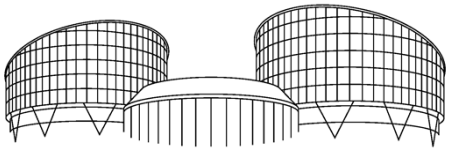

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ALİ RIZA AND OTHERS v. TURKEY

(Applications nos. 30226/10 and 4 others)

JUDGMENT

Art 6 § 1 (civil) • Independent and impartial tribunal • Structural deficiencies of the Arbitration Committee of the Turkish Football Federation (TFF) on account of vast powers given to the Board of Directors over its organisation and operation and lack of adequate safeguards protecting its members against outside pressures • Football clubs represented better than players or referees in the governing bodies of the TFF Art 46 • Execution of judgements • Need for general measures aimed at reforming the system of settlement of football disputes under the auspices of the TFF

STRASBOURG

28 January 2020

FINAL

22/06/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ali Rıza and Others v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 10 December 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in five applications (nos. 30226/10, 17880/11, 17887/11, 17891/11 and 5506/16) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Ömer Kerim Ali Rıza, who has dual British and Turkish citizenship, and four Turkish nationals, Mr Fatih Arslan, Mr Şaban Serin, Mr Mehmet Erhan Berber and Mr Serkan Akal, on 20 April 2010, 29 December 2010 and 11 January 2016 respectively.

2. The first applicant was first represented by Mr S. Bezen, a lawyer practising in Istanbul and, following his resignation, by Mr L. Valloni, a lawyer practising in Zürich. The second, third and fourth applicants were represented by Mr A. Soydan, and the fifth applicant was represented by Mr Z. Edebali, both lawyers practising in Istanbul.

3. The Turkish Government ("the Government") were represented by their Agent.

4. All five applicants complained that the proceedings before the legal committees of the Turkish Football Federation (*Türkiye Futbol Federasyonu* – "the TFF") had not satisfied the requirements of independence and impartiality under Article 6 § 1 of the Convention. Except for the first applicant, they further complained under the same Article that the proceedings had not been fair, referring to various procedural shortcomings. The second, third and fourth applicants also complained that the proceedings had infringed their right to peaceful enjoyment of possessions within the meaning of Article 1 of Protocol No. 1 to the Convention taken alone and in conjunction with Article 13 of the Convention.

5. Notice of the above complaints was given to the Government on 6 February and 26 April 2018 respectively, and the remainder of the

applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

6. The United Kingdom Government, who were informed of application no. 30226/10, did not exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

7. The facts of the case, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

A. Facts concerning application no. 30226/10

1. Background to the dispute

8. At the time of the events giving rise to the present application, the applicant was a professional football player.

9. The applicant and Trabzonspor Kulübü Derneği ("the Club"), a professional football club in the top Turkish professional league, signed an undated employment contract effective from 17 January 2006 until 30 June 2008. The contract was drafted in English and specified, among other things, the amounts payable to the applicant.

10. The Government submitted that the applicant and the Club had also entered into a standard employment contract (*tek tip sözleşme*) in Turkish on 18 January 2006, which had been certified by a notary public in Trabzon. The applicant, however, categorically denied before the domestic authorities and the Court entering into such a contract and claimed that he had not appeared before the notary.

11. On 4 January 2008 the applicant left the Club and returned to England, his home country. The next day Mr J. Riza, his agent, informed the Club by fax that the Club had breached the terms of the contract and therefore his client would no longer be playing for it.

12. By decisions of 8 and 14 January 2008, the board of the Club decided to fine the applicant a total of 184,000 Turkish liras (TRY) (equivalent to approximately 109,523 Euros (EUR) at the material time) for leaving the Club without notice, missing training sessions without permission and failing to return to the Club. The Club gave the applicant notice of these decisions through a notary on 14 and 15 January 2008 respectively.

13. On 18 January 2008 the applicant filed a witness statement with FIFA (the *Fédération internationale de football association*). He claimed before the Dispute Resolution Chamber of FIFA that the Club had repeatedly defaulted on its payment obligations under the contract and that

certain payments had been made with delays of more than four months. The Club had given him post-dated cheques in exchange for some of the payments, put pressure on him to accept those cheques as full payment and made him sign documents evidencing receipt of payment. He further claimed that the Club had asked him to make "donations" for charitable purposes but that he had never been given any proof of those donations. He also complained that the Club had put psychological pressure on him by forcing him to train with the youth team and not selecting him for the senior team. Lastly, he claimed that he had been given a severe training programme which had made it impossible for him to spend time with his family.

14. On 8 April 2008 the applicant's representative sent a written notice of termination to the Club and the TFF declaring that the applicant was terminating the contract for just cause because his salary for the month of March had not been paid. It further stipulated that the situation in which he had been placed had made it impossible for him to continue playing for the Club.

2. Proceedings before the TFF

15. On 16 May 2008 the Club lodged an application with the Dispute Resolution Committee of the TFF (*Türkiye Futbol Federasyonu Uyuşmazlık Çözüm Kurulu* – "the DRC") against the applicant, seeking damages in the amount of TRY 291,973 (equivalent to approximately EUR 153,670 at the material time) for wrongful termination of the contract, payment of the fines it had issued and the imposition of a transfer ban on account of his breach of the provisions of the Professional Football and Transfer Directive, as in force at the material time ("the former Transfer Directive"), governing termination of contracts.

16. On 20 May 2008 the applicant submitted his defence and counterclaims to the DRC. He requested the DRC to order the Club to pay his salary arrears for the months of January, February, March and April 2008, his overdue match appearance fees from the first half of the season 2007/8, and the match appearance fees he would have been paid until the end of his contract had it not been terminated.

17. On 2 December 2008 the DRC dismissed the applicant's claims and partially granted the Club's claims. It held that the applicant had wrongfully terminated his contract and therefore ordered him to pay TRY 94,357.95 (equivalent to approximately EUR 46,711 on the date of the decision) in damages for wrongful termination and a fine of TRY 139,022.80 (equivalent to approximately EUR 68,822 on the date of the decision). It also suspended his ability to sign for another club for four months for having wrongfully terminated his contract with the Club in breach of the former Transfer Directive.

18. On 22 January 2009 the applicant lodged an objection against the DRC's decision of 2 December 2008 with the Arbitration Committee of the TFF (*Türkiye Futbol Federasyonu Tahkim Kurulu* – "the Arbitration Committee").

19. By a decision of 16 April 2009, the Arbitration Committee partly allowed the applicant's objection. It upheld the DRC's finding that he had wrongfully terminated the contract. However, it held that the Club had also failed to terminate the contract within the period prescribed by the former Transfer Directive and, referring to the amounts owed to the applicant under the contract, reduced the amount he had to pay to TRY 129,353.38 (equivalent to approximately EUR 61,596 on the date of the decision). Lastly, it annulled the sporting sanction imposed on him.

20. The applicant was served with the Arbitration Committee's decision on 21 October 2009. The law in force at the material time provided that the Arbitration Committee's decisions were final and binding and could not be reviewed by the ordinary courts (see paragraph 102 below).

3. Proceedings before the Court of Arbitration for Sport

21. On 11 November 2009 the applicant applied to the Court of Arbitration for Sport ("the CAS") against the Arbitration Committee's decision of 16 April 2009.

22. By a decision of 10 June 2010, the CAS declared the application inadmissible for lack of jurisdiction. It held that the dispute between the applicant and the Club had no international element and therefore did not fall within its competence.

