THE LEGAL NATURE OF THE PROFESSIONAL PLAYER'S CONTRACT IN LIGHT OF THE FRENCH AND KUWAITI LAWS

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Abstract: *Not only do countries around the world view sports as a means of entertainment, recreation, and physical health, but they also consider sports from an economic, technical, and service point of view; especially since sports has become a profession and an important source of income. This has made it necessary to organize professional sports through legal texts, which have been the subject of legal and judicial controversies in their drafting and interpretation, and have caused difficulties in their application. One of the most important means of organizing and implementing professionalism in sports is through contracts. However, the concept, the effects, and the legal nature of these contracts have generally been a subject of controversy.*

This brief research presents the legal nature of the professional player contract, in light of the French and Kuwaiti laws in order to bring to the attention of the researchers the difference between the professional player contract as being either a type of contractor contract or an employment contract. This, in return, will help in identifying the judicial system that is competent to handle the professional player contract disputes.

Keywords: contractor contract, employment contract, professional, characteristics, legal nature, Sports , Arbitration , Competent Court, Athlete, Disputes.

Introduction

During the past century, the sports movement in the world witnessed a continuous tremendous development in all individual and team sports, and the competition in this field was established as a major feature. The sport practiced by young people today is no longer just a hobby, but rather a source of income. Therefore, professional sports have developed into a profession, trade, art, social, economical, political, and legislative necessity. Accordingly, it was necessary for this development to be reflected in the form of legislation and the need arises to draft codified laws for professional sports.

Professionalism in its general scope entitles the athlete remuneration for the performance of sports activities according to a binding contract concluded with the party corresponding to sign a contract, agreed in his own capacity, and based

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on free will, inclusive of the parties' rights and obligations. Therefore, in this study we opt to suggest significant mechanisms applied for professional sports, namely, the professional player's contract which allows the player to dedicate himself to the sport and live for it.

Perhaps one of the most significant topics in the field of the professional player's contract is the legal nature of this contract, its legal adaptation, which is reflected in its effects and the court competence in the case of a dispute.

In this study, we shall shed light on the legal nature of the professional player's contract in Two Chapters. In Chapter One, we shall address the dispute on the nature of this contract, and we shall analyze the dispute that prevailed between commentators that viewed the professional player to be an independent person in practicing his sport, and so, considered the contract between him and his club as a contracting contract; and others who viewed it as an employment contract, based on its most prominent characteristics, namely, the professional player being subordinate to his club.

In Chapter Two, we shall discuss the similarity between the professional player's employment contract and the employment contract, and we shall discuss the common characteristics between the professional player's employment contract and any other employment contract, and the distinctive characteristics of the professional player's contract from any other employment contract, to conclude the research and provide our final opinion.

Chapter One

I. The Dispute on the Legal Nature of the Professional Player's Contract

Determining the legal nature of any contract is one of the most significant legal studies of interest for those who study the field of law and those who are entrusted with the jurisdiction. Providing legal explanation to a specific contract is relative to the acknowledgment of its legal nature.[1] A judge who is presented with a dispute regarding the professional sports contract or one of the contracts related to it, such as the transfer of player contract or the sports' investment contracts, shall interpret the nature of this contract in order to define it, understand the legal rules that govern it and the implementation of those rules to the contract. It is well-known that in the professional sports contract, the professional player cannot participate in the official matches and competitions organized by the Sports Federation, unless he is licensed to do so by such Sports Federation. To obtain this license, the player must be registered as a professional player in one

1. Nbih Abdul Hamid Al-Alqmani, Muhammad Ahmad Ali, Ahmad Muhammad Ahmad, International Football Professional Regulations and Interpretations, First Edition AD 97, referred to by Ali Abdel Karim Jalal, the law applicable to the professional sports contract, Zain Human Rights Publications, p. 38- not literal quoted.

of the clubs licensed to practice professionalism. These clubs shall not allow this player to be registered in the professional players' register, unless after concluding a professional contract with them.

The difficulty arises with regards to determining the legal nature of the professional sports contract, and this difficulty gradually increases, with regards to the possibility of this contract being subject to more than one local and international legal system. According to, the conditions and implications of this contract and the facts, circumstances, and disputes, it shall be subject in its implications to the general rules of civil law, the rules related to labor law, and the local and international sports regulations and statutes.[2] In reference, a dispute arose in jurisprudence and comparative judiciary regarding the legal nature of the professional sports contract. The French jurists and particularly the judiciary witnessed two distinct trends in defining this contract based on the characteristics that distinguish it. Some considered the professional player to be an independent person in practicing his sport, and so, considered the contract between him and his club as a contracting contract; (Part One); And others who viewed it as an employment contract, based on its most prominent characteristics, namely, the professional player being subordinate to his club.[3] (Part Two).

Part One

1. Professional Player as a Contracting Contract

In this part, we shall address the trend that views the professional player's contract as a contracting contract, as it has some provisions in common with this contract based on several arguments that we shall discuss successively in (Section One) and then we shall present the criticisms presented against him in (Section Two).

Section One

1.1. Demonstrating that the Professional Player's Contract is a Contracting Contract

Judicial rulings and jurists in France for a long period of time considered the contract concluded between the professional sports player and the sports club, a contracting contract and what applies to the contracting contract applies to it, regardless of the type of sport the player performs, this is due to what the trend

2. See Jawad Fatima Al-Zahra, Sports Professional Contract, University of AL-Arbi bin Mahdi - Umm El Bouaghi - 2017-2018 pp.5,6.

