



Sports and financial sanctions imposed on the applicants by the Turkish Football Federation: violations of the Convention

In today's Chamber judgment¹ in the cases of [Sedat Doğan v. Turkey](#) (application no. 48909/14), [Naki and Amed Sportif Faaliyetler Kulübü Derneği v. Turkey](#) (no. 48924/16) and [İbrahim Tokmak v. Turkey](#) (no. 54540/16), 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, and

a violation of Article 10 (freedom of expression) of the Convention.

The three cases concerned sports sanctions and financial penalties imposed on the applicants by the Turkish Football Federation on account of statements to the media or messages posted or shared on social media, and the appeal proceedings lodged against those sanctions by the applicants before the Federation's Arbitration Committee.

Referring to its case-law in the [Ali Rıza and Others](#) judgment, delivered on 28 January 2020, the Court noted structural deficiencies in the Arbitration Committee of the Turkish Football Federation and the lack of adequate safeguards to protect the members of the Committee from outside pressure. It concluded that the Arbitration Committee lacked independence and impartiality and found a violation of Article 6 § 1 of the Convention in each of the three cases.

The Court also noted, in each of the three cases, that the reasoning given by the national bodies in their decisions to impose sanctions on the applicants demonstrated a failure to carry out an adequate balancing exercise between, on the one hand, the applicants' right to freedom of expression and, on the other, the right of the TFF's leadership to respect for their private lives and the other interests at stake, such as maintaining order and peace in the football community. In each of these cases, the Court considered that the national authorities had not carried out an appropriate analysis, having regard to all the criteria laid down and applied by the Court in its case-law concerning freedom of expression. In the Court's view, the Government had not shown that the reasons given by the national authorities to justify the contested measures had been relevant and sufficient, and that those measures had been necessary in a democratic society. It followed that, for each of the three cases and for the same reasons, there had been a violation of Article 10 of the Convention.

Principal facts

Case of Sedat Doğan

The applicant, Sedat Doğan, is a Turkish national who was born in 1971 and lives in Istanbul (Turkey). At the relevant time he was a member of the management board of Galatasaray football club.

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.

On 8 December 2013, while participating by telephone in a televised sports event, Mr Doğan made comments about the referral to the Professional Football Disciplinary Committee of the Turkish Football Federation (TFF), of two players from his club who, at a football match on the day following Nelson Mandela's death, had displayed T-shirts paying tribute to him.

On 12 December 2013, considering that Mr Doğan's statements amounted to the offence of unsportsmanlike language, punishable under Rule 37 of the Football Disciplinary Regulations, the Disciplinary Committee imposed the disciplinary sanction of withdrawal of the rights attached to his functions for sixty days, together with a disciplinary fine of 44,000 Turkish lira (TRY) (about 15,753 euros (EUR)) in application of Rule 37 § 1 (b) of these Regulations. On 19 December 2013 the TFF's Arbitration Committee upheld that decision.

On 12 December 2013, following the Disciplinary Committee's delivery of the above-mentioned decision imposing a sanction, the applicant published several messages on his Twitter account, with the hashtag "Goodbye TFF". On 17 December 2013 he published other tweets.

On 19 December 2013, holding that these tweets amounted, within the meaning of Rule 37 of the Disciplinary Regulations, to unsportsmanlike language capable of debasing the image of football, inciting to violence and disorder in the sport and giving rise to protests by supporters, the Disciplinary Committee sentenced Mr Doğan to the disciplinary sanction of a 45-day withdrawal of the rights attached to his functions, together with a disciplinary fine of TRY 33,000 (about EUR 11,750) in application of Rule 37 § 1 (b) of the Regulations. On 26 December 2013 the TFF's Arbitration Committee upheld that decision.

Case of Naki and Amed Sportif Faaliyetler Kulübü Derneği

The applicants are Mr Deniz Naki, a Turkish national who was born in 1989 and lived in Diyarbakır when the application was lodged, and Amed Sportif Faaliyetler Kulübü Derneği, a Turkish association operating as a sports club.

Mr Naki, a professional footballer, was employed at the relevant time by the applicant club, which competed in the first division of the Turkish professional league (Süper Lig).