23. On 9 July 2010 the applicant appealed to the Swiss Federal Court, seeking the annulment of the decision of the CAS. By a decision of 19 April 2011, the Swiss Federal Court dismissed the appeal.

24. On 11 November 2011 the applicant lodged an application with the Court against Switzerland (application no. 74989/11) complaining under Article 6 about the proceedings before the CAS and the Swiss Federal Court (see paragraph 142 below).

B. Facts concerning applications nos. 17880/11, 17887/11 and 17891/11

1. Background to the dispute

25. The applicants are amateur football players who played at the material time for İçmeler Belediyespor Kulübü, an amateur football club which was in the Muğla super amateur league.

26. In the final weeks of the season 2009/10, İçmeler Belediyespor and another team, Yeni Milasspor, were competing against each other to win the league championship and be promoted to the upper league.

27. On 14 March 2010 İçmeler Belediyespor, the applicants' team, had a match with Armutalan Belediyespor, while Yeni Milasspor faced Bodrumspor. Since İçmeler Belediyespor and Yeni Milasspor were close on points, both matches were scheduled to start at the same time. However, on the actual day, the match between İçmeler Belediyespor and Armutalan Belediyespor ("the Match") started with a fifteen-minute delay because the previous match played in the same stadium had finished fifteen minutes late. Moreover, ten minutes of injury time were added to the first half of the Match as one of the players of the opposing team had been seriously injured. As a result, by the time the match between Yeni Milasspor and Bodrumspor finished, the Match was still going on. In the seventy-fifth minute, when it was announced that Bodrumspor had beaten Yeni Milasspor, the applicants' team had a two-goal lead against their opponents. Following the announcement, they scored three additional goals and won the Match 6-1, which put them ahead of Yeni Milasspor on goal difference.

2. Proceedings before the TFF

28. After the Match was over, Yeni Milasspor and another club competing in the same league, Dalyan Belediyespor, lodged a complaint with the TFF alleging that the Match had been unlawfully fixed.

29. By a letter of 8 April 2010 the General Secretariat of the TFF referred the complaint about the Match to the Ethics Committee of the TFF (*Türkiye Futbol Federasyonu Etik Kurulu* – "the Ethics Committee").

30. By a decision of 28 April 2010, the Ethics Committee found that players of İçmeler Belediyespor and Armutalan Belediyespor had acted in a way that constituted "match-fixing" (*hatır şikesi*) after the result of the match between Yeni Milasspor and Bodrumspor had been announced. It noted that, following the announcement, the players of Armutalan Belediyespor had intentionally given the ball to the players of İçmeler Belediyespor and had put up no defence in order to allow additional goals be scored against them.

31. The matter was subsequently referred to the Amateur Football Disciplinary Committee of the TFF (*Türkiye Futbol Federasyonu Amatör Futbol Disiplin Kurulu* – "the AFDC") to decide whether the players and coaches of the teams had committed the offence of "match-fixing" as per the findings of the Ethics Committee.

32. By a letter of 17 May 2010 the AFDC asked the applicants to file their defence against the match-fixing allegations within forty-eight hours.

33. On 18 May 2010 the applicants filed their written defence submissions. They unequivocally denied the accusation of match-fixing and submitted that all they had done was to score goals as the opposing team had refused to defend their goal due to their frustration with the referee's decisions.

34. On 26 May 2010 the AFDC unanimously found that the applicants had committed the disciplinary offence of "influencing the match result" and banned them from participating in any football-related activity for a year pursuant to Article 55 of the former Football Disciplinary Directive ("the former Disciplinary Directive").

35. On 3 June 2010 the applicants lodged an objection against the decision of the AFDC with the Arbitration Committee. They argued that there was no evidence to show their involvement in a match-fixing scheme and that they had been punished on the basis of a mistaken assumption. They also asked the Arbitration Committee to hold a hearing.

36. By a decision of 1 July 2010, the Arbitration Committee, after hearing the applicants, the referee, the assistant referees and the observer of the Match, unanimously dismissed the applicants' objection and upheld the AFDC's decision of 26 May 2010. The Arbitration Committee's short decision was published on the TFF's website.

37. On 23 December 2010 the third applicant asked the Arbitration Committee to provide him with a copy of its reasoned decision. He claimed before the Court that the TFF had responded to his request by stating that the reasoned decision had not yet been drafted. The Government informed the Court that the reasoned decision could not be located in the archives of the Arbitration Committee.

C. Facts concerning application no. 5506/16

1. Background to the dispute

38. The applicant is a football referee who was a top-level assistant referee (*üst klasman yardımcı hakem*) between 1 July 2000 and 23 July 2015. Under the TFF rules, top-level assistant referees have the right to referee matches in the top two professional football leagues.

39. By a decision of 21 July 2015, the Central Referee Committee of the TFF (*Türkiye Futbol Federasyonu Merkez Hakem Kurulu* – "the CRC") specified the criteria used to determine the levels of referees in accordance with the Central Referee Committee Directive in force at the material time ("the former CRC Directive"). On that basis, it drew up a list of the top-level assistant referees for the season 2015/16, which included the names of seventy top-ranking assistant referees. The applicant was, however, ranked at seventy-eight out of eighty-three assistant referees in that list, which resulted in his downgrading to the level of "provincial referee" for the season 2015/16.

2. Proceedings before the TFF

40. On 27 July 2015 the applicant lodged an objection against the CRC's decision to downgrade him to provincial referee level with the Arbitration

Committee, seeking his reinstatement as a top-level assistant referee. Relying on the former CRC Directive, in force at the time of the CRC's decision, he argued that the number of top-level assistant referees had to be twice the number of top-level referees and that as thirty-nine referees had been selected as top-level referees for the season 2015/16, the number of top-level assistant referees had to be seventy-eight. The applicant contended that the CRC's decision to limit the number of top-level assistant referees to seventy and exclude him from the list of top-level assistant referees had been contrary to the former CRC Directive. In his view, the CRC had prepared the list by using the 10% margin granted to it under the previous version, which had been repealed and replaced with the former CRC Directive, which entered into force on 11 July 2014.

41. On 29 July 2015 the applicant asked the Arbitration Committee to hold a hearing and allow him to comment on the submissions of the CRC.

42. On 30 July 2015 the Arbitration Committee decided that there was no compelling reason to hold a hearing and dismissed the applicant's objection. It 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. Determining the number of top-level assistant referees for any given season was also a matter which fell within the CRC's margin of appreciation. Contrary to what the applicant argued, the former CRC Directive did not in any way limit the CRC's discretion to select only those referees who were most fit for the position. In particular, the expression "*kadar*" ("up to") referred to in the former CRC Directive did not mean that the number of top-level assistant referees had to be exactly twice the number of top-level referees. Instead, the said provision set the maximum number of top-level assistant referees and gave the CRC the ability to reduce the number if it so wished. Accordingly, the CRC had been well within its rights to limit the number of top-level assistant referees to only seventy, and the applicant's downgrading to the level of "provincial referee" had been in accordance with the law and procedure.

43. On 19 August 2015 the applicant lodged a fresh application with the Arbitration Committee, requesting the reopening of the proceedings and a review of its decision. He reiterated his argument that the wording of the former CRC Directive left no room for interpretation by unequivocally setting out the number of top-level assistant referees. He added that, in any event, the CRC could only downgrade a referee on the limited grounds provided in the former CRC Directive, none of which had applied in his case. He also asked the Arbitration Committee to hold a hearing before it delivered its decision.

