



ECHR Rules that Turkish Football Federation Decisions Violate Human Rights

Authors: Meriç Bahçivancı, Ali Topuz

On 18 May 2021, European Court of Human Rights ("Court") ruled under three separate but related judgments that Turkey shall pay compensation due to Turkish Football Federation's ("TFF") disciplinary decisions. The Court continued to apply its previous decisions concluding that the structural deficiencies of the TFF bodies as well as insufficient reasoning of the disciplinary decisions lead to violation of the right to a fair trial¹ and the freedom of speech². The Court, therefore, affirmed that any disciplinary decision of the TFF might violate the European Convention on Human Rights ("ECHR") unless and until Turkey addresses the problems underlying the violations.

Facts

In the judgments delivered upon the applications of Sedat Doğan, Deniz Naki and Amed Sportif Faaliyetler Klubü Derneği, and İbrahim Tokmak³, the Court found violation of the applicants' rights to a fair trial and freedoms of speech under Articles 6 and 10 of the ECHR, respectively. In all three cases, TFF Arbitration Committee (the "Arbitration Committee") dismissed the applicants' submissions against the penalties imposed by the TFF Professional Footballer Disciplinary Committee (the "PFDC").

Violation of the Freedom of Speech

Especially in İbrahim Tokmak, the Court found that the restriction of the freedom of speech through disciplinary penalties affirmed by the Arbitration Committee violates Article 10 of the ECHR. Under the precedents of the Court, when a sanction is as grave as putting an end to the applicant's career as a referee, the justification of the sanction must contain the level of detail that such gravity deserves. Whereas in İbrahim Tokmak, the TFF bodies failed to establish the connection between the applicant's expressions and the violent acts that are claimed to have been encouraged by these expressions.

Violation of the Right to a Fair Trial

The Court reiterated that Board of Directors, the administrative body of the TFF, has a significant influence on the Arbitration Committee, which performs judicial tasks on behalf of the TFF. Indeed, the Board of Directors appoints the Arbitration Committee members, and their term of office is limited to that of the Board of Directors. The Court also pointed the lack of a recusation mechanism to challenge the independency and impartiality of the Arbitration Committee members. In short, according to the Court, each disciplinary penalty imposed by the TFF bodies might amount to the violation of right to a fair trial due to these structural deficiencies per se (i.e., irrespective of the underlying facts).

Recommended Remedies

Turkey's Human Rights Action Plan, announced in April 2021, contains the first concrete declaration towards the improvement of TFF's structure in view of the Court's precedents. The Standard Regulations⁴ of the FIFA Dispute Resolution Board provide a useful reference on the organization and functions of sports arbitration committees. The Standard Regulations envisage equal participation of sportsmen and clubs in arbitration committees, minimization of the influence of the Board of Directors on such committees, and mechanisms for the recusation of the arbitrators.

To address the freedom of speech concerns of the Court, the PFDC and Dispute Resolution Board should make their decisions available to public after redacting the confidential information. The fact that the Arbitration Committee has started to publish its decisions in May 2021 promises an improvement on the freedom of speech front. The transparency afforded by such publication should improve the justifications on which the TFF penalties are based.

This note is prepared for the general information only and does not constitute legal advice. This should not, therefore, be acted upon in any specific situation without appropriate legal advice.
© Başgöl Avukatlık Bürosu. All rights reserved.

¹ Ali Rıza and Others v. Turkey, No: 30226/10, 17880/11, and 5506/16, 28.01.2020, <http://hudoc.echr.coe.int/eng?i=001-200548>

² Mart and Others v. Turkey, No: 57031/10, 19.03.2019, <http://hudoc.echr.coe.int/tur?i=001-191750>

³ Sedat Doğan v. Turkey, No: 48909/14, 18.05.2021, <http://hudoc.echr.coe.int/eng?i=001-209956>;
Naki and Amed Sportif Faaliyetler Klubü Derneği v. Turkey, No: 48924/16, 18.05.2021, <http://hudoc.echr.coe.int/eng?i=001-209957>;
İbrahim Tokmak v. Turkey, No: 54540/16, 18.05.2021, <http://hudoc.echr.coe.int/eng?i=001-209958>

⁴ <https://www.fifa.com/who-we-are/legal/professional-football-department/ndrc/>