3. See Mansour Nasr El-Din, Manmani Mohamed Amin, the legal adaptation of the professional contract for a football player, Journal of Law and Local Development, Algeria, p. 44.

viewed as the absence of the subordinate relationship between the player and the club.[4]

The civil court of "Tribune du Caen" ruled that "a professional football player is an independent artist who seeks, from his practice of the game, to draw attention to the importance of sport utilizing the body and to demonstrate his abilities and personal talents, and therefore he sets in his game his own authenticity."[5]

The French judiciary decided on defining the professional contract as a contracting contract due to the player's independence and freedom during his performance of the game as a professional, as the professional player is not subject to any control, direction or supervision by his club and therefore he is not affiliated with his club, and the French Court of Cassation ruled in its decision issued on April 30, 1947 that "A professional football player is not considered affiliated with the contracting club, because this player, although he accepts to be subjected to the rules of the game and the team organization, however, during the exercise of his game, he retains the freedom and independence required by the nature of this game, which indicates the absence of the subordinate relationship between him and the club, and therefore the club does not claim liability for the subordinate's employment regarding the fault committed by this player during the match, causing harm to a player from the opposite team." [6]

In addition, the French Social Security Authority was depriving professional players from benefiting from the social security system enjoyed by workers, claiming that the contract that the professional player is bound by to the club is not an employment contract, but rather a contracting contract, because the player plays independently and free, in order to satisfy his self-desire, by demonstrating his ability, talents and special capabilities, and he works independently like the artist on the stage, which represents the role that suits him motivated by his artistic sense, and so, no one else can impose on him his authority, opinion or direction, so it is difficult to describe him as worker who is subject to the employer.[7]

In another case, the French judiciary defined the football player's professional contract as a contracting contract, given that the professional player did not

4. Abdel Hamid Othman El Hefny, Professional Football Player Contract, A Comparative Study between the Regulations of Some Arab Countries, Al-Asriya Library, Egypt, 2007, pp. 38,39, referred to by Mansour Nasr El-Din, Manmani Muhammad Amin, previous reference, p. 45.

5. Dec. 1908, D.1909.11271-7 Dec. 1909.D. 1910, 28, Paris 24 Juillet. Gas, pal, 2; 682. Referred to by Mansour Nasr El-Din and Manmani Muhammad Amin, previous reference, p. 45.

6. Cass. Civ. 30 Avril 1947.Gaz.pal. 1947, 11 P. 5d. 1947, p. 305, Referred to by Mansour Nasr El-Din, Manmani Muhammad Amin, previous reference, p. 45.

7. Muhammad Suleiman Al-Ahmad, Al-Wajeez in Sports Contracts, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2005, p. 35 Referred to by Jawad Fatima Al-Zahra, previous reference, p. 8

have any benefits from the provisions of the labor law related to compensation for injuries during the employment term.[8]

Some French jurists popularized this judiciary, and based its belief of the contracting theory on Article (1779) of the French Civil Code, which states that "there are three main types of employment and industry lease: -

1. Hiring workers who are obligated to serve someone.
2. Hiring drivers of vehicles on land or at sea who transport people or goods.
3. Hiring architects, contractors and technicians to carry out studies, designs or marketing.[9]

In the opinion of this jurists, the professional football player contract enters the first form, i.e., the person who undertakes the service of another, the professional football player who signs a contract with a sports club and undertakes according to this contract to participate in football matches and competitions, is in the position of the contractor to the employer.[10]

Despite the existence of judicial rulings and some opinions of French jurists that support this trend, it was met with severe criticism, and this is what we shall discuss in Section Two.

Section Two

1.2. Criticism of those who support the view of the Professional Player's Contract as a Contracting Contract

Opponents criticize those who view the professional player's contract as a contracting contract, and that despite the similarities between the contracting contract and the professional football player's contract, there are essential differences between them that we shall briefly and respectively present: -

1. The truth is that the supporters of the idea of contracting , in viewing the professional contract for a football player as a contracting contract, and in reliance on the freedom and independence of the player in practicing his game, is considered weak evidence, and would not rule out the prominent subordinate relationship between the professional player and his club, because what the player enjoys such as freedom and independence is deemed necessary, and what

8. Amiens 12 Mars 1935, Gaz.pal.,1, p. 873.

9. Close to Article 661 of the Kuwaiti Civil Code, which states that "contracting is a contract under which one of the parties is obligated to perform work for the other party in return for a consideration, without being subordinate to it or acting on its behalf.

10. Alian Delperier; contribution al'etude du sportif en droit positifwww.nitropdf.com, Referred to by Jalil Al-Saadi, Professional Football Player Contract in Iraqi Law, A Comparative Study with French and Saudi Laws. pp. 18, 19.

is required by the nature of the player and the game he plays as a professional. The player deals with the ball with his talent and he must be free so he can be creative, but this does not mean that he is completely separated from the coach's instructions and the plan drawn for him. This level of freedom and independence is not unique to only professional players, but also some many workers, without negating the status of other professionals, such as the doctor, engineer, journalist and others who work for wages for others. 11

2. The contractor performs the agreed work in his personal name and not in the name of the employer, unlike the professional player who participates in matches and competitions held between clubs in the name of the club bearing on his chest the logo of the contracted club.

3. The professional player's technical personality and his skill abilities are considered by the employer (the sports club) so that he must perform his sports work himself and not through someone else, because the professional contract concluded between the player and the club - unlike the contracting contract[12] -is based on personal consideration.[13]

4. The contractor can commit to work towards more than one employer and at the same time without any action affecting the other work, and there is nothing legally preventing this obligation, but the professional sports contract is completely of opposite scope, and so, the club can conclude more than one professional contract with different players, unlike the player, who cannot sign more than one professional contract in the same sports season, during the validity period of the contract agreed upon with the new club.[14]

5. The contractor bears the risks of the work he undertakes to complete, so that if any loss or damage occurs, he alone bears liability without the employer, unlike the professional player, as he performs the game required from him and

11. Ragab Karim Abd Allah, The Professional Contract for a Football Player, In Light of the Professional Regulations issued by the National Football Associations in Egypt and some other countries and the International Football Association (FIFA), Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 40. Referred to by Mansour Nasr El-Din and Manmani Muhammad Amin, the previous reference, p. 47.