44. By a decision of 20 August 2015, the Arbitration Committee summarily dismissed the applicant's request for reopening and a hearing, holding that there were no grounds to justify the reopening of the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Turkish Football Federation

45. The TFF was established in 1923 to govern football in Turkey. 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 since 1923 and UEFA (the Union of European Football Associations) since 1962.

46. By operation of law, the TFF is an autonomous entity which has a separate legal personality and is governed by private-law principles. Its headquarters are in Istanbul.

47. 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.

On 16 May 2009 Law no. 5894 of 5 May 2009 on the Establishment and Duties of the Turkish Football Federation ("the TFF Law") 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.

48. 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.

49. A summary of the key provisions of the previous and current TFF legal frameworks pertaining to the composition, powers and manner of appointment of the relevant bodies of the TFF and administration and discipline of football activities is provided below.

1. Legal framework governing the Turkish Football Federation's bodies

50. The main bodies of the TFF which make up its central organisation are the Congress (*Genel Kurul*), the Board of Directors (*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).

51. 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 DRC, the Disciplinary Committees (*Disiplin Kurulları*) and the Ethics Committee (Article 5 of the TFF Law and Article 54 of the TFF Statutes).

52. The Arbitration Committee is the TFF's highest legal committee. It hears objections lodged against the decisions of first-instance legal committees and settles football-related disputes falling within its jurisdiction as the appellate body (Article 6 of the TFF Law and Article 54 of the TFF Statutes).

53. Neither the first-instance legal committees nor the Arbitration Committee have a legal personality or a budget separate from the TFF. They are considered an integral part of the TFF's central organisation and use the TFF's staff for secretarial and administrative work. Until 17 April 2019, they were located in the same building as the TFF's headquarters.

54. The TFF also has consultancy and administrative units, which consist of the General Secretariat and the standing committees (*yan kurullar*), with the CRC being one of the standing committees (Article 43 of the TFF Statutes).

(a) Congress

55. 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 fourteen 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. The quorum of the Congress consists of the simple majority of the delegates, and decisions are taken with more than half of the votes of the delegates present at the general assembly meeting (Article 6 of the former TFF Law and Articles 21 to 25 of the TFF Statutes).

(i) Rules governing the composition of the Congress under the former TFF Law

56. Article 5 of the former TFF Law provided that the following individuals were eligible to become members of the Congress and participate and vote in the general assembly meeting, which took place every four years:

(a) the chairman of each club in the top Turkish professional football league and six delegates chosen by their board of directors;

(b) the chairman of each club in the Turkish professional first league and one delegate chosen by their board of directors;

(c) the chairman of each club in the groups of the Turkish professional second league;

(d) the chairman of the top five ranking clubs in each group of the Turkish professional third league;

(e) individuals who had served as president of the TFF for more than two years;

(f) the president of the National Olympic Committee and one delegate chosen by its board of directors;

(g) Turkish citizens who had actively served for at least five years on the Executive Committees of FIFA and UEFA;

(h) Turkish citizens who had been coaches of the national team for at least two years;

(ı) football players who had been capped for the senior national team at least seventy-five times and who had retired more than six months prior to the date of the general assembly meeting;

(i) the president of the Professional Footballers Association (*Profesyonel Futbolcular Derneği*);

(j) the general president of the Amateur Sports Clubs Confederation of Turkey (*Türkiye Amatör Spor Kulüpleri Konfederasyonu*) and four delegates chosen by its board of directors;

(k) the president of the Football Coaches Association of Turkey (*Türkiye Futbol Antrenörleri Derneği*);

(l) retired referees who had refereed at least the finals in the Olympic, world and continental football federation championships in adult categories and at least the semi-finals in the European championships;

(m) one additional delegate from each club which had won the top Turkish professional football league;

(n) the presidents of disabled sports federations which had football in the scope of their activities; and

(o) the general president of the Active Football Referees and Observers Association of Turkey (*Türkiye Faal Futbol Hakemleri ve Gözlemcileri Derneği*).

(ii) Current rules governing the composition of the Congress

57. Article 9 of the TFF Statutes provides that the following entities or individuals are eligible to become members of the TFF:

(a) clubs in the Turkish professional football leagues;

(b) the Amateur Sports Clubs Confederation of Turkey;

(c) the Professional Footballers Association;

(d) the Football Coaches Association of Turkey;

(e) the Active Football Referees and Observers Association of Turkey;

(f) disabled sports federations which have football in the scope of their activities;

(g) individuals actively serving on the Executive Committees of FIFA or UEFA;

(h) individuals who have actively served on the committees of FIFA or UEFA for at least ten years;

(i) individuals who have served as president of the TFF; and

(j) other individuals accepted as members by the Congress.

58. Article 22 of the TFF Statutes provides a list of members of the Congress. The delegates of the Congress nominated by legal person (non-individual) members of the TFF are as follows:

Member of the TFF	**Representative in the Congress**
Clubs in the top Turkish professional football league	The chairman and six delegates chosen by the board of each club
Clubs in the Turkish professional first league	The chairman and one delegate chosen by the board of each club
Clubs in the Turkish professional second league	The chairman of each club
Clubs in the Turkish professional third league	The chairman of each club
Amateur Sports Clubs Confederation of Turkey	The president and nine delegates chosen by the board
Professional Footballers Association	The president
Football Coaches Association of Turkey	The president
Active Football Referees and Observers Association of Turkey	The president (who must be retired)
Disabled sports federations with football in the scope of their activities	The president of each federation

59. Amendments made to the TFF Statutes on 29 June 2011 brought about important changes to the criteria provided in the former TFF Law to determine who among players, referees and coaches were eligible to become members of the Congress.

60. Article 22 of the TFF Statutes since provides that the following individuals are eligible to become members of the Congress:

(a) five individuals who are retired football players and who have been capped most for the senior national team;

(b) five individuals who have coached the national team the longest;

(c) five individuals who are retired referees and who have refereed the most matches in the UEFA Champions League, except for the qualifying rounds, or before that league was established, in the corresponding organisations.

61. In addition, individuals actively serving on the Executive Committees of FIFA or UEFA, individuals who have actively served on the

committees of FIFA or UEFA for at least ten years and former presidents of the TFF are also automatically eligible to become members of the Congress.

62. The delegates of the Congress are entitled to participate and vote in general assembly meetings of the Congress and elect the President and the Board of Directors of the TFF.

(b) Board of Directors

63. 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 (Article 9 of the former TFF Law and Articles 33 and 38 of the TFF Statutes).

64. Being a member of the Congress is not a prerequisite to becoming a member of the Board of Directors. Turkish citizens who are at least twenty-five years old are eligible to sit on the Board of Directors, provided that they have not received any disciplinary sanctions from the TFF or been convicted of certain crimes (Article 33 of the TFF Statutes).

65. Once elected to the Board of Directors, any individual who is the chairman or a member of the board of a professional football club must resign from his or her position. Members are also precluded from sitting on any other bodies of the TFF or becoming a member of the Congress during the term of their office (Article 10 of the former TFF Law and Articles 33 and 38 of the TFF Statutes).

66. The Board of Directors has the power to appoint some or all members of the legal committees of the TFF as well as the standing committees of the TFF, such as the CRC, upon the recommendation of the President and determine the amount of *per diem*, remuneration, accommodation expenses and allowances payable to members of some of those bodies (Article 10 of the former TFF Law and Article 35 of the TFF Statutes).

