



Problems of Legal Regulation of Temporary Transitions of Professional Athletes (Lease) on the Example of the Legislation of the Republic of Uzbekistan

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Abstract: The article analyzes the problems of legal regulation of the rental of professional athletes on the basis of the legislation of the Republic of Uzbekistan. Attention is paid to the legal acts regulating these relations, as well as the conditions on which the parties agree when renting a professional athlete. It is noted that the athlete's lease agreement, as well as the transfer agreement, has a complex legal nature. They interact with the norms of both civil and labor law.

Keywords: sports, sports relations, sports contract, sportsman's loan, national legislation.

In the Republic of Uzbekistan, the development of physical culture and sports is of paramount importance. In the Message of the President of the Republic of Uzbekistan, Shavkat Mirziyoyev, to the Oliy Majlis (Parliament) of the Republic of Uzbekistan on December 20, 2022, it was said about the need for "mass attraction of people of different ages to physical culture" and "ensuring a healthy lifestyle for a person." [1] In the Draft New Constitution of Uzbekistan, article 48 states that "The state creates conditions for the development of physical culture and sports, the formation of a healthy lifestyle among the population." [2]

The progress of physical culture and sports relations in our country is very dynamic, which, in turn, requires constant attention to the improvement of the legal framework, the creation of fundamentally new legislative acts that consolidate the achievements of physical culture and sports in our country.

Therefore, the study and improvement of sports law is of great importance.

One of the topics that, in our opinion, should be given more attention in the field of sports law is the legal aspects of contractual relations in sports. The activities of an athlete in our country, as well as activities in other areas, must comply with the principles established by regulatory enactments.

Today, in our opinion, the issues of legal regulation of transitions (transfer) of athletes from one sports organization to another with a valid contract are very important. as well as its lease.

The right of an athlete to transfer to another physical culture and sports organization is, in our opinion, one of the main ones that should be granted to an athlete in his contract.

The laws of many countries have established rules governing such relations. For example, in acts regulating relations regarding the transfer and rental of athletes from such countries as Germany, France,

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Great Britain, Brazil, Argentina and many others, it is directly indicated that the regulation of relations arising between an athlete and a sports organization regarding the transfer of an athlete to another sports organization or his lease. Thus, the Brazilian Law N 6354 of September 2, 1976 regulated "issues of the transfer of a professional athlete to another club." [3]

In some works of the author, attention was also paid to this issue [4,5]

Until recently, national legislation has not established the rules for the transfer of athletes from one sports organization to another. Moreover, the concepts of "athlete transfer" and "athlete rental" do not exist in our legislation.

The new Labor Code of the Republic of Uzbekistan, which came into force in April 2023, only defines the temporary transfer of an athlete from one employer to another and does not say anything about renting, transferring or "transferring". These rules are established in clubs for various sports. For example, the Regulations of the Football Association of Uzbekistan adopted the procedure for the transfer of players from club to club, approved by the executive committee of the Football Association of Uzbekistan on 11.02.2021. [6]

The legal regulation of temporary transitions (transfers) of athletes - professionals mainly lies in the legal acts of sports federations and associations. Another part of the provisions affecting this institution is contained in labor and civil legislation) - for example, article 503 of the New Labor Code of the Republic of Uzbekistan "Peculiarities of legal regulation of the labor of athletes", [7] however, at the moment, neither the Civil Code of the Republic of Uzbekistan, [8] neither the law of the Republic of Uzbekistan "On Physical Culture and Sports" [9] contains norms regulating the application of a transfer agreement on the terms of "lease".

Under a transfer agreement on a "lease" basis, one professional sports club (lessor) undertakes to transfer, on a "lease" basis, to another professional sports club (tenant) for a certain period of time a professional athlete, who, in turn, undertakes to transfer from one professional sports club to another. The contract is consensual, urgent and reimbursable. The bilaterally binding nature of the agreement is evidenced by the fact that the club-lessor transfers the athlete to the club-tenant, and the latter has an obligation to accept the athlete and pay the club-lessor a transfer fee and other payments agreed by the parties (including compensation for education, training and improvement of skills athlete).

Most of the obligations under the contract have a clearly expressed non-property nature, since the relationship for the transfer of a football player from one club to another and back does not pursue the transfer of any material benefits. This means that the property valuation of the contract is only the transfer amount paid by the tenant club, as well as the amount of compensation for education, training and improvement of the athlete's skills, which indicates that the transfer agreement is reimbursable on a "lease" basis [8]. The presence of a term in this agreement delimits it from a transfer agreement, according to which an athlete transfers to another club on a permanent basis. At its core, unlike a transfer agreement under a transfer agreement on a "lease" basis, an athlete transfers to another sports club twice, respectively, in accordance with Art. 93 of the Labor Code of the Republic of Uzbekistan is twice transferred to another job [7]. This means that a record of dismissal and acceptance to another job is made twice in the football player's work book. However, the Regulations, for example, by the Football Association of Uzbekistan (UFU), do not recognize the return of an athlete to the club-lessor as a second transition. Also, this agreement is tripartite, the athlete in it acts as a participant (party) of the agreement. The legal nature of this agreement is very ambiguous, some scientists find many contradictions contained in agreements of this kind. In turn, most researchers attribute it to civil law contracts [10,11]. The standard form of a transfer agreement on a lease is approved by the sports federations, for example, in the annex to

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the Regulations of the Football Association of Uzbekistan (UFU) and is mandatory for use by the relevant professional football clubs.

