

UDC 349.222

DOI <https://doi.org/10.32849/2663-5313/2020.12.15>

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## SPECIFIC FEATURES AND LEGAL NATURE OF CONTRACTS OF FOOTBALL PLAYERS IN UKRAINE

*The article is devoted to the analysis of the specific features and legal nature of the contract of football player in Ukraine. Authors analyzed the most important sources of law of Ukraine and competent national and international organizations, which regulate the structure, form and minimal requirements to the football contracts in our country. Particularly, the list of the relevant normative acts in this sphere consists from the Code of Laws on Labour of Ukraine, the Law of Ukraine “On Physical Culture and Sport”, Football Federation of Ukraine (at the moment Ukrainian Association of Football) Regulations on the Status and Transfer of Players, FIFA Regulations on the Status and Transfer of Players, Agreement between UEFA, EPFL, ECA and the FIFPro Division Europe Regarding the Minimum Requirements for Standard Player Contracts in the Professional Football Sector in the European Union and the rest of the UEFA Territory. Having synthesized the most important information from these sources, the complex list of specific features of football contracts has been formed (e.g. written form, the club’s obligation to maintain the professional status, the player’s obligation to be 15 years or older, definition of a precise salary etc.). Moreover, the article has analyzed the issue of legal nature of such a contract, namely two main approaches to this problem – “labouristic” and “civilistic”, which mean regulating the aforementioned issues using the provisions of corresponding branch. In the article have also been analyzed the thoughts of scientists and the provisions of normative acts on this problem. Additionally here have been stated the main points derived from the judgment of the Cassation Administrative Court of the Supreme Court, which has included some precious interpretations of the legislative norms necessary to distinguish between civil and employment contracts, and this has been applied to the subject of the article. As a result a conclusion has been made that football contracts should be regulated by labour law. It has been summarized in the final part of the article that football should be considered an important element of the Ukrainian economy, which makes the regulation of employment relations to be considered significant; additionally it has been concluded that football contracts should be researched in particular in order to control efficiently the issues that may arise around them and in general – to take the functioning of the football sphere in Ukraine to the higher level.*

**Key words:** football contract, sports contract, employment relations, sports law, differentiation between civil and employment contracts.

**Formulation of the problem.** Football is beyond any doubt the most popular sport in the world, and Ukraine is certainly not an exception to this rule. Before the COVID-19 outbreak this spectacular kind of activity was gathering thousands and tens of thousands of fans at the stadiums and probably even more (especially nowadays) – in front of their TVs. That’s not surprising at all since our football history has plenty of bright moments: “Shakhtar’s” victory in UEFA Cup in 2009, “Dnipro’s” runner-up result in UEFA Europa League in 2015, “Dynamo’s” participation in UEFA Champions League semi-finals in 1999 etc. Not a lesser pride for us are our players whose talent has been repeatedly considered outstanding: such

ones are, for example, Oleh Blokhin, Ihor Belanov and Andriy Shevchenko, who have won the most prestigious individual award in football – Ballon d’Or.

The activity of such a demand among the population certainly needs a proper legal regulation. Sports law in general mainly overlaps spheres like civil, economic, corporative law and arbitration. However, the issue we touch upon is related to another important branch – the labour law. Athletes constitute an essential element of every sport, and unless they are not amateurs they usually sign a contract with a sports club or promoter depending on the particular activity they are engaged in. The same system is used in football.

Yet the contractual relations between athletes and their clubs in football still largely lack legal regulation, especially in our country. Taking into account the huge salaries footballers often have nowadays and the complexity of possible contractual terms in their entirety makes the legal situation in this sphere to be considered intolerable.

**The latest researches and publications analysis.** The theoretical base for the research of the aforementioned topic is presented by such scientists as O. Chepys, Y. Sukha, M. Kozina, M. Tkalych, A. Polyans'kyi, S. Poshuleznyi et cetera. However, they mostly take into account the sports contractual relations in general, not the football ones, which makes us consider unsatisfying not only the legal regulation of these, but even their doctrinal development.