67. The Board of Directors also has the power to issue and enforce directives which govern the functioning of the various bodies of the TFF as well as the administration and discipline of football (Article 10 of the former TFF Law and Article 35 of the TFF Statutes). Once adopted by the Board of Directors, the directives enter into force following their publication on the TFF's website.

68. Another power of the Board of Directors is to review and approve the decisions of the CRC which create legal effect and are likely to be challenged before the Arbitration Committee (Article 35 of the TFF Statutes).

(c) First-instance legal committees of the TFF

(i) Dispute Resolution Committee

69. 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.

70. At the time of the events giving rise to application no. 30226/10, Article 12/A of the former TFF Law and the former Dispute Resolution Committee Directive ("the former DRC Directive") constituted the legal basis of the DRC.

71. Under the former DRC Directive, the DRC was composed of a chairman and fifteen other members. Its chairman was appointed by the Board of Directors. The remaining members were nominated by the following football associations, which each had the right to nominate five members: (i) the Football Clubs Foundation (*Kulüpler Birliği Vakfı*); (ii) the Professional Footballers Association; and (iii) the Football Coaches Association of Turkey. Members of the DRC, including the chairman, had to be law graduates with at least five years' professional experience (Article 12/A of the former TFF Law and Article 3 of the former DRC Directive).

72. Its decisions were taken by committees of five, which consisted of the chairman, two members nominated by the Football Clubs Foundation and two members nominated by the relevant associations, depending on the subject of the dispute (Article 8 of the former DRC Directive).

73. Objections against its decisions could be lodged with the Arbitration Committee (Article 14 of the former TFF Law and former DRC Directive).

(ii) Ethics Committee

74. 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 (Article 60 § 1 of the TFF Statutes).

75. Under the TFF Statutes and the Ethics Committee Directive, which entered into force on 2 December 2009 (*Etik Kurulu Talimatı* – "the Ethics Committee Directive"), the Ethics Committee is composed of a chairman, four principal and four substitute members, who are appointed by the Board of Directors upon the recommendation of the President. All members must be law graduates with at least five years' professional experience (Article 60 § 1 of the TFF Statutes and Article 3 § 1 of the Ethics Committee Directive).

76. The procedure before the Ethics Committee starts with a referral by the Board of Directors which must, either of its own motion or upon receipt of a complaint, refer instances of match-fixing which it considers sufficiently serious (Article 7 § 1 of the Ethics Committee Directive).

77. Upon referral, the Ethics Committee carries out a preliminary investigation into the allegations of match-fixing. On the basis of the evidence gathered in its investigation, the Ethics Committee prepares a report which is submitted to the Board of Directors, which will then decide whether or not to refer the matter to the relevant disciplinary committee (Article 7 §§ 2 and 6 of the Ethics Committee Directive).

(iii) Disciplinary Committees

78. 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 (Article 57 of the TFF Statutes).

79. The Football Disciplinary Directive, which entered into force on 11 August 2017 (*Futbol Disiplin Talimatı* – "the Disciplinary Directive"), provides that 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 (Article 63 of the Disciplinary Directive).

80. It is composed of a chairman, six principal and six substitute members, who are appointed by the Board of Directors upon the recommendation of the President. Following the amendments to the TFF Statutes, which took effect as of 15 June 2019, all members of the AFDC must be law graduates with at least five years' professional experience (Article 57 §§ 2 to 5 of the TFF Statutes and Article 62 of the Disciplinary Directive).

81. Objections against decisions of the AFDC can be lodged with the Arbitration Committee within seven days of receipt (Article 88 of the Disciplinary Directive).

(d) Central Referee Committee

82. The CRC is a standing committee of the TFF whose main duty is to appoint referees and observers for official and friendly football matches.

83. One of the main duties of the CRC is to determine the levels of professional referees. The names of those who will be appointed as referees are submitted to the Board of Directors for approval (Article 5 of the former CRC Directive). Moreover, the current CRC Directive, which entered into force on 8 May 2019 (*Merkez Hakem Kurulu Talimatı* – "the CRC Directive"), expressly provides that the number of the top-level assistant referees is determined by the Board of Directors upon the recommendation of the CRC (Article 43 of the TFF Statutes and Articles 5 and 39 of the CRC Directive).

84. The CRC is composed of one chairman and eight members, who are appointed by the Board of Directors upon the recommendation of the President. Referees who have retired at least one year prior to the date of their appointment are eligible to become members of the CRC. Three of its members, including the chairman, can be selected among individuals who have not been referees but who possess experience in the field of sports (Article 43 of the TFF Statutes and Article 3 of the CRC Directive).

85. They are required to act independently when discharging their duties and cannot be removed from office unless they resign or withdraw from membership (Article 43 of the TFF Statutes). Except for the president and two members who serve on a special committee, members of the CRC receive a *per diem* in an amount determined by the Board of Directors (Article 27 of the CRC Directive).

86. An objection against the levels of referees published by the CRC may be lodged with the Arbitration Committee within seven days of publication of the list of referees (Article 36 of the CRC Directive).

(e) Arbitration Committee

87. The Arbitration Committee is the highest legal committee of the TFF. It is the final authority which decides on disputes falling within its jurisdiction as set out in the TFF Statutes and the relevant directives.

88. At the time of the events giving rise to application no. 30226/10, Articles 13 and 14 of the former TFF Law set out the competence, composition and duties of the Arbitration Committee. Those provisions were complemented by the former Arbitration Committee Directive of April 2008 ("the former Arbitration Directive").

89. The rules under the TFF Law, the TFF Statutes and the Arbitration Committee Directive, which entered into force on 11 August 2017 (*Tahkim Kurulu Talimatı* – "the Arbitration Directive"), are not significantly different from the rules under the previous legal framework. Accordingly, reference will mainly be made to the rules governing the duties, powers, composition and appointment of the Arbitration Committee as laid down in the TFF Law, the TFF Statutes and the Arbitration Directive.

(i) Jurisdiction

90. The Arbitration Committee is authorised to review, among other things, objections filed against decisions of the DRC and the Disciplinary Committees of the TFF. It also has the authority to set aside directives issued by the Board of Directors that are incompatible with the TFF Law and/or the TFF Statutes (Article 14 of the former TFF Law, Article 62 of the TFF Statutes and Article 2 of the Arbitration Directive).

91. The Arbitration Committee has full jurisdiction to examine the facts and law of the case and render a definitive decision on the matter. It has the

power to uphold the contested decision in whole or in part or amend it where deemed appropriate (Article 62 of the TFF Statutes and Article 15 of the Arbitration Directive).

(ii) Composition

92. The Arbitration Committee is composed of a chairman, six principal and six substitute members, who are appointed by the Board of Directors upon the recommendation of the President. Members must be law graduates with at least five years' professional experience. 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. In addition, members of the Arbitration Committee may not work in other bodies or organs of the TFF or in any club which is a member of the TFF or any other private-law entity (Article 13 of the former TFF Law, Article 6 of the TFF Law and Article 61 of the TFF Statutes).

(iii) Term of office

93. Members of the Arbitration Committee are appointed for the term of the Board of Directors and the President. They may not be removed from office unless they have 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).

94. The TFF legislation does not contain any provision preventing the reappointment of members of the Arbitration Committee for another term.

(iv) Duty of independence

95. The law imposes on members of the Arbitration Committee a duty to decide in an independent and impartial manner (Article 13 of the former TFF Law and Article 6 of the TFF Law).

