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Meeting:	1443rd meeting (September 2022) (DH)
Item reference:	Action Report (05/09/2022)

Communication from Türkiye concerning the cases of Ali Riza and Others v. Turkey, Eksioglu v. Turkey, Sedat Dogan v. Turkey, Naki and AMED Sportif Faaliyetler Kulübü Dernegi v. Turkey, Ibrahim Tokmak v. Turkey (Application Nos. 30226/10, 2006/13, 48909/14, 48924/16, 54540/16) - *The appendices in Turkish are available upon request to the Secretariat*

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Réunion :	1443e réunion (septembre 2022) (DH)
Référence du point :	Bilan d'action (05/09/2022)

Communication de la Türkiye concernant les affaires Ali Riza et autres c. Turquie, Eksioglu c. Turquie, Sedat Dogan c. Turquie, Naki and AMED Sportif Faaliyetler Kulübü Dernegi c. Turquie, Ibrahim Tokmak c. Turquie (requêtes n° 30226/10, 2006/13, 48909/14, 48924/16, 54540/16) ***(anglais uniquement) -*** *Les annexes en turc sont disponibles sur demande au Secrétariat.*

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Ankara, September 2022

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05 SEP. 2022
SERVICE DE L'EXECUTION
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ACTION REPORT

Ali Rıza and Others v. Türkiye (30226/10)
Judgment of 28 January 2020, final on 22 June 2020

Ekşioğlu and Mosturoğlu v. Türkiye (2006/13, 10857/13)
Judgment of 15 June 2021, final on 15 June 2021

İbrahim Tokmak v. Türkiye (54540/16)
Judgment of 18 May 2021, final on 6 September 2021

Naki and Amed Sportif Faaliyetler Kulübü Derneği v. Türkiye (48924/16)
Judgment of 18 May 2021, final on 6 September 2021

Sedat Doğan v. Türkiye (48909/14)
Judgment of 18 May 2021, final on 6 September 2021

I. CASE DESCRIPTION

1. The case concerned about the violation of the applicants' right to a fair trial on account of the failure to meet the requirements for independence and impartiality of the Arbitration Committee of the Turkish Football Federation ("the TFF") where the proceedings were carried out with regards to the applicants (violation of Art. 6).

2. The Court held that the TFF Arbitration Committee had structural deficiencies due to vast powers that had been given to the Board of Directors over its organisation and operation and lack of adequate safeguards protecting its members against outside pressures.

3. In the judgment in question, the Court particularly noted that the Committee members were not immune from any action which may be brought against them in connection with the discharge of their duties and were not bound by any rules of professional conduct, also they are not required to swear an oath or make a solemn declaration before taking up their duties. Furthermore, the Court emphasized that unduly alignment of the tenure of the members of the Arbitration Committee with the Board of Directors constituted a contradiction with the guarantees of independence and impartiality. The Court also considered it a deficiency in its assessment that there was no specific procedure to be followed in cases where the independence or impartiality of a member of the Arbitration Committee was challenged by the parties and the failure to specify which body was competent to decide on such a challenge.

4. Having regard the composition of the Congress and the Board of Directors, the Court stressed that the players did not enjoy the same level of representation as football clubs. Lastly the Court discerned, even though this does not imply hierarchical relationship, that the existence of a number of strong organisational and structural ties between the Board of

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Directors and the Arbitration Committee could make a strong impression as to the significant level of influence that the Board of Directors enjoys over the functioning of the Arbitration Committee.

5. After having established the deficiencies with regard to the Arbitration Committee, the Court finally made an assessment within the scope of Article 46 of the Convention and stated that the problem was systematic and that some general measures should be taken by the Government in order to improve the system for resolving football disputes within the TFF. In this context, it was offered that the structural and functional separation of the Arbitration Committee from the Board of Directors should be ensured by restructuring the institutional basis.

6. *Ekşioğlu* case further concerns a violation of Article 8 on account of the use, in the context of the disciplinary investigation, of the recordings of the telephone conversations of the applicants, which is found by the Court an interference within the meaning of the Article.

7. *İbrahim Tokmak* and *Naki and Amed Sportif Faaliyetler Kulübü Derneği* cases also concern a violation of Article 10 on account of the disciplinary sanction imposed on the applicants for the post they had published on a social media site.

II. INDIVIDUAL MEASURES

8. The Turkish authorities have taken measures to ensure that the violation at issue has ceased and that the applicants have been redressed for its negative consequences.