12. Article 6811/ of the Kuwaiti Civil Code: "The contractor may entrust the execution of the work in whole or in part to a subcontractor if a condition in the contract does not prevent him from doing so, or if the nature of the work is such that the contractor's personality is considered.

13. Ahmed Mohamed Bahgat, The Privacy of the Provisions of the Professional Player's Employment contract, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 17, referred to by Mansour Nasr El-Din and Manmani Mohamed Amin, previous reference, p. 47.

14. Abdullah Al-Tarawneh, The Legal System of the Professional Sports Contract, Ph.D. Thesis, Faculty of Law, Cairo University, 2013, p. 158. Referred to by Mansour Nasr El-Din and Manmani Mohamed Amin, previous reference, p. 47.

gets his compensation regardless of the score of the match. If the team loses, the club bears the loss[15]. However, we believe that the professional player also bears the loss in the long term, if the loss is related to him or because of his low-level performance during the season, which will be reflected in his upcoming agreements and the remuneration he receives in the future.

We are satisfied with this amount of criticism opposing the opinion that adopts the idea of contracting to apply its provisions to the professional sports contract, and we shall discuss the opposing opinion that highlights the element of subordination of the professional player to the club in the professional sports contract to define his sports contract as an employment contract and not a contracting contract (Part Two).

Part Two

2. Professional Player Contract as an Employment Contract

In this part, we shall address the trend that views the professional sports contract as an employment contract, as it shares its basic elements with this contract in (Section One), and we shall demonstrate the criticisms addressed by the supporters of this trend and respond to them (Section Two).

Section One

2.1 Demonstrating that the Professional Player's Contract is an Employment Contract

Although the old French judiciary and jurists believed that the professional sports contract is just a contracting contract, this trend was short-lived, and soon the modern French judiciary and jurists sought to adapt this contract as an employment contract based on the boundless similarity between the constituent elements of both contracts which is notable in their definitions.

− Definition of the employment contract in comparative laws: the Egyptian Labor Law defines the employment contract in Article 31 as "..a contract under which a worker undertakes to work for an employer, under his management and supervision, in return for a wage."

An employment contract in English law is a specific kind of contract whereby one person performs work under the direction of another[16].

As for the French legislator, he did not provide a definition for the employ-

15. See Ali Abdul Karim Jalal, previous reference, p. 42

16. From Wikipedia, the free encyclopedia. www.en.wikipedia.org. The two main features of a contract is that work is exchanged for a wage, and that one party stands in a relationship of relative dependence, or inequality of bargaining power.

ment contract, whether in civil law or in labor law. Therefore, the judiciary and commentators have undertaken this task, as shall demonstrate later. [17]

As for the Kuwaiti Labor Law, it also did not provide a definition for the employment contract, but this can be extracted from the first article in paragraph 1.4, where it clarified that the term worker means "every male or female who performs manual or mental work for the benefit of the employer, under his management and supervision in return for a wage." The term "employer", it means "every natural or legal person who employs workers in return for a wage".

Undoubtedly, from the legal definitions of the employment contract in the comparative labor laws, it has become evident to most comparative judiciary and commentators the similarities between the employment contract and the professional player's contract, especially through the essential elements of each of them.

− English Judiciary: Considering the professional player's contract as an employment contract is what the English judiciary has adopted since 1910, when viewing the Walker case against Crystal Palace and in which the question prevailed, is the football player entitled to receive the allowances and compensation stipulated in the British Workers' Compensation System, based on the fact that the player's relationship with his club is an employment contract? Or he won't obtain it based on the fact that the contract between the player and the club is considered a contracting contract? The court decided that it is a working relationship on the grounds that *the player is affiliated with his club which is considered responsible for training the player, punishing him, as well as directing him to perform specific acts, in addition to, choosing the players domicile.*[18]

− The French Judiciary: The provisions of the French Court of Cassation have settled that there is a subordinate relationship between the professional player and his club, based on the professional sports contract concluded between them. Whereas, the French Court of Cassation ruled in its decision issued in 1947 that "the mere submission of the professional player to the rules of the game and the team organization means that he loses his freedom and independence from the sports club, and as a result, he is considered in a state of subordination to the latter, who has the right to direct and supervise him.[19]. The judicial rulings in France followed this path and confirmed the inclusion of the professional player's con-

17. See previous reference, p. 8

18. Walker vs. Crystal Palace Football Club [1910] 1 KB 87, www.coursehero.com, cit. Haitham Hamed Al-Masarweh, Ammar Said Alrefae. The Nature of the Professional Football Player's Contract: An Analytical Study in the Kingdom of Saudi Arabia King Abdulaziz University, Al-Shamal Journal for Human Sciences, (4), Volume (2), Northern Issue, Hudood University 2019 p. 168,

19. Abdullah Al-Tarawneh, the previous reference, referred to by Mansour Nasr Al-Din and Manmani Muhammad Amin, the previous reference, pp. 48, 47, adapted

tract with the essential elements contained in the work contract for (work, wages and subordinate relationship).

