

Sadržaj doktorskog rada pod naslovom „*Prestanak ugovora između igrača i kluba u profesionalnom nogometu*“ doktoranda Davora Radića

SAŽETAK

Doktorski rad pod nazivom *Prestanak ugovora između igrača i kluba u profesionalnom nogometu* usmjeren je na sustavnu analizu načina prestanka ugovora u profesionalnom nogometu, s obzirom na to da taj prestanak predstavlja središnje pitanje pravne regulacije ugovornog odnosa igrača i kluba, a postojeći normativni okvir u Bosni i Hercegovini u pogledu jednostranog raskida ugovora zahtijeva znanstvenu analizu i reformu jer nije usklađen s međunarodnim standardima i pravilima FIFA-e.

Sportsko-nogometno pravo predstavlja relativno novu granu prava koja se iznimno brzo razvija te u okviru pravne znanosti čini poseban dio građanskog prava, s obzirom na to da uređuje ugovorne odnose, odgovornost za štetu, statusna i obveznopravna pitanja između igrača i klubova, ali i svih drugih dionika u profesionalnom nogometu.

Profesionalni nogomet kao globalni fenomen ne predstavlja samo sportsku disciplinu, već i složen pravni, društveni i gospodarski sustav. U njegovom središtu nalazi se ugovorni odnos između igrača i kluba koji zbog specifičnosti profesije ima osobitu pravnu narav. Za razliku od standardnih radnih odnosa, ugovor u profesionalnom nogometu istodobno je podlozan radnopravnim normama, autonomnim sportskim pravilima međunarodnog nogometnog saveza i pravilima obveznog prava države u kojoj se sklapa ugovor o profesionalnom igranju te međunarodnim pravilima o slobodi kretanja radnika. Upravo ta višeslojnost pravne regulacije otvara niz problema, posebice u području prestanka ugovora. Poredbenom analizom dat će se prikaz načina prestanka ugovora u Bosni i Hercegovini i Republici Hrvatskoj, a s obzirom na važnost ugovornih odnosa u profesionalnom nogometu važno je izložiti i status igrača u izabranim europskim državama koje predstavljaju najrazvijenije zemlje u području profesionalnog nogometa i nogometnih natjecanja: Savezna Republika Njemačka, Republika Italija, Francuska Republika, Engleska kao dio Ujedinjenog Kraljevstva Velike Britanije i Sjeverne Irske, Kraljevina Španjolska, Kraljevina Nizozemska i Republika Portugal. Sudska praksa Suda Europske unije znatno utječe na status igrača kao radnika tako da će se analizirati najznačajnije odluke tog suda i utjecaj te sudske prakse na profesionalni nogomet.

U istraživanju će se razmotriti zakonodavno uređenje prestanka radnog odnosa u Bosni i Hercegovini i Republici Hrvatskoj, koji prestaje na način uređen mjerodavnim propisima

radnog prava svake od promatranih država. Iz radnih odnosa nastaju prava i obveze za obje strane, a što je uređeno radnim zakonodavstvom obje države, u kojem su normirane vrste prestanka ugovora o radu.

U profesionalnom nogometu ugovori između igrača i klubova prestaju s danom njihova isteka, sporazumnim raskidom i jednostranim raskidom zbog opravdanog razloga ili sportski opravdanog razloga, a sve na način koji je utvrdila Svjetska nogometna organizacija (dalje: FIFA) kao tzv. globalni regulator međunarodnog nogometa. FIFA u odredbama Pravilnika o statusu i transferima igrača uređuje vrste prestanka ugovora u profesionalnom nogometu. Takvi načini prestanka obvezuju sve dionike u nogometu, pa tako i one u Bosni i Hercegovini i Republici Hrvatskoj. Međutim, u praksi se često događa da profesionalni odnos između igrača i kluba prestane na druge načine koji nisu uređeni ni međunarodnim pravilima FIFA-e ni autonomnim sportskim pravilima nogometnih saveza. Kao primjer se mogu navesti prestanak ugovora zbog smrti igrača, otkaz ugovora u stečajnom i/ili likvidacijskom postupku koji se vodi nad nogometnim klubom, kao i prestanak ugovora zbog slučaja više sile.