Just Satisfaction

9. The authorities would like to state that;

i. In the case of ***Ali Rıza and Others***, the Court noted that it could not speculate as to what the outcome of the proceedings complained of would have been if the violation of Article 6 § 1 of the Convention had not occurred and therefore did not award any just satisfaction with respect to the applicants' pecuniary damages. In addition, having regard to the nature of the violation found, the Court awarded EUR 12,500 each the first applicant Ömer Kerim Ali Rıza and the fifth applicant Serkan Akal under this head. As regards the remainder of the first applicant's claim for costs and expenses, the Court accordingly dismissed claims under this head as the applicant did not submit documents showing that he had paid or was under an obligation to pay the fees charged or expenses incurred in respect of the proceedings before the Court. Regard being had to the fact that the applicant failed to submit any documents in support of his claim, the Court rejected his claim for costs and expenses
ii. In the case of ***Ekşioğlu and Mosturoğlu***, the Court did not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejected the first applicant İlhan Yüksel Ekşioğlu's claim. On the other hand, it awarded the second applicant Mehmet Şekip Mosturoğlu EUR 6,000 in respect of non-pecuniary damages. The Court

rejected the applicants' claims for costs and expenses by considering those incurred in the domestic proceedings were not related to the violations found.

iii. In the case of ***İbrahim Tokmak*** the Court dismissed the applicant's claims for pecuniary damage as they were unsubstantiated. On the other hand, it considered that the applicant should be awarded EUR 7,800 for non-pecuniary damage. Having regard to the documents in its possession and its case-law, the Court considered it reasonable to award the applicant the sum of EUR 2,000 for costs and expenses.

iv. In the case of ***Naki and Amed Sportif Faaliyetler Kulübü Derneği*** the Court considered that the applicants should be awarded EUR 6,058 jointly for pecuniary damage. The Court noted that this sum corresponding to the amount of the disciplinary fine imposed on the first applicant Deniz Naki and paid by the second applicant Amed Sportif Faaliyetler Kulübü Derneği. In addition, it awarded the first applicant EUR 2,000 and the second applicant EUR 6,000 in respect of non-pecuniary damage. The Court rejected the claim for costs and expenses due to the absence of evidence which was presented by the applicants in this regard.

v. In the case of ***Sedat Doğan*** the Court rejected the applicant's claim for pecuniary damage on the ground that there was no evidence submitted by the applicant. However, the Court considered it appropriate to pay the applicant EUR 7,800 in respect of non-pecuniary damage. The Court rejected the applicant's claim relating to costs and expenses on account of the absence of evidence presented by the applicants in this regard.

10. The amounts of just satisfaction awarded by the Court have been disbursed to the applicants.

Reopening of the Proceedings

11. In the Article 91 of the Turkish Football Federation Disciplinary Directive, it is stated that, if the evidence relied on in a finalized disciplinary decision is errenous or a new evidence emerges that will affect the disciplinary decision, or if an amendment is made in the legislation in favor of the relevant parties before the execution of the disciplinary sanction is completed; the person or clubs concerned and the investigative authorities may request the reopening of the proceedings from the Disciplinary Board that made the decision. Upon this request, the relevant Disciplinary Board may decide that there is no need to change the previous decision, or it may make a new decision, depending on the result of the examination.

12. According to the case-law of the relevant Committees, ECtHR's violation judgments are assessed as a "new evidence" and accepted one of the circumstances that constituties justified reason for reopening of the disciplinary proceedings.

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13. Within this context, some of the applicants requested the reopening of the proceedings based on violation judgments rendered in favour of them.

14. In the cases of ***Ekşioğlu and Mosturoğlu, Sedat Doğan*** and ***İbrahim Tokmak***, following the Court's violation judgments became final, the applicants İlhan Yüksel Ekşioğlu and Mehmet Şekip Mosturoğlu applied to the Arbitration Committee for reopening of the proceedings and requested the sanctions of "suspension" imposed on them be revoked. As a result of the evaluation process, the Arbitration Committee ruled that the applications be transmitted to the Professional Football Disciplinary Committee ("the PFDC") since the sanctions that are the subject matter of the application had been given by that Committee[1][2]. In addition, the applicants Sedat Doğan and İbrahim Tokmak directly applied to the PFDC. On 14 November 2021 and 20 January 2022 the PFDC accepted all the applicants' request for reopening of the proceedings and revoked the sanctions imposed on them[3][4]. The PFDC further decided that *"there [were] no grounds to sentence the applicants"*. Therefore, the penalties against the applicants were eliminated with all their consequences.

15. In the case of ***Ali Rıza and Others***, on 5 November 2020 the Arbitration Committee sent the applicant Serkan Akal's request for reopening of the proceedings to the Central Referee Committee ("the CRC") which has competence to determine the number of top-level assistant referees for any given season[5]. The CRC, by repealing its previous decision, examined the case again. However, the applicant's request for reassignment as a referee was not accepted by the CRC on account of the fact that he did not meet the age-related conditions in the current legislation (CRC Directive). The applicant lodged an objection against the CRC's decision seeking his reinstatement as a top-level assistant referee. On 21 October 2021 the Arbitration Committee held that the decision whether or not to include an assistant referee in the list of top-level assistant referees belonged exclusively to the CRC and dismissed the applicant's request holding that there were no grounds to justify the applicant's arguments[6].

16. As can be seen, following the violation judgments of the Court, the applicants' requests for reopening of proceedings were accepted by the competent organs of the TFF. The applicants' requests were examined and, as a result of the retrial, the sanctions that caused the violation were abolished. As regards the one of the applicants, although his request for a retrial was accepted, a decision could not be made in line with his demand as he did not meet the conditions in the current legislation.

