

The Problem of Independence and Impartiality of the Arbitration Committee of the Turkish Football Federation in the Context of the Judgments of the European Court of Human Rights^(*)

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Abstract

Nowadays, a significant part of sports law disputes are resolved by sports resolution authorities acting through alternative dispute resolution methods such as arbitration and mediation. Pursuant to Article 59 (3) of the Constitution, “*The decisions of sports federations relating to sports administration and disciplinary sanctions may only be challenged through compulsory arbitration. The decisions of the Arbitration Committee are final and shall not be appealed to any judicial authority.*” The functioning of the Arbitration Committee of the Turkish Football Federation (the Arbitration Committee), which carries out its duties in line with the aforementioned provision of the Constitution, has been recently extensively analysed by the European Court of Human Rights (ECtHR). In *Ali Rıza and Others v. Turkey* case the ECtHR held that the Arbitration Committee was not independent and impartial. With this decision, the Turkish football arbitration proceedings started to be discussed in terms of the right to a fair trial.

The purpose of this study is to analyse the Turkish Football Federation arbitration proceedings in line with the ECtHR judgments in terms of the right to a fair trial. Within

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the scope of the study, the steps taken by the State and the TFF to overcome the independence and impartiality of the Arbitration Committee have been discussed and solution suggestions are tried to be produced.

Keywords

Right to Sport, Right to a Fair Trial in Sport, Turkish Football Federation, Compulsory Arbitration Proceedings, The Arbitration Committee of the Turkish Football Federation.

Avrupa İnsan Hakları Mahkemesi Kararları Bağlamında Türkiye Futbol Federasyonu Tahkim Yargılamasında Bağımsızlık ve Tarafsızlık Sorunu

Öz

Günümüzde spor hukuku uyuşmazlıklarının önemli bir bölümü, tahkim ve arabuluculuk yöntemi gibi alternatif uyuşmazlık çözüm yolları ile görev yapan sportif yargı mercileri tarafından çözümlenmektedir. Anayasa'nın 59 (3) maddesi uyarınca, "*Spor federasyonlarının spor faaliyetlerinin yönetimine ve disiplinine ilişkin kararlarına karşı ancak zorunlu tahkim yoluna başvurulabilir. Tahkim kurulu kararları kesin olup bu kararlara karşı hiçbir yargı merciine başvurulamaz.*" Anayasa'nın anılan hükmü doğrultusunda görevlerini yürüten Türkiye Futbol Federasyonu Tahkim Kurulu'nun (Tahkim Kurulu) işleyişi, Avrupa İnsan Hakları Mahkemesi (AİHM) tarafından yakın zamanda kapsamlı olarak incelenmiştir. AİHM *Ali Rıza ve diğçerleri ve Türkiye* davasında, Tahkim Kurulunun bağımsız ve tarafsız olmadığına karar vermiştir. Bu kararla birlikte Türk futbol tahkim yargılaması, adil yargılanma hakkı açısından tartışılmaya başlanmıştır.

Bu çalışmanın amacı, AİHM kararları doğrultusunda Türkiye Futbol Federasyonu (TFF) tahkim yargılamasının adil yargılanma hakkı açısından incelenmesidir. Çalışma kapsamında Devlet ve TFF tarafından Tahkim Kurulunun bağımsızlık ve tarafsızlık sorununun giderilmesine yönelik atılan adımlar tartışılmış ve bu konuda çözüm önerileri üretilmeye çalışılmıştır.

Anahtar Kelimeler

Spor Hakkı, Sporda Adil Yargılanma Hakkı, Türkiye Futbol Federasyonu, Zorunlu Tahkim Yargılaması, Türkiye Futbol Federasyonu Tahkim Kurulu.

Introduction

Sports activities, whether they are carried out for mental and physical health or for earning money, are very important for people to sustain their biological and sociological existence.¹ For this reason, sport is in direct and indirect interaction with other areas of life. Since sport is an indispensable part of life, it constitutes a right for people and is protected by the legal system². Due to these characteristics, the right to sport is a fundamental human right that is linked to rights such as the right to life, the right to work, the right to equality and the right to education³.

Many studies, argue that sport is a fundamental human right⁴. As a matter of fact, many international declarations and documents recognize sport as a fundamental human right. International Olympic Committee (IOC), European Union (EU), United Nations (UN) and United Nations Educational, Scientific and Cultural Organization (UNESCO) have emphasised in many international treaties, declarations and instruments that sport is a fundamental human right⁵.

In the Fundamental Principles of Olympism section of the IOC Charter, it is stated that, *"The practice of sport is a human right. Every individual must have*

¹ Christer Malm, Johan Jakobsson and Isaksson Andreas, 'Physical Activity and Sports-Real Health Benefits: A Review with Insight into the Public Health Of Sweden' (2019) 7(5) Sports 1, 11.

² Taner Ayanoglu, 'The Scope and Limits of the Right to Sport in Turkish Law' (2019) (68) In Annales de la Faculté de Droit d'Istanbul 1, 4.

³ Atilla Erdemli, 'Spor Nedir?' (2007) Kismet Erkiner and Ali Soysüren (eds), *Spor Hukuku Dersleri* (Kadir Has Üniversitesi Spor Hukuku Araştırma ve Uygulama Merkezi Yayını, 11, 19.

⁴ Bruce Kidd and Bruce Donnelly, 'Human Rights In Sports' (2000) 35(2) International Review for the Sociology of Sport 131, 140; Fred Coalter, 'The Politics of Sport-For-Development: Limited Focus Programmes and Broad Gauge Problems?' (2010) 45(3) International Review for the Sociology of Sport 295, 309; Bruce Kidd, 'Cautions, Questions and Opportunities in Sport for Development and Peace' (2011) 32(3) Third World Quarterly 603, 605; Andrew Bloodworth, Mike McNamee and Richard Bailey, 'Sport, Physical Activity and Well-Being: an Objectivist Account' (2012) 17(4) Sport, Education and Society 497, 505; Cathy Devine, 'London 2012 Olympic Legacy: a Big Sporting Society?' (2013) 5(2) International Journal of Sport Policy and Politics 257,270; Meg Hancock, Lyras Alexis, and Ha Jae-Pil, 'Sport for Development Programs for Girls and Women: a Global Assessment' (2013) 1(1) Journal of Sport For Development 15,20; Francisco Javier, 'The Sport for All Ideal: a Tool for Enhancing Human Capabilities and Dignity' (2014) 63(1) Physical Culture and Sport 20, 23; Andrew Adams and Mark Piekarz, 'Sport Events and Human Rights: Positive Promotion or Negative Erosion?' (2015) 7(3) Journal of Policy Research in Tourism, Leisure and Events 220, 231; Mina C. Mojtahedi and Hisayo Katsui, 'Making the Right Real! a Case Study on the Implementation of the Right to Sport for Persons With Disabilities in Ethiopia' (2018) 21(1) Sport in Society 40, 44.

⁵ Emanuele Isidori and Benetton Mirca, 'Sport as Education: Between Dignity and Human Rights' (2015) 197 Procedia-Social and Behavioral Sciences 686, 689.

*the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play*⁶. The 1948 United Nations Universal Declaration of Human Rights recognised that, “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”⁷. According to the International Charter of Physical Education, Physical Activity and Sport adopted by UNESCO in 1978, “Recognizing that physical education, physical activity and sport can bring a variety of individual and societal benefits, such as health, social and economic development, youth empowerment, reconciliation and peace”⁸. Article 1.1. of the UNESCO International Charter of Physical Education, Physical Activity and Sport states that, “Every human being has a fundamental right to physical education, physical activity and sport without discrimination on the basis of ethnicity, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property or any other basis”⁹. In the World Programme of Action Concerning Disabled Persons¹⁰ adopted by UN in 1982 and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities¹¹ adopted in 1993 include articles recognising the right of disabled people to do sports¹². As can be seen from the aforementioned treaties, documents and declarations of international organisations, the right to sport is recognised as a fundamental human right.