− French Jurisprudence: the majority of French jurists confirmed the existence of an actual legal subordinate relationship between the professional player and the contracted club, which asserts that this player is a hired worker for his club, and that the contract between them is an employment contract. They assured that there is plenty of evidence for subordination of the professional football player to his club, the first of which is the player's technical subordination to the coach, who is entrusted by the club with the task of team training and technical supervision, and where the player must comply with the coach's instructions, whether during training, prior to the commencement of the match, or even during the break between the two halves of the match, and the player shall rarely act according to his whims while playing.[20]

− And they concluded from their research that the professional sports contract contains similar essential elements which are the main components of an employment contract, which are:

1. The first element is work: work is an essential pillar in the employment contract and its concept refers to every type of paid work that the worker performs for the employer and under his direction and supervision, and the definition of the term work is absolute in most labor legislation. Thus, the participation of the professional player in the regular, binding training and matches in which his club is a party falls within the concept of work, as the absolute is taken for its release.[21]

2. The second element is wage: Article 55 of the Kuwaiti Labor Law clarifies the meaning of wage as "...what the worker receives from the basic wage or ought to receive in return for his work and because of it, in addition to, all the elements stipulated in the contract or the employer's regulations. And without prejudice to the social allowance. The children's allowance issued in accordance with Law No. 19 of 2000, [22] includes in the wage calculation of what the worker receives on a regular basis in terms of bonuses, allowances, grants, gifts or cash benefits.

The meaning of wage in the Labor Law is that that is intended in the professional sports contract, where the wage is all that is provided to the player from basic wages, additional dues and benefits in kind, such as bonuses, allowances,

20. Jean.Remi Cognard, contrat de travail dans le sport profissionel. La revue regards sur le droit social, volume 5, n. 1 p. 58- 69 Juris Edition 2012,. Referred to Ben Azouz Ben Saber, the legal nature of the contract of a professional football player in Algerian legislation, Abdelhamid Ben Badis University - Mostaganem, Algeria p.53.

21. Jalil Al-Saadi's, previous reference, p. 20.

22. Law No. 19 of 2000 Concerning Supporting and Encouraging National Labor to Work in Non-Governmental Entities.

rewards, housing, car, clothing and the necessary sports equipment for his professional game.[23]

Based on this, the payment of wages for a professional player has become a standard concept in the modern era,[24] and so, a player receives a wage in consideration for playing for his club.

3. The third element: Legal subordination: Legal subordination is the essential and basic element in the employment contract, which is always relied upon in distinguishing between this contract and other contracts contained in the work, such as the contracting contract and agency contract, and this subordination results from the economic power of the employer, and it appears in the form of the worker being subject, when performing work for the employer, to the powers of direction, control and discipline exercised over him by the employer and accepted by the worker.[25] Legal subordination, means that the worker is subject during the performance of his work to the control and supervision of the employer, so that the latter has the right to issue orders and instructions to the worker that he must obey and comply with, and he has the right to impose penalties on the worker if he violates the orders and instructions issued to him. [26] This subordination is available in the professional sports contract, as the sports club has actual authority over the professional player represented in controlling and directing him and the consequent authority to impose penalties on him in the event of violating orders or violating their implementation.[27] Legal subordination varies in its degrees, so we find the strongest in the form of technical subordination and the lowest in the form of organizational and administrative subordination, and between this and that, some believe partial subordination is called professional subordination.[28]

The supporters of this trend concluded that all the elements of the work contract, including work, wages and legal subordination, are clearly available in the professional sports contract, which indicates conclusive evidence that this contract is an employment contract.

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23. See Ali Abdul Karim Jalal, previous reference, pp. 47, 48

24. Daniel VEAUX, Contrats en matiere de sport, Juris-Classeurs, Fas. 798, no. 91 s. et F. BUY, J.M. MARMAYOU, D. PORACCHIA et F. RIZZO, op. cit., p.282 et s.

25. Moataz Nazih Muhammad Al-Sadiq Al-Mahdi, the previous reference, p. 28 Referred to by Ali Abdul Karim Jalal, p. 47.

26. Ali Abdul Karim Jalal, p. 47.

27. Abdul Razzaq Seflo, The Legal Nature of the Professional Sports Contract, 1st Edition, Dar Sader, Beirut 2011 pp. 57, 56, published in the Journal of Law and Local Development. Referred to by Mansour Nasr al-Din, Manmani Muhammad Amin, previous reference p.50

28. See: Khalid Jassim Al-Hindani, Abdul-Rasoul Abdul-Ridha, Explanation of the Provisions of the Kuwaiti Labor Law, i. 3 Kuwait National Library, Kuwait 2018. p. 147.

Despite this, there are those who completely ruled out that the professional player's contract is an employment contract or tried to raise doubts about the idea of similarity between the employment contract and the professional player's contract[29], so some drew some criticism that was refuted by the supporters of this trend (Section Two).

Section Two

2.2. Criticisms of the Professional Player's Contract as an Employment Contract and Responding to it

Those who considered the professional player's contract as an employment contract faced several criticisms, and we will review the most important of them with a response to it in the following items:

First: The high amounts of money received by the professional player: The professional player often receives high amounts that far exceed what the worker usually receives in employment contracts. He also receives his wages, in the form of separate, irregular amounts, while in the employment contract, the wage is paid on a regular basis and in a fixed amount, and the law does not require the business owner to be one of the owners of capital who seek to achieve profit, while we find in the contract of the professional player, that the club always aims to make a profit![30]

The response to the first criticism: In response to that, the "working" professional athlete is not the only one who receives huge amounts of money, but also some stars in the profession of art and music, some senior doctors, engineers, journalists and others. These people get high wages from their work for others, without anyone denying them the status of a worker. As for the manner in which the athlete obtains his wages, it is not considered a jurisprudential or judicial criterion that can be relied upon in adjusting the employment contract and determining its nature[31]. Even though, the professional sports club that contracts with professional players in many countries, especially France and England, is considered a commercial company,

However, many international sports clubs, especially in the Middle East and the Arab Gulf, take the non-profit association as its legal form and conclude

29. See: Part of the minority opinion in comparative legal jurisprudence that excludes conditioning the professional player contract as a work contract, Haitham Hamed Al-Masarwe, Ammar Saeed Al-Rifai, "The subjectiveness of the professional football player contract", an analytical study according to the rules and regulations in the Kingdom of Saudi Arabia, King Abdulaziz University, Jeddah, Kingdom Saudi Arabia.