17. In the cases of ***Ali Rıza and Others*** and ***Naki and Amed Sportif Faaliyetler Kulübü Derneği***, the applicants except Serkan Akal have not sumitted any application to the

[1] https://www.tff.org/Resources/TFF/Documents/Tahkim%20Kurulu%20Gerekceli%20Kararlari/65-Anonimle%C5%9Ftirilmi%C5%9F.pdf
[2] https://www.tff.org/Resources/TFF/Documents/Tahkim%20Kurulu%20Gerekceli%20Kararlari/66-Anonimle%C5%9Ftirilmi%C5%9F.pdf
[3] https://www.tff.org/Default.aspx?pageId=200&ftxtId=36913
[4] https://www.tff.org/Default.aspx?pageId=200&ftxtId=36371
[5] https://www.tff.org/Resources/TFF/Documents/Tahkim%20Kurulu%20Gerekceli%20Kararlari/18-(Anonimlestirilmis).pdf
[6] https://www.tff.org/Resources/TFF/Documents/Tahkim%20Kurulu%20Gerekceli%20Kararlari/102-Anonimle%C5%9Ftirilmi%C5%9F.pdf

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TFF for reopening of the proceedings. As can be seen, legal remedy of reopening of the proceedings is open for the applicants for whom the ECtHR have found violation of fundamental rights and freedoms. If the afore-metioned applicants had requested the reopening of the proceedings, the relevant committees of the TFF would have re-examined the applications and would have made a new decision with regard to subject matters of the applications. However, the said applicants have not requested the reopening of the proceedings so far.

18. Hence, no further individual measure is necessary in respect of the above-mentioned cases. As indicated above, the sums of just satisfaction awarded were dully paid.

III. GENERAL MEASURES

19. The Government took general measures to prevent reoccurring of the violations found by the Court.

A. As Regards the Violation of Article 6

20. In its judgment the ECtHR held that the Arbitration Committee could not be considered to have been independent and impartial within the meaning of Article 6 of the Convention because of the Board of Directors' – *the executive body of the TFF* – had significant influence over the Arbitration Committee's organisation and functioning (§ 216 of the judgment). The Court further noted that the TFF Law did not provide appropriate safeguards to protect members of the Arbitration Committee from any outside pressure and neither was there a specific procedure to deal with challenges to an Arbitration Committee member on the ground of lack of independence and impartiality. (§ 222 of the judgment).

21. The Court also considered that for the proper execution of the present judgment the respondent State would have to take a number of general measures aimed at reforming the system of settlement of football disputes under the auspices of the TFF. The Court notes that these measures should include restructuring of the institutional basis of the Arbitration Committee so that it is structurally and operationally detached from the Board of Directors and enjoys a sufficiently independent statue that is commensurate with its powers (§ 242 of the judgment).

Turkish Football Federation

22. At first, the authorities would like to provide information about the general organization of the TFF. Pursuant to Law no. 5894[7] on the Establishment and Duties of the Turkish Football Federation ("the TFF Law"), the TFF is an autonomous entity which has a separate legal personality and is governed by private-law principles. The Turkish Football Federation has the authority to put into action TFF Statutes[8] and has the power to issue and

[7] https://www.mevzuat.gov.tr/mevzuatmetin/1.5.5894.pdf
[8] https://www.tff.org/Resources/TFF/Documents/TFF-KANUN-STATU/TFF-Statusu.pdf

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enforce directives which govern the functioning of the various bodies of the TFF as well as the administration and discipline of football.

23. The TFF was established in 1923 to govern football in Türkiye. As the sport's national federation, it is the highest authority regulating and overseeing all aspects of professional and amateur football in the country. It has been a member of FIFA (the Fédération Internationale de Football Association) since 1923 and UEFA (the Union of European Football Associations) since 1962. By operation of law, the TFF is an autonomous entity which has a separate legal personality and is governed by private-law principles.

24. The legal framework governing the TFF has evolved significantly over the course of time. At the time of the proceedings to which the first applicant was party, Law no. 3813 of 17 June 1992 on the Establishment and Duties of the Turkish Football Federation ("the former TFF Law"), as amended by Law no. 5719 of 29 November 2007 ("Law no. 5719"), was in force.

25. On 16 May 2009 Law no. 5894 took effect, thus repealing and replacing the former TFF Law. The TFF Law was in force at the time of the proceedings to which the remaining applicants were parties.

26. Unlike its predecessor, the TFF Law only provides a broad legal framework. The detailed provisions governing the TFF's bodies are set out in the statutes of the TFF ("the TFF Statutes"), adopted on 3 June 2008. The provisions of the TFF Statutes, which entered into force simultaneously with the TFF Law and have been amended from time to time, are complemented by the directives (*talimat*) issued by the Board of Directors.

27. The main bodies of the TFF which make up its central organisation are the Congress [9] (*Genel Kurul*), the Board of Directors [10] (*Yönetim Kurulu*) and the legal committees (*hukuk kurulları*) (Article 4 of the former TFF Law and the TFF Law and Article 20 of the TFF Statutes).