However, as a result of increased public interest in sports, broadcasting, advertising and sponsorship incomes in the field of sports have also increased as-

⁶ IOC, ‘Article 4 of the Fundamental Principles of Olympism’ (17 July 2020) <<https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>> Date of Access 12 January 2023.

⁷ UN, ‘Article 24 of the Universal Declaration of Human Rights of 1948’ <<https://www.un.org/sites/un2.un.org/files/udhr.pdf>> Date of Access 12 January 2023.

⁸ Preamble article 6 of the International Charter of Physical Education, Physical Activity and Sport adopted by UNESCO in 1978 see <<https://unesdoc.unesco.org/ark:/48223/pf0000235409>> Date of Access 12 January 2023.

⁹ Article 1.1 of the International Charter of Physical Education, Physical Activity and Sport.

¹⁰ UN, ‘World Programme of Action Concerning Disabled Persons’ <<https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.html>> Date of Access 12 January 2023.

¹¹ UN, ‘The Standard Rules on the Equalization of Opportunities for Persons with Disabilities’ <<https://www.un.org/esa/socdev/enable/dissre00.htm>> Date of Access 12 January 2023.

¹² Elise C. Roy, ‘Aiming for Inclusive Sport: the Legal and Practical Implications of United Nations Disability Convention for Sport, Recreation and Leisure for People With Disabilities’ (2007) 5(1) Entertainment and Sports Law Journal 1, 7.

tronomically. Thus, the incomes of sports clubs and athletes have also increased extraordinarily¹³. As a natural consequence, the number of disputes in the field of sports law has increased. Since sport is a fundamental human right, many applications have been made to the European Court of Human Rights (ECtHR) in relation to the rights protected by the European Convention on Human Rights (ECHR), especially in the context of the right to a fair trial, respect for private and family life and freedom of expression. In this context, the ECtHR has rendered important decisions in recent years in relation to incidents in the field of sports.

The ECtHR has found violations of rights under Articles 6, 8 and 10 of the ECHR in the *Ali Rıza* judgment and a number of subsequent applications concerning Turkish football arbitration proceedings¹⁴. In *Ali Rıza* judgment, the ECtHR specifically stated that there is a systemic problem concerning the Arbitration Committee and that the State should take the necessary measures to overcome this problem.

In this study, the problem of independence and impartiality of the arbitration proceedings of the TFF is discussed in the context of the applications to the ECtHR. Within the scope of the study, the steps taken by the State and the TFF to overcome the problem were revealed and it is aimed to propose solutions in this regard.

I. The right to a fair trial in the context of ECtHR case law

Pursuant to Article 90 of the Constitution, international human rights treaties to which Turkey is a party become directly effective in domestic law upon ratification. This requires Turkish courts to apply the provisions of these conventions directly and primarily. The authority to interpret the ECHR belongs to the ECtHR. Therefore, in the process of implementing this convention in domestic law, the provisions of the convention and the decisions of the ECtHR should be taken into consideration together¹⁵.

¹³ Dinçer Çeribaş, 'Türkiye'de Sporcu Ücretlerinin Vergilendirilmesi' (2020) 10(2) Hacettepe Hukuk Fakültesi Dergisi 555, 557.

¹⁴ *Ekşioğlu and Mosturoğlu v. Turkey* App no 2006/13 and 10857/13 (ECHR, 15 June 2021); *İbrahim Tokmak v. Turkey*, App no 54540/16 (ECHR, 18 May 2021); *Naki and Amed Sportif Faaliyetler Kulübü Derneği v. Turkey*, App no 48924/16 (ECHR, 18 May 2021); *Sedat Doğan v. Turkey*, App no 48909/14, (ECHR 18 May 2021).

¹⁵ Ali Akyıldız, 'Spor Tahkim Kurullarının Tarafsızlığı ve Bağımsızlığı Sorunu: AİHM'in "Ali Rıza ve Diğerleri v. Türkiye" Kararı' (ed. Tacar Çağlar), TBB Spor Hukuku Kurulu Av. Hasan Güneş Atabay Armağanı (2020) 44.

In this context, the concept of the right to a fair trial, which has become a major problem for TFF arbitration proceedings, should be discussed in detail. The concept of “right to a fair trial”, which is a fundamental human right, has been frequently discussed in the doctrine. The minimum standards that must be complied with in order for justice to fulfill its expected functions constitute the scope of the right to a fair trial. These standards include the following elements;

- Independent and impartial courts: Trials must be conducted by independent and impartial courts.
- Presumption of innocence: A person is innocent until proven guilty.
- Right to a timely and effective defense: The accused person must have the right to an effective defense in sufficient time.
- Right to information: A person must be informed of the charges against him and have the opportunity to present counter-evidence.
- Speedy trial: Trials must be held within a reasonable time.
- Right to counsel: The accused person has the right to a lawyer.
- Trial by two levels: There should be a right to appeal to a higher court after a verdict has been rendered.
- Power to punish and the principle of proportionality: If a person commits a crime, he must be punished fairly and in accordance with the law.

The right to a fair trial is essentially about the fair administration of justice. What is important in ensuring the right to a fair trial is whether the conditions necessary for a fair decision to be rendered in the judicial process are met. In order to evaluate the impartiality and independence of the Arbitration Committee in terms of the right to a fair trial within the framework of the ECtHR judgments, first of all, the concept of “right to a fair trial” should be examined within the framework of the doctrine and the ECHR.

The right to a fair trial is regulated in Article 6/1 of the ECHR. According to the said Article, *“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public*

order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

Although the right to a fair trial is included in the ECHR, the definition of this right is not included in the ECHR. However, the rights and guarantees in the ECHR as a whole aim to ensure the right to a fair trial. Likewise, this right provides individuals with guarantees regarding the fair administration of justice¹⁶.

The granting of the right to sue before judicial authorities is undoubtedly a prerequisite for a fair trial¹⁷. One of the most important points in terms of the right to a fair trial is to determine to which conflicts this right will be applied. This is because not all judicial processes are included in the scope of Article 6 of the ECHR. In the said article, the exercise of this right is limited to proceedings concerning “civil rights and obligations” and “charges against individuals”. However, the ECHR does not define these concepts either. Therefore, the scope of the right to a fair trial is determined within the framework of ECtHR judgments according to the characteristics of each concrete case, independently of domestic law rules.

In this context, the question arises as to whether the decisions of the Arbitration Committee regarding football proceedings are considered by the ECtHR within the scope of the “right to a fair trial”. Therefore, it is necessary to examine whether Article 6 (1) of the ECHR is applicable to each application regarding the violation of the right to a fair trial.

The fact that the right to a fair trial under Article 6 (1) of the ECHR covers civil rights and obligations as well as criminal law means that the admissibility requirement is met, especially for sports law disputes, which also include material disputes¹⁸.

The ECtHR essentially explained in the Ali Rıza case and previously in the Mutu and Pechstein case why football adjudication processes are considered within the scope of the “right to a fair trial”. In the Ali Rıza case, the ECtHR

¹⁶ Billur Yalıtı, *Vergi Yükümlüsünün Hakları*, (Beta Basım Yayım Dağıtım, 2006) 80.

¹⁷ Türkiye Millî Olimpiyat Komitesi Spor Hukuku Komisyonu, ‘Spor Hukukunda Güncel Sorunlar-II Sempozyumu’, (2010) 21.

¹⁸ Akyıldız (n. 14) 60.

stated that, in line with the relevant provisions of the FIFA and UEFA legislation, the functioning of single and specialized arbitration committees, which are among the non-State dispute resolution mechanisms, is a correct practice in terms of ensuring stability¹⁹. However, in the light of the findings in Mutu and Pechstein case, the ECtHR added that the *sui generis* nature of football disputes and the powers of the Arbitration Committee in this context could not result in the applicants being deprived of their right to a fair trial as guaranteed by Article 6 (1) of the ECHR²⁰.

The most striking finding of the ECtHR regarding the applicability of the right to a fair trial in football proceedings concerns the compulsory arbitration proceedings of the Arbitration Committee. In the Ali Rıza case, the ECtHR specifically emphasized the distinction between voluntary and compulsory arbitration. The ECtHR stated that in cases where arbitration proceedings are mandated by law, the parties are not likely to refer the dispute to a body other than the arbitral tribunal²¹. As a result of compulsory arbitration proceedings, the ECtHR stated that the arbitration proceedings must provide the guarantees set out in Article 6 (1) of the ECHR²².

