

# ECTHR Rules on Impartiality of Turkish Arbitration Proceedings for Settling Football Disputes



On 28 January 2020, the European Court of Human Rights (the **ECTHR**) ruled that Turkish arbitration rules applicable to the settlement of football disputes were incompatible with Article 6 § 1 (right to a fair trial) of the European Convention of Human Rights (the **ECHR**).

The case originated in five applications against Turkey lodged by Ali Rıza, (a dual British and Turkish citizen), and four Turkish nationals: one football referee (downgraded from top-level assistant referee to “provincial referee”) and three amateur football players (found guilty of match-fixing charges).

All five applicants complained that the proceedings before the legal committees of the Turkish Football Federation (the **TFF**) had not satisfied the requirements of independence and impartiality under Article 6 § 1 ECHR.

## **Facts**

The First Applicant, Mr. Rıza, entered into an employment dispute with his former football club, *Trabzonspor Kulübü Derneği*, regarding the termination of his contract. The dispute was brought before the Dispute Resolution Committee (the **DRC**) of the TFF. Ultimately, the DRC found that Mr. Rıza had wrongfully terminated his contract and imposed a financial sanction, which was upheld by the Arbitration Committee of the TFF (the **Arbitration Committee**). Mr. Rıza then 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 a separate application ([\*Ali Rıza v. Switzerland, no. 74989/11\*](#)) against Switzerland with the ECtHR, which is still ongoing).

The Second, Third and Fourth Applicants were amateur football players who were accused of match-fixing in 2010. 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.

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

### **Claims**

Relying on Article 6 § 1 ECHR (right to a fair hearing and access to court), all five applicants alleged that the proceedings before the Arbitration Committee of the TFF had lacked independence and impartiality. They alleged, in particular, that the members of that Committee were biased

towards football clubs because they had been appointed by the TFF's Board of Directors (the ***Board of Directors***), which was predominately composed of former members or executives of football clubs.

### **Admissibility**

The ECtHR rejected the complaints of the Second, Third and Fourth Applicants under Article 6 § 1 as inadmissible because that provision was not applicable to the proceedings against them as "*influencing a match result*" was a disciplinary offence that did not concern the determination of a criminal charge under Article 6.

However, the ECtHR noted that the Arbitration Committee had exclusive and compulsory jurisdiction over the respective football disputes brought by Mr. Rıza and Mr. Akal and stressed the fact that that body's rulings were final and not amenable to judicial review by any court.

Referring in particular to its findings in [\*Mutu and Pechstein v. Switzerland\*](#), the ECtHR found that that the *sui generis* nature of football disputes and the special features of the dispute resolution mechanism of the Arbitration Committee did not mean that the applicants could be deprived of their right to a fair trial guaranteed by Article 6 § 1 ECHR. It drew a distinction between voluntary and compulsory arbitration and stated that in the case of compulsory arbitration, as here, the arbitral tribunal must afford the safeguards secured by Article 6 § 1 ECHR.

### **On Substance**

The ECtHR, therefore, had to ascertain whether the Arbitration Committee could be regarded as being an "*independent and impartial tribunal established by law*" within the meaning of Article 6 § 1 ECHR.

The ECtHR restated its case-law that, in order to establish

whether or not a tribunal can be considered to be "independent" under Article 6 § 1, "regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence". Additionally, the existence of impartiality, under the jurisprudence of the ECtHR, is determined by both a subjective test where "regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case" and an objective test "by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality". Lastly, the ECtHR stressed the importance that "justice must not only be done, it must also be seen to be done", and considered that both concepts of independence and impartiality are closely linked and, may require examination together.

The applicants did not call into question the subjective impartiality of any member of the Arbitration Committee but rather their independence and objective impartiality. In this regard, they argued that the members of the Arbitration Committee, by writ of their manner of appointment, term of office and remuneration, were not independent from the Board of Directors.

The ECtHR held that it was difficult to dissociate the question of impartiality from that of independence and, thus, they were considered together.