28. The legal committees are structured as a two-tier system. The main first-instance legal committees (*ilk derece hukuk kurulları*) of the TFF are the Dispute Resolution Committee[11] ("the DRC") (*Uyuşmazlık Çözüm Kurulu*), the Disciplinary Committees[12]

[9] The Congress is the main decision-making authority of the TFF. It has the power to adopt and alter the TFF Statutes, which are the main piece of secondary legislation governing the functioning of the TFF's bodies and are published in the Official Gazette. It also elects the members of the Board of Directors and the president of the TFF (*Türkiye Futbol Federasyonu Başkanı* – "the President"), who acts as the chairman of the Board of Directors.

[10] The Board of Directors is the TFF's executive body, which consists of the President and fourteen members, all of whom are elected by the Congress. The President serves for a four-year term and acts as the chairman of the Board of Directors. To become the President, the prospective candidate must fulfil the conditions set out in the TFF Statutes and have the support of at least one fifth of the delegates of the Congress. The President is elected with the simple majority of the delegates present in the general assembly meeting of the Congress

[11] The DRC was established by Law no. 5719, which took effect on 4 December 2007, to review football disputes of a contractual nature as a first-instance legal committee of the TFF. The DRC is composed of a chairman and six other members. Its all members including the chairman is elected by the Congress. The DRC takes its decisions by committees of five, which consisted of the chairman and four members. Objections against its decisions can be lodged with the Arbitration Committee.

[12] The Amateur Football Disciplinary Committee ("the AFDC"), together with the Professional Football Disciplinary Committee of the TFF (Türkiye Futbol Federasyonu Profesyonel Futbol Disiplin Kurulu – "the PFDC") and the provincial disciplinary committees make up the Disciplinary Committees. The AFDC has power to decide on disciplinary offences committed resulting from the actions of amateur football clubs, their players, coaches, executives and other individuals, as well as referees and other officials involved in amateur football matches. Objections against decisions of the AFDC can be lodged with the Arbitration Committee.

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(*Disiplin Kurulları*) and the Ethics Committee[13] (Article 5 of the TFF Law and Article 54 of the TFF Statutes).

Arbitration Committee

29. According to Article 6 of the Law no. 5894 which was amended by the Article 53 of the Law no. 7405 (Sports Clubs and Sports Federations Law)[14] that entered into force on 22 April 2022, the Arbitration Committee is the independent and impartial compulsory arbitration authority and the TFF's highest legal committee. It hears objections lodged against the decisions of first-instance legal committees and, as a final decision-making body, settles football-related disputes falling within its jurisdiction (see Article 6 of the TFF Law and Article 61 of the TFF Statutes).

a. The amendments made related to the Arbitration Committee in the TFF Statutes and in the TFF Law

30. The Government presents that since the Court found a systemic problem concerning the independence and impartiality of the Arbitration Committee, the Government took immediate action and TFF Congress has adopted comprehensive amendments were made on the TFF Law and the TFF Statutes to overcome the deficiencies found in said judgment.

31. The content of amendments constitutes the expression of the Government's responsibility to execute the Court's judgments. The said amendments in full line with the Court's standards. The Government considers that all necessary general measures have been taken, and those measures are capable of the preventing similar violations.

32. In this part, the Government would like to submit to the Committee its explanations on the findings, which were considered as the reasons for violations by the Court as regards the composition and independence of the Arbitration Committee, by assessing these findings one by one.

1- The Court's finding that the term of office of the members of the Arbitration Committee is limited to that of the Board of Directors (see Ali Rıza and Others, § 213):

33. In its judgment, after having examined the manner of appointment of the Arbitration Committee, the Court noted that members were appointed by the Board of Directors upon the recommendation of the President. In the Court's view, however, the mere fact that its members are appointed by the Board of Directors is not sufficient to cast doubt on its objective impartiality. In addition, the fact that the Arbitration Committee was exclusively

[13] The Ethics Committee was established to protect the ethical values and brand value of Turkish football and preserve its reputation in the eyes of the public

[14] Sports Clubs and Sports Federations Law numbered 7405 was published in Official Gazette dated 26 April 2022 and numbered 31821 entered into force on the same day. With this Law, the establishment and operation procedures and principles of sports clubs, sports joint stock companies and sports federations have been determined.

composed of lay assessors did not pose any problem for the Court. Nevertheless, the Court found structural deficiencies in the formation of the Arbitration Committee on account of the vast powers given to the Board of Directors over its organisation and operation.

34. In the first place, the Court examined the term of office of members of the Arbitration Committee and then noted that the TFF legislation did not set a fixed term for them and provided that the duration of their mandate is the same as that of the Board of Directors and the President. The Court further noted that the TFF rules forbade the premature replacement or removal of members of the Arbitration Committee before the end of their mandate unless they resign or withdraw from membership. As a result, despite the fact that the members enjoyed security of tenure, the Court considered that the unduly alignment of the tenure of the members of the Arbitration Committee with the executive body called into question the guarantees of independence and impartiality required by Article 6 of the Convention.

35. According to the former legislation, members of the Arbitration Committee were appointed for the term of the Board of Directors and the President. They might not be removed from office unless they had resigned or withdrawn from membership by not attending a certain number of meetings (Article 13 of the former TFF Law and Article 61 of the TFF Statutes).