The ECtHR has previously emphasized in Mutu and Pechstein case that where arbitration is mandated by law, the arbitral proceedings must provide the guarantees recognized by Article 6 (1) of the ECHR²³. The ECtHR emphasized that in voluntary arbitration proceedings, the parties may be deemed to have waived some of the procedural safeguards²⁴ provided by Article 6 of the ECHR by entering into an arbitration agreement, but in order for this waiver to be valid, the will to arbitrate must be expressed “free, lawful and unequivocal²⁵”.

¹⁹ Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.179.

²⁰ Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.180.

²¹ Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.174.

²² Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.181, Mutu ve Pechstein para. 123.

²³ Mutu and Pechstein para. 96-97.

²⁴ The case law of the ECtHR recognizes that some of the rights guaranteed by Article 6 of the ECHR (such as the right to a public hearing) are incompatible with the nature of arbitration; therefore, the conclusion of an arbitration agreement would only constitute a waiver of such rights (Application No. 28101/95 Nordström-Janzo and Nordström-Lehtine v. the Netherlands; Application no. 31737/96 SUOVANIEMI and others v. Finland, 23 February 1999).

²⁵ Mutu and Pechstein para. 103.

Within the scope of these statements of the ECtHR, it is useful to explain the characteristics of voluntary arbitration and compulsory arbitration proceedings. As a matter of fact, in cases where compulsory arbitration is envisaged in sports law disputes, there are criticisms that it negatively affects the right to a fair trial²⁶.

Arbitration is not a new concept for our country. Both the Code of Civil Procedure No. 1927 and the Code of Civil Procedure No. 6100 regulate arbitration²⁷. Arbitration is the settlement of a dispute between the parties by an arbitral tribunal appointed pursuant to a contract or a provision of law, or by persons directly elected by law. Arbitration proceedings are basically divided into two categories: voluntary arbitration proceedings and compulsory arbitration proceedings. Within the scope of the freedom of contract, voluntary arbitration proceedings are in cases where the parties have the authority to choose the persons who can resolve the dispute between them by agreement. Compulsory arbitration, on the other hand, refers to the delegation of a dispute to persons or committees other than the state courts by special legal regulations. The conditions under which arbitration is compulsory are determined by special provisions of law²⁸.

Here, the ECtHR stated that the Arbitration Committee should provide the guarantees stipulated in Article 6 (1) of the ECHR, citing the fact that the Arbitration Committee is a committee operating within the scope of compulsory arbitration proceedings within the scope of Law No. 5894, that individuals have no choice but to apply to this committee in accordance with domestic law rules, and moreover, unlike CAS decisions, the decisions of the Arbitration Committee are final and cannot be appealed to any court against the decisions of the Arbitration Committee²⁹.

Therefore, if there is an arbitration that is not based on the free will of the parties and is compulsory under a provision of law³⁰, the guarantees provided

²⁶ Habil Efe Direnisa, 'Spor Hukukundan Doğan Uyuşmazlıkların Çözümünde Tahkime İlişkin Güncel Sorunlar ve Gelişmeler' (2023) 5(2) Türk-Alman Üniversitesi Hukuk Fakültesi Dergisi 666, 702.

²⁷ Hukuk Muhakemeleri Usulü Kanunu, Law No: 1086, Enacted on: 18.6.1927, Official Gazette 2.7.1927/622; Hukuk Muhakemeleri Kanunu, Law No: 6100, Enacted on: 12.1.2011, Official Gazette 4.2.2011/27836.

²⁸ Nuray Ekşi, Spor Tahkim Hukuku, (Beta 2015) 120.

²⁹ Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.179, 180 and 181.

³⁰ Ekşi, (n. 27) 139-140.

for by Article 6 of the ECHR must also be applied to this arbitration proceeding³¹. As can be seen, the arbitral authorities, and therefore the Arbitration Committee, which conduct compulsory arbitration proceedings in accordance with the case law of the ECtHR, have the appearance of a “tribunal established by law” that is required to provide the guarantees recognized by Article 6 of the ECHR³². The lack of independence and impartiality of the prosecuting authority constitutes a violation of the right to a fair trial in terms of Article 6 (1) of the ECHR, and it would be useful to explain the concepts of “independence” and “impartiality” with the case law of the ECtHR³³.

A. The concept of independence in terms of the right to a fair trial

Pursuant to Article 9 of the Constitution, judicial power is exercised by independent courts. It is understood from this provision that the authorities that will exercise judicial power must bear the name of “court” and that these institutions bearing the name of “court” must have persons bearing the title of “judge³⁴”. The exception to the rule that people who believe that their rights have been violated must apply to the courts is “arbitration”. According to Küçükgüngör, arbitration, which aims to resolve a dispute without recourse to state courts, is an exceptional type of proceeding that replaces the jurisdiction of the state³⁵. Ayanoğlu, on the other hand, argues that in order for a decision to qualify as a judicial decision, it must be rendered by state courts within the meaning of Article 9 of the Constitution³⁶. However, the ECtHR states that in cases of compulsory arbitration proceedings, the guarantees of Article 6 (1) of the ECHR must be ensured³⁷. It is therefore necessary to explain the conditions necessary to ensure judicial independence.

³¹ Application No. 28101/95 Nordström-Janzo and Nordström-Lehtine v. the Netherlands, paragraf 32.

³² Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para. 201, 204.

³³ Hatice Özdemir Kocasakal, ‘Avrupa İnsan Hakları Mahkemesi’nin Pecshtein Kararı Çerçevesinde CAS’ın Tarafsızlığı ve Bağımsızlığı’ (2020) 40(1) Public and Private International Law Bulletin 79, 97.

³⁴ Cem Akil, ‘Türkiye Futbol Federasyonu Tahkim Kurulu’nun Yapısı ve Kararlarının Hukuki Niteliği’ (2013) 19(3) Marmara Üniversitesi Hukuk Fakültesi Dergisi 379, 390.

³⁵ Erkan Küçükgüngör, ‘Türkiye Futbol Federasyonu Tahkim Kurulu’nun Yapısı ve Tahkim Kurulu Kararlarının Niteliği’ (2001) 50(2) Ankara Üniversitesi Hukuk Fakültesi Dergisi 141, 143.

³⁶ Taner Ayanoğlu, ‘Türkiye Futbol Federasyonu Tahkim Kurulu’nun İşlevi ve Kararlarının Niteliği’ (2008) 74 Türkiye Barolar Birliği Dergisi 43, 68.

³⁷ Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.181.

The independence of a judicial body means that it receives no orders or instructions from any person or organization, that it has no relationship with any person or organization that might influence its decision or cause it to feel under pressure, and that it is in a position to exercise its jurisdiction entirely of its own free will³⁸.

Independence in terms of “courts” exercising judicial power on behalf of the State refers to the independence of the courts from persons or institutions exercising other powers of the State. In this context, the independence of the court means that it does not receive orders or instructions from any person or institution, and in particular from the legislative or executive branch, and that it renders judgments without being under pressure from anyone³⁹.

According to the case-law of the ECtHR, in order for a judicial body to be characterized as “independent”, the method of appointment of the judges, their term of office, the existence of safeguards to protect the judges against external pressures, and whether they adopt an independent stance towards the parties are taken into account.

B. The concept of impartiality in terms of the right to a fair trial

Impartiality means that the judicial body should be at an equal distance to both sides of the dispute, should not take sides and should not have prejudices about the dispute.

The ECtHR considers the issue of impartiality from two different perspectives: subjective and objective impartiality. Subjective impartiality refers to whether the authority conducting the proceedings is biased towards the parties to the case. Objective impartiality, on the other hand, refers to the fact that the authority conducting the proceedings has an impartial appearance that is free from all kinds of suspicion, which gives confidence to those who seek rights⁴⁰. In other words, the measures taken to ensure impartiality must remove any reasonable doubt about the impartiality of the body⁴¹. Indeed, in

³⁸ Süheyla Balkar Bozkurt, *Milletlerarası Ticari Tahkimde Hakemlerin Bağımsızlık Yükümlülüğü*, (On iki Levha İstanbul) 115-116.