(v) Remuneration of members

96. Members of the Arbitration Committee receive a *per diem* in an amount determined at the beginning of each season by the Board of Directors for each meeting they attend (Article 22 of the Arbitration Directive).

(vi) Conduct of the proceedings

97. The proceedings must be carried out in accordance with the procedural rules provided for in other legislation, to the extent that they are not contrary to the rules set out in the Arbitration Directive (Article 61 of the TFF Statutes and Article 18 of the Arbitration Directive).

98. Applications to the Arbitration Committee against decisions of the first-instance legal committees must be made in writing. The Arbitration Committee first examines whether the written submissions meet the formal requirements and, if they are considered complete, serves them on the relevant parties with a request for a reply (Articles 8 and 9 of the Arbitration Directive).

99. Following the exchange of written submissions, the case is submitted to the Arbitration Committee together with the opinion of the member who examined the case. The Committee, as a general rule, carries out an on-paper examination but where necessary may ask the parties to supply further information and documents or hold a hearing (Article 10 of the Arbitration Directive).

100. The decisions of the Arbitration Committee are taken by the majority of members present. Where the votes are equal, the chairman has the casting vote. Moreover, the Arbitration Committee must give reasons for its decisions. The operative part of the decision is notified immediately to the General Secretariat of the TFF and the reasoned decision must be served on the parties within three months of the application to the Arbitration Committee at the latest. Furthermore, objections against decisions of the Disciplinary Committees must be decided within one month (Article 61 of the TFF Statutes and Articles 12 and 13 of the Arbitration Directive).

(vii) Applicable law

101. The Arbitration Committee must decide in accordance with substantive Turkish law, having regard to the provisions of the TFF Law (enacted by Parliament), the TFF Statutes (enacted by the Congress), the directives of the TFF (enacted by the Board of Directors), and the rules of FIFA and UEFA (Article 61 of the TFF Statutes and Article 19 of the Arbitration Directive).

(viii) Finality of decisions

102. The former TFF Law and the former Arbitration Directive expressly stipulated that decisions rendered by the Arbitration Committee were final, not subject to the approval of any administrative or judicial body and could not be challenged before any such authority (Article 14 of the former TFF Law and Article 14 of the former Arbitration Directive).

103. Article 6 of the TFF Law also originally contained a similar provision, which stated that decisions of the Arbitration Committee were final and not open to judicial review by the ordinary courts.

104. By a decision of 6 January 2011, the Constitutional Court struck down as unconstitutional the part of that provision excluding the judicial review of decisions of the Arbitration Committee. It held that the immunity

of decisions of the Arbitration Committee from judicial review violated the right of access to court guaranteed by Article 36 of the Constitution.

105. Following the Constitutional Court's decision, Article 59 of the Constitution on the development of sports was amended on 17 March 2011. The word "arbitration" was added to its heading and a third paragraph was inserted, which reads as follows:

> "Decisions of sports federations relating to the administration and discipline of sports activities may be challenged only through compulsory arbitration. Decisions of arbitration committees are final and shall not be appealed to any judicial authority."

106. As per Article 59 § 3 of the Constitution, the TFF Statutes and the Arbitration Directive set out that, notwithstanding the rules of civil and criminal procedure on the reopening of proceedings and rectification of factual errors, decisions of the Arbitration Committee are final and binding and not amenable to review before the ordinary courts (Article 62 of the TFF Statutes and Article 14 of the Arbitration Directive).

107. The mere fact that there has been a breach of the right to a fair hearing does not constitute grounds for the reopening of proceedings under the rules of civil or criminal procedure. A domestic arbitration award can be set aside by way of annulment proceedings (*iptal davası*) where the principle of equality of the parties and the right to be heard is not respected or the award is against public order. This, however, does not apply to the Arbitration Committee's decisions because their review by any authority, without exception, is not permitted.

2. Legal framework governing TFF's jurisdiction on contractual disputes

(a) Former TFF Law

108. Before the amendments introduced by Law no. 5719 entered into force, the Board of Directors had jurisdiction to settle contractual football disputes (see *Kolgu v. Turkey* (dec.), no. 2935/07, § 10, 27 August 2013).

109. Following the entry into force of Law no. 5719, the former TFF Law gave the DRC exclusive jurisdiction to settle disputes arising under all kinds of contracts or those relating to football between (i) clubs; (ii) clubs and footballers, coaches, trainers, players' agents, masseurs and match organisers; and (iii) players' agents and footballers, coaches and trainers (Article 12/A of the former TFF Law).

(b) TFF Law and Statutes

110. Article 5 § 2 of the TFF Law also originally contained a provision similar to Article 12/A of the former TFF Law which provided that the DRC had exclusive jurisdiction to settle disputes arising in connection with the TFF Law, the TFF Statutes and the TFF's directives. The TFF Statutes also provided that the DRC had exclusive jurisdiction to settle disputes between

(i) clubs; (ii) clubs and footballers, professional coaches, trainers and players' agents; and (iii) players' agents and footballers, professional coaches and trainers.

(c) Constitutional amendment of 17 March 2011

111. Article 59 § 3 of the Constitution, introduced by the constitutional amendment of 17 March 2011, provides that decisions of sports federations relating to the administration and discipline of sports activities may be challenged only through compulsory arbitration (see paragraph 105 above).

(d) Constitutional Court's decision of 18 January 2018

112. The constitutionality of Article 5 § 2 of the TFF Law giving exclusive jurisdiction to the legal committees of the TFF, including the DRC was challenged before the Constitutional Court in proceedings brought by a licensed players' agent against a football club to recover amounts due to him.

113. By a decision of 18 January 2018, the Constitutional Court found Article 5 § 2 of the TFF Law unconstitutional. It noted that Article 59 § 3 of the Constitution made arbitration compulsory only for the settlement of disputes arising from the "administration" and "discipline" of sports activities. However, Article 5 § 2 of the TFF Law made no such distinction and provided that disputes arising from all football-related disputes had to be exclusively heard by the legal committees of the TFF, without any possibility of bringing the dispute before the ordinary courts. Accordingly, the Constitutional Court concluded that Article 5 § 2 of the TFF Law was not only contrary to Article 59 § 3 of the Constitution but also impaired the essence of an individual's right of access to a court.

114. The Constitutional Court's decision entered into force within one year of its publication in the Official Gazette, that is, on 3 March 2019.

(e) Recent changes in the TFF rules

115. After the Constitutional Court's decision of 18 January 2018 entered into force (see paragraph 113 above), the TFF Statutes were amended on 15 June 2019 so as to provide that clubs, footballers, coaches and football managers are free whether or not to accept the DRC's jurisdiction for the disputes arising out of all kinds of football-related contracts between them, except for those concerning sporting sanctions and training compensation which fall within the exclusive jurisdiction of the DRC (Article 56 of the TFF Statutes).

116. The Dispute Resolution Directive, which entered into force on 17 June 2019 (*Uyuşmazlık Çözüm Kurulu Talimatı* – "the DRC Directive"), also provides that the DRC has voluntary jurisdiction in contractual disputes

unless the dispute arises from sporting sanctions and training compensation (Article 2 of the DRC Directive).

117. Accordingly, as at the date of this judgment, a dispute between a football player and a club such as the dispute which gave rise to the application of the first applicant (application no. 30226/10) can be brought before the ordinary courts. Moreover, even if the parties choose to first refer such a dispute to the TFF by accepting the DRC's jurisdiction, they may still file an appeal to the ordinary courts against the decisions delivered by the legal committees of the TFF.