36. With the Law on Sports Clubs and Sports Federations which entered into force on 22 April 2022, apart from the term of office of the Board of Directors, the term of office of members of the Arbitration Committee was determined as four years from the date of their inauguration. Unless the members resign or are deemed withdrawn, no new members can be appointed in their place. New members elected to the vacant membership for any reason shall serve for the remaining term of office of the Board.

37. With the amendments made in the TFF Statutes adopted by the TFF Congress dated 28 July 2021 the term of office of all the Legal Committees has been determined as four years and the provision stipulating that their term of office shall be limited to that of the Executive Committee has been annulled. (see amendments to Articles 55, 57 and 61 of the TFF Statutes)

38. At this point, pursuant to new legislation, Türkiye Football Federation Elective General Assembly was held on 16 June 2022 in Ankara. As a result of the election held in the General Assembly the new president of TFF was elected. Following the election of the new president, some of the presidents and members of the existing legal committees submitted their resignation to the TFF. On 9 July 2022, new members of the Arbitration Committee was elected for four years regardless of the term of office of the Board of Directors, by the Board of Directors according to the Law No. 5894 and TFF Statutes.

39. Therefore, the circumtances giving rise to the violation due to the limitation of the Arbitration Committee's members' tenure that of the Board of Directors (the executive body) has been removed by the amendments in the TFF Law and TFF Statutes.

2- The Court's finding that the TFF Arbitration Committee Regulations do not include a special provision concerning the members' withdrawal in the circumtances which may affect their independence and impartiality (see Ali Rıza and Others, §§ 212 and 215).

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40. In its judgment, the Court noted that members of the Arbitration Committee were not bound by any rules of professional conduct (§ 212). Furthermore, the Court draw the attention to the fact that the TFF did not put in place a specific procedure to be followed in cases where the independence or impartiality of a member of the Arbitration Committee was challenged by the parties; and the rules did not specify which body was competent to decide on such a challenge. (§ 215). As a result, the Court concluded that there were a number of strong organisational and structural ties between the Board of Directors and the Arbitration Committee.

41. According to the amendments made in Article 6 of the Law No. 5894 by Law No. 7405 dated 22 April 2022, legislative guarantees have been introduced regarding the impartiality and independence of the Arbitration Committee. According to these amendments the Chairman and the members of the Arbitration Committee have to present their written statements that they are not in a situation that prevents them from fulfilling their duties with independenece and impartiality within one week at the latest from the date of Board of Directors' decision regarding the appointment. Furthermore, they have to swear an oath in the presence of the members of the Board of Directors that they will fulfill their duties in impartial and independent manner.

42. Furthermore, in accordance with the Court's assessment the relevant part of the TFF Statutes that regulates the liabilities of the members of legal committees including the Arbitration Committee was formed as follows:

Article 54/4

b- Members of the Legal Committees must disclose any relationships and interests that may lead to a conflict of interest in the context of their future activities before taking office.

c-If a conflict of interest arises during the performance of their duties, the members of the Legal Committees are obliged to withdraw from the relevant file and immediately notify in writing the committee to which they are assigned. Members of the Legal Committees are obliged to withdraw from their membership via immediately notifying in writing the committee, to which they are assigned, when a situation that may create a conflict of interest among themselves or with the persons working in other organs of the TFF arises.

d. The relevant parties/situations that may create a conflict of interest (but not limited to the listed cases) are as follows:

-Covering individuals working within the TFF and/or member clubs' representative and employee;

-Spouse and house mate;

-Individuals sharing the same household, regardless of personal relationship;

-other family members up to the third degree;

-Persons who gain advantage due to a legal entity, partnership or institution or who serve as managers in these institutions;

-directly or indirectly controlling or benefiting from a legal entity, partnership or institution;

-performing services on behalf of such an entity, partnership or institution, regardless of the existence of a formal contract. (see amendments to Article 54 of the TFF Statutes)

43. The authorities would like to note that pursuant to new regulations of the Statutes, the obligation of members of the Arbitration Committee to decide independently and impartiality was ensured. Furthermore, according to the new regulations it is mandatory for the members of the Arbitration Committee to disclose any relationships and interests that may lead to a "conflict of interest"[15] in the context of their future activities before taking office.

44. In addition to this, the members of the Arbitration Committee are obliged to withdraw from their membership when a situation that may create a conflict of interest among themselves or with the persons working in other organs of the TFF arises and withdraw from the relevant file by immediately notifying the committee to which they are assigned. As a result, the members of the Arbitration Committee have to disclose circumstances which may affect their independence and impartiality.

45. Therefore, with the amendment made in the TFF Law and TFF Statutes all the barriers that could prevent the members of the Arbitration Committee from making decisions impartially and independently have been removed.

3- The Court's finding with regard to appointment of members of the Arbitration Committee by the Board of Directors and its consideration as regards the absence of a requirement for the members of the Arbitration Committee to swear an oath or make a solemn declaration before taking up their duties (see Ali Rıza and Others, $ 212)

46. The Court criticized the appointment procedure of the members of the Arbitration Committee due to the absence of swear an oath or making a solemn declaration before taking up their duties.

