INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

How to protect the employer's interests after the termination of employment contracts – aspects of labour law in general and sports law in particular

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National Report of Greece

Stefanos Tsimikalis

Tsimikalis Kalonarou
Nefytou Vamva 1, 10674
Athens, Greece
+30 210 3647528
s.tsimikalis@athenslegal.gr

General Reporters:

Dr. Hans Georg LAIMER, LL.M. (LSE) zeiler.partners Rechtsanwälte GmbH Stubenbastei 2 // Entrance Zedlitzgasse 7 A-1010 Wien // Vienna Phone: +43 1 8901087-81 E-mail: hans.laimer@zeiler.partners	Dr. Stephan DITTL SALGER Rechtsanwälte PartGmbB Darmstädter Landstraße 125 D-60598 Frankfurt am Main Phone: +49 (69) 66 40 88 251 E-mail: dittl@salger.com

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1. Employment Law

1.1. Restrictive covenants

1.1.1. Is the principle of A POST TERMINATION RESTRICTIVE COVENANT known in your legal system? If yes, how can this principle be defined? Where does the principle have its origin? (Civil Code, case law, etc)

Post termination restrictive covenants are known in the Greek legal system. However, no statutory legal provisions govern this principle, which has been elaborated by Greek case-law. Its origin lies in article 361 of the Greek Civil Code pertaining to the freedom of contract[1].

1.1.2. At what stage in the employment relationship between employee and employer are post termination restrictive covenants agreed upon in your jurisdiction? Is there any relevant case law?

Post termination restrictive covenants are usually agreed upon in the initial employment contract. There is relevant case law confirming the validity of such covenants[2].

1.1.3. Once the employment contract is signed, is there a general obligation of non-compete also in the absence of an express agreement after the termination of the employment? Are there specific statutory provisions or precedents referring to this? Could whistle blowing be regarded as a part of the employee's post termination restrictive covenant?

Once the employment contract is signed, there is no general obligation of non-compete after the termination of the employment agreement in the absence of such an express covenant. There are no relevant statutory legal provisions. Case law rules that a non-compete obligation must be expressly agreed upon. However, case law confirms that, in extraordinary cases, when the former employee infringes good morals, the obligation of non-compete, which is inherent in every employment relation, survives the termination of

[1] Lixouriotis *Individual of Employment Relations*, 3rd edition, page 281

[2] Areopag 1285/1984, 1591/2002, 917/2008, Zerdelis *Employment Law*, 2011, page 610, Koukiadis *Employment Law*, 2005, page 564

the employment, without a respective covenant having been agreed upon[3]. Non- whistle blowing cannot be part of a post termination covenant[4].

1.1.4. Which obligations regarding post termination restrictive covenants exist on the employer's side in the absence of an express agreement? Are there specific statutory provisions or precedents governing employer's duties after the termination of the employment in your jurisdiction?

There are no statutory provisions or precedents governing employer's duties after termination of the employment in Greece, in the absence of an express agreement, since the employee would not be subject to a non-compete obligation.

1.1.5. What kind of different restrictive covenants that may be available and can be agreed between employer and employee in your jurisdiction? (see the examples in the introduction). Please describe how these can be defined and how they work in your jurisdiction.

The usual restrictive covenants agreed upon in Greece are the non-competitive, non-dealing and non-solicitation covenants. Greek legal literature defines only the former as the covenant preventing a former employee to compete with his former employer on his behalf or on behalf of third parties. Rare case-law has dealt with the other two types of covenants[5]. Consequently there is no obvious rule governing such covenants.

1.1.6. What are the conditions for a valid post termination restrictive covenant in your jurisdiction? (e.g. prerequisites like minimum age, minimum salary, minimum employment period; way of termination of employment, etc.). Please describe the conditions applicable and how these work in your jurisdiction.

The conditions set by legal literature for a post termination restrictive covenant being valid, mainly for non-competing covenants, are the following:

a) the covenant should cover a legitimate interest of the former employer

b) the covenant should not contravene good morals,

c) a fair remuneration should be agreed upon,

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[3] Athens First Instance Court 7740/1999, Thessaloniki Appeal Court 94/1994, Athens Appeal Court 4530/2002, Leventis *Individual Employment Law*, Athens 2011, page 366

[4] Lixouriotis *ibid*, page 276, Zerdelis *ibid,* page 605

[5] Athens First Instance Court, 7440/1999

d) its duration and geographical scope should be fair[6]

Case law and legal literature have not addressed further conditions. However, taking into account the principle that a post termination covenant should seek to achieve a balance of interests between the parties, a minimum employment of at least six months prior to the termination of the employment should be considered fair. On the other side the way of termination of the employment is of no relevance. As to the required *fair remuneration*, there is no thumbrule. Case law varies substantially: the Highest Court has sanctioned a two years period without remuneration[7] and the same period following the payment of salaries of 20 months as acceptable[8]. In another case the same court has deemed as fair the payment of salaries of six months for a non-compete period of one year[9].