3. Legal framework of the TFF governing the discipline and administration of football

(a) Professional Football and Transfer Directive

118. At the time of the events giving rise to application no. 30226/10, football players who unilaterally terminated their contracts without just cause would be prevented from playing in football matches for a four-month period by suspending their ability to sign for a new club during that period (Article 35 of the former Transfer Directive).

(b) Football Disciplinary Directive

119. The procedure relating to disciplinary matters before the TFF is primarily governed by a directive issued by the Board of Directors.

120. The Disciplinary Directive applies to all football matches organised by the TFF or falling within its authority and to clubs, club executives, players (professional and amateur), coaches and other individuals involved in football activities. It provides that clubs or individuals who act contrary to sportsmanship, the rules of the game and decisions and directives of the TFF are punishable by a disciplinary sanction. The Directive further provides that as regards unsportsmanlike conduct or other disciplinary provisions a referee not seeing and making a decision about such conduct does not prevent a person from being sanctioned (Article 58 of the TFF Statutes and Articles 3 and 4 of the Disciplinary Directive).

121. The Disciplinary Directive also governs instances of match-fixing in football matches. It uses the term "influencing the match result" to describe the act of fixing the match result and contains an absolute ban on influencing or any attempt to influence match results. The former Disciplinary Directive, in force at the time of the proceedings to which the second, third and fourth applicants were parties, provided that anyone who influenced or attempted to influence the result of a match would be banned for one to three years. The Disciplinary Directive, however, provides that anyone found guilty of influencing the match result will be banned permanently. It also defines the scope of the "ban" by stating that those who are banned cannot participate in football matches, cannot carry out

administrative, sporting or any other activity relating to football and cannot enter stadiums. Moreover, it specifies that the time period between two seasons cannot be counted towards the duration of the ban (Articles 56 and 97 of the Disciplinary Directive).

(c) Football Competition Directive

122. The framework of the Disciplinary Directive is complemented by the Football Competition Directive (*Futbol Müsabaka Talimatı* – "the Competition Directive"), which regulates the rules of the game. The current version of the Competition Directive, which entered into force on 9 August 2017, provides that it is forbidden to influence or attempt to influence a match result in a way contrary to the law or sports ethics, and sets out the consequences for a football club of influencing the match result (Article 25 of the Competition Directive).

(d) Amateur Players Licence and Transfer Directive

123. The Amateur Players Licence and Transfer Directive, which entered into force on 11 August 2006 (*Amatör Futbolcu Lisans ve Transfer Talimatı* – "the Amateur Football Directive"), defines amateur players as players who play without receiving any remuneration except for reimbursement of expenses which are essential for their participation in football activities such as accommodation, equipment, insurance and training expenses (Article 4 of the Amateur Football Directive).

B. Ombudsman's advisory decision of 27 July 2018

124. The Ombudsman Institution of the Republic of Turkey ("the Ombudsman") was established in 2012 by Law no. 6328 of 14 June 2012 as an entity affiliated with Parliament.

125. Article 5 of Law no. 6328 provides that the Ombudsman's duty is to examine, investigate and make recommendations to administrative authorities in relation to any of their acts and actions upon a complaint lodged against the relevant administrative authority. The Ombudsman assesses the functioning of that entity within the framework of an understanding of human rights-based justice and in terms of its legality and conformity with the principle of fairness. If the Ombudsman concludes that the acts or actions of that entity were not lawful or just and finds in favour of the applicant, it issues a recommendation decision (*tavsiye kararı*) containing proposals for the remedying of the shortcomings of the administrative practices which gave rise to the application. The recommendation decisions are advisory only.

126. By a recommendation decision of 27 July 2018, the Ombudsman held that disciplinary proceedings before the TFF were not independent and impartial. The decision originated in a complaint lodged by a former

member of the Board of Directors of the TFF who was dismissed and subject to several disciplinary sanctions for comments that he had made about the TFF in private. The Ombudsman held that the PFDC and the Arbitration Committee were not independent of the Board of Directors and recommended that relevant changes be made to the TFF Statutes, the Disciplinary Directive and the Arbitration Directive to ensure the independence and impartiality of disciplinary proceedings before the TFF.

127. In its decision, the Ombudsman referred to an opinion delivered by an academic on whether proceedings before the PFDC and the Arbitration Committee were independent and impartial. The relevant part of the opinion referred to reads as follows:

> "... The PFDC is completely dependent on the Board of Directors and eventually the President. This is why the mandate of the PFDC is limited to the term of office of the Board of Directors. Accordingly, the PFDC members are bound by the instructions of the President and the Board of Directors. They owe the position they are in to the President and the Board of Directors who elected them. Therefore, there are no legal safeguards against the members being subjected to express or implied but generally unofficial wishes, demands, orders and requests of the President and the Board of Directors ...
>
> This analysis is even more true for the Arbitration Committee ... There are no mechanisms in the legislation or regulations to protect the Arbitration Committee from outside pressures. Although Article 61 § 4 of the TFF Statutes provides that the Arbitration Committee shall be independent in carrying out its functions, there are no real assurances for members of the Committee. The applicable law, in particular the Constitution, does not contain any provisions protecting members of the Arbitration Committee from taking orders from public institutions or semi-public institutions like the TFF including the President and the Board of Directors (see, *mutatis mutandis*, *Brudnicka and Others v. Poland*, no. 54273/00, § 41, 3 March 2005). Therefore, the abstract and general provision concerning the independence of the members is completely misleading. This misleading appearance is contrary to the principle of "justice must not only be done; it must also be seen to be done" (see, *mutatis mutandis*, *Bramelid and Malström v. Sweden*, nos. 8588/79 and 8589/79, report of the Commission of 12 December 1983, para. 35). The members of the Arbitration Committee are bound by the instructions of the President and the Board of Directors. Furthermore, they are determined at the sole discretion of the President and the Board of Directors. This system places members of the Arbitration Committee in an unprotected and weak position which makes them vulnerable to manipulation ..."

C. Decisions granting requests for the reopening of proceedings before the TFF

128. The Government provided the Court with two decisions taken by the legal committees of the TFF in which requests to reopen the proceedings were granted.

129. The first decision concerned a professional football player who had received a sporting sanction of six months. By a decision of 28 December 2017, the Arbitration Committee partly granted the player's request to reopen on the grounds that an amendment to the Transfer Directive had

reduced the maximum period of suspension from six to four months. Holding that the subsequent amendment to the Transfer Directive was in favour of the player, the Arbitration Committee reduced the length of the player's sanction to four months.

130. The second decision concerned a former member of the Board of Directors. The PFDC had suspended that individual for a year and six months for having acted contrary to good sportsmanship and insulting the referees of a football match. By a decision of 18 August 2016, the PFDC granted the request to reopen on the grounds that an amendment to the Discipline Directive had reduced the minimum period of suspension for the offence of insult from six to three months. Holding that the change in the directive was in favour of the applicant, the PFDC reduced the length of the total sanction to nine months.

D. Law no. 6222 on the Prevention of Violence and Disorder in Sports

131. Actions or agreements purporting to fix the result of a football match became a criminal offence with the enactment of Law no. 6222 on the Prevention of Violence and Disorder in Sports ("Law no. 6222"), which came into force on 14 April 2011.