³⁹ Sibel İnceoğlu, *İnsan Hakları Avrupa Mahkemesi Kararlarında Adil Yargılanma Hakkı, Kamu ve Özel Hukuk Alanlarında Ortak Yargısal Hak ve İlkeler* (Beta, 2013) 166.

⁴⁰ Durmuş Tezcan, Mustafa Ruhan Erdem, Oğuz Sancakdar ve Rifat Murat Önok, *İnsan Hakları El Kitabı*, (7. Bası, Seçkin Yayınevi 2018) 322.

⁴¹ Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.197.

many of its judgments, the ECtHR has advocated the idea that “it is not enough that justice is done, it must also be seen to be done⁴²”.

When investigating the impartiality of the court, the ECtHR looks at the procedure of appointment and dismissal of the members, their term of office, whether they receive orders and instructions and whether they have an independent appearance as a result of an overall assessment⁴³. Since it is very difficult to prove the subjective impartiality of the person conducting the proceedings, the ECtHR considers objective impartiality sufficient for the violation of the principle of impartiality.

Indeed, the ECtHR considers that even if it is difficult to obtain evidence that would rebut the presumption of subjective impartiality of the person conducting the proceedings, it is more possible to establish the existence of objective impartiality criteria and therefore the objective impartiality criterion provides a more important guarantee⁴⁴. It also considers that since the concepts of independence and objective impartiality are closely related, these concepts should be taken into account jointly, depending on the circumstances⁴⁵.

II. Analysing the ECtHR judgments on TFF arbitration proceedings

A. Functioning of the TFF arbitration proceedings

The right to sport, which is a fundamental human right, is protected under the supervision and oversight of the ECtHR in the context of the right to prohibition of torture, the right to liberty and security, the right to a fair trial, the right to respect for private and family life, freedom of expression, the right to an effective remedy, the right to prohibition of discrimination and other rights protected under the ECHR⁴⁶.

⁴² Feyyaz Gölcüklü, ‘Avrupa İnsan Hakları Sözleşmesinde “Adil Yargılama” (1994) 1(4) Ankara Üniversitesi SBF Dergisi 199, 201.

⁴³ Fatih Gündoğdu, ‘TFF Tahkim Kurulu Yargılamasının Adil Yargılanma Hakkı Bakımından Değerlendirilmesi’ (2019) 140 Türkiye Barolar Birliği Dergisi 141, 162.

⁴⁴ Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.198.

⁴⁵ Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.200.

⁴⁶ See *FC Mretebi v. Georgia App no 38736/04 (ECHR, 31 July 2007)*; *Ressiot and Others v. France App no 15054/07 and 15066/07 (ECHR, 28 June 2012)*; *Herrmann v. Germany App no 9300/07 (ECHR, 26 June 2012)*; *Ostendorf v. Germany App no 15598/08 (ECHR, 7 March 2013)*; *Hentschel and Stark v. Germany App no 47274/15 (ECHR, 9 November 2017)*; *National Federation of Sportspersons’Associations And Unions (FNASS) and Others v. France App no*

Due to the *sui generis* nature of sports law, sports law disputes are often resolved by alternative dispute resolution methods such as arbitration and mediation methods other than state courts⁴⁷. However, the ECtHR considers that the *sui generis* nature of sports law disputes is not sufficient to deprive the applicants of the right to a fair trial guaranteed under the ECHR⁴⁸. The ECtHR therefore examines applications in the field of sport within its competence.

In an application brought by professional footballer Ömer Kerim Ali Rıza in relation to a contractual dispute, the ECtHR found a violation of the right to a fair trial under Article 6 (1) of the ECHR on the grounds that the Arbitration Committee was not independent and impartial. Furthermore, the ECtHR stated in its judgment that “*There is a systemic problem in the settlement of football disputes in Turkey and measures should be taken to overcome this problem*”. In particular, it was stated that the Arbitration Committee was not established to be independent from the Board of Directors.

The first judgment before the ECtHR dealing with the right to a fair trial under a football (service) contract concerns a dispute between Turkish football player Önder Deniz Kolğu and Turkish football club Vestel Manisaspor⁴⁹. The applicant alleged a violation of his right to a fair trial on the grounds that the Arbitration Committee was not independent and impartial. However, the ECtHR held that there had been no violation of Article 6 of the ECHR, in particular because the applicant had applied to the Arbitration Committee despite the fact that the remedy of recourse to the state courts was open to him⁵⁰. Similarly the ECtHR has previously held in a case⁵¹ concerning a dispute between the

48151/11 and 77769/13 (ECHR, 18 January 2018); *S., V. and A. v. Denmark* App no 35553/12, 36678/12 and 36711/12 (ECHR, 22 October 2018); *Velkov v. Bulgaria* App no 34503/10 (ECHR, 21 July 2020); *Semenya v. Switzerland* App no 10934/21 (ECHR, 11 July 2023); *A.M. v. Turkey* App no 67199/17 (ECHR, 19 October 2021); *Negovanović and Others v. Serbia* App no 29907/16 (ECHR, 25 January 2022).

⁴⁷ Dinçer Çeribaş and Oğuz Özbek, ‘*Alternative Dispute Resolution in Sports Disputes: A Review of Turkish Athletics, Basketball and Volleyball Federation Decisions*’ (2021) 27(1) Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi 853, 858.

⁴⁸ *Ali Rıza and others v. Turkey* App no 30226/10 and 4 others (ECHR, 28 January 2020), para.180.

⁴⁹ *Önder Deniz Kolğu v. Turkey*, App no. 2935/07 (ECHR, Admissibility Decision of 27 August 2013).

⁵⁰ *Önder Deniz Kolğu v. Turkey*, App no 2935/07, (ECHR, 27 August 2013), para 44.

⁵¹ *Mutu and Pechstein v. Switzerland* App no 40575/10-67474/10 (ECHR, 2 October 2018).

famous Romanian footballer Adrian Mutu and the English football club Chelsea arising out of the unilateral termination of a football (service) contract that the application must be examined from the point of view of the right to a fair trial.

Indeed, in *Ali Rıza* judgment, the ECtHR extensively examined the resolution of Turkish football disputes, stating that the *sui generis* nature of football disputes does not exclude the ECtHR's jurisdiction⁵². For these reasons, it is required to explain the main features of the TFF arbitration proceedings in order to evaluate the *Ali Rıza* decision.

The most important innovation in Türkiye regarding sports governance and disciplinary proceedings was the Constitutional amendment in 2011. In 2011, Article 59 of the Constitution was amended as follows: "*The decisions of sports federations relating to sports administration and disciplinary sanctions may only be challenged through compulsory arbitration. The decisions of the Arbitration Board are final and shall not be appealed to any judicial authority*". In this regulation, recourse to the state courts against the decisions of the sports federations regarding the management and discipline of sports federations is closed and it is stated that only compulsory arbitration can be applied to⁵³.

Compulsory arbitration refers to the resolution of a dispute by individuals or tribunals other than the state courts as determined by special legal regulations⁵⁴. In Türkiye, the Arbitration Committee⁵⁵ in charge of football disputes operates within the scope of compulsory arbitration proceedings⁵⁶.

The TFF's compulsory arbitration procedure is organised by the first instance legal committees within the TFF and the Arbitration Committee, which is the highest legal committee⁵⁷. The first instance legal committees of the TFF

⁵² *Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.180.*

⁵³ Haydar Burak Gemalmaz, '*Applicability of Human Rights Standards in Turkish Football Arbitration: The Contribution of the European Court of Human Rights*' (2019) 9(1) *The International Sports Law Journal* 38, 44.

⁵⁴ Ekşi (n. 27) 120.

⁵⁵ Türkiye Futbol Federasyonu Kuruluş ve Görevleri Hakkında Kanun, Law No: 5894, Enacted on: 5.5.2009, Official Gazette 16.5.2009/27230.

