



Turkey must reform system for settling football disputes

In today's Chamber judgment¹ in the case of [Ali Rıza and Others v. Turkey](#) (application nos. 30226/10, 17880/11, 17887/11, 17891/11 and 5506/16) concerning football disputes the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights on account of the lack of independence and impartiality of the body, the Arbitration Committee of the Turkish Football Federation ("the TFF"), which had decided on disputes concerning Ömer Rıza, a professional football player, and Serkan Akal, a referee.

Mr Rıza's dispute was over his contract, while Mr Akal's concerned his downgrading. The TFF decisions on their cases were not subject to judicial review.

The Court found in particular that the executive body of the TFF, the Board of Directors, which had always largely consisted of members or executives of football clubs, had too strong an influence over the organisation and functioning of the Arbitration Committee. Nor did TFF law provide appropriate safeguards to protect members of the Arbitration Committee from any outside pressure.

Noting that the case revealed a systemic problem as regards the settlement of football disputes in Turkey, the Court indicated under Article 46 (binding force and implementation) that the State should take measures to ensure the structural independence of the Arbitration Committee.

It declared three amateur football players' complaints inadmissible, in particular because Article 6 was not applicable in their cases.

Principal facts

The applicants were Ömer Kerim Ali Rıza, a dual British and Turkish national, and Fatih Arslan, Şaban Serin, Mehmet Erhan Berber, and Serkan Akal, Turkish nationals, who were born in 1979, 1974, 1980, 1981, and 1977 respectively. They live in Broxbourne (the UK), Muğla, Kocaeli and Zonguldak (Turkey).

Mr Rıza was a football player for Trabzonspor Kulübü Derneği, a club in the top Turkish professional league. He returned to England, his home country, in 2008 and the club brought proceedings against him with the Turkish Football Federation ("the TFF") for breach of contract. In his defence he submitted that the club owed him salary arrears and match appearance fees. The TFF Arbitration Committee ultimately found in 2009 that he had wrongfully terminated his contract and fined him approximately 61,596 euros (EUR). He applied against this decision to the Swiss-based Court of Arbitration for Sport, but his application was declared inadmissible for lack of jurisdiction. An appeal to the Swiss Federal Court was dismissed in 2011 and he has since brought an application (no. 74989/11) against Switzerland with the European Court, which is ongoing.

The second to fourth applicants are amateur football players. Proceedings were brought against them with the TFF when they were accused in 2010 of match-fixing during an important end of

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

season match for their team, İçmeler Belediyespor Kulübü. In a first-instance decision by the Amateur Football Disciplinary Committee of the TFF, it was found that the applicants had committed the disciplinary offence of “influencing the match result” and were banned from any football-related activities for a year. This decision was then unanimously upheld by the Arbitration Committee.

Mr Akal, the fifth applicant, is a football referee. He lodged an objection with the TFF Arbitration Committee in 2015 about the Federation’s decision to downgrade him from top-level assistant referee to “provincial referee”. The committee dismissed his objection, finding that his downgrading had been in accordance with the law and procedure.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing and access to court), all five applicants alleged that the proceedings before the Arbitration Committee had lacked independence and impartiality. They alleged in particular that the members of the Committee who had decided on their cases were biased towards football clubs because they had been appointed by the TFF’s Board of Directors, which was predominately composed of former members or executives of football clubs.

They all, except for Mr Rıza, also made several other complaints under Article 6 § 1 about procedural shortcomings in the proceedings, and the lack of judicial review of the decisions against them.

The second to fourth applicants complained under Article 1 of Protocol No. 1 (protection of property), taken alone and in conjunction with Article 13 (right to an effective remedy), that banning them for a year from football had deprived them of their income.

The application was lodged with the European Court of Human Rights on 20 April 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert Spano (Iceland), *President*,
Marko Bošnjak (Slovenia),
Valeriu Grițco (the Republic of Moldova),
Egidijus Kūris (Lithuania),
Ivana Jelić (Montenegro),
Arnfinn Bårdsen (Norway),
Saadet Yüksel (Turkey),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Amateur footballers’ complaints](#)

The Court rejected the applicants’ complaints under Article 6 § 1 as inadmissible because that provision was not applicable to the proceedings against them.