132. Under Law no. 6222, a person who provides a gain or other interest to another with a view to influencing the result of a sports competition may be punished with one to three years of imprisonment and ordered to pay up to twenty thousand day-fines. The person who benefits from such an arrangement is also criminally liable. Law no. 6222 further provides that the punishment of a person under the law does not remove the relevant sports federation's right to impose a disciplinary sanction in the same matter.

III. RELEVANT INTERNATIONAL RULES

A. Rules of FIFA

1. FIFA Statutes

133. Article 14 of the FIFA Statutes reads as follows:

> "1. Member associations have the following obligations:
>
> (a) to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as the decisions of the Court of Arbitration for Sport (CAS) passed on appeal on the basis of art. 57 par. 1 of the FIFA Statutes;
>
> ...
>
> (d) to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies;
>
> ...

(f) to ratify statutes that are in accordance with the requirements of the FIFA Standard Statutes;

...

2. Violation of the above-mentioned obligations by any member association may lead to sanctions provided for in these Statutes."

134. Article 15 of the FIFA Statutes provides:

"Member associations' statutes must comply with the principles of good governance, and shall in particular contain, at a minimum, provisions relating to the following matters:

...

(d) to ensure that judicial bodies are independent (separation of powers);

...

(f) all relevant stakeholders must agree to recognise the jurisdiction and authority of CAS and give priority to arbitration as a means of dispute resolution ..."

135. Article 59 § 3 of the FIFA Statutes states:

"The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to CAS. The associations shall also ensure that this stipulation is implemented in the association, if necessary by imposing a binding obligation on its members. The associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law."

2. FIFA Circular no. 1010 of 20 December 2005

136. FIFA Circular no. 1010 provides that the minimum procedural standard that an "independent" and "duly constituted" arbitration tribunal should meet in accordance with Article 59 of the FIFA Statutes is as follows:

"- ***Principle of parity when constituting the arbitration tribunal***

The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.

- Right to an independent and impartial tribunal

To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.

- Principle of a fair hearing

Each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to take evidence and participate in the proceedings. Every party has the right to be represented by a lawyer or other expert.

- Right to contentious proceedings

Each party must be entitled to examine and comment on the allegations filed by the other party and attempt to rebut and disprove them with its own allegations and evidence.

- Principle of equal treatment

The arbitration tribunal must ensure that the parties are treated equally. Equal treatment requires that identical issues are always dealt with in the same way *vis-à-vis* the parties."

137. The Circular further provides that members of FIFA are obliged to ensure compliance with the foregoing minimum standard at all times when establishing or recognising an arbitration tribunal in accordance with Article 59 of the FIFA Statutes. Members may specify additional requirements with a view to enforcing the independence and due constitution of the arbitration tribunal.

B. Rules of UEFA

138. Article 59 of the UEFA Statutes reads as follows:

"1. Each Member Association shall include in its statutes a provision whereby it, its leagues, clubs, players and officials agree to respect at all times the Statutes, regulations and decisions of UEFA ...

2. Each Member Association shall ensure that its leagues, clubs, players and officials acknowledge and accept these obligations ..."

139. Article 60 of the UEFA Statutes, entitled "Obligation to Refer Disputes to Court of Arbitration", provides as follows:

"Associations shall include in their statutes a provision under which disputes of national dimension arising from or related to the application of their statutes or regulations shall, subject to their national legislation, be referred in the last instance to an independent and impartial court of arbitration, to the exclusion of any ordinary court."

C. Memorandum of understanding between the Council of Europe and UEFA

140. The relevant parts of the memorandum of understanding entered into between the Council of Europe and UEFA on 9 May 2018 provide as follows:

> "1.6. ... Co-operation on enhancing the international system of sport justice is needed with a view to increasing its independence and respect for human rights, while recognising the crucial role of arbitration in resolving sport cases in an effective and efficient manner, in so far as it complies with human rights standards, such as the Convention for the Protection of Human Rights and Fundamental Freedoms.
>
> ...
>
> 2.5. Promoting good governance in sport, in particular compliance of the football organisations with its key principles, such as democracy, gender balance, stakeholder's involvement, transparency, accountability, solidarity and checks and balances, as well as with the relevant anti-corruption standards."

D. Memorandum of understanding between UEFA and the *Federation internationale des associations de footballers professionnels* (FIFPro)

141. The relevant provisions of the memorandum of understanding entered into between UEFA and FIFPro on 10 December 2007 read as follows:

> "2.6 That, in respect of the modernisation of football structures and the reinforcement of internal mechanisms within football for the resolution of conflict, FIFPro Division Europe supports the implementation of arbitration procedures and dispute resolution chambers by associations, operating on the bases defined by FIFA in circular no. 1010, especially in Europe. UEFA is also supportive of the implementation of proper arbitration procedures to deal with disputes in football.
>
> ...
>
> 10.2. Subject to national legislation any dispute between the Club and the Player regarding this employment contract shall be submitted to independent and impartial arbitration composed of equal representatives of each party (employer and employee) under the National Association's statutes and regulations, or to CAS. Such decisions are final. Under the conditions mentioned in the FIFA Regulations for the Status and Transfer of Players, disputes may be settled by the Dispute Resolution Chamber, with an appeal possibility to CAS."

THE LAW

I. PRELIMINARY ISSUE

142. The Court notes that the first applicant requested that his application against Switzerland (*Ali Rıza v. Switzerland*, no. 74989/11), which is pending before the Court, be joined to his present application

(application no. 30226/10). He argued that the two applications share the same factual background and therefore should be examined together. The Court observes that the applicant complained about various procedural shortcomings in the proceedings before the CAS and the Swiss Federal Court in his application against Switzerland. Whilst the proceedings before the instances of the TFF and the ensuing proceedings originate in the same dispute and thus share much of the factual background, the Court considers that the latter complaint requires a separate examination of the nature and scope of the Swiss system of dispute resolution in the first applicant's case which not only differs from the Turkish system under review, but also encompasses separate legal issues not raised in the present case. It therefore finds it more appropriate to examine the applications separately and decides not to join them.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF A LACK OF INDEPENDENCE AND IMPARTIALITY OF THE ARBITRATION COMMITTEE

143. All of the applicants complained that the proceedings before the Arbitration Committee had not met the requirements of independence and impartiality under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "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. ..."

144. The Government contested the applicants' arguments.

A. Admissibility

1. Whether Article 6 § 1 of the Convention is applicable

(a) The parties' arguments

145. The Government argued that Article 6 § 1 of the Convention was not applicable to the impugned proceedings before the TFF. They submitted that the disputes in question had not involved the determination of the applicants' civil rights and obligations or any criminal charge against them.

146. In application no. 30226/10, the applicant contended that, contrary to the Government's argument, the dispute in question had been an employment dispute arising out of the termination of the employment relationship between him and his former club. In addition, the sporting sanction imposed on him by the DRC had had an impact on his professional life as he had been unable to sign for another football club or play in any matches for a specific period.

147. In applications nos. 17880/11, 17887/11 and 17891/11, the applicants maintained that the disciplinary sanction imposed on them had amounted to a criminal charge within the meaning of Article 6 § 1, referring to the fact that rules of criminal procedure were applicable to proceedings before the Arbitration Committee. They further submitted that their right to play as amateur football players had been at stake in the disciplinary proceedings before the TFF since they had risked being banned from playing football.