47. In the former legislation, there was no provision requring members to swear an oath or make a solemn declaration before taking up their duties. However, according to the amendments made in Article 6 of the Law No. 5894 by Law No. 7405 dated 22 April 2022, the obligation of swearing an oath was introduced. While taking an oath members of the Committee shall declare that they will fulfill their duties in impartial and independent manner in the presence of the members of the Board of Directors.

[15] A conflict of interest is the situation in which any possible advantage is gained by the individuals who are under bound by these rules, the members of the committees or the interested parties.

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48. In addition, in line with the amendments made in the TFF Law, similar amendmnets have made in the TFF Statutes. Pursuant to Article 61 of the TFF Statute, members of the Arbitrartion Commiitee have to swear an oath in the presence of the members of the Board of Directors that they will fulfill their duties in impartial and independent manner.

49. As can be seen, legislative guarantees have been introduced regarding the impartiality and independence of the Arbitration Committee in line with the Court's judgment.

b. Impact Assessment

50. In its judgment the Court draw the attention to the appointment procedure of the Arbitration Committee which was predominantly composed of former members or executives of football clubs. The Court further noted that the players did not enjoy the same level of representation as clubs before the Arbitration Committee concerning their contractual disputes. In this connection, the Court considered that there was a legitimate reason to doubt that the members of the Arbitration Committee, in the absence of adequate safeguards protecting them against outside pressures, particularly from the Board of Directors, lacked of necessary independence and impartiality due to the vast powers given to the Board of Directors over its organization and operation.

51. In the first version of Law No. 5984, it was emphasized that the composition, duties, powers, rights and responsibilities of the Arbitration Committee and the qualifications required of its members would be determined in the TFF Statute. In this context, the TFF Statute stipulated that the Arbitration Committee was composed of a chairman, six (6) principal and six (6) substitute members, who were appointed by the Board of Directors upon the recommendation of the President. Members had to be law graduates with at least five years' professional experience.

52. However, with the amendment made in the Law, the Arbitration Committee shall consist of a Chairman, and six (6) full and six (6) substitute members with a bachelor of laws degree and a minimum ten years of professional experience who are elected by the decision of the Executive Board. With the amendment made, a legal basis was provided for the number and qualifications of the members of the Arbitration Commiitee. By increasing the professional experience period from five years to ten years, a more qualified board structure was tried to be constituted.

53. Moreover, with the amendments made by Law No. 7405, legislative guarantees have been introduced regarding the impartiality and independence of the Arbitration Committee and its appointment procedure. According to these amendments the Arbitration Committee is an independent and impartial compulsory arbitration authority which is the top legal board of TFF under the present Law and is also the ultimate legal body to rule on the disputes covered by the TFF Statutes and corresponding regulation.

54. While there was no such regulation in the former legislation, according to new legislation, the Chairman and the members of the Arbitration Committee have to present their written statements that they are not in a situation that prevents them from fulfilling their duties with independenece and impartiality within one week at the latest from the date of Board of Directors' decision regarding the appointment. At the same time, they have to swear an oath

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in the presence of the members of the Board of Directors that they will fulfill their duties in impartial and independent manner.

55. According to the former legislation, members of the Arbitration Committee were appointed for the term of the Board of Directors and the President, with the amendments made, the term of office of the Arbitration Committee has been determined as four years from the date of their inauguration, regardless of the term of office of the Board of Directors. Unless the members resign or are deemed withdrawn, no new members can be appointed in their place. New members elected to the vacant membership for any reason shall serve for the remaining term of office of the Board.

56. In Article 6 of the Law No. 5894, which was amended by Law No. 7405, the necessary issues have been specified for the members of the Arbitration Committee to conduct their activities with impartiality and independence. No organ, authority, authority or person may give orders or instructions, make recommendations or suggestions regarding the task of the Arbitration Committee. Furthermore, no member of the Arbitrartion Committee shall at the same time work for any affiliated member or club of the TFF or have a seat on the Executive Committee, any other Standing or ad-hoc Committee or in the General Secretariat. All members of the Legal Committees are bound by the law, TFF Statutes, Regulations and directives. Moreover, individuals serving on the board of autonomous sports federations or sports clubs or those who have received a disciplinary sanction of more than six months are not eligible to sit on the Arbitration Committee. The rules that no members of the Board of Directors are allowed to become members of the Arbitration Committee have been preserved.

57. In order to remove the deficiencies, which had been stated in the violation judgment of the Court, amendments in the TFF Statutes were adopted by the TFF Congress dated 28 July 2021 and 16 June 2022 in respect of the composition of the Arbitration Committee and the Statutes have been harmonized with the TFF Law.

