

Turkey: Collection of the Footballers' Receivables *

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Article by Orçun Doğançalı **

I- Introduction

The Turkish football industry is the seventh largest in Europe, having generated a revenue of 515 million Euros in 2011. However, some of Turkey's top football teams (including Fenerbahçe), their officials (including Fenerbahçe's club president Mr. Aziz Yıldırım), and various players are still subject to criminal investigations started in 2011. In addition to these incidents, in 2011 there were also major legislative amendments introduced by the Turkish Football Federation (**TFF**) with respect to the collection of the players' receivables. In this article, these amendments, which are tremendously effective, will be summarised both from the perspectives of the Turkish and the foreign players. It will be concluded that the Turkish players have three legal options to pursue their receivables against the Turkish clubs, whereas the foreign players have four. In order to produce a reader friendly text, references to the specific statuses of the TFF / FIFA as well as the Turkish legislation are purposefully avoided in this article.

II- Arbitration at the Dispute Resolution Chamber of the TFF (Chamber)

Is suing the club at the Chamber mandatory or voluntary? Voluntary.

When should the parties agree on the arbitration? Before or after the dispute arises? After the dispute.

A New Directive regulating the Chamber was put into force in August 2011 (**New Directive**). In case a dispute (such as one regarding receivables) arises between the club and the player, either party is entitled to apply to the Chamber in writing. After that, the Chamber shall notify the other party whether it (in practice, this party is always the club) accepts that the dispute shall be resolved by the Chamber. In other words, this arbitration is not a compulsory one and the parties should even agree, after the dispute arises, on whether the dispute should be resolved by the Chamber. These are the most noteworthy amendments introduced by the New Directive. Before the New Directive, the club and the player were obliged to resolve the receivables dispute through the mandatorily applicable arbitration procedures of the Chamber. During the period when the previous mandatory arbitration of the Chamber was in force, disputes between the clubs and players, as expected, were resolved faster and with less cost than the litigation in the court. The usual length of the trial of the compulsory arbitration of the Chamber would be approximately 1 (one) year.

The reason and the rationale behind why the mandatory arbitration of the Chamber has been abolished is controversial (i.e. is it because the UEFA/FIFA has requested this? Not entirely, we presume). Leaving that question aside, after the New Directive was put into force, we have the fact that only few cases are brought before the Chamber. As expected, the clubs generally do not agree on the new voluntary arbitration procedure of the Chamber. From the perspective of the Clubs' interests, litigation in the court is more favourable since in that way they are able to postpone the payment of the player's receivables even if the court renders its decision in favour of the player.

III- Litigation in the court

Is this a lengthy and costly legal option? Yes, it is.

If there is a receivable dispute and if the club does not provide its consent that the dispute shall be resolved at the arbitration of the Chamber (- as explained in section II above -), then the player should sue the club at the Turkish court. There must always be a signed professional player's contract between the player and the club. Any player's contract should define the club's financial obligations with regard to the player's salary, bonuses etc. Having said that, the legal ground of the lawsuit shall be the infringement of the player's contract. This lawsuit is an ordinary and usual "receivables" lawsuit that will be resolved pursuant to the Turkish Procedural Law and Code of Obligations etc. In the best case scenario, the usual length of the litigation in court (including its appeal period) would be 2 (two) years.

IV- Directly initiating the collection proceedings through the execution office

Does this procedure have more adventurous payments? Yes, it does.

As an alternative to the legal options explained above, the player may directly initiate execution proceedings upon the club for the collection of his receivables. Upon receiving the request of the player in writing, the execution office shall serve the payment order upon the club. Within seven days following the receipt of the payment order, the club shall either object to the payment order or pay the amount/receivables indicated in the payment order to the player. If the club objects, then the player should apply to the court for the cancellation of the objection. This lawsuit is not entirely different from the one explained in section III above. The only additional legal benefit available to the player is that the court might order the payment of the "execution denial compensation" in the amount of 20 percent of the receivables (- if the disputed receivable(s) is definite and/or determinable before the trial). In most cases, as explained, there will be a player's contract setting forth explicitly the amount of the salary, bonuses etc. that the player will receive. This means that the receivable is definite or at least determinable. To briefly re-phrase this: the player might be able to receive the receivable, plus compensation to the amount of 20 percent of the receivable.

V- Taking the club to the Dispute Resolution Chamber of FIFA (DRC)

Are foreign players in Turkey armed with more powerful legal option(s) within the scope of the legislation of the FIFA? Yes, they are.

It should be noted that, like Turkish players, foreign players are also entitled to sue Turkish clubs. The legal option explained below is an additional legal remedy, which does not preclude the foreign players to exercise legal options available to the Turkish players.

Having said that, the DRC is entitled to resolve the employment related disputes between the players and the clubs of an international dimension. It is unarguable that a dispute between a foreign player and a Turkish club with respect to receivables is an employment related dispute with an international dimension. In other words, the foreign player is entitled to sue the Turkish club at the DRC for the settlement of his receivable dispute. If the DRC renders its decision in favour of the player, then the DRC notifies the short version decision (i.e. findings of the decision) to the Turkish club through the TFF. The club has two options; either pay the receivable within 30 days following the receipt of the short version decision or request the issuance of the full version decision (decision with grounds/reasons) from the DRC within 10 days following the receipt of the short version decision. For the Club, time limit to appeal the decision of the DRC at the Court of Arbitration of Sports (CAS) shall commence upon the receipt of the full version decision.

At the end of the procedures, the decision of the DRC in favour of the foreign player might become final and binding. Upon that, if the Turkish club does not fulfil the decision of the DRC, (i.e. payment of the player's receivables), then the Turkish club might be subject to severe disciplinary sanctions imposed by FIFA and implemented through the TFF (such as payment of a heavy fine, deduction of 6 points that the club gained in the national league, etc.)

VI- Conclusion

As explained, there are three legal options available to the Turkish players to pursue their receivable(s) against the club, namely;

- **OPTION 1:** Suing the club at the voluntary arbitration of the Dispute Resolution Chamber of the TFF and,
- if the club does not agree on the voluntary arbitration of the TFF, then the player should either;
 - (i) **OPTION 2:** sue the club before the court,

or

- (ii) **OPTION 3:** directly initiate execution proceedings for the collection of his receivable(s) (- if the club objects to the execution proceedings, then the player should file a lawsuit for the cancellation of the objection -). Option 3 provides an advantageous legal mechanism for the player to receive the (additional) “execution denial compensation” in the amount of 20 % of the receivable.

As far as foreign players are concerned, they have an additional legal option available to them i.e. suing the club at the Dispute Resolution Chamber of FIFA. (**OPTION 4**) In other words, foreign players are entitled to sue the clubs like Turkish players, plus they have an additional international weapon.

Which of the options explained above are to be chosen and initiated against the Turkish club depends on the particulars of each individual case (such as whether the club is in a good financial situation, whether the Club is willing to pay etc.)

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** Mr. Orçun Doğançalı was the senior member of the litigation team of the Turkish Football Federation and is currently partner at “Doğançalı – Attorneys at Law”.