Therefore, **the goal of the article** is to define the specific features and nature of the contracts of football players in particular, using the sources of law, which are actual for Ukraine.

**Statement of the main part.** The first step we ought to take to understand the essence of the footballer's contract is to define the term "contract" in general. As the Article 21 of the Code of Laws on Labour of Ukraine states, it is a specific form of an employment agreement, which may contain such terms as the duration; rights, obligations and the responsibility of parties; conditions of material security and the organization of employee's work; conditions of termination of contract, – which all may be set by the parties [1].

The only Ukrainian law, which aims to regulate the sports contractual relations, is the Law on Physical Culture and Sport. However, its provisions are absolutely insufficient to do it effectively since this law does not even describe any features of the sports contract. The only important article in it for us is the Article 38, which defines the professional sport as a "commercial direction of a sports activity related to preparing and carrying out the spectacular sports events on a high organizational level in order to receive income". It also constitutes the presence of the contract as a necessary attribute of a professional athlete status. Yet the most useful for us in this article is the list of the sources of the professional sports (and, therefore, contract) law, which contains the aforementioned Law, the Code of Laws on Labour, the statutes and regulations of the subjects of the sphere of physical culture and sports and international organizations [2].

Taking into account the latter provision, the next document we should address is the relevant act of the Ukrainian Association of Foot-

ball (former Football Federation of Ukraine) – the main subject in Ukrainian football. Since its Statute does not provide us with useful information, the most relevant act for us is the Regulation on the Status and Transfer of Football Players, which is the only one to try to define the term "contract" in the football context: it is stated in the "Definitions" section that the "contract is the form of an employment agreement between the professional football club and its employee with all annexes, changes and additions, which is to be concluded according to the Ukrainian legislation and this Regulation in order to participate in the competitions" [3]. From this definition and also from the Article 8(1) of the aforementioned Regulation we can derive the information about the subjective composition of the employment relations in football: a professional football club, on one side, and an employee of any kind ("footballer, coach or other specialist") – on the other. The term "professional club" should be understood as a "legal person with the status of an economic entity created to participate in football competitions under the aegis of FFU (UAF)", which "has the certificate of the right to participate in Ukrainian football championships..."; and the footballer is an "athlete who, being in the team squad, takes part in the training process and football competitions" [3].

Having analyzed the provisions of the FFU (UAF) Regulation on the Status and Transfer of Football Players, we may outline some specific features of a footballer's contract:

1. It defines the rights and obligations of the footballer and the professional club.
2. It must be only in writing.
3. It may be concluded only with the professional club (not the amateur).
4. It may be concluded only by a football player who is 15 years or older.
5. It must match the provisions of the Agreement between UEFA, EPFL, ECA and the FIFPro Division Europe Regarding the Minimum Requirements for Standard Player Contracts in the Professional Football Sector in the European Union and the Rest of the UEFA Territory.
6. It must contain the structural elements of the typical form of contract defined by the Annex III of the Regulation.
7. It must define the precise salary of the player.
8. Its minimum duration is the time between the conclusion of the contract and the end of the season. O. Chepys and M. Keckerchen' assert this means 6 months [4, p. 151]; however, it can be lesser, if speaking about free agents: according to the article 6 of FIFA Regulations on the Status and Transfer of Players, "a pro-

fessional whose contract has expired prior to the end of a registration period (“transfer window”) may be registered outside that registration period” [5].

9. Maximum duration – 5 years.

10. It is concluded in three specimens: the first remains for the club, the second – for the player and the third – for the Ukrainian Association of Football.

11. A minor may conclude the contract only for the maximum duration of three years; he would also need his parents’ consent and the notarization of the contract.

12. It must contain the following information:

- a) signatories of the parties;
- b) name and surname of the player;
- c) date of birth of the player;
- d) address of the player;
- e) citizenship of the player;
- f) full name of the club;
- g) registration number of the club;
- h) address of the club;
- i) name, surname and address of the club’s representative;
- j) precise date of the beginning and expiry of the contract (day/month/year);
- k) information about the additional individuals, who have taken part in discussing and concluding the contract (for example, minor’s parents, player’s legal representative, player’s licensed agent, interpreter etc.) [6].