In particular, at the time of the events under Turkish law, influencing a match result was a disciplinary offence involving the risk of a three-year ban and did not concern the determination of a criminal charge under Article 6.

Nor could the proceedings come under the scope of civil rights and obligations. Domestic law stated that amateur football players were not remunerated and therefore their right to exercise a profession was not at stake. Furthermore, although it might be common practice in Turkey for amateur football players to receive a salary or other benefits, the applicants had not provided proof of receipt of such payments or of any kind of contract with their club. They had thus failed to prove that the dispute had involved any kind of pecuniary right.

Owing to that lack of proof regarding pecuniary losses, the Court also rejected as inadmissible these applicants' complaint under Article 1 of Protocol No. 1 and Article 13.

Professional footballer's and referee's complaints

The Court noted that at the time of the applicants' proceedings the Arbitration Committee had exclusive and compulsory jurisdiction over the respective football disputes brought by Mr Rıza and Mr Akal, and stressed that that body's rulings were final and not amenable to judicial review by any court. As such, it had to provide the same safeguards as guaranteed under Article 6 § 1 of the Convention.

However, the Court considered that there were inadequate safeguards to protect the members of the Arbitration Committee from outside pressure, notably from the TFF's executive body, the Board of Directors, which had an undeniably strong influence on the way the Committee was organised and functioned.

In particular, the Board of Directors, which appointed the members of the Arbitration Committee, had always largely consisted of members or executives of football clubs. Those who represented the interests of football other than those of clubs were in the minority.

The Arbitration Committee, composed mostly either of lawyers or academics who specialised in sports law, were not bound by any rules of professional conduct. They neither had to swear an oath or make a solemn declaration before taking up their duties. Moreover, they were not protected from civil liability actions.

Furthermore, TFF rules had no fixed term for members' term of office. Their mandate was the same as the Board of Directors', unduly aligning their tenure with the executive body. In addition, members did not have to disclose circumstances affecting their independence and impartiality and there was no specific procedure to deal with challenges to a member on those grounds.

As concerned Mr Rıza, who was involved in a contractual dispute, the Court therefore considered that the balance had been tipped in favour of the football club, given that at the time of the proceedings against him, all members of the Arbitration Committee had been appointed by the Board of Directors, predominantly composed of former members or executives of football clubs.

Similarly, the wide powers given to the Board of Directors had to have been at work in Mr Akal's dispute, which was of a regulatory nature. The board set the rules governing the composition, principles and procedure of the functioning of the Central Referee Committee of the TFF, the first-instance body which had decided on his case. Indeed, TFF rules required that the list of referees prepared by the Central Referee Committee had to be submitted to the Board of Directors for prior approval.

In sum, the applicants had had legitimate reason to doubt that the Arbitration Committee members would approach their case with the necessary independence and impartiality. There had therefore been a violation of Article 6 § 1.

Other complaints

The Court considered that there was no need to examine separately the other complaints about the fairness of the proceedings, including the right of access to court, before the Arbitration Committee.

Article 46 (binding force and implementation)

The Court noted that the violation found revealed a systemic problem regarding the settlement of football disputes in Turkey. It considered that the State should take measures to reform the system for settling such disputes under the auspices of the TFF, such as restructuring the Arbitration Committee so that it was sufficiently independent from the Board of Directors.

Article 41 (just satisfaction)

The Court held that Turkey was to pay Mr Rıza and Mr Akal 12,500 euros (EUR), each, in respect of non-pecuniary damage. It awarded Mr Rıza EUR 6,975 in respect of costs and expenses. It dismissed, by six votes to one, the remainder of these two applicants' claim for just satisfaction.

Separate opinion

Judge Marko Bošnjak expressed a partly concurring and partly dissenting opinion. His opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.