member of the club." Also, in Section 4.1 of this contract, the first and most important task of the club to player is "Respect for the player personality as an element of human structure of the club" and regulations define the previous club as a club in that the player has been registered in. This has led football contracts be vary in many ways. For example, in certain people leasing in which hired conductorship is required, if the hired sign a contract with another person, that contracts is valid, although can't be able to do the subjects of first contract, because by the contract for tenant, religious right has been created that only can request hired obligation to do the committed subject and don't have authority to cancel the other contracts and where coercion is not possible, the court may determine the amount of the fine for each day of delay and when the hired does not tend to work, tenant has the right to cancel the contract and claim damages from the operator's lack of commitment. (Consistory, 1388, 579) However, this subject is in the assumption that the contract effect is its commitment to the hired person. However, when we consider acquiring as the contract effect, the second contract would not be void. In this assumption, some believe that if tenant has paid the hired remuneration and hired contracts with another, the tenant can refunded the remuneration or the second contract will belong to tenant permission, because hired benefits belongs to others and any contracts blunt second contract

(Hashemi Shahroudi 1423, 29-30 and Mohaghegh Damad and Nematollahi, 1385, 33-34).

While, football player can't join a team after signing a contract with another club or even negotiate with another club for signing a contract. If the player attempts to do so, and various dates of the contract, the first contract is valid and for the second contract, thirty percent of the total amount of compensation to the highest contract must be paid to the first club.

This suggests that, the contract effect of football players is not acquiring and neither commitment, but it is "membership" that could explain the mentioned regulation. This is the element that open the way restricting many freedoms of players and let clubs creating certain restrictions for players; the subject that can't be included in leasing people contracts, since acquiring the benefits or commitment have areas that are not allowed to create such restrictions. For example: Football player with this contract is committed not to interview with the media without the permission of the club and if he interviewed by the club permission, he should comply all rules and regulations of the club and does not participate in radio and television programs without permission. Also, in this regard, paragraph 8-5 of sample contract states: "In order to preserve the rights of the contracting parties and clubs, leagues organization and other clubs and respecting mutual principles, the player is not allowed to criticize players, coaches, fans, managers of the club and other clubs and the league and federation officials (commissioners and referees) in visual media, audio and text and etc. under any circumstances.

Moreover, if the contract of football players is leasing evidence, the relationship between the player and the club must be stopped upon dissolution. However, the situation in the bylaw is not like that and in some cases some effects are imposed on a player even after the cancellation of the contract. For example, according to Article 5 of the bylaws, professional player can say goodbye to his football activities after completion of his contract, but if he decide to play again after thirty months, he has to sign contract with his last contracted club and he can't serve in other clubs.

Moreover, leasing contract is consensual and the legislator has not predicted a particular form of expression the volition. The principle in on consensual contract and in suspicion, the principle should be founded on being non-formal. However,

football players' contract is formal. In accordance with paragraph 1 of Article 20 in bylaw, after completing, contract should be adjusted in the club's official letterhead with the logo of the club and club manager should sign and stamp it and the player should sign it without any line breaking. Also, termination the contract after signing and stamping must be submitted to the league and players and two copies will be retained by the club. In this way, in our opinion, the nature of football players' contract is apart from leasing people and this contract can't be justified on the basis of a lease.

## **2-2. Contractor**

It may be assumed that, contract of football players is work contract evidence. The player is like a worker, who performs sport activities under the authority of an employer called club and monthly he earns salary from the club. Some of the issues contained in the sample bylaws and contract also wages this interpretation. Application of right in paragraphs 4-2, 6-2, 6-3, 6-5 and 5-14 in the sample contract is often associated with the concept of wage or work right specified in the work contract. Also, a player can request leave in accordance with clause 4.7 of the contract and in this regard, he is assumed as a labor that has request to leave. Moreover, in accordance with clause 4.8 in sample contract, if an accident occurs during competition, training, camps, sports trips or gym sessions which cause damage to the player, the club is responsible for providing medical care. This can be supported by the social security of workers on the job-related injuries. Thus explaining the similarities and differences of these two contracts seems necessary to determine the legal nature of contracts of certain players.

### **2-1-1. Similarities of definitive contract with football players' contract**

In addition to being continuous and valuable consideration, depending on a person is another similarity that can be seen between these two contracts. In the work contract, the subject of the contract shall be made by the specific party and the contract is no longer possible for another one. This is evident in the contract of football players. In other words, in both of these contracts, the parties' character is the main cause.

### **2-1-2. Differences in work contract with a definite contract of football players**

Despite the expression of similarities, they have fundamental differences which make them two separate natures. Some important differences have been noted below.

First: According to Article 2 of the Labor Law, work contract is accepting term or indefinitely. In other words, determining the time is the elements of contract and legislature sought to give the permanent character to these contracts (Allah Hamadani, 1342, 65). However, according to Article 19 of the Regulations, contract of football players must be signed temporary and time determining is its authenticity conditions.