Pri jednostranom raskidu ugovora iz opravdanog razloga, stranka koja je raskinula ugovor ne plaća nikakvu novčanu naknadu drugoj strani, dok se u obrnutom slučaju plaća naknada, pri čemu je osobito važno pravilno utvrditi kriterije za izračun takve štete u slučajevima raskida ugovora bez opravdanog razloga, propisane člankom 17. FIFA Pravilnika o statusu i transferima igrača. Predmet *Diarra* predstavlja jednu od najznačajnijih novijih odluka Suda Europske unije u području profesionalnog sporta koja će imati dalekosežne posljedice na uređenje ugovornih odnosa u profesionalnom nogometu, ali i na normativni sustav FIFA-e u pogledu utvrđivanja posljedica koje se primjenjuju u slučajevima izjavljivanja raskida ugovora bez opravdanog razloga.

Zaštita prava iz ugovornog odnosa u profesionalnom nogometu u slučaju sporova između igrača i kluba ostvaruje se pred nadležnim nogometnim tribunalima i drugim tijelima za rješavanje sporova (NS/FS BiH, HNS, FIFA, CAS). U Bosni i Hercegovini najviše tijelo za rješavanje nogometnih sporova je Komitet za status i transfer igrača NS/FS BiH, a u Republici Hrvatskoj sporovi u profesionalnom nogometu se iznose pred Arbitražni sud HNS-a. U predmetima s međunarodnim elementom takvi se sporovi iznose pred FIFA-inim nogometnim tribunalima, a igrač i klub mogu ih iznijeti i pred Arbitražni sud za sport u Lausanni (Švicarska) ako su dogovorili nadležnost tog suda u svom ugovoru. Svi ti nogometni tribunali donijeli su velik broj odluka iz područja prestanka ugovora u profesionalnom nogometu, a najznačajnije odluke bit će predmet analize u ovom doktorskom radu jer pridonose osiguranju jedinstvene

primjene prava i ravnopravnosti svih u njegovoj primjeni, kao i razvoju prava u praksi nadležnih nogometnih tribunala u Bosni i Hercegovini.

Trenutačna praksa nadležnih tijela za rješavanje sporova u NS/FS BiH u postupcima koji se vode povodom jednostranog raskida ugovora nije usklađena s praksom međunarodnih nogometnih tribunala te ju je potrebno mijenjati, budući da profesionalni igrači u Bosni i Hercegovini trpe štetne posljedice zbog nemogućnosti nesmetanog prelaska u druge nogometne klubove. Zbog toga će u ovom doktorskom radu poseban naglasak biti na usklađivanju domaće prakse nadležnih nogometnih tijela NS/FS BiH s međunarodnim standardima i praksom FIFA-e i CAS-a. U središtu te neusklađenosti nalazi se razlika između deklaratornog modela, u kojem raskid ugovora proizvodi učinak već samom izjavom ugovorne strane, uz naknadnu ocjenu njegove opravdanosti i konstitutivnog modela kakav proizlazi iz prakse NS/FS BiH u kojem učinak raskida ovisi o prethodnoj odluci nadležnog tijela saveza. Upravo se na razgraničenju tih dvaju modela temelji središnja teza ovoga dokorskog rada, prema kojoj prestanak ugovora treba nastupiti izjavom volje, dok se zakonitost raskida i njegove posljedice ocjenjuju naknadno.

Slijedom iznesenih teorijskih, normativnih i praktičnih polazišta, razvidno je da institut prestanka ugovora u profesionalnom nogometu, a osobito jednostrani raskid ugovora, predstavlja jedno od temeljnih i najsloženijih pitanja suvremenog sportsko-nogometnog prava. Njegova složenost proizlazi iz istodobne primjene radnopravnih i obveznopravnih normi, autonomnih sportskih pravila (*lex sportiva*) te međunarodnih standarda FIFA-e koji se razvijaju na razini međunarodnih nogometnih tijela i sudske prakse. U takvom višeslojnom normativnom okruženju svako odstupanje nacionalnih pravila od međunarodnih standarda nužno dovodi do poremećaja pravne ravnoteže između ugovornih strana.