⁵⁶ In Türkiye, there are two separate arbitration committees in the field of sports. The first one is the Arbitration Committee of the Turkish Football Federation, which is only responsible for football disputes. The other one is the Arbitration Committee of the Ministry of Youth and Sports, which is responsible for all sports branches other than football.

⁵⁷ Ekşi (n. 27) 80.

are the Professional Football Disciplinary Committee (Profesyonel Futbol Disiplin Kurulu - "the PFDC"), the Amateur Football Disciplinary Committee (Amatör Futbol Disiplin Kurulu - "the AFDC"), the Dispute Resolution Committee (Uyuşmazlık Çözüm Kurulu - "the DRC"), the Club Licence Committee (Kulüp Lisans Kurulu - "the CLC"), the Ethic Committee (Etik Kurulu - "the EC") and the provincial disciplinary committees. Except for the decisions of the provincial disciplinary committees⁵⁸, there is a right of appeal to the Arbitration Committee against the decisions of other first instance legal committees⁵⁹. The Arbitration Committee is the final national competent sporting resolution authority and its decisions are final.

Decisions of national sports resolution may be appealed to the Court of Arbitration for Sport (CAS) in accordance with the Article R47 of the CAS Code if certain conditions are met⁶⁰. In the limited circumstances set out in the Article 190 (2)⁶¹ of the Swiss Private International Law Act, an action for annulment may be filed against CAS decisions before the Swiss Federal Court.

Pursuant to Article 56 (1) of the FIFA Statutes⁶² and Article R47 of the CAS Code, there is a right of appeal to CAS in football disputes in Türkiye which

⁵⁸ Pursuant to Article 87 (2) of the Football Disciplinary Directive entitled 'Appeal to Provincial Disciplinary Committee Decisions': "*Provincial Disciplinary Board decisions may be appealed before the AFDC within seven days from the date of notification.*"

⁵⁹ For further information about Football Disciplinary Directive; Ethic Committee Directive; Club Licence and Fair Play Directive see <<https://www.tff.org/default.aspx?pageID=132>> accessed 12 January 2023.

⁶⁰ Code of Sports-related Arbitration, 2020 Article R47 of the CAS Code states that: "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

⁶¹ According to the Article 190(2) of the Swiss Private International Law Act of 18 December 1987: "*Proceedings for setting aside the award may only be initiated: a. where the sole arbitrator has been improperly appointed or where the arbitral tribunal has been improperly constituted; b. where the arbitral tribunal has wrongly accepted or denied jurisdiction; c. where the arbitral tribunal has ruled beyond the claims submitted to it, or failed to decide one of the claims; d. where the principle of equal treatment of the parties or their right to be heard in an adversary procedure has not been observed; e. where the award is incompatible with public policy.*"

⁶² According to the Article 56 (1) of the FIFA Statutes (May 2021 Edition): "*FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents.*" regulation and Article 57 (1) of the FIFA

have an international dimension and are resolved by the competent legal bodies of FIFA. However, since Article 64 (1)⁶³ of the TFF Statutes stipulates that “*However, CAS/TAS ...cannot hear appeals against decisions taken by the independent and duly constituted Arbitration Committee of the TFF.*” the appeal to CAS against national decisions is closed.

B. Decisions of the ECtHR about the TFF arbitration proceedings

In *Ali Rıza and others v. Turkey* case⁶⁴ the ECtHR extensively examined the functioning of Turkish football arbitration proceedings from a human rights perspective. The Arbitration Committee imposed a fine and a transfer ban on Ali Rıza (the Applicant) as a result of a dispute which had arisen because the Applicant had left Trabzonspor Club (the Club) without authorisation. The Applicant appealed against the Arbitration Committee’s decision first to CAS, then to the Swiss Federal Tribunal and finally to the ECtHR.

The ECtHR ruled on a wide range of disputes in the field of sport⁶⁵. However, for the first time in the *Ali Rıza* case, the ECtHR found that the Arbitration Committee is not impartial and independent. From this point of view, the *Ali Rıza* case had great repercussions in national and international football circles.

In the *Ali Rıza* case, the ECtHR stated that it was not opposed to the resolution of sports law disputes by arbitration. However, it drew attention to the distinction between voluntary arbitration and compulsory arbitration. Furthermore, the ECtHR has stated that where arbitration proceedings are mandated by law, the parties are not likely to refer the dispute to a body other

Statutes, “*Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*”

⁶³ Pursuant to Article 64 of the TFF Statutes entitled Court of Arbitration for Sport (CAS/TAS):

“1. In accordance with the FIFA and UEFA Statutes, all appeals against a final and binding FIFA or UEFA decision are heard by the Court of Arbitration for Sport (CAS/TAS) in Lausanne, Switzerland. However, CAS/TAS cannot hear appeals against violations of the rules of the game, suspensions under the relevant provisions of the FIFA and UEFA Statutes or decisions taken by the independent and duly constituted Arbitration Committee of the TFF.

2. The TFF shall ensure that itself and its members, players, officials, competition organisers and players’ representatives fully comply with all decisions taken and finalised by FIFA or UEFA bodies and CAS/TAS.”

⁶⁴ *Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020).*

⁶⁵ *ibid* 14.

than the arbitral tribunal. In this case, the ECtHR examined the application, stating that the arbitral tribunal must provide the guarantees⁶⁶ set out in Article 6 (1) of the ECHR⁶⁷. The ECtHR also found that the Congress of the TFF (TFF Genel Kurulu) and the Board of Directors of the TFF (TFF Yönetim Kurulu) which is elected by the Congress, were largely composed of the club members and executives and that the Board of Directors had a major influence on the functioning of the Arbitration Committee. In other words, it was stated that there was a structural inequality in the composition of the Arbitration Committee in favour of sports clubs.

The ECtHR evaluates the principle of impartiality in two different aspects: subjective and objective impartiality. Subjective impartiality refers to whether the person conducting the proceedings has a biased attitude towards the parties to the case. Objective impartiality, on the other hand, refers to the fact that the authority conducting the proceedings has an impartial appearance and structure free from all kinds of suspicion. Since it is very difficult to prove the subjective impartiality of the person conducting the proceedings, the ECtHR considers objective impartiality sufficient for the violation of the principle of impartiality⁶⁸.

The ECtHR stated that the procedure of the appointment of the Arbitration Committee by decision of the Board of Directors was not sufficient in itself to cast doubt on the objective impartiality of the Arbitration Committee⁶⁹. However, the ECtHR found that, there were reasonable grounds to doubt that the Arbitration Committee would operate in accordance with the necessary principles of independence and impartiality, taking into account the following considerations:

⁶⁶ *Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para.181.*

⁶⁷ Article 6 (1) of the ECHR states that: *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

⁶⁸ Hatice Kocasakal, 'Avrupa İnsan Hakları Mahkemesi'nin Pecshtein Kararı Çerçevesinde CAS'ın Tarafsızlığı ve Bağımsızlığı' 2020 40(1) 79, 99.

⁶⁹ *Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020), para. 209.*

- The legal committees of the TFF do not have a separate legal personality and budget from the TFF, these committees benefit from TFF's staff for their secretarial and administrative services, and until 17 April 2019, they served at the same location as the TFF headquarters⁷⁰.
- The Arbitration Committee members are appointed limited to the term of office of the Board of Directors and the President of the TFF⁷¹.
- The Arbitration Committee members are paid travelling and accommodation expenses in addition to the remuneration paid by the TFF, and the amounts paid to them are determined by the Board of Directors⁷².
- The Law No. 5894 and the TFF Statutes⁷³ do not provide the necessary safeguards to protect the Arbitration Committee members against any external pressure from their appointors and to fulfil their duties in an independent manner⁷⁴.
- The Arbitration Committee members are not required to swear an oath before taking up their duties⁷⁵.

As a result, the ECtHR held that there had been a violation of Article 6 (1) of the ECHR on account of the lack of independence and impartiality of the TFF in respect of the first and the fifth applicants. Furthermore, the ECtHR explained that the committees in charge of the resolution of the sports law disputes must be established in accordance with the standards of the ECHR, otherwise the decisions of these committees must be open to judicial review. For these reasons, it stated that measures should be taken to restructure the Arbitration Committee to be independent from the Board of Directors.