Second: Regulations explicitly refers contracting parties to civil and commercial law. Paragraph 4, Article 39 states that "The parties have freedom of contract under civil law and trade". While, if the authority of this bylaw considered the player as a labor or even saw similarities between these two, undoubtedly guided the parties to comply with the provisions of labor law.

Third: The main criterion for distinguishing these two contracts is "compliance" (5). Labor is a person who works under the orders of his employer, while football player has full freedom to perform the subject of contract. It is true that the player is trained under technical staff and plays according to the teaching and technical staff and where the technical staff will determine, but he has freedom on the football field or other obligations and act in accordance with his creativity and ingenuity.

Fourth: According to Article 224 of the Civil Code, "the meanings of words related to customary predicate contracts" and where words need to be interpreted. Nobody calls a football player a labor and the club is also not an employer, but in the norm, a player is a real person who joins the club as a legal person and he is committed to doing certain things against it.

Fifth: According to the Articles 85 and 86 of Direct Taxes Code, the employer is responsible for paying taxes on their labor rights, while the taxation of profits made by football players must be paid by them.

These differences and other differences like this make us believe that we should consider separate nature for football player contracts.

## **3. Author's view**

After the discussion about previous issues, we have reached the conclusion that football player's contract cannot be justified by any of the specific contracts. This contract has independent and separate nature that is discussed. Because of this contract, the player becomes a member of the club and dedicates all his skill and creativity to his team. The club also looks at him as a member of the club human resource and provides him all necessary technical facilities and training for his growth.

This contract is a contract in that sovereignty principle of volition is still shading and the parties' obligations benefit will form under its shadow and free volitions and no responsible person can be involved in the signing of the contract. Thus we believe that football player contract, is an independent contract, in that legal source can be considered Article 10 of the Civil Code.

This article states: "Private contracts are valid toward those who have signed it if it is not against the law." So this contract would be in the category of anonymous contracts. However, because of the importance of football and their contracts with sport clubs, today involved agencies have been prowling in this regard to make a special order on these contracts. But, in our opinion the measures are not enough and the legislature and government must adjust and approve new laws about the contract of football players according the most advanced programming in the sport and introduce this contract to the world of law as an emerging contract. This action expands the supervision scope of regulatory bodies and dams the way on the legal tricks.

#### 4. Conclusions

We knew that, at first glance, definitive contracts between players and clubs are similar to some contracts such as leasing people and work contract. The similarity of the mentioned contract with leasing contract is in the way that makes the player committed to the club like a hired in a specified period. While we have demonstrated that the effect of such a contract is different from leasing contracts and these two contracts are different. So that, the effect of definitive football contracts is membership unlike the leasing contract.

Comparison of football definitive contracts with work contracts rejects any substantial similarity between these two contracts, so that compliance element can be the main difference between these two contracts. On the other hand, temporality of

football definitive contracts unlike work contracts that can be permanent is considered as the difference between these two cases. In short, it should be said that football definitive contracts are legally has distinct nature of formal contracts, in this form that they should be considered as indefinite contracts (Article 10 of the Civil Code). According to author, legislative involvement in the formulation and preparation of certain contracts in order to organize football definitive contracts is necessary and inevitable.

#### Notes:

- According to paragraph 1 of Article 3 of the bylaws, players who participate in organized football are divided into two categories: professional and amateur players. According to the paragraph 2 of this Article "Professional player is a player who has written a contract with a club and the fee which is belonged to him is more than the costs that he incurred. Other players regardless of the presence or absence of a contract are considered as an amateur player".

- Jurists and lawyers also divide the leasing people in two categories: general and specific persons and speak about specific and general hire by this validity. From the perspective of jurists, specific hired is a person who is in the leasing of another person for a certain time and give his benefits to the other and his stewardship in doing action is required while general hired sign contract with another one for a certain issue and his stewardship is not a condition (Toosi 1408, 268 and Ibn al-Halabi Zohre in 1417, 288 in 1408 and Mohaghegh Heli, 2: 146 and Allameh Helli 1413, 6: 156 and Esfahani, 1409, 129 and Yazdi 1420, 5:81).

- Some jurists consider that as absolute owned without making differentiate between different types of leases (Fadel Abi 1417, 2: 30 and Haeri Tabatabai, 1418, 10:29) and some other can separate in this regard, by this mean that they consider the specific leasing people as owned and general leasing people as covenant (Qazi Ibn Braj 1411, 478 and Ibn Idris Heli 1410, 470: 2). Some are mostly contemporaries and consider leasing people absolute covenantal (Hashemi Shahroudi, 1423, 24: 2).

- The sample contract is a contract that the Football Federation has published it for public information in the media (Fars News Agency www.farsnews.com, 92/03/03).

- The compliance element is used to separate the work contract with leasing people. If the purpose of compliance element is that the labor should work based on employer's order and rule does not have initiative in doing the subject of the contract, while in the contract of leasing people, the hired person have freedom in doing the subject of the contract and he can work based on his creativity and programming (Araghi 1389.1: 1382 110, Barati Nia, 79).

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