58. In line with the amendments made in the TFF Law, similar amendments have made in the TFF Statutes.

59. Pursuant to the TFF Statutes, members of the Committee cannot be a shareholder or a member of sport clubs that are subject to the jurisdiction of the TFF Legal Boards. No member of any Legal Committee shall at the same time work for any affiliated member or club of the TFF or have a seat on the Executive Committee, any other Standing or ad-hoc Committee or in the General Secretariat. All members of the Legal Committees are bound by the Law, TFF Statutes, Regulations and directives. (see amendments to Article 54 of the TFF Statutes). According to the Article 54 of the TFF Statutes members of the Arbitration Committee cannot take office in other positions and organs of the TFF during their term of office. In addition, they cannot take up duties within the body of or other private law legal entities directly related to the TFF members. Unless those -*who work for the boards of other sports federations or sport clubs*- resign from their duties, or those who have been sentenced for more than six months by the disciplinary boards, cannot become a member of the Arbitration Board.

60. According to revised Article 54/4 of the Statutes; all members of the Legal Committees are independent and impartial in their mandate. Committees are obliged to maintain their impartiality and independence during their duties. No organ, authority, office or

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individual may give orders or instructions, or make recommendations or suggestions to the Legal Committees relating to the exercise of judicial power.

61. Moreover, some amendments were made to ensure the independence and impartiality of the members who will take office in the legal committees as well as the Arbitration Committee, and the matter of conflict of interest has been regulated in detail. Each member shall sign the "Declaration of Acceptance of Position, Independence, Impartiality and Suitability for Duty" and take an oath. (see amendments to Article 61 of the TFF Statutes, Provisional Section 2)

62. The authorities consider that it would be useful to mention about other novelties made by the latest amendments.

63. According to the amendments made in the Statute, members of the Legal Committee shall not be held responsible for the decisions rendered within the scope of their duties, except in cases of gross negligence. In addition, decisions rendered by the legal committees and appealable by only the Arbitration Committee are limited to those regarding the management and discipline of football, and with the amendments the decisions concerning matters other than the management and discipline of football can be appealed through judicial remedies. (see amendments to Article 61 of the TFF Statute)

64. Attendance fees, wages and progress payments to be paid to the chairman and members of the Professional Football Disciplinary Committee, the Dispute Resolution Committee and the Arbitration Committee are determined by the Congress and are covered by the fees and trial expenses paid by the parties applying to these committees. Thus the economic independence of the committee members will also be ensured.

65. Lastly the Government would like to give information about new composition of the Arbitration Committee. Türkiye Football Federation Elective General Assembly was held on 16 June 2022 and pursuant to new legislation and new president of TFF was elected. Following the resignation of some of the presidents and members of the existing legal committees, on 9 July 2022 new members of the Arbitration Committee was elected for four years regardless of the term of office of the Board of Directors. The newly elected Arbitration Committee consist of high judiciary members, academics and lawyers. The members of the Arbitration Committee neither have any other duties within the TFF nor have any organic ties with the football clubs. Therefore, it cannot be said that the players do not enjoy the same level of representation as clubs before the Arbitration Committee concerning their contractual disputes.

66. Therefore, with the amendment made in the Statute the Arbitration Committee was restructured and the structural deficiencies in the former version of the Committee have been completely eliminated.

B. As Regards the Violation of Article 8

67. In *Eksioglu* case, the Court further found a violation of Article 8 of the Convention as regards the use, in the context of a disciplinary investigation, of recordings of the applicant. Having referred to the case of *Karabeyoğlu v. Türkiye* (no. 30083/10, 7 June 2016), the Court,

in that connection, noted that the tapping of the applicants' telephone lines was authorised only for the purpose of a criminal investigation and in particular for the offence of setting up an organisation with a view to committing crimes. No provision of domestic law allowed for the use of such data as part of a disciplinary investigation. It therefore follows that the use of recordings of their tapped telephone conversations was not in conformity with domestic legislation.

68. Lastly the authorities would like to note that the measures in respect of this point are being examined by the Committee of Ministers within the context of *Karabeyoğlu* group of cases (appl. no.30083/10).

C. Violation of the Article 10 of the Convention

69. In the cases of *Naki and AMED Sportif Faaliyetler Kulübü Derneği*, *Doğan* and *İbrahim Tokmak*, the Court found that the sanctions imposed on the applicants had amounted to interference with the exercise of their right to freedom of expression protected under the Article 10 of the Convention on account of the fact that the reasons adduced by the domestic authorities to justify the measures impugned therefore had been neither relevant nor sufficient, and those measures had not been necessary in a democratic society or proportionate to the legitimate aims pursued.

70. The Turkish authorities would like to note that the European Court found violation of Article 10 due to the fact that the authorities' decisions had contained no satisfactory argument concerning the oral or written comments presented as fuelling or condoning violence, hatred or intolerance.

71. In view of the foregoing, the authorities are of the opinion that the general measures taken with respect to violation of Article 6§1 are also relevant concerning the violation of Article 10 since these measures are capable of preventing disproportionate interventions in the right to freedom of expression.

72. The Court concluded that this reasoning adopted by the national authorities in their decisions had failed to establish that in the instant case they had conducted an adequate balancing exercise, in accordance with the relevant criteria set out in the Court's case-law, between, on the one hand, the applicant's right to freedom of expression and on the other, the competing interests, such as the prevention of disorder and hostility in the football community.