1.1.7. What is the potential scope of a post termination restrictive covenant in your jurisdiction? (e.g. taking into consideration time, geographical scope, content, interest, activities; etc.). Please describe how that works in your jurisdiction and what pitfalls have to be observed for both employers and employees.

The Highest Court has confirmed a two years' period for a restrictive covenant as acceptable. Since the main issue is the existence of a legitimate interest of the employer to ask for such a covenant, the geographical scope should be restricted within the reach of the employer's business.

1.1.8. What are the possible sanctions against the employee in the event of a breach of a post termination restrictive covenant? Describe how that works in your jurisdiction and provide for practical information about the dos and don'ts.

Theoretically, the employee infringing such covenant could be sued for damages. However, the proof of such damages having occurred is extremely cumbersome. Hence, employees are usually asked to agree upon a reasonable penalty to be paid to the employee[10]. Since, according to the Greek Civil Code, the level of the penalty can be challenged at court, such level should be considered carefully. In this context the Highest Court has confirmed as fair a penalty amounting to twice the remuneration of six months, the employee

[6] Zerdelis, ibid, page 610, Koukiadis, ibid, page 5611, Lixouriotis, ibid, page 282

[7] Areopag 1285/1984

[8] Areopag 917/2008

[9] Areopag 1591/2002

[10] Areopag 1285/1984

had received when leaving the employer. However, this seems to be a border-line case[11].

1.1.9. What are the possible sanctions against the new employer in the event of a breach of a post termination restrictive covenant by the employee of the former employer? Is it a matter of unfair competition in your jurisdiction?

Such matter can, under certain conditions, be considered as an act of unfair competition, mainly when the new employer acts with fraudulent intention, inciting the employee to infringe the restriction in order to appropriate confidential information of the former employer's business[12].

1.1.10. When an employer has invested money in an employee's training, is there any possibility for the employer to get a refund from the employee, in case of breach of the post termination restrictive covenant, and under which conditions?

This question has not yet been addressed by case law. For such a claim to be enforced, I would say that the invested sum in the training of the employee must be defined in the employment contract and depend on the duration of the employment. That is to say, that the claim (real damage of the employer due to the need to train a new employee) could be enforced only to the extent that the sum invested had not been written off.

1.1.11. What are the possibilities of lawsuit for the employee in case of the employer's disadvantageous actions during a period covered by a restrictive covenant (e.g. the employer prevents the employee from finding a new job by spreading out rumors)?

The employee would have the option to file either a civil action for damages or a criminal action for defamation.

1.2. Garden Leave

[11] Areopag 1591/2002

[12] Koukiadis, ibid, page 565, Lixouriotis, ibid, page 283

1.2.1. Does the concept of "garden leave" exist in your jurisdiction? How does it work, what is the scope and what are the prerequisites?

The concept of *garden leave* is not usual in Greece, due to the specifics of the termination of open-ended employment contracts. According to the Law, an open-ended contract can be terminated any time under the condition that a statutory indemnification is paid to the employee. Alternatively only 50% of such indemnification is payable, when a statutory notice period is granted. The great majority of employers do not grant such notice period, since they prefer that the employees to be cut-off immediately from confidential informations. However, the parties could agree in the initial contract that, during the statutory notice period (if such is granted), the employee undertakes to stay at home, while he receives full salary. Since the notice period is short (one to four months), such agreement cannot be challenged as abusive or contravening good morals.

As to fixed term employment contracts, a covenant in the initial agreement is acceptable according to which the employee will have to take a *garden leave* during the last months of his employment. However, the duration of the *garden leave* should be fair and related to the length of services of the employee.

1.2.2. Talking about garden leave provisions: do employees – or certain types of employees – have a right to be "actively employed" in your jurisdiction, e.g. so that a garden leave provision would not – or not be fully – be enforceable for an employer and the employee would have a "right" to continue working until the end of the employment? What is the respective legal framework in your jurisdiction?

Employees do not have a general[13] claim to actively work. However, the refusal of the employer to let the employee work can be challenged at Court if the employee claims violation of his personality[14]. As per 1.2.1 a *garden leave* can only be agreed upon by the parties. This principle is not regulated by the law, but has been elaborated by case law. The employee could challenge the *garden leave* clause only if its length is abusive.

1.3. Are there any other specific means to protect the employer's interest at the end of an employment contract in your jurisdiction? Please explain in detail and provide for practical guidance.

There are no other means to protect the employer's interest in Greece.

[13] Koukiadis, ibid, page 689, Zerdelis, ibid, page 857, Areopag 1106/2000

[14] Areopag 1203/1987, 593/1987

2. The World of Sports and Employment Law

2.2. General questions

2.2.2. Does employment law apply to the relation between athlete's and sports clubs/Associations in your jurisdiction? Are there relevant differences between the kinds of sports and between professionals and amateurs?