The findings in the *Ali Rıza* case have been taken as precedent in subsequent applications regarding the TFF arbitration proceedings and various violation decisions have been rendered. After this case, information on the applica-

⁷⁰ *ibid*, para. 53.

⁷¹ *ibid*, para. 213.

⁷² *ibid*, para. 214.

⁷³ TFF Statüsü, Enacted on: 3.6.2008. Pursuant to Article 84 of the TFF Statutes, the TFF Statutes entered into force with the adoption of Law No. 5894.

⁷⁴ *Ali Rıza and others v. Turkey App no 30226/10 (ECHR, 28 January 2020)*, para. 222.

⁷⁵ *ibid*, para. 212.

tions concluded against the Turkish Government (the Government) in relation to football disputes is given in Table 1⁷⁶.

Application	Article 6 (1) of the ECHR (Right to a fair trial)	Article 10 of the ECHR (Freedom of expression)	Article 8 of the ECHR (Right to respect for private and family life)
Ali Rıza and Others (Application No: 30226/10, 28 January 2020)	Violation	-	-
İlhan Yüksek Ekşioğlu and Şekip Mosturoğlu (Application No: 2006/13 and 10857/13, 15 June 2021)	Violation	-	Violation
İbrahim Tokmak (Application No: 54540/16, 18 May 2021)	Violation	Violation	-
Naki and Amed Sportif Faaliyetler Kulübü Derneği (Application No: 48924/16, 18 May 2021)	Violation	Violation	-
Sedat Doğan (Application No: 48909/14, 18 May 2021)	Violation	Violation	-

Table 1: Violation decisions regarding TFF arbitration proceedings

In the judgments in Table 1, it was decided that the right to a fair trial under Article 6 (1) of the ECHR was violated on the grounds that the Arbitration Com-

⁷⁶ *Ekşioğlu and Mosturoğlu v. Turkey*, App no 2006/13 and 10857/13, (ECHR, 15 June 2021); *İbrahim Tokmak v. Turkey*, App no 54540/16, (ECHR, 18 May 2021); *Naki and Amed Sportif Faaliyetler Kulübü Derneği v. Turkey*, App no 48924/16, (ECHR, 18 May 2021); *Sedat Doğan v. Turkey*, App no 48909/14, (ECHR, 18 May 2021).

mittee was not independent and impartial, as explained in the *Ali Rıza* judgment. It was decided that the right to freedom of expression was violated in the cases of *İbrahim Tokmak*⁷⁷, *Sedat Doğan*⁷⁸, *Naki ve Amed Sportif Faaliyetler Kulübü Derneği*⁷⁹, and that the right to respect for private and family life was violated in the case of *İlhan Yüksel Ekşioğlu and Şekip Mosturoğlu*⁸⁰. The most striking feature of these judgments is that in all of them, the right to a fair trial was found to have been violated in line with the grounds in the *Ali Rıza* judgment.

As a matter of fact, applications for the TFF arbitration proceedings are not limited to the cases listed in Table 1. In some applications alleging violations of the right to a fair trial and freedom of expression, the Government requested a friendly settlement of the disputes under Article 39 of the ECHR⁸¹. As a result of the acceptance of the applicants' request for friendly settlement, pecuniary and non-pecuniary damages were awarded in favour of the applicants in the cases of *Ali Yıldırım Koç v. Fenerbahçe Futbol Anonim Şirketi*⁸², *Fenerbahçe Futbol Anonim Şirketi v. Alper Pirşen*⁸³ and *Galatasaray Sportif Sınai ve Ticari Yatırımlar Anonim Şirketi*⁸⁴. The applications in the TFF arbitration proceedings are still pending and there are other cases that are likely to be concluded against the Government in the near future⁸⁵.

⁷⁷ *İbrahim Tokmak v. Turkey App no 54540/16 (ECHR, 18 May 2021).*

⁷⁸ *Sedat Doğan v. Turkey App no 48909/14 (ECHR, 18 May 2021).*

⁷⁹ *Naki and Amed Sportif Faaliyetler Kulübü Derneği v. Turkey App no 48924/16 (ECHR, 18 May 2021).*

⁸⁰ *Ekşioğlu and Mosturoğlu v. Turkey App no 2006/13 and 10857/13 (ECHR, 15 June 2021).*

⁸¹ According to Article 39 (1) of the ECHR "At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto."

⁸² *Ali Yıldırım Koç ve Fenerbahçe Futbol Anonim Şirketi v. Türkiye App. no 80/21 (ECHR, 6 October 2022).* In this decision, EUR 3.902 in pecuniary damages and EUR 7.800 in non-pecuniary damages were awarded in favour of Ali Yıldırım Koç and EUR 13.007 in pecuniary damages and EUR 7.800 in non-pecuniary damages were awarded in favour of Fenerbahçe.

⁸³ *Fenerbahçe Futbol Anonim Şirketi ve Alper Pirşen v. Türkiye App. no 33702/21, (ECHR, 6 October 2022).* In this decision, EUR 7.800 non-pecuniary damages were awarded in favour of Alper Pirşen and EUR 10.623 pecuniary damages and EUR 7.800 non-pecuniary damages were awarded in favour of Fenerbahçe.

⁸⁴ *Galatasaray Sportif Sınai ve Ticari Yatırımlar Anonim Şirketi v. Türkiye App. no 52186/21 (ECHR, 6 October 2022).* In this decision, EUR 10.241 in pecuniary damages and EUR 7.800 in non-pecuniary damages were awarded in favour of Galatasaray.

⁸⁵ See *Serkan Çınar v. Türkiye, App no 35314/20 (ECHR, 15 November 2022); Adnan Yüksel Gürüz v. Türkiye App no 51563/20 (ECHR, 15 November 2022).*

C. Work carried out by the Government and the TFF

Following the findings of the ECtHR in the *Ali Rıza* judgment, important decisions were taken at the general assembly meeting held by the TFF on 28 July 2021 in order to eliminate the problems experienced in terms of the right to a fair trial. In this context, the main amendments made to the TFF Statutes in order to ensure the independence and impartiality of the Arbitration Committee and other legal committees are as follows⁸⁶:

- A Nomination Commission for Legal Committees⁸⁷ (Hukuk Kurulları Aday Komisyonu) has been established to nominate the chairmen and members of the Arbitration Committee, the PFDC and the DRC to propose them to the Congress⁸⁸.
- It has been decided that the Arbitration Committee, the PFDC and the DRC will be elected by the Congress from among the candidates with at least fifteen years of professional experience⁸⁹ identified by the Nomination Commission for Legal Committees⁹⁰.
- It has been decided that the Congress will determine the remuneration to be paid to the members of the Arbitration Committee, the PFDC and the DRC⁹¹.
- The term of office of the members elected to the Arbitration Committee, the PFDC, the AFDC, the CLC and the EC has been determined as four years and it has been decided that even if their term of office expires, they will continue to serve until the newly elected members take office⁹².

⁸⁶ Türkiye Futbol Federasyonu Statüsü Değişiklikleri, Official Gazette 11.8.2021/ 31565.

⁸⁷ Pursuant to the Turkish Football Federation Statutes Amendments, the Nomination Commission for Legal Committees consists of 13 members in total; 3 members notified by the TFF, 3 members notified by the Super League Clubs Association Foundation, 1 member notified by the TFF 1st League Clubs Association, 2 members notified by the TFF 2nd and 3rd League Clubs Association representing the TFF 2nd League and TFF 3rd League Clubs, 1 member notified by the Confederation of Amateur Sports Clubs of Türkiye, 1 member notified by the Professional Footballers Association, 1 member notified by the Türkiye Football Coaches Association.

⁸⁸ Türkiye Futbol Federasyonu Statüsü Değişiklikleri Article 54 (2), Official Gazette 11.8.2021/31565.

⁸⁹ Türkiye Futbol Federasyonu Statüsü Değişiklikleri Article 61 (1), Official Gazette 11.8.2021/31565.