On 31 January 2016, after his team's victory in a football match in the Turkish championship, Mr Naki published a message on his Facebook account.

On 4 February 2016 the TFF's Professional Football Disciplinary Committee held that the applicant's comments breached the ban on ideological propaganda – set out in Rule 42 § 4 of the Football Disciplinary Regulations – and amounted, within the meaning of Rule 38 of these Regulations, to unsportsmanlike language capable of debasing the image of football, inciting to violence and disorder in the sport and giving rise to protests by supporters. The Committee imposed a disciplinary sanction on Mr Naki, namely a twelve-match suspension and a disciplinary fine of TRY 19,500 (EUR 6,058).

On 6 February 2016 the applicant association lodged an appeal against the Disciplinary Committee's decision. It submitted that Mr Naki's remarks had been peaceful in intention and did not incite to violence in any way, and that they were protected by Articles 9 and 10 of the Convention.

On 8 February 2016 the TFF's Arbitration Committee dismissed this appeal and upheld the Disciplinary Committee's decision.

Case of Ibrahim Tokmak

The applicant, Mr Ibrahim Tokmak, is a Turkish national who was born in 1981 and lives in Istanbul. He was a football referee at the time of the events in question.

On 2 January 2016 Mr Tokmak shared on his Facebook account a Facebook post from another person about H.K., commentator and publisher of a daily newspaper, who had died two days

previously in a hotel room during a trip to Saudi Arabia. Press reports indicated that this person had died from a heart attack caused by a drug used to address erectile dysfunction.

On 18 February 2016, considering that the post in question was in breach of Rule 38 (a) of the Regulations of the Central Referee Committee, the TFF's Professional Football Disciplinary Committee imposed on Mr Tokmak, in application of Rule 46 § 1 of the Football Disciplinary Regulations, the disciplinary sanction of a three-month withdrawal of the rights attached to his functions. On 25 February 2016 the TFF's Arbitration Committee upheld the sanction.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), all the applicants called into question the independence and impartiality of the Arbitration Committee, from both an organisational and a financial perspective. In this connection, Mr Doğan argued that the members of this Committee were appointed by the President of the TFF and that their term of office was limited to the latter's mandate. Relying on Article 10 (freedom of expression), all the applicants alleged that the sanctions imposed on them had breached their right to freedom of expression. In addition, relying on Article 7 (no punishment without law), Mr Doğan claimed to have been subjected to arbitrary proceedings. Under Article 13 (right to an effective remedy), he complained that he had been unable to submit the decisions of the Disciplinary Committee and the Arbitration Committee to judicial review.

The application was lodged with the European Court of Human Rights on 17 June 2014.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Marko **Bošnjak** (Slovenia),
Aleš **Pejchal** (the Czech Republic),
Valeriu **Grițco** (the Republic of Moldova),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Turkey),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court reiterated its findings in the [Ali Rıza and Others](#) judgment, delivered on 28 January 2020, that there existed structural deficiencies in the Arbitration Committee, resulting from the wide powers given to the TFF's Board of Directors with regard to the way that the Committee was organised and functioned. In view of the absence of adequate safeguards to protect the members of the Committee from outside pressure, especially from the Board of Directors, the Court had held that there were legitimate reasons to doubt the independence and impartiality of its members.

Similarly, and for the same reasons, the Court concluded in each of the three cases that there had been a violation of Article 6 § 1 of the Convention.

Article 10

In the three cases, the Court noted that the interference in question had a legal basis and pursued the legitimate aims of the prevention of disorder and crime and the protection of the reputation and rights of others.

Case of Sedat Doğan

The Court noted that the reasoning given by the national bodies in their decisions to impose sanctions on the applicant did not enable it to establish that they had carried out an adequate balancing exercise in the present case between, on the one hand, the applicant's right to freedom of expression and, on the other, the right of the TFF's leadership to respect for their private lives and the other interests at stake, such as maintaining order and peace in the football community.