The relations between athletes and sports clubs/associations are regulated by the general employment law provisions as well as the specific employment provisions included in the Sports Law.

There are no distinctions between athletes of different sports. All athletes, regardless of the sport they compete in are treated equally. However a distinction between athletes that are treated as professionals and amateur athletes exists.

By Law, professional athletes are considered those that provide their services to an organized department within a sports union that only employs athletes against payment (TAP) or to a Limited Sports Company (known in Greece as PAE which is the form that the majority of the Football Clubs operate under).

By contrast, as amateurs, are regarded the athletes that play or perform their sport to any sports union or club whithout receiving any payment. Even if an athlete receives or enjoys benefits from the club, federation or union to which he belongs this does not automatically make him a professional athlete.

The primary difference between the two categories of athletes is that only in regard to the relations of the professional athlete with his sports club, are the provisions of employment law applicable, meaning that these are regulated by his employment contract.

2.2.3. Are there specific employment law provision (statutes, rules of sports associations) applicable for athletes in your jurisdiction? In particular regarding post termination restrictive covenants and/or garden leave provisions and/or the right to continue to work?

No.

2.2.4. Is there a specific court or arbitration system for employment matters between athletes and clubs in your jurisdiction? Are those arbitration proceedings obligatory before going to court?

The Law provides that any financial disputes that arise between athletes, coaches and Limited Sports Companies or sports unions are settled by Financial Dispute Resolution Commissions that are established jointly by the relevant federation and the body representing its athletes. These Commissions are permanent arbitration bodies. The submission of the disputes to it is mandatory unless the athlete's contract specifically foresees another way of resolving the dispute.

2.3. Transfer Fee System and termination of contracts

2.3.2. a) For the EU Member States: Describe how the Bosman case has changed the situation in your jurisdiction and if/how the sports associations and the legislator have responded to this judgement.

The Greek transfer system had many deficiencies prior to the Bosman case. Up to that point it was virtually impossible for a professional athlete to transfer to another team/club thus violating one's right to work and to choose his employer[15].

In 1999 the new law on sports was adopted taking into account the CJEU's findings. Now the so-called contractual freedom applies and the parties can freely negotiate the content of their contract. Furthermore athletes are free to change their employer without having to worry about not being able to compete in other teams/clubs.

2.3.3. Are there specific laws or regulations of sports associations (different from the general rules) dealing with the termination of athletes' employment contracts in your jurisdiction? Are such contracts usually open-ended or do they run for a fixed term? Are there any restrictions for fixed-term contracts in your jurisdiction?

No, there are no specific law or regulations covering the termination of athlete's employment contracts in Greece.

The majority of athlete's contracts are for a fixed term, usually for two or three years. By Law they cannot be shorter than six (6) months and longer than five (5) years.

[15] Panagiotopoulos, Dimitrios. *Sports Law I,* Athens, Nomiki Vivliothiki, 2005.

2.3.4. Can a player switch the club during the term of the employment contract for a certain transfer fee without the consent of the former club in the absence of a respective clause? Is it obligatory in your jurisdiction to agree on such a clause and a certain transfer fee?

No, this is not possible. This would constitute a unilateral termination of the employment agreement which is not provided for by law and federations' regulations. The player is allowed to transfer only according to the provisions of his contract and only during the dedicated transfer periods.

Furthermore an athlete shall be entitled to sign a new contract only if his previous contract has expired or if this is due to expire within the next six (6) months. Even in this case he is obliged to inform his current club/team although no consent is required.

No obligation to agree on such a clause or transfer fee exists.

(the above apply primarily to football which is the most advanced sport in Greece in terms of regulations governing player-clubs/teams relations)

2.3.5. What are the remedies for the former club in your jurisdiction, if a player switches the club during the term of the employment contract without the consent of the former club and without the payment of an agreed transfer fee?

In such a case the former club is entitled to compensation which may very well have been specified in the employment contract. If this is not the case the club is entitled to:

- The salary the player would receive from the point of the termination until the end of the following transfer period plus any bonuses the player would be entitled according to employment law provisions such as Christmas bonus, annual leave bonus etc. and
- An amount equal to the sum of the remaining instalments until the expiration of the contract divided by the number of the remaining transfer periods up to the expiration

Further to the above the player also faces administrative penalties such as a ban from games for four (4) months.

(the above apply primarily to football which is the most advanced sport in Greece in terms of regulations governing player-clubs/teams relations. See Football Federation's Regulation on transfer of players article 17)

2.4. Are there any further conflicts between employment law and the employment practice of sports clubs and associations in your jurisdiction? Please describe relevant cases or judgments.

There are no specific conflicts worth mentioning.