30. Soc, 6 oct, 1997. Bull. Civ.1971, N.534. Egyptian Civil Appeal December 17, 1977, Appeal No. 512

31. Daniel veaux . op. cit. p. 96. Referred to by Ali Abdul Karim Jalal, p. 48.

contracts with professional athletes without making a profit among its main objectives.[32] In fact, we believe that the last element of criticism is valid, and that citing Arab countries in their application of sports professionalism is not a successful martyrdom, and the evidence for this is their classification in international competitions, and this is due to the poor application of sports professionalism. Professionalism is a technical professional business, the main objective of which is to make a profit for the sports club and a source of livelihood for the professional player. This is what distinguishes the professional player's employment contract from other employment contracts in which the employer may or may not be a merchant.

Second: The lack or weakness of union representation in the sports field: The lack of weakness of union representation in the field of sports practice may prevent the professional athlete from being described as a worker. It is evident that union organizations play an important role in setting labor laws through collective labor agreements.[33]

Responding to the second criticism: In response to that, the existence of a union to which the professional athlete belongs is not a condition for describing the latter as a worker.[34] However, for example, there are national collective agreements for sports in France (CCNS) as well as the National Federation of Sports Associations and Union of Athletes (FNASS).[35] It is sufficient for the judiciary to protect the rights of the professional athlete in the absence of such unions in his country.

Third: The Necessity of Approval and Licensing from the Sports Club Association for the Contract of the Professional Player: -

A professional player cannot participate in official matches or competitions with his club, without being licensed by the relevant association, and he cannot obtain this license unless he is a member of this association, committed and subject to its terms and rules. Hence, we find that the professional athlete in the professional sports contract is subject to two types of legal rules. In addition to the rules regulating the employment contract, it is at the same time subject

32. See: Article 24 of Kuwaiti Law No. 87 of 2017 regarding sports, which states that "the sports club is a sports body, enjoying a legal personality, and aims to carry out a sports activity, and prepare the means and services necessary to achieve its goals, for the benefit of all its members in all respects. Social, cultural, recreational and health.

33. The Kuwaiti legislator singled out Chapter One of Chapter Five of the Labor Law to organize the organizations of workers and employers and the union solution (Articles 98-110).

34. Qareb, Ragab Karim Abdellah, previous reference, p. 47. Referred to by Ziad Alaa El-Din, Sports employment Contract, University of Djilali El Yabes - Sidi Bel Abbas, Algeria 2016/2015, p. 78.

35. V. J.R.Cognard, Contrat de travail dans le sport professionnel, juris Edition 2012 p. 19. Referred to by Ziyad Alaa El-Din, previous reference, p. 78

to the regulations and rules of the local federation and the regional and international sports regulations, and this duality may prevent us from saying that the relationship that arises between the athlete and his club is a purely working relationship.[36]

Also, the multiplicity of contracts that a professional sports player enters into, such as advertising, media, transfer, agency and other contracts, after signing the professional contract with his club, makes it difficult to determine the athlete's legal status and determine the employer who has the authority to direct and control.[37]

Response to the third criticism: Despite the validity of these observations and criticisms, these doubts and difficulties are not, as we see, preventing the professional athlete from being described as a hired worker. As for the condition of the athlete joining the sports federation and the necessity of obtaining a license from him to practice his activity, and the necessity for the union to ratify his contract with the club, they are nothing but organizational conditions for practicing sports activity related to public health, public security and public interest, which guarantees that athletes and sports bodies are running sports activity smoothly in society, Moreover, the athlete is not the only one who must join the organization organizing his profession. Rather, the club to which the athlete belongs must be licensed by the concerned federation or the state[38], and the same applies to the doctor, engineer, lawyer, pharmacist and others, just like the worker who is required by law sometimes to obtain a license to practice the craft.[39]

As for the duplication of organizational rules to which the professional athlete is subject, it does not negate the employment relationship between him and the club, because he plays and exercises his sporting activity for the latter's benefit, and subject to his control and guidance, and if the athlete is also subject to the rules of the concerned union, this does not conflict with his subordination to the club, and this is what happens with many other categories of workers. The hired doctor, for example, is subject to the regulatory rules set by the Medical Syndicate locally, the World Health Organization internationally, and the Hippocratic

36. Les Problemes Juridiques Du Sport, Le Sportif Et Le Groupementsportif, Universite De Nice, Faculte De Droit Et Des Sciences Economiques, Colloque 18-19 October 1979.Economica, p. 147 S.

37. See: Rajab Karim Abd Allah, p. 49, quoted by an act referred to by Ziyad Alaa El-Din, pp. 79,80

38. Roger Blanpain, The Future of Sport Law in the European Union, Wolters Kluwer, law&business, 2008, p. 142.

39. See: Ziyad Aladdin, p. 80.

Oath, in addition to being subject to the regulatory rules issued by the employer in which he works.[40]

- With regard to the multiplicity of contracts that the working athlete concludes with others, there is no dispute that the employment contract concluded by this athlete is the primary contract, and the other contracts are only secondary or sub-contracts, and there is nothing to prevent the multiplicity of employment contracts for one worker, as long as there is an element of subordination in each of them. The athlete who signs a contract with the advertising company is affiliated with it only in relation to his agreed work, and at the same time remains affiliated with his club with regard to his basic work and the service he provides for the benefit of his club.[41]

II. Similarities and differences between a Professional Player's Employment Contract and an Employment Contract

If we agree with the majority of scholars and judges that the professional player's contract is an employment contract, to what extent does it correspond to it? The answer to this question is achieved through our review of the elements of the agreement between the professional player's contract and the employment contract (Part One) and their different elements (Part Two).