Analiza postojećeg bosanskohercegovačkog normativnog i institucionalnog okvira pokazuje da neusklađenost s pravilima i praksom međunarodnih nogometnih tribunala ima konkretne i mjerljive posljedice, osobito u pogledu pravne sigurnosti profesionalnih igrača, ostvarivanja prava na slobodno kretanje te funkcioniranja nogometnog tržišta. Takva praksa može dovesti do pravne neizvjesnosti te rezultirati povećanjem broja sporova, produljenjem postupaka te slabljenjem povjerenja u učinkovitost sustava rješavanja sportskih sporova u profesionalnom nogometu u Bosni i Hercegovini. Nužnost usklađivanja domaćeg normativnog uređenja i prakse nadležnih tijela NS/FS BiH s međunarodnim standardima FIFA-e ne predstavlja tek formalnu obvezu, već preduvjet za osiguranje ravnopravnog položaja ugovornih strana i stabilnosti ugovornih odnosa u profesionalnom nogometu.

Ključne riječi: ugovori, ugovorni odnos igrača i kluba, radno pravo, sportsko-nogometno pravo, profesionalni nogomet, raskid ugovora, FIFA, praksa nogometnih tribunala.

The content of the doctoral dissertation titled „*Termination of the contract between player and club in professional football*” by doctoral candidate Davor Radić

SUMMARY

The doctoral thesis, entitled *Termination of the contract between player and club in professional football*, focuses on a systematic analysis of the manner of contract termination in professional football, given that such termination is the central issue of legal regulation of the contractual relationship between a player and a club, and the existing normative framework in Bosnia and Herzegovina regarding unilateral contract termination requires scientific analysis and reform, as it is not aligned with international standards and FIFA rules.

Sports-football law is a relatively new branch of law progressing at an exceptionally fast pace and as such represents a special part of civil law in legal science, since it regulates contractual relations, liability for damage, matters of status and of the law of obligations between players and clubs, as well as all other stakeholders in professional football.

Professional football as a global phenomenon is not only a sports discipline but also a complex legal, social and economic system. At its core is the contractual relationship between a player and a club, which has a special legal nature due to the profession's specific nature. Unlike standard employment relationships, a contract in professional football is simultaneously subject to labor law norms, the autonomous sports rules of the international football federation and the law of obligations of the country in which the professional playing contract is concluded, as well as international rules on the freedom of movement of workers. It is precisely this multi-layered nature of legal regulation that opens several problems, especially concerning contract termination. A comparative analysis will provide an overview of the manner in which contracts are terminated in Bosnia and Herzegovina and the Republic of Croatia, and given the importance of contractual relations in professional football, it is important to also present the status of players in selected European countries that represent the countries with the most developed professional football and football competitions: the Federal Republic of Germany, the Republic of Italy, the French Republic, England as part of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Spain, the Kingdom of the Netherlands and the Republic of Portugal. The case law of the Court of Justice of the European Union significantly affects the status of players as workers, and the most significant decisions of that court and the impact of that case law on professional football will therefore be analyzed.

The research will examine the legislative regulation of the termination of employment in Bosnia and Herzegovina and the Republic of Croatia, which ceases in a manner governed by the relevant labor law regulations of each of the observed countries. Employment relationships give rise to rights and obligations for both parties, which are regulated by the labor legislation of both countries, under which the types of termination of employment contracts are stipulated.

In professional football, contracts between players and clubs cease on their expiry date, by mutual agreement, or are unilaterally terminated with a just cause or with a sporting justification, all in the manner defined by the International Federation of Association Football (hereinafter: FIFA) as the so-called global regulator of international football. FIFA regulates the types of contract termination in professional football in the provisions of the Regulations on the Status and Transfer of Players. Such termination methods are binding on all stakeholders in football, including those in Bosnia and Herzegovina and the Republic of Croatia. However, in practice, it often happens that the contractual relationship between a player and a club terminates in other ways that are not governed by either the international rules of FIFA or the autonomous sports rules of national football associations. Examples of this include the termination of a contract due to the death of a player, the termination of a contract in bankruptcy and/or liquidation proceedings against a football club, and the termination of a contract due to force majeure.