Since the transition (transfer) of an athlete under the specified contract is temporary, there is a possibility of mixing it with a temporary transfer to another job in labor legislation. However, based on the literal interpretation of Art. 92 of the Labor Code of the Republic of Uzbekistan, it follows that a temporary transfer is possible only with one employer, and under a transfer agreement on a “lease” basis, the athlete’s employer changes [7]. Thus, it is not possible to recognize the relationship of the temporary transition (transfer) of a football player as labor relations. The belonging of any contract to civil law is also determined by its subject. There has not yet been a consensus on the definition of the subject of a transfer contract on the terms of a “lease” in the science of sports and civil law. Some scientists believe that it is the temporary transfer of an athlete from one club to another for a certain period. A temporary transfer on a “lease” basis in accordance with Article 1 of the AFU Regulations is a transfer (transfer) of a professional athlete from a professional sports club, for which he is registered, for a temporary performance for another professional sports club - represents the period between the first and second registration periods or the period between the second registration period and the end of the current sports season [6].

The duration of the transition must necessarily be established by the parties and cannot be shorter than the periods provided for by the said regulations. Others recognize as the subject: 1) actions aimed at the assignment of a claim, the object is the property right to compensation, the object is the property right to the athlete's services; 2) services for the transfer of a player to another sports club, and services are recognized as an object [12, 13]; 3) services for the education and training of an athlete, the object also refers to services; [14, 15] 4) assignment of the property right to services for the athlete's access to competitions - transfer rights (the right to register a professional (non-amateur) athlete in the relevant sports association, the object - the property right to services for the athlete's access to competitions [16].

Based on a literal interpretation in accordance with Art. 535 of the Civil Code of the Republic of Uzbekistan of the definition of a transfer agreement on the terms of "lease", a moving object from one subject to another is the temporary transfer of an athlete from one club to another [8]. The object of this agreement is transfer rights, which should be understood as the rights to register an athlete in the relevant sports club, the right to compete for the colors of the corresponding club, etc. In accordance with this, one party, the lessor club, transfers for a certain period transfer rights (the right to register a professional athlete in the relevant sports association), and the other party - the club-tenant pays the club-renter (owner of the transfer) compensation payments for the training and improvement of the skills of a professional athlete. The Civil Code of the Republic of Uzbekistan does not provide for such an object of civil rights, therefore, we believe that temporary transfer should be understood as the assignment of the right to claim transfer rights for a certain period. Transfer rights belonging to the club-lessor on the basis of an employment contract with an athlete can be transferred by him to the club-lessor under a transaction in accordance with Art. 313 of the Civil Code of the Republic of Uzbekistan [8]. Thus, by its nature, a transfer agreement on a “lease” basis is an assignment of the right to claim for a certain period. According to it, the tenant club receives transfer rights for the temporary transition of a particular athlete. In order to consider this agreement concluded, it is necessary to indicate the content of the transfer transition of a certain professional athlete. Thus, despite the differences in the points of view of various researchers on the issue of the presence of a civil law nature in a transfer agreement on the terms of a “lease”, it is not possible to speak of its absence.

Continuing to analyze the national legislation, we note that Article 535 of the Civil Code of the Republic of Uzbekistan gives

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The Civil Code of the Republic of Uzbekistan does not contain the concept of "rent of an athlete". The Civil Code gives only the concept of "types of objects of civil rights", where the object is "things, results of intellectual activity, as well as personal non-property rights and other tangible and intangible benefits" (article), i.e. individuals cannot be the object of a lease agreement, like any other. However, the rental of an athlete implies that the object of such an agreement is an individual. Given the above, based on world practice, in order to improve national legislation, it seems to be correct to amend the Civil Code of the Republic of Uzbekistan in Article 81, where it should be indicated that the object of the contract can be precisely an individual without prejudice to dignity, "and in Article 535 indicate, that in exceptional cases, directly specified in Article 81, the object of the lease agreement may be a natural person." [8]

When an athlete is temporarily transferred to another employer to continue playing professional sports, the employment contract concluded with the previous employer is suspended and resumed at the end of the athlete's temporary transfer. This is an innovation for the labor law of Uzbekistan, and, as a result, some issues, for example, the question of where the employee's work book is stored, have not yet been resolved.

Based on Art. 81 of the Labor Code of the Republic of Uzbekistan, only information about the transfer to another permanent job is entered in the work book. Information on temporary transfer is not subject to entry [7]. It is considered possible, by analogy with the law, to apply the procedure for filling out a work book for a person appointed as a temporary (anti-crisis) manager.

Legislative experience of foreign countries shows that the work book of an athlete, coach can remain with the original employer for the entire period of transfer. The employer can also make entries in the work book of an athlete, coach on the suspension of a fixed-term employment contract for the period of temporary transfer to another employer, on the renewal of a fixed-term employment contract [17].

At the same time, representatives of, for example, Russian science came to the conclusion that when an athlete is temporarily transferred to another employer, the work book should be transferred to the employer at the place of temporary work, because. for the period of temporary transfer, the athlete is connected by labor relations with only one employer, who must keep the work book. We support this opinion, since In practice, there are many examples of an athlete temporarily moving to another club on a loan basis and, naturally, he develops labor relations with this new employer [18, 19].

In addition, the norms of Article 503 of the new Labor Code of the Republic of Uzbekistan also note that "During the period of temporary transition (sports lease), the athlete and the employer at the place of temporary work are fully subject to the rules established by labor legislation and other acts containing labor standards. law, with the features established by this article" [7].

So, the athlete's lease agreement, as well as the transfer agreement, has a complex nature. In them, as we have seen, the norms of civil and labor law interact. Also, these contracts are poorly regulated by regulatory legal acts. Therefore, we recommend carefully prescribing all the rights and obligations of the parties, responsibility for their failure.

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