



## Switzerland did not breach the Convention in a dispute before the Court of Arbitration for Sport between a footballer and the Turkish club Trabzonspor

In today's **Chamber** judgment<sup>1</sup> in the case of [Ali Rıza v. Switzerland](#) (application no. 74989/11) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 § 1 (right of access to a court)** of the European Convention on Human Rights.

The case concerned a dispute between a professional footballer and his former Turkish League club, Trabzonspor. Mr Ali Rıza complained that he had been ordered by the Turkish Football Federation to pay damages for leaving the club without notice before the expiry of his contract. He applied to the Court of Arbitration for Sport (CAS), based in Lausanne, which ruled that it had no jurisdiction to hear the case. That decision was upheld by the Federal Supreme Court.

The Court found that the CAS had given a convincing explanation, in a detailed and reasoned decision, as to why it was unable to deal with the dispute and, in particular, why the dispute had no international element. That being so, Mr Ali Rıza had applied to a court that did not have jurisdiction to examine his complaints. The judgment of the Federal Supreme Court likewise contained reasons, addressing all the grounds of appeal raised by Mr Ali Rıza. The decisions of both courts were neither arbitrary nor manifestly unreasonable.

The Court held, in view of the above considerations, the extremely tenuous link between Mr Ali Rıza's dispute and Switzerland, and the specific nature of proceedings before the CAS and the Federal Supreme Court, that the restriction of the right of access to a court had not been disproportionate to the aim pursued, namely the proper administration of justice and the effectiveness of domestic court decisions.

The Court declared inadmissible the complaints concerning the failure to hold a hearing and the alleged non-compliance with the principle of equality of arms, holding that those complaints were manifestly ill-founded.

### Principal facts

The applicant, Ömer Kerim Ali Rıza, is a United Kingdom and Turkish national who was born in 1979 and lives in Broxbourne (United Kingdom).

Mr Ali Rıza, who had signed a fixed-term contract (from 17 January 2006 to 30 June 2008) with Trabzonspor, informed the club in January 2008 that he would no longer play for it as it had not honoured its contractual obligations, in particular because of delays in the payment of wages.

The club brought the dispute before the Dispute Resolution Committee of the Turkish Football Federation (TFF) (*Türkiye Futbol Federasyonu Üyuşmazlık Çözüm Kurulu*) – the TFF itself being affiliated to the Fédération internationale de Football Association (FIFA) – seeking the imposition 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](http://www.coe.int/t/dghl/monitoring/execution).

a transfer ban, damages for wrongful termination of the contract and payment of the fine imposed by its board.

In December 2008 the Dispute Resolution Committee found in favour of the club and ordered Mr Ali Rıza to pay damages to Trabzonspor for wrongful termination of the contract, as well as fining him. It also banned him from signing for another club for four months. Mr Ali Rıza appealed against the decision.

In April 2009 the TFF Arbitration Committee upheld the decision of the Dispute Resolution Committee, but reduced the amount of the fine to be paid by Mr Ali Rıza and set aside the sports sanction imposed on him. Mr Ali Rıza challenged the Arbitration Committee's decision before the Court of Arbitration for Sport (CAS), based in Lausanne.

In June 2010 the CAS declared the application inadmissible for lack of jurisdiction, holding in particular that the dispute had no international element. Mr Ali Rıza lodged a civil-law appeal with the Federal Supreme Court, which upheld the decision of the CAS and dismissed the appeal.

On 28 January 2020 the Court delivered a judgment (*Ali Rıza and Others v. Turkey*, nos. 30226/10 and 4 others) in relation to an application by Mr Ali Rıza against Turkey. The present application concerns only the decisions given by the CAS and the Federal Supreme Court and was brought against Switzerland.

## Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing), Mr Ali Rıza submitted that he had been unable to bring his case before an impartial and independent tribunal and that his right of access to a court had been infringed as a result. He also complained that he had not been given a hearing and that the principle of equality of arms had not been observed before the Federal Supreme Court.

The application was lodged with the European Court of Human Rights on 11 November 2011.