Part One

1. Common Characteristics of a Professional Player's Employment Contract and an Employment Contract

First: The professional player's work contract is a binding contract on both parties: the contract binding both parties, and as it is basic knowledge, is a contract that imposes on the contracting parties' reciprocal obligations. The other party has the right to request for non-performance or demand to terminate the contract.[42]

Article 1 of Law No. 49/2005 regarding the regulation of Kuwaiti sports professionalism stipulates that "a professional contract is a fixed-term contract whereby the player undertakes to provide to the contracted sports club all of his

40. See: Kuwaiti Law No. 70 of 2020 regarding the practice of the medical profession and its auxiliary professions (Articles 4-25) related to licensing and other obligations imposed on hired and non-paid physicians.

41. See: Rajab Karim Abd Allah, p. 49, referred to by Ziyad Alaa El-Din, p. 81.

42. Bran and Jallan, Labor Law, Paris 1985, p. 237, referred to by Khaled Jassim Al-Hadaniani, Abdel Rasoul Abdel Reda, previous reference pp. 138,139

time (or part of it for partial professionalism) and his technical and physical capabilities in return for a certain wage[43].

Kuwaiti Law No. 87/2017 regarding sports also stipulated that sports club contracts, with regard to professional players participating in sports activities, be in accordance with the rules, regulations and requirements of the relevant national and international sports federations.[44]

Article 9 of the Regulations on the Status and Transfers of Players in the Kuwait Football Association stipulates the obligations of the professional player in ten paragraphs, including attending training exercises, camps, seminars, press conferences, performing friendly and official matches in the club and the national team according to the established dates, maintaining physical fitness, attending technical tests, periodic medical examinations and treatment. To have morals and to be a good role model inside and outside the stadium and not to be absent from the club during the contract period without the written consent of the club or an acceptable excuse accepted by the club. On the other hand, the aforementioned regulation, in Article 10 of it, obligated the sports club to provide medical treatment and rehabilitation for players registered in the club's records with the Federation and health insurance that covers cases of injury, disability and death throughout the period of the professional player's contract with the club and cases whose effects extend beyond the end of the contract, and to fulfill his financial obligations towards players and other clubs according to the conditions stipulated in the contracts concluded with their professional players and in the transfer agreements, and allowing the national player to join the national teams and training camps upon the union's request and other obligations, which prove that the professional sports contract is a binding contract for both sides and not for one side.[45]

Second: The professional player's work contract is a successive contract: a successive contract is a contract in which time is an essential element, so that it is not possible to know the number of payments required from both parties except

43. This law was published in the Official Gazette, Kuwait Today, Issue 726, Fifty-first Year, on 24/7/2005. It was repealed by Law No. 87/2017 currently applied in the matter of sports.

44. See Article 61, second paragraph of Law No. 87/2017 in the matter of sports published in the Official Gazette of Kuwait Al-Youm, Supplement to Issue No. 1369, 63rd year, dated December 4, 2017, which is currently applied to sports affairs. And see also the draft law on professionalism and sports investment submitted to the Kuwaiti National Assembly for a vote, which stipulated in its first article the definition of a professional contract as "a fixed-term contract under which a professional sportsman undertakes to submit to the sports club or company agreed with it all his time and technical and physical capabilities in return for a certain agreed wage."

45. Article 13 of the Regulations on the Status and Transfer of Players in the International Football Association, and see also, Fifa Circular No 1171/2008, Professional Football Players Contract Minimum Requirements, Club's Obligations Art.4, Player's Obligations Art.5.

through lapse of the period[46]. In contrast to successive contracts, there are immediate contracts that are concluded and executed at the same time. The contract of the professional player with the club is undoubtedly one of the successive contracts that are prolonged, as the time period plays a major role, whether in its convening or in its enforcement, just like the employment contract. The number of obligations in the contract of employment of a professional player with his club for a period of one sports season differs from the number of obligations incurred by both parties in the event that they are bound by the contract for a period of four seasons, and therefore the law requires both parties to write down in their contract the day, month and year and determine its duration in accordance with the provisions of the legislation national and international as we demonstrated in the previous clause.[47]

Third: The professional player's work contract is one of the submissive contracts: Submission contracts are a group of contracts in which one of the contracting parties does not have the right to discuss or modify the terms of the contract, so he accepts them as they are or leaves them all, and contracts of submission in this sense constitute an exception to the general principle that the contracts are agreed upon when two wills have conducted the negotiation stage as the contracting parties, and agree on all the terms of the contract, in preparation for concluding the final contract. A professional player's work contract is considered a contract of compliance if it is often prepared in advance according to a form issued by the association concerned with the game or the licensed association or from the club contracting with the player. Thus, the parties only have to fill in the blanks within the document, which is a model of the contract. But the stardom of some players and their enjoyment of international fame due to their charming technical level created an exception to the feature of submission in the professional player's work contract and the work contract in general, so they turned the verse and instead of the contract for them being a contract of submission, it became a contract of submission on the contracting club,[48] and the best examples are set in the cases of the player Cristiano Ronaldo and Lionel Messi, whoever thinks that they are submissive to the club they signed for, will become a laughingstock and a station for ridicule.