Probably, the most controversial point in the discussion about specific features of football contracts are legal relations which emerge after the conclusion of the contract. Positions of scientists on this problem can be summed up in two main approaches:

1) “labouristic”: a contract creates relations regulated by labour law;

2) “civilistic”: a contract creates relations regulated by civil law.

M. Kozina, for example, tends to agree with the first approach. She asserts that professional sports activity is a type of work, which is executed systematically, has a certain goal (participation in competitions); it is also done using the employer’s money and under the requirements of the labour regulations created by the employer (trainings, training camps, daily routine, prohibition of using alcohol and drugs etc.); an athlete usually receives a regular salary for his activity. She concludes that all these factors show us the fact that professional sports activity is a wage labour and, therefore, it ought to be the object of regulation of labour law sphere [7, p. 428].

On the other hand, M. Tkalych supports the second approach. He thinks that a sports’ contract is a kind of a civil law contract for

the performance of work, where the first party undertakes to perform the training activity in order to acquire skills necessary to participate in competitions successfully; and the second party undertakes to pay for these training works, at the same time acquiring the right to use the results achieved by the athlete. In Tkalych’s opinion, these are clearly the signs of the civil character of the sports contract [8, p. 332].

In this scientific argument we tend to support the “labouristic” approach.

To begin with, we want to stress the fact that football contracts should be considered a specific type of sports contracts, which do not necessarily share all the characteristics of other types of sports contracts. This means that contracts in other sports may really possess the features of civil law contracts, resembling employment agreements quite distantly. However, football ones are certainly to be regulated by labour law (at least in Ukraine) because of the following reasons.

As we stated before, according to the Article 21 of the Code of Laws on Labour of Ukraine, contract is a specific form of the employment agreement, thus, it is regulated by labour law. However, in Ukraine it is quite a widespread problem – how to tell the difference between the employment contract and civil contract? As long as legislation does not provide us with this information, we should address the judicial practice to fill in the blanks. Supreme Court of Ukraine had analyzed this issue in the case No. 820/1432/17 (“Alptekhprom’ vs. Main Department of State Service on Labour Issues in Kharkiv Region) and outlined the following distinctions:

1. Employment agreement regulates the working process and its subject matter is labour itself, while the civil contract regulates the acquisition of a specific result and its subject matter is a certain scope of work.

2. After the performance of some work by the employee his labour obligations don’t exhaust, while the validity of a civil contract expires.

3. Employee is put on the payroll and obliged to stick to the employment regulations, while the performer in civil legal relations doesn’t need to be put on the payroll and may organize his working process freely [9].

Footballer’s contract absolutely matches the requirements to the employment agreement stated in the aforementioned decision of the Supreme Court.

Firstly, the contract determines the labour function of the footballer and its particular manifestations, not the results for him to achieve. This can be proven quite clearly by the Article 7(2) of the Minimum Requirements Regarding the Standard Player Contracts, which lists the player’s obligations to be mentioned in

contract: to play matches to the best of his best ability, to participate in training and match preparation according to the instructions of his superior (e.g. head coach), to maintain a healthy lifestyle and high standard of fitness, to comply with and act in accordance with club officials' instructions etc. [6]. There is no provision in any of the relevant acts of Ukrainian legislation, UAF, UEFA or FIFA, which obliges a player to achieve a certain result. Such a condition may actually be included in a particular contract, yet it is optional and mostly provides for the reward for a player for achieving a result of a certain kind and amount, not the sanctions for failing to do it. For example, a monetary reward for scoring 10 goals or more during the season.

Secondly, as we stated above, the player's contract expires only when the date of expiry comes or by mutual agreement [5]. It also may be terminated in accordance with the provisions of Article 10 of the UAF Regulation on the Status and Transfer of Players or the provisions of the Section IV of the FIFA Regulations on the Status and Transfer of Players, but never after the achievement of some sort of a specific goal by a player.