The Court noted that these decisions did not contain a sufficient response to the question whether the interference had been justified, having regard in particular to the context of the comments made by the applicant during the television programme in question, namely the referral to the Disciplinary Committee of two players from his club for having paid tribute to Nelson Mandela, and the tweets that he had published in reaction to the disciplinary sanctions imposed on him. Nor had these decisions made it possible to ascertain the potential harm of the comments and tweets. For example, they did not show that the comments and tweets had encouraged supporters in practice, or were likely to encourage them, to commit acts of violence.

Case of Naki and Amed Sportif Faaliyetler Kulübü Derneği

After analysing the decisions issued on 4 and 8 February 2016 by the Disciplinary Committee and the Arbitration Committee in the context of the disciplinary proceedings against the applicant, the Court noted that these bodies had held that the remarks in question were likely to stir up violence and disorder in the sport and to lead to protests by supporters, were unrelated to football or to sport (and in fact harmed the latter's image), were aimed at disseminating ideological propaganda likely to disrupt peace in the sporting world, and that in consequence they amounted to unsportsmanlike language and contained ideological propaganda.

The Court noted that the decisions to impose sanctions on the applicants did not contain a sufficient response to the question whether the interference had been justified in their case. Neither the Disciplinary Committee nor the Arbitration Committee had specified which parts of the Facebook message raised a problem, and they had not examined the circumstances around the publication, namely the victory by the applicant's team in a football match following violent incidents in the region over the preceding months. Nor had these decisions made it possible to ascertain the potential harm of this publication. They did not show that it had encouraged supporters in practice, or were likely to encourage them, to commit acts of violence.

Case of Ibrahim Tokmak

The Court noted that the Disciplinary Committee and the Arbitration Committee had considered that referees, regarded – in their capacity as representatives of the TFF – as the sole football authority on the pitch, were required to pay particular attention to their social life and their conduct, given the fragile peaceful climate in the football world and the need to maintain an image of the football authorities as being objective and impartial. The Disciplinary Committee and the Arbitration Committee had considered that the contested Facebook post contained expressions that were disrespectful with regard to the memory of a deceased individual and thus fell under the disciplinary offence, laid down in Rule 38 (a) of the Regulations of the Central Referees Committee, of posting, commenting or sharing on social media any content that was contrary to the values of the national, moral and sports culture.

While being prepared to accept that the contested publication, which was critical of a deceased journalist, contained expressions that could be considered indecent, insulting and contrary to the values of the "national, moral and sports culture", the Court noted that neither the Disciplinary Committee nor the Arbitration Committee had stated whether the sanction imposed had been justified by the legitimate aims of the prevention of disorder or crime, or that it was proportionate to those aims. The decisions did not establish whether the publication in question, which concerned a subject unrelated to sport, was likely to disrupt the peaceful climate in the football community. They did not show that it had encouraged supporters in practice, or were likely to encourage them,

to commit acts of violence. The authorities did not seem to have taken into account the nature and gravity of the sanction, which had put an end to the applicant's career as a referee through the automatic cancellation of his referee's licence, nor the dissuasive effect that this sanction could have on the exercise, by the applicant and by other football professionals, of their right to freedom of expression.

In each of these cases, the Court considered that the national authorities had not carried out an appropriate analysis, having regard to all the criteria laid down and applied in its case-law concerning freedom of expression. In the Court's view, the Government had not shown that the reasons given by the national authorities to justify the contested measures had been relevant and sufficient, and that those measures had been necessary in a democratic society. It followed that for each of the three cases there had been a violation of Article 10 of the Convention.

Other articles

Having regard to its finding of violations of Articles 6 § 1 and 10, the Court held that it was not necessary to examine separately the admissibility and merits of the other complaints raised by the applicants.

Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Doğan 7,800 euros (EUR) in respect of pecuniary damage; Mr Naki and Amed Sportif Faaliyetler Kulübü Derneği sports club, jointly, EUR 6,058 in respect of pecuniary damage; Mr Naki EUR 2,000 and Amed Sportif Faaliyetler Kulübü Derneği sports club EUR 6,000 in respect of non-pecuniary damage; Mr Tokmak EUR 7,800 in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

The judgment is available only in French.

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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.