Fourth: considering the personality of the professional player in the professional player's work contract: Considering the personality of the professional player is of great importance, no other person can perform his obligation due to the nature of the sports activity that requires special physical and technical skills, since with this consideration the value of the player's work is deter-

46. See: Bran and Gallan, ibid., p. 237.

47. See: Hassan Hussein Al-Barawi, previous reference, p. 95.

48. See: Amer Mahmoud Al-Kiswani, previous reference, p. 42.

mined. Also, considering the personality of the professional player has an impact on the expiration of his work contract with his club. If he dies or is unable to complete the game during the validity of the contract, his contract with his club will expire without the possibility of completing its implementation by one of his heirs, nor the implementation of his legacy in the face of his heirs, and this contract is like all other work contracts that shall inevitably expire with the death of the worker, but the death of the employer does not lead to their termination.[49]

Part Two

2. Distinctive Features of a Professional Player's Contract

Looking at the regulations for the status and transfer of national and international sports players, we find ourselves inclined to the opinion of the majority in adapting the professional player's contract as an employment contract, but we do not believe it completely identical, and it has its own characteristics and nature, and this is what we will prove in the following points:-

First: The professional player's contract is a fixed-term contract: Article 27 of the Kuwaiti Labor Law stipulates that "a person who has reached the age of fifteen has the capacity to conclude an employment contract if it is for an unlimited period, and if the period is fixed, it may not exceed a year until he reaches eighteen." Also, Article 30 of the same law stipulates that "if the employment contract is for a fixed term, its term shall not exceed five years and not less than one year, and the contract may be renewed upon the expiry of its term with the consent of both parties." Therefore, if it has been agreed upon in the comparative labor law, that the employment contract may be for a fixed-term period or an unlimited period, however the contract of a professional player may only be for a limited period, and therefore the Kuwaiti legislator was keen to mention this in paragraph (2) of Article (61) of Kuwaiti Law No. 87/2017 regarding sports, the aforementioned stated that the professional player's contract with his club is for a fixed term and in accordance with the rules, regulations and requirements of the relevant national and international sports federations.[50] Likewise, the majority of jurists, especially in France, believe that it is not possible to use employment contracts of indefinite duration due to the temporary nature of the sports activity, and therefore a professional player may be subject to the system of fixed-term employment contracts set

49. See: Ziyad Aladdin, Maklekl Bouziane, ibid. p. 69. Khaled Jassim al-Hindani, Abdel Rasoul Abdul-Ridha, ibid. 141

50. See: p. 14. See: also Article L 1221.2 of the French Labor Code and the possibility of concluding a fixed-term employment contract.

forth for example in Article 30 of the Kuwaiti Labor Law and Article L1221.2 of the French Labor Code.[51]

Second: The parties to the professional player's work contract: The employer in ordinary work contracts is "every natural or legal person who employs workers for a wage."[52] If we look at the professional player's contract, we find that the employer is always a legal person, and it cannot be a natural person. This is evident through the preamble of the typical professional player contracts, in which the first party finds a club, company or association, and the second party is the player. The reason for this is the commitment of the sports bodies in the member states to follow the bylaws, statutes and circulars issued by the international federations they follow. Therefore, we find that Kuwaiti Law No. 87/2017 stipulates in Article No. 61/2 that contracts for sports clubs, with regard to professional players participating in sports activities, shall be in accordance with the rules, regulations and requirements of the relevant national and international sports federations.[53]

Third: Formality in the professional player's work contract: no special form is required for the contract of work to be concluded, as it is one of the consensual contracts that take place once the wills of both parties agree. Rather, the contract remains consensual, but writing is stipulated here to prove and not to convene. This is evident from the wording of Article 28 of the Kuwaiti Labor Law, which states that "the work contract must be established in writing... If it is not established in a written document, the contract is considered valid, and the worker may, in this case, prove his right by all means of proof."[54]

This text here proves that writing is to prove and not to convene, and there is a difference between writing as a proof or writing as a condition for the contract to be effective, the question that arises here is whether writing in the professional player's employment contract is used to prove or bind?

1. Kuwaiti national legislation: Article 61/2 of Law No. 78/2017 stipulates that sports club contracts, with regard to professional players participating in sports activities, is in accordance with the rules, regulations and requirements of the relevant national and international sports federations. In implementation of this, Article 11/2 of the Regulations on the Status and Transfer of Players in the Kuwait Football Association stipulates that "a professional player is bound by a written contract with a specific club for a financial consideration that is more than the expenses that he actually incurs as a result of playing the football

51. Hassan Hussein Al-Barawi, previous reference, pp. 94,95.

52. See: p. 7.

53. FIFA Circular No 1171/2008, Professional Football Players Contract Minimum Requirements, Opt. Cit, Art.4/1.

54. Kuwaiti Labor Law No. 6/2010.

game." Article 16 of the same regulation stipulates that the professional player must be registered in a club that is a member of the federation in accordance with the provisions and system of these regulations, and he must agree to abide by the regulations, systems and decisions of the International and Asian Football Federations....

2. International sports provisions and regulations: For example, but not limited to, we find the International Football Association (FIFA) keen on a certain formality in the professional sports contract, which is the need to register the contract and ratify it by the concerned federation, and this is considered a necessary procedure, because the lack of registering the contract with the concerned union loses all its effects and promises if it was not, whether against the contracting parties or against the concerned union. The purpose of registration is to grant the professional player a license to do his work with the club. If the contract is not registered and not ratified, then this professional player cannot do his work and the contract shall not be binding.[55] The necessity of registering the professional player in the relevant association and ratifying his contract is a formality in which the contracting parties' will and their obligations are poured, which confirms that writing, registration and endorsement are a formal element of the professional player's contract of employment and not a condition to prove it.[56]

Fourth: The legal framework of the professional player's contract: Through our presentation of the previous distinctive characteristics of the professional player's contract of employment, it is evident that the provisions governing the player's relationship with the club are not limited only to what is stated in the individual employment contract whose provisions are subject to the labor law and the general rules stipulated in the Civil Code, but also includes the regulations and provisions of the club and the statute of the relevant association. In addition, the player and the club are bound by the binding rules contained in the statutes, regulations and circulars issued by the Asian and international federations, and in the event of their violation, they will be subject to either suspension or expulsion, as the case may be.[57]

Fifth: The judiciary competent to hear professional player contract disputes:

- Article 44 of the aforementioned Kuwaiti Sports Law stipulates that "an independent sports arbitration body with a legal personality called (the National Sports Arbitration Authority) shall be established to undertake the settlement of sports disputes in the state, one of whose parties is any of the sports bodies, its members or affiliates, through mediation or conciliation or arbitration. Article

55. FIFA Circular no 1171/2008, Art. 11.1.2. Art. L1242-12 Code Du Travail Francais.

56. Ziad Aladdin, Maklekl Bouziane, the previous reference, p. 65. Compare Hassan Hussein Al-Barawi, previous reference, p. 101.