Thirdly, the player must be formally included in the professional club's structure and obey the inner rules of the club. The first fact may be illustrated by the Annex III (typical contract form), which must be used as a template of the footballer's contract under the provisions of the Article 8(2) of the aforementioned UAF Regulation: particularly it is stated in the Annex that a certain person is "being hired for the position of the Professional Football Player of the football team of the Club" [3]. The mandatory performance of the employment regulations is enshrined in the UEFA Agreement's Article 7(2) on player's obligations: among them we can find the ones like "obeying club rules (including disciplinary regulations)", "acting in accordance with the club's officials' instructions", "undergoing regularly medical examination and medical treatment upon request of the club's doctor" etc [6]. These evidences clearly prove the fact that footballer is not actually free in organizing his working process and, moreover, he is officially put on the club's payroll for the appropriate position.

### Conclusion

Summarizing all aforementioned information, we may quite clearly see the fact that football player's contract is a specific type of an employment agreement (contract) with its own features, which are distinct from those we can see in other sports contracts. However, despite the great popularity and role of professional football in the economy of our country, it

is rather insufficiently regulated by law. But if the problem of regulation can be partially solved using the provisions of the official acts and documents of appropriate football organizations like UAF, UEFA or FIFA, it still remains unclear why the issues regarding employment relations in football are so unpopular with scientists. Almost everyone who tries to analyze this issue tends to generalize the specificities and nature of various sports contracts – and this is the biggest mistake that can be done in such a research.

All in all, we need to continue studying the issues regarding football contracts in order to make our legal field more favorable to the successful development and eventual prosperity of Ukrainian football as one of the most important spheres of our economy.

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**Руслан Доценко, Валерій Авескулов. Особливості та юридична природа контрактів футболістів в Україні**

*Стаття присвячена аналізу особливостей та юридичної природи контракту футболіста в Україні. Авторами проаналізовано найважливіші джерела права України та компетентних національних і міжнародних організацій, які регулюють структуру, форму та мінімальні вимоги до футбольних контрактів у нашій державі. Зокрема, до релевантних нормативно-правових актів у цій галузі можна віднести Кодекс законів про працю України, Закон України «Про фізичну культуру та спорт», Регламент Футбольної федерації України (нині – Української асоціації футболу) про статус і трансфер футболістів, Регламент ФІФА про статус і трансфер футболістів, Угоду між УЄФА, ЄПФЛ, АЕК і Європейським дивізіоном ФІФПро про мінімальні вимоги до стандартного контракту футболіста-професіонала. Шляхом синтезу найбільш важливої інформації з цих джерел було складено комплексний перелік характерних рис футбольних контрактів (наприклад, письмова форма, необхідність наявності у клубу статусу професійного, досягнення футболістом 15 років, визначення точної заробітної плати футболіста тощо). Окрім того, у статті опрацьовано питання правової природи такого контракту, а саме два основні підходи до цього питання – «трудоий» та «цивільстичний», відповідно до яких питання, що постають навколо футбольного контракту, мають регулюватися приписами відповідної галузі права. Проаналізовано думки низки вчених та положення релевантних нормативно-правових актів з цього питання. Додатково були викладені головні думки з рішення Касаційного адміністративного суду Верховного Суду, в якому містилося цінне тлумачення законодавчих положень, необхідне для розрізнення цивільних правочинів та трудових договорів, що було за аналогією застосоване до предмета статті. У результаті зроблено висновок про належність інституту футбольного контракту до царини трудового права. У заключній частині статті підбито підсумок вищевикладеної інформації, відповідно до якого футбол слід вважати важливим елементом економіки України, що надає питанню ефективного регулювання трудових правовідносин особливого значення; окрім того, зроблено висновок про необхідність подальших досліджень футбольного контракту як самостійного типу спортивного контракту, специфіку якого слід урахувувати задля досягнення достатнього контролю над питаннями, з ним пов'язаними, та покращення загального рівня функціонування футбольної сфери в Україні.*

**Ключові слова:** футбольний контракт, спортивний контракт, трудові відносини, спортивне право, розрізнення цивільно-правових та трудових контрактів.