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

Paul **Lemmens** (Belgium), *President*,  
Dmitry **Dedov** (Russia),  
Carlo **Ranzoni** (Liechtenstein),  
Georges **Ravarani** (Luxembourg),  
María **Elósegui** (Spain),  
Darian **Pavli** (Albania),  
Anja **Seibert-Fohr** (Germany),

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1 (right of access to a court)

The Court expressed doubts as to whether Mr Ali Rıza could claim a right of access to a court in respect of Switzerland, given that the dispute forming the subject of his application had only a very tenuous link with the respondent State. It pointed out in that connection that on the face of it, the proceedings before the TFF bodies had had no connection with the Swiss courts and no international element. On the contrary, they had concerned a dispute between the applicant – a Turkish professional footballer (who admittedly also held United Kingdom nationality) – and a Turkish football club and the TFF. Furthermore, the law in force at the material time had provided that decisions of the Arbitration Committee were final and binding. Accordingly, there had been no right

of appeal to the CAS, and the proceedings before that body could not be considered to form part of the compulsory arbitration procedure before bodies of the TFF.

Assuming that Mr Ali Riza had been able to claim of right of access to a court in respect of Switzerland, the Court found that the restriction of the right of access to the CAS had pursued a legitimate aim, namely the proper administration of justice and the effectiveness of domestic court decisions.

The Court reiterated that regulations governing permitted limitations on the right of access to the courts could vary in time and place according to the needs and resources of the community and of individuals. In laying down such regulations, the State Party enjoyed a certain margin of appreciation. Moreover, a decision that a court lacked jurisdiction did not infringe the right of access to a court if the submissions of the party arguing that the court had jurisdiction were the subject of a genuine and effective examination and if the court gave adequate reasons justifying its decision.

The Court noted in that connection that in a decision containing extensive and detailed reasons, the CAS had first pointed out that Article R47 of the CAS Code of Sports-related Arbitration established that its jurisdiction could derive either from a contract containing an arbitration clause, or from a subsequent arbitration agreement, or from the statutes or regulations of a sports body providing for an appeal to the CAS. However, the CAS had found that there were no clauses establishing its jurisdiction in the contract of employment signed between Mr Ali Riza and the club. It had also observed that the parties had not signed any subsequent arbitration agreement and that neither the FIFA Statutes nor the 2008 FIFA Regulations on the Status and Transfer of Players provided a basis for its jurisdiction. The CAS had further held that the dispute had no international element and that accordingly, Article 14 of the TFF Arbitration Committee Regulations were not applicable in the present case. That being so, the conditions in Article R47 of the CAS Code were not met and there was no basis for the jurisdiction of the CAS. Subsequently, the Federal Supreme Court had endorsed the CAS's finding that the dispute had no international element and thus did not satisfy the requirements of Article 14 TFF Arbitration Committee Regulations. There were therefore no grounds for the CAS to assume jurisdiction.

Accordingly, the Court found that the CAS had given a convincing explanation, in a detailed and reasoned decision, as to why it was unable to deal with the dispute and, in particular, why the dispute had no international element. This meant that after the TFF bodies had found against Mr Ali Riza, he had applied to a court that had no jurisdiction to examine his complaints. The findings of the CAS had, moreover, been upheld by the Federal Supreme Court, whose judgment had likewise given detailed reasons, addressing all the grounds of appeal raised by Mr Ali Riza and containing clear reasoning and persuasive conclusions.

The Court concluded, within its limited powers of review, that the decisions of the CAS and the Federal Supreme Court had neither been arbitrary nor manifestly unreasonable. Bearing in mind the above considerations, the extremely tenuous link between Mr Ali Riza's dispute and Switzerland, and the specific nature of proceedings before the CAS and the Federal Supreme Court, the restriction of the right of access to a court had not been disproportionate to the aim pursued, namely the proper administration of justice and the effectiveness of domestic court decisions. Accordingly, the essence of that right had not been impaired and there had been no violation of Article 6 § 1 of the Convention as regards the right of access to a court.

#### Other complaints under Article 6 § 1

The Court rejected as manifestly ill-founded the complaint about the failure to hold a hearing, finding that the question of the CAS's jurisdiction was a highly technical matter that could validly be determined without having recourse to a hearing.

The Court also rejected as manifestly ill-founded the complaint of a breach of the principle of equality of arms, finding that Mr Ali Riza had not been placed at a clear disadvantage in relation to the club and the TFF in the proceedings before the Federal Supreme Court.

## Separate opinions

Judge Pavli joined by Judges Dedov and Ravarani expressed a concurring opinion. Judge Lemmens expressed a partly dissenting and partly concurring opinion. These opinions are annexed to the judgment.

*The judgment is available only in French.*

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### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Inci Ertekin (tel : + 33 3 90 21 55 30)**

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

**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.