73. The authorities would like to note that football clubs' players, coaches, executives and other individuals, as well as referees and other officials who faces disciplinary proceedings are provided effective and adequate safeguards against arbitrariness. In particular, the persons listed above have possibility to be investigated by an independent and impartial body authorized to review all relevant factual and legal questions in order to determine the lawfulness of the measure. Before this review body, the persons concerned uses adversarial proceedings to present his/her views and challenge the authorities' arguments.

74. Furthermore, in order to provide access to efficient functioning of disciplinary boards and to comply with the principle of equality of arms, some safeguards were introduced

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to protect the interests of the persons those are investigated. Within this context, in the Football Disicplinary Directive it has been regulated that no punishment can be given without a defense; that if the relevant disciplinary authority considers necessary, it may appoint a member of the relevant board to receive oral defense of the person under investigation; that the President of the Board decides whether to hold a meeting to which all parties will be invited for oral statements if a request submitted by one of the parties; that oral statements are always be taken in closed session. Moreover, the decisions of the disciplinary boards shall be written with reasons and are duly notified to the parties.

75. If the evidence based on a finalized decision of the disciplinary boards is deemed contrary on facts or a new evidence emerges that will affect the decision, or if a change is made in the legislation in favor of the relevant parties before the execution of the decision is completed; the persons concerned may request the reopening of the proceedings from the Disciplinary Board that made the decision. Following this request, the disciplinary boards may make a new decision, depending on the result of the examination.

76. The authorities would like to submit that the impugned interference served for the maintenance of football activities in a peaceful atmosphere in compliance with the sense of sportsmanship and fair play and for the protection of democratic society, exclusively in the context of the football community, through preventing any conduct against the sense of sportsmanship, the sports ethics, or the sense of fair play, preventing any act or action which would undermine the value of football, preventing violence and disorder in sports, and preventing any speech or statement which might cause the fans to make protests. The Government would like to emphasize that the field of sports, especially the football branch, is considerably fragile, vulnerable to provocations, social explosions and turmoil and based on delicate balances. In view of these characteristics of sports, which is a field of friendship, peace and fraternity, the Government notes that the persons from the football community with a certain degree of influence on the masses, such as chairpersons and directors of clubs, professional football players, referees, and sports columnists have substantial responsibilities to avoid the destruction of the peaceful sportive atmosphere and the emergence of the feelings of hatred and hostility.

77. Furthermore, following the violation judgments of Court with regard to freedom of expression, the TFF Boards have changed their point of view in similar disputes and started to solve them in favour of the applicants. In its decisions, the Arbitration Committee referred to general perspectives of the ECtHR along with predecent judgments of the Court and revoked the disciplinary sanctions given by the PFDC. In this respect, the autorities consider that the decisions rendered by Arbitration Committee interpreted the issues from a more freedom-based perspective in respect of the right to freedom of expression. (see Annex)

Remedy of Individual Application before the Constitutional Court

78. Individual application procedure has been introduced through the constitutional amendments made in 2010, and as of 23 September 2012 the Constitutional Court (the CCT) has started to receive individual applications. Article 148 of the Constitution stipulates that anyone who considers that his/her constitutional rights set forth in the European Convention

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on Human Rights have been infringed by a public authority shall have the right to apply to the Constitutional Court after exhausting other existing domestic remedies. Although, this is not a major response to the shortcomings identified by the European Court in this case, the Turkish authorities would like to observe that an individual in the applicant's situation could today pursue the avenue of lodging an individual application to uphold his or her Convention rights, including in the present case.

79. In this respect, the Turkish authorities would like to recall that the European Court indicated in *Hasan Uzun* (10755/13) case that the individual application to the Constitutional Court should be considered an effective remedy as of 23 September 2012.

Publication and Dissemination Measures

80. The Turkish authorities ensured that the European Court's judgments have been translated into Turkish and published on its official website which has been made available to the public and legal professionals.[16]

81. The authorities also ensured that the European Court's findings have been disseminated among the competent bodies to ensure that similar violations are prevented. To this end, the European Court's judgment has been transmitted to the administrative authoritiy which rendered the impugned decision. It has also been transmitted to the Constitutional Court and the Court of Cassation.

IV. CONCLUSIONS

82. The Turkish authorities consider that both individual and general measures have duly been taken in respect of this case. Individual measures provided a redress for the applicant and the general measures taken are capable of preventing similar violations.

83. The authorities consider that the measures taken or envisaged are capable of preventing for many violations being examined under this group of cases. Therefore, the Turkish authorities invite the Committee of Ministers to decide that there is no need to take any further individual and general measures in these cases and that the cases be closed.

[16] Ali Rıza and others / Türkiye *(30226/10)* - https://hudoc.echr.coe.int/eng?i=001-204729
Naki ve Amed Sportif Faaliyetler Kulubü Derneği / Türkiye (*48924/16*) - https://hudoc.echr.coe.int/eng?i=001-212059
İbrahim Tokmak / Türkiye (*54540/16*) - https://hudoc.echr.coe.int/eng?i=001-212064
Sedat Doğan / Türkiye (*48909/14*) - https://hudoc.echr.coe.int/eng?i=001-212060
Ekşioğlu and Mosturoğlu (2006/13 ve 10857/13) - https://hudoc.echr.coe.int/eng?i=001-217036