In the case of unilateral termination of a contract with just cause, the party that terminated the contract does not pay any compensation to the other party, while in the opposite case compensation is paid, and it is particularly important to correctly determine the criteria for calculating such damages in cases of termination of the contract without a just cause, prescribed by Article 17 of the FIFA Regulations on the Status and Transfer of Players. The Diarra case represents one of the most significant recent decisions of the Court of Justice of the European Union in the field of professional sport, and it will have far-reaching consequences for the regulation of contractual relations in professional football, but also for FIFA's normative system as regards determining the consequences applied in cases of termination of a contract without a just cause.

The protection of rights arising from the contractual relationship in professional football in the event of disputes between players and clubs is exercised before the competent football tribunals and other dispute resolution bodies (NS/FS BiH, HNS, FIFA, CAS). In Bosnia and Herzegovina, the highest body for resolving football disputes is the Committee for the Status and Transfer of Players of NS/FS BiH, and in the Republic of Croatia, professional football

disputes are brought before the Court of Arbitration of the HNS. In cases with an international dimension, such disputes are brought before FIFA's football tribunals. The player and the club may also bring their disputes before the Court of Arbitration for Sport in Lausanne (Switzerland) if they have agreed on the jurisdiction of that court in their contract. All these football tribunals have made a large number of decisions in the field of termination of contracts in professional football, and the most significant decisions will be the subject of analysis because they contribute to ensuring the uniform application of law and the equality of all in its application, as well as to the development of law in the practice of the competent football tribunals in Bosnia and Herzegovina.

The current practice of the competent bodies for resolving disputes in the NS/FS BiH in proceedings conducted upon unilateral termination of a contract is not aligned with the practice of international football tribunals and therefore needs to be changed, considering that professional players in Bosnia and Herzegovina suffer damage due to the impossibility of unimpeded transfer to other football clubs. For this reason, the emphasis in this doctoral thesis will be on aligning the domestic practice of competent football bodies of NS/FS BiH with international standards and practice of FIFA and CAS. At the heart of this lack of alignment lies the distinction between the declaratory model, in which termination of a contract produces its effect by the mere declaration of the contracting party, with its justification assessed only subsequently, and the constitutive model, as found in the practice of NS/FS BiH, in which the effect of termination depends on a prior decision of the competent body of the association. It is precisely on the delimitation of these two models that the central argument of this thesis rests, according to which termination of a contract should take effect upon the declaration of intent, while the lawfulness of the termination and its consequences are assessed subsequently.

Following the theoretical, normative and practical starting points presented, it is clear that the legal institution of contract termination in professional football, and in particular the unilateral termination of a contract, represents one of the fundamental and most complex issues of modern sports-football law. Its complexity arises from the simultaneous application of the norms of labor law and of the law of obligations, autonomous sports rules (*lex sportiva*) and international FIFA standards that are developed at the level of international football bodies and court practice. In such a multi-layered normative environment, any deviation of national rules from international standards necessarily leads to a disruption of the legal balance between the contracting parties.

An analysis of the existing Bosnian-Herzegovinian normative and institutional framework shows that the lack of compliance with the rules and practice of international

football tribunals has concrete and measurable consequences, especially with regard to the legal security of professional players, the exercise of the right to free movement and the functioning of the football market. Such a practice can lead to legal uncertainty and can result in an increase in the number of disputes, the prolongation of proceedings and weakening of confidence in the effectiveness of the sports dispute resolution system in professional football in Bosnia and Herzegovina. The necessity of harmonizing the domestic normative framework and practice of the competent bodies of the NS/FS BiH with the international standards of FIFA does not represent only a formal obligation, but a prerequisite for ensuring the equal position of the contracting parties and the stability of contractual relations in professional football.

***Key words:* contracts, contractual relationship between players and clubs, labor law, sports-football law, professional football, termination of contracts, FIFA, case law of football tribunals.**