Firstly, regarding the manner of appointment of the Arbitration Committee, the ECtHR noted that members are appointed by the Board of Directors, which enjoyed unfettered discretion in choosing who will serve on the Arbitration Committee. As the applicants did not complain that members of the Arbitration Committee received any instruction or were subject to any pressure from the Board of Directors, the ECtHR

went on to examine whether sufficient safeguards were in place so as to ensure that the members of the Arbitration Committee performed their duties with the required level of independence. To this effect, the ECtHR examined the composition of the both the Board of Directors and the Arbitration Committee. It found that the Board of Directors had always largely consisted of members or executives of football clubs, and that those who represented interests other than those of football clubs were always a minority. Regarding the Arbitration Committee, the ECtHR found that members who serve on the Arbitration Committee were mostly either lawyers or academics specialising in sports law, however, it noted that members of the Arbitration Committee are not immune from any action which may be brought against them in connection with the discharge of their duties and nor are they bound by any rules of professional conduct.

Secondly, examining the term of office of members of the Arbitration Committee, the ECtHR found that the duration of their mandate is the same as that of the Board of Directors. Additionally, the ECtHR noted that the rules governing the Arbitration Committee did not allow for the replacement or removal of members before the end of their mandate unless they resigned or withdrew from membership. In this context, the ECtHR also took note that members of the Arbitration Committee are under an obligation to be independent, that individuals who sit on the Board of Directors are not allowed to become members of the Arbitration Committee, and that a party could, in principle, request the withdrawal of a member of the Arbitration Committee. However, the ECtHR considered that there were no rules in place to require a member to disclose circumstances which may affect his or her independence and impartiality, and nor was there any specific procedure to be followed in cases where the independence of a member of the Arbitration Committee was challenged by a party.

After analysing these elements of the Arbitration Committee,

the ECtHR found that there were a number of strong organisational and structural ties between the Board of Directors and the Arbitration Committee that indicated a significant level of influence that the Board of Directors had over the functioning of the Arbitration Committee. The ECtHR then went on to examine whether the Arbitration Committee was composed of members who could be regarded as independent and impartial.

Firstly, regarding the contractual dispute of Mr. Riza, the First Applicant, the ECtHR noted that the main line of argumentation was that the members of the Arbitration Committee had an implicit bias towards football clubs because of the structural inequality between clubs and players in the composition of the Board of Directors. The ECtHR considered that, as players do not enjoy the same level of representation as football clubs, this may well tip the balance in favour of clubs in proceedings before the Arbitration Committee concerning their contractual disputes with players. The ECtHR emphasised that, at the time of the dispute, all members of the Arbitration Committee who decided the First Applicant's case were appointed by the Board of Directors, which was predominantly composed of former members or executives of football clubs.

Secondly, regarding the regulatory dispute of Mr. Akal, the Fifth Applicant, the ECtHR noted that the two main arguments raised were, on one hand, that the Board of Directors enjoyed a considerable amount of influence over both the Central Referee Committee (the **CRC**) of the TFF and the Arbitration Committee, and, on the other hand, that the lists of referees prepared by the CRC were submitted to the Board of Directors for prior approval. The ECtHR noted that the CRC is appointed by the Board of Directors and, additionally, that the Board of Directors sets the rules governing the composition, principles and procedure of the functioning of the CRC. Under the rules governing the CRC, the CRC is obliged to submit the lists of

referees that it has prepared to the Board of Directors for approval. Any objection against the list of referees prepared by the CRC is settled by the Arbitration Committee, which is appointed by the Board of Directors.

In light of all these elements, the ECtHR found that there were structural deficiencies within the Arbitration Committee due to the vast powers given to the Board of Directors over its organisation and operation. Given the absence of adequate safeguards protecting the Arbitration Committee against outside pressures from the Board of Directors, the ECtHR considered that the applicants had a legitimate reason to doubt independence and impartiality of the members of the Arbitration Committee. Therefore, the ECtHR ruled that there had been a violation of Article 6 § 1 ECHR.

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Although this judgment by the ECtHR does not seem to set any new ground-breaking findings, it nevertheless serves as a good reminder of the guarantees of impartiality and independence that must be set by sport adjudicatory bodies.

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