⁹⁰ Article 54 (2) of the Türkiye Futbol Federasyonu Statüsü Değişiklikleri.

⁹¹ Article 54 (4) of the Türkiye Futbol Federasyonu Statüsü Değişiklikleri.

⁹² Article 54 (2) of the Türkiye Futbol Federasyonu Statüsü Değişiklikleri.

- It has been regulated that the members of the legal committees of the TFF can not be replaced by new members unless they resign or are deemed to have resigned⁹³, that they are impartial and independent in their duties, that they can not be given orders and instructions by anyone in relation to their duties, that they can not work in any club, board or general secretariat affiliated to the TFF⁹⁴, that they can not be held responsible for their decisions except in cases of gross negligence⁹⁵, and that they must take an oath before taking office⁹⁶.

In addition, within the scope of the provisional Article 2 added to the TFF Statutes, it has been decided that *“the Arbitration Committee, the PFDC and the DRC, which will be formed after the Statutes amendments enter into force, will be elected by the Congress at the 2022 TFF Ordinary General Assembly meeting.”*

Independently of this, the Parliament has been working on amending the law in line with the findings of the *Ali Rıza* judgment. As a result of these works, some amendments were made to the Law No. 5894 regarding the composition and functioning of the TFF legal committees with the regulations that entered into force on 26 April 2022⁹⁷. These amendments are as follows:

- The rule that the Arbitration Committee shall be elected by the Board of Directors has been introduced⁹⁸. Similarly, the rule of election of the first instance legal committees⁹⁹ by the Board of Directors has been introduced¹⁰⁰.

⁹³ Article 54 (4) of the Türkiye Futbol Federasyonu Statüsü Değişiklikleri.

⁹⁴ Article 54 (4) of the Türkiye Futbol Federasyonu Statüsü Değişiklikleri.

⁹⁵ Article 54 (5) of the Türkiye Futbol Federasyonu Statüsü Değişiklikleri.

⁹⁶ Article 54 (5) of the Türkiye Futbol Federasyonu Statüsü Değişiklikleri.

⁹⁷ Spor Kulüpleri ve Spor Federasyonları Kanunu, Law No.: 7405, Enacted on: 22.4.2022, Official Gazette 26.4.2022/31821.

⁹⁸ According to the Article 6 (2) of the Law No. 5894: *“The Arbitration Committee shall consist of a chairman and six original and six substitute members who shall be elected by the Board of Directors from among legal professionals with at least ten years of professional experience...”*

⁹⁹ PFDC, AFDC, DRC, CLC, EC and provincial disciplinary committees.

¹⁰⁰ According to the Article 5 (4) of the Law No. 5894, *“The first instance legal committees shall consist of members to be elected by the Board of Directors. ...”*

- In addition, similar to the amendments made in the TFF Statutes, regulations have been introduced regarding the determination of the term of office of the Arbitration Committee and the first instance legal committees is set as four years independent of the term of office of the Board of Directors, the inability to elect new members unless the members resign or are deemed to have resigned, the impartiality and independence of the members in their duties, the inability of anyone to give orders and instructions regarding their duties, the inability to take office in other committees and organs of the TFF, the obligation to take an oath before taking office and the requirement of ten years of professional experience to become a member¹⁰¹.

As a result of the amendments made to Law No. 5894, some important provisions of the amendments to the TFF Statutes adopted at the TFF general assembly meeting on 28 July 2021 have become contrary to the law. These amendments¹⁰² to the TFF Statutes, which have become contrary to the legal regulations, have never been implemented.

Although the amendment to the TFF Statutes¹⁰³ stipulates that the Arbitration Committee, PFDC and DRC shall be elected by the Congress¹⁰⁴ at the TFF general assembly meeting to be held in 2022, these committees were not elected by the Congress due to the amendment to the law that entered into force before the TFF general assembly was held in 2022. Similarly, the requirement of fifteen years of professional experience¹⁰⁵ for the membership of the Arbitration Committee in the TFF Statutes amendment has been reduced to ten years with the Law amendment¹⁰⁶. Furthermore, although the amendment to the TFF Statutes stipulates that the remunerations to be paid to the members of the Arbitration Committee shall be determined by the Congress¹⁰⁷, the amendment to the Law does not include a provision on this matter.

¹⁰¹ Article 5 and 6 of the Law No. 5894.

¹⁰² Türkiye Futbol Federasyonu Statüsü Değişiklikleri, Official Gazette 11.8.2021/31565.

¹⁰³ Türkiye Futbol Federasyonu Statüsü Değişiklikleri, Official Gazette 11.8.2021/31565.

¹⁰⁴ Türkiye Futbol Federasyonu Statüsü Değişiklikleri Provisional Article 2, Official Gazette 11.8.2021/31565.

¹⁰⁵ Türkiye Futbol Federasyonu Statüsü Değişiklikleri Article 61 (1), Official Gazette 11.8.2021/31565.

¹⁰⁶ Article 6 (2) of the Law No. 5894.

¹⁰⁷ Türkiye Futbol Federasyonu Statüsü Değişiklikleri Article 54 (4), Official Gazette 11.8.2021/31565.

As can be seen, the rule of election of the Arbitration Committee by the Congress, which was one of the most important innovations introduced by the amendment to the TFF Statutes in order to remove the obstacles to the right to a fair trial, was not accepted by the Parliament and the Board of Directors was authorised to appoint the Arbitration Committee in the law. In other words, the continuation of the authority of the Board of Directors to appoint the Arbitration Committee, which was one of the important grounds for the violation of the right to a fair trial in the *Ali Rıza* judgment, has been accepted¹⁰⁸.

As such, the relevant articles of the TFF Statutes, which had become contrary to the Law, were amended again at the TFF general assembly meeting held on 16 June 2022 in order to comply with the law¹⁰⁹. In the new TFF Statute amendments, it is stated that the Board of Directors has the authority to appoint the Arbitration Committee, as in the law. Also, the regulation on the determination of the remuneration to be paid to the members of the Arbitration Committee, PFDC and DRC by the Congress has been removed. The requirement of fifteen years of professional experience for membership of the Arbitration Committee has been reduced to ten years. In addition, regulations¹¹⁰ on other issues that are important for ensuring the independence and impartiality of the Arbitration Committee in the context of human rights have been preserved.

III. Assessment of the TFF arbitration proceedings

In line with the ECtHR's findings in the *Ali Rıza* judgment, it is useful to evaluate the work carried out by the Government and the TFF.

According to the ECtHR, three main reasons lie at the root of the problem identified. The first reason is that the Board of Directors has a great influence

¹⁰⁸ In the *Ali Rıza* decision, while the Arbitration Committee was appointed by the Board of Directors upon the proposal of the President of the TFF, the authority to appoint the Arbitration Committee was given directly to the Board of Directors as a result of the amendment in Article 6 (2) of the Law No. 5894 which entered into force on 26 April 2022.

¹⁰⁹ Türkiye Futbol Federasyonu Statüsü Değişiklikleri, Official Gazette 24.6.2022/31876.

¹¹⁰ Regulations have been introduced such as the term of office of the members of the Arbitration Committee, the obligation to take an oath before taking office, their impartiality and independence in their duties, the obligation to withdraw from the file in case of conflict of interest, and the inability to be held liable except in cases of gross negligence.

over the functioning of the Arbitration Committee in matters such as the appointment of the Arbitration Committee, the term of office and the determination of the remuneration. The second reason is the lack of adequate safeguards to protect the members of the Arbitration Committee against external pressures and their appointors. Thirdly and finally, a structural inequality in favour of sports clubs arises in the composition of the Arbitration Committee due to the fact that the majority of the Congress is composed of representatives of sports clubs and the Board of Directors is elected by these representatives of the Congress, while the Board of Directors, which is predominantly composed of representatives of sports clubs, appoints the Arbitration Committee. Therefore, the ECtHR considers that in a possible dispute between sports clubs and other stakeholders of sport¹¹¹, the Arbitration Committee is likely to favour the sports club and this situation causes injustice.