57. See Art. 16 suspension, Art. 17 expulsion of FIFA STATUTES. May 2021 edition.

68 of the statute of the Kuwait Football Association introduced "1. Sports disputes in Kuwait Football Association disputes or sports disputes affecting KFA members, leagues, clubs, players and administrators may not be submitted to the ordinary courts unless the FIFA regulations or the mandatory provisions of national law so specifically provide for recourse to the ordinary courts. 2. Such disputes, as specified in Article 68, first paragraph, must be submitted to the Court of Arbitration, which is recognized by the Kuwait Football Association, the Asian Football Association or the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.[58]

- Only resort to the arbitration court in accordance with Article 68 when all the internal channels of the Kuwait Football Association have been exhausted, and the Kuwait Football Association has jurisdiction over internal national disputes, i.e. between the parties belonging to the Kuwait Football Association and the International Football Association has jurisdiction over any disputes between the parties belonging to the various federations and/or confederations.[59]

- The Kuwaiti sports law and the professional regulations required the club and the professional player to present the disputes arising between them first before the competent authorities in the concerned sports federation, in order to find an appropriate solution to them. This is due to the keenness of the sports parties to resolve their disputes among themselves in an amicable manner as they are one family, and the resolution of disputes through these sports bodies is required by the nature of the sporting activity itself and its special nature, as the sports federation or the association resolves the dispute in an expedited manner as it is the best to understand the nature of the conflict and develop the optimal solution to it, in addition to the fact that those bodies can impose their decisions on the parties with their powers. After exhausting all the competent committees to resolve disputes amicably in the concerned federation, the National Court of Arbitration is resorted to, which can appeal its decisions in accordance with the rules of jurisdiction, the regulations of the Court of Arbitration for Sport (CAS) and the rules of jurisdiction in international sports federations.[60]

These laws, regulations, and special sports judicial committees to which the

58. Resolution No. 10 of 2018 regarding the publication of the articles of association of the Kuwait Football Association.

59. The Statute of the National Sports Arbitration Authority was published in the official Al-Kuwait Al-Youm newspaper on 9/1/2020.

60. See Article 45 of the Statute of the Kuwait National Sports Arbitration Commission and see for example the International Sports Judiciary according to the FIFA Statute Articles 51 Disciplinary Committee Article 52 Values Committee Article 53 Appeal Committee 54 Football Court Article 55 Disciplinary Measures.

- Art.56Court of Arbitration for Sport (CAS), FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between

professional player's contract is subject, in addition to the other characteristics that were reviewed in this requirement, created for this contract , distinguishes it from the rest of the employment contracts, which led us at the end of this research to be convinced that the professional player's contract is a contract of a special nature, which combines several provisions, some of which are due to the will of the parties of the contract, and some of them are organizational and regulations issued by the national and international sports bodies to which the two parties of the contract are affiliated. This special nature of the professional player's work contract imposed on the judge a double effort, especially with regard to jurisdiction and the rules of jurisdiction in the consideration of disputes arising from this contract.[61]

Conclusion

This study focused on determining the legal nature of the professional player's contract, acknowledging the legal system to which this contract is subject to and the judiciary competent to consider its disputes. We discussed the disagreements common in comparative jurisprudence and the judiciary regarding the legal nature of the professional player's contract, and especially the opposing views regarding the classification of the contract, and whether the professional player's contract is a contracting contract, and among those who believe it is as an employment contract, based on its most prominent characteristics, which is the professional player's subordination to his club. To conclude our findings regarding both opinions, we discussed, the contracting contract theory in this regarding, and its opposing views, in addition to, the employment contract theory and its opposing views, and therefore, we believe that the professional player's contract is an employment contract, however, it is not an employment contract corresponding to other standard employment contracts, but it is an employment contract of a special nature in view of the distinctive characteristics that distinguish it from other employment contracts. It is therefore evident that the professional player's contract with his club can only be concluded with a fixed-term contract and in accordance with the rules, regulations and requirements of the relevant national and international sports federations, and that the employer is always a legal person, and that it is a formal contract in which the will of the

FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents.

61. See: The ruling of the Kuwaiti Court of Cassation issued on 10/7/2019 in the appeals No. 3823 and 3842 / Administrative / 1/2017. see A. Behbehani justified the null decision and the implicit reversal of the Court of Cassation ruling in the case known as the Three Points. Published in Arkan electronic magazine, dated 7/10/2020.

professional player and his club and the obligations of each party towards the other are poured in a formal mold.

The contract is not binding and has no value, if it is not registered and ratified by the relevant association. Writing, registration and ratification are a formal element of the professional player's contract of employment, without them, this contract is considered as if it had not been established, and it is a contract whose legal framework is not limited to local laws, but extends to include International Sports Laws, regulations, and the local judiciary and the national and international sports judiciary are specialized in examining their disputes.

Finally, we recommend that all national and international legal rules related to the professional player's employment contract be included in a special chapter of the labor law due to its subjectivity and its distinction from other ordinary employment contracts.

Finished by praise of Allah

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