The ECtHR while setting out the basic grounds explained above, saw the starting point of the problem of independence and impartiality of the Arbitration Committee in the inequality in the composition of the Congress, as a large part of the Congress of the TFF is composed of representatives of the sports clubs. However, the ECtHR did not explicitly stated in its judgment that the structure of the Congress, which is predominantly composed of representatives of sports clubs, should be changed.

The composition of the Congress is regulated in Article 22 (1) of the TFF Statutes. Pursuant to this article, the number of members of the Congress, which is formed by taking into account the current number of teams in the Turkish football leagues for the 2023-2024 season, is shown in Table 2.

Membership Type	Number of Clubs	Total Number of Members
Presidents of the top league clubs and 6 delegates	20	140
Presidents of 1st league clubs and 1 delegate	18	36
2nd league club presidents	19	19
3rd league club presidents	60	60

¹¹¹ Other stakeholders of football such as; referees, coaches, athletes, sports club employees and similar individuals.

Membership Type	Number of Clubs	Total Number of Members
President of the Confederation of Amateur Sports Clubs of Türkiye and 9 delegates	-	10
President of the Professional Footballers Association and 5 delegates	-	6
President of the Turkish Football Coaches Association and 5 delegates	-	6
President of the Association of Active Football Referees and Observers of Türkiye and 5 delegates	-	6
Presidents of disabled sports federations with football branches	-	?
People who have served in the FIFA or UEFA Executive Committee	-	?
Persons who have served on FIFA or UEFA committees for at least ten years	-	?
People who served as president of the Turkish Football Federation	-	?

Table 2: Composition of the Congress

At the general assembly meeting held by the TFF on 18 July 2024, it was stated that the Congress consisted of a total of 321 members¹¹². Table 2 shows that 255 members of the general assembly are composed of representatives of sports clubs. In this respect, it is noteworthy that the majority of the Congress (approximately 80 per cent) is composed of the members and executives of sports clubs. As a matter of fact, considering that TFF Super League sports clubs have seven memberships, first league sports clubs have two memberships, and second and third league sports clubs have one membership, it is seen that the representatives of sports clubs are not fairly represented even among themselves.

¹¹² According to the report of the general assembly meeting published on the TFF website see <<https://www.tff.org/Resources/TFF/Auto/fe485878b00b40f295e9ad3aaf8fc7e8.pdf>> Date of Access 2 September 2023.

In a study published in 2020¹¹³, the membership structure of the Congress of the football federations of various countries was analysed by categorising them as professional clubs, amateur clubs and other stakeholders. As a result of this analysis, the distribution of the Congress members of football federations of seventeen selected countries is shown in Table 3.

Country	Professional Clubs	Amateur Clubs	Other Stakeholders
Mexico	%91	%9	-
Türkiye	%83	%3	%14
Argentina	%81	%13	%6
Ivory Coast	%68	%29	%3
Colombia	%51	%49	%1
Morocco	%45	%9	%42
Brazil	%42	%57	%1
France	%37	%63	-
USA	%36	%26	%38
Italy	%34	%34	%32
Switzerland	%28	%72	-
Germany	%17	%33	%50
Australia	%28	%55	%17
Japan	%25	%66	%9
Spain	%14	%35	%51
England	%12	%57	%31
South Africa	%2	%85	%13

Table 3: The Congress membership structure of the football associations of seventeen selected countries

As can be seen from Table 3, Türkiye ranks the highest among the countries in the table in terms of the representation rate of professional football

¹¹³ Türkiye Futbol Araştırmaları Grubu, 'Futbol Federasyonlarının Temsil Sistemleri' (November 2020) see <<https://www.tufar.org/wp-content/uploads/2020/11/TUFAR-Sayi-4-Futbol-Federasyonlarinin-Temsil-Sistemleri.pdf>> Date of Access 12 July 2022.

clubs. The general assembly membership structure of the football federations of the countries in Europe is shown in Table 4.

Country	Professional Clubs	Amateur Clubs	Other Stakeholders
Türkiye	%83	%3	%14
France	%37	%63	-
Italy	%34	%34	%32
Switzerland	%28	%72	-
Germany	%17	%33	%50
Spain	%14	%35	%51
England	%12	%57	%31

Table 4: The Congress membership structure of the football associations of seven selected European countries

Among the countries in Table 4, Türkiye has the highest representation rate of professional football clubs, and Türkiye also has a low representation rate of amateur football clubs and other stakeholders in the Congress. In the light of the data in Table 3 and Table 4, it is necessary to discuss how to make the Congress off the TFF structure fairer in terms of representation by analysing the Congress structures of the football federations of other European countries.

Conclusion

It is obvious what needs to be done to overcome the problem of the independence and impartiality of the Arbitration Committee, which has started to be discussed with the *Ali Rıza* judgment. After the *Ali Rıza* judgment, the Parliament and the TFF worked to resolve the problem. However, the first amendments to the statutes made by the TFF and the subsequent amendments to the law have included different regulations on the same subject. This situation clearly shows that there is a difference of opinion between the Parliament and the TFF executives on the structure and functioning of the Arbitration Committee.

In terms of the general functioning of the law, it would have been necessary to first amend the law, which is the higher norm, and then amend the TFF Statutes, which is the lower norm. However, in the process, the amendment of

the TFF Statutes was made before the amendment of the law. As a matter of fact, some of the first amendments made to the TFF Statutes were regulated differently in the articles of the law that entered into force later. For this reason, the TFF Statutes had to be amended again in order to change the articles that became contrary to the law¹¹⁴.

Although the ECtHR's findings on the Arbitration Committee were set forth in the *Ali Rıza* judgment dated 28 January 2020, the fact that the law was amended on 26 April 2022 to eliminate the problem is a matter that should be criticized. Indeed, the legislative amendments made to address the independence and impartiality of the Arbitration Council are not only too late, but also insufficient to address the problem.

Regarding the efforts to solve the problem of the TFF arbitration proceedings, there have been different problems at the national level that are not visible. The fact that the TFF's first amendments made to the TFF Statutes and the amendments to the law contain opposite provisions on the same subject clearly demonstrates that the TFF management and the Parliament are at odds. However, leaving this problem aside, it would be useful to make a final assessment of the legislative amendments made to address the independence and impartiality of the Arbitration Committee.

With the first amendments to the TFF Statutes following the *Ali Rıza* decision, the Congress was authorised to elect the Arbitration Committee and the influence of the Board of Directors on the Arbitration Committee was minimised through various regulations. However, with the subsequent legislative amendments, the favourable provisions in the TFF Statutes were nullified. The most important difference between these amendments is that the authority to appoint the Arbitration Committee was given to the Board of Directors with the amendment in Law No. 5894.

However, it is quite optimistic to think that the independence and impartiality of the Arbitration Committee has been ensured with the statements such as "*The Arbitration Committee is independent and impartial*", which are wishful statements that do not affect the actual cause of the problem in line with the amendments in Law No. 5894. Unfortunately, as a result of the amendments made to Law No. 5894 in 2022, it is not possible to say that the

¹¹⁴ See Türkiye Futbol Federasyonu Statüsü Değişiklikleri, Official Gazette 11.8.2021/31565; see Türkiye Futbol Federasyonu Statüsü Değişiklikleri, Official Gazette 24.6.2022/31876.

objective impartiality conditions sought by the ECtHR in terms of the establishment of the right to a fair trial have been met. This is because the authority to appoint the Arbitration Committee is still vested in the Board of Directors and no changes have been made to the structure of the Congress¹¹⁵.

Within the scope of all these evaluations, in order to ensure the right to a fair trial in TFF arbitration proceedings, it would be useful to make the Congress structure more fair as in other European countries. In this context, it would be beneficial to end the predominant representation of sports clubs in the Congress and to increase the representation of athletes, coaches, referees and other stakeholders of sports. However, the powers of the Board of Directors over the Arbitration Committee, particularly the power to appoint the Arbitration Committee, should be limited. Otherwise, it would not be a surprise to see violation of rights decisions by the ECtHR in the ongoing applications regarding the TFF arbitration proceedings.

¹¹⁵ Article 52 and 53 of the Law No. 7405.

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