148. In application no. 5506/16, the applicant contended that his exclusion from the list of top-level assistant referees had had an impact on his professional life since he could no longer referee in matches in the top two professional football leagues. The decision had also deprived him of a significant amount of his future income.

149. The Court notes that the applicants and the Government also furnished a number of arguments concerning the nature of proceedings before the Arbitration Committee. The Court considers that these arguments do not pertain to the applicability of Article 6 § 1 and will therefore examine them in connection with the merits (see paragraphs 169 to 181 below).

(b) The Court's assessment

150. The Court reiterates that the concept of "civil rights and obligations" is an autonomous concept deriving from the Convention which cannot be interpreted solely by reference to the respondent State's domestic law. Article 6 § 1 of the Convention applies irrespective of the parties' status, the character of the legislation which governs how the "dispute" is to be determined, and the character of the authority which has jurisdiction in the matter (see *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 106, 15 March 2018).

(i) Applications nos. 17880/11, 17887/11, 17891/11

151. In view of the similarity of the applications in terms of both fact and law, the Court finds it appropriate to join and examine them together.

152. The Court observes that the applicants complained about the disciplinary proceedings initiated against them before the legal committees of the TFF, which resulted in their suspension for one year.

153. The Court will first examine whether Article 6, under its criminal limb, is applicable to those proceedings. According to the Court's established case-law, three criteria, commonly known as the "Engel criteria", need to be considered in determining whether or not there was a "criminal charge" within the meaning of Article 6 § 1 of the Convention (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22). The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the

degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative and not necessarily cumulative. This, however, does not preclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 122, 6 November 2018, with further references).

154. As regards the first criterion – the domestic classification of the measure – the Court observes that at the material time Law no. 6222 had not yet come into force (see paragraph 131 above) and influencing the match result only constituted a disciplinary offence under Turkish law. As regards the remaining criteria, the nature of the offence and degree of severity of the penalty, the Court further observes that influencing the match result is unsportsmanlike conduct which goes against the rules of fair play and that the maximum penalty that the applicants risked receiving was a three-year ban under the former Disciplinary Directive (see paragraph 121 above). In view of the foregoing, the Court considers that none of the elements above, taken alternatively or cumulatively, is sufficient to reach a conclusion that the disciplinary proceedings against the applicants concerned the determination of a criminal charge within the meaning of Article 6 of the Convention.

155. The Court will next examine whether the impugned proceedings fell within the scope of Article 6 under its civil head. It reiterates that, according to its established case-law, disciplinary proceedings before professional bodies where the right to practise a profession is directly at stake gives rise to disputes over civil rights and obligations (see, among other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 45, Series A no. 43). The Court observes that under the rules of the TFF, amateur football players play football without receiving remuneration. While professional football players are paid for the time they spend competing and training, amateur football players are only allowed to be reimbursed for the expenses they incur (see paragraph 123 above). It follows that the suspension that was imposed on the applicants, who play football as amateurs, did not put at stake their right to exercise a profession. The Court also notes that the applicants complained of being deprived of their salary for a year as result of the suspension imposed on them. They submitted news reports and columns published in Turkish newspapers and several examples of contracts entered into between amateur players and clubs. The Court accepts that it may be common practice in Turkey for players playing in amateur football leagues to receive a salary or other benefits from their clubs. Be that as it may, it observes that the applicants failed to produce a copy of any agreements they concluded with their club or proof of payments or any other benefits they had received. In the Court's

view, the applicants thus failed to demonstrate that the dispute in question was pecuniary in nature.

156. In these circumstances, the Court finds that Article 6 is not applicable to the impugned proceedings either under its criminal or civil heads.

157. It follows that the applicants' complaints under Article 6 are incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 (a), and should be rejected, in accordance with Article 35 § 4 of the Convention.

(ii) Applications nos. 30226/10 and 5506/16

158. Having regard to the similar subject matter of the applications, the Court finds it appropriate to join and examine them together.

159. As regards application no. 30226/10, the Court observes that the applicant complained about the Arbitration Committee's decision of 16 April 2009, in which the Arbitration Committee ordered him to pay damages to the Club for having unlawfully terminated his agreement. The rights in question are clearly of a pecuniary nature and stem from a contractual relationship between private persons. The Court therefore considers that the rights in question are "civil" rights within the meaning of Article 6 of the Convention (see, *mutatis mutandis*, *Mutu and Pechstein v. Switzerland*, nos. 40575/10 and 67474/10, § 57, 2 October 2018).

160. As regards application no. 5506/16, the Court notes that the applicant complained about the Arbitration Committee's decision of 30 July 2015 which upheld the CRC's decision to downgrade him from "top-level" to "provincial" referee. The Court considers that the decision undoubtedly had an adverse effect on his professional career as an assistant referee. In addition, having regard to the material submitted by the applicant, the Court observes that the decision also resulted in the applicant losing part of his earnings. The foregoing considerations are sufficient to establish the "civil" nature of the rights in question.

161. The Court therefore finds that Article 6 is applicable *ratione materiae* to the disputes forming the subject matter of the proceedings before the TFF to which the applicants were parties.

2. Whether the first applicant has exhausted domestic remedies

(a) The parties' arguments

162. The Government argued that application no. 30226/10 was inadmissible on account of the first applicant's failure to exhaust domestic remedies. While they admitted that the Arbitration Committee's decision had been final and not amenable to any appeal, they argued that the applicant could have requested the reopening of the proceedings as per the rules of civil procedure. In support of their argument, they submitted

decisions of the legal committees of the TFF granting requests to reopen the proceedings (see paragraphs 128 to 130 above).

163. The applicant submitted that an application to reopen the proceedings could not be considered an effective remedy. He argued that such applications were only admissible if there were valid grounds justifying the reopening of the proceedings. In his case, however, no such grounds had existed and therefore he had not had to avail himself of that remedy.

(b) The Court's assessment

164. The Court reiterates its established case-law that an application to reopen the proceedings cannot, as a rule, be taken into account for the purposes of applying Article 35 § 1 of the Convention (see, among other authorities, *Korzeniak v. Poland*, no. 56134/08, § 39, 10 January 2017). In the present case, the Court notes that the Arbitration Committee's decision was final and that there were no circumstances warranting the reopening of the proceedings. In such circumstances, an application to reopen the proceedings is an extraordinary remedy which the applicant need not exhaust (see *Merter and Others v. Turkey*, no. 2249/03, § 33, 23 March 2010).

165. The Court also notes that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 74, 25 March 2014).

166. Turning to the present case, the Court observes that in the decisions referred to by the Government, the legal committees of the TFF granted the requests to reopen the proceedings because there had been a favourable change in the relevant rules which purported to reduce the minimum and maximum length of the sanctions imposed on the individuals concerned (see paragraphs 129 and 130 above). However, there was no such *ex post facto* development in the TFF legislation in favour of the applicant on which he could have relied in order to apply to reopen the proceedings.

167. In these circumstances, the Court finds that the Government's objection regarding the non-exhaustion of domestic remedies is unfounded and therefore must be dismissed.

3. Conclusion

168. The Court notes that the complaints concerning the independence and impartiality of the Arbitration Committee in applications nos. 30226/10

and 5506/16 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Nature of proceedings before the Arbitration Committee

(a) The parties' submissions

169. The applicants argued that proceedings before the Arbitration Committee were compulsory arbitration proceedings. They maintained that the Constitution and the relevant rules of the TFF required that all football-related disputes be submitted to the Arbitration Committee. They further submitted that the rules of the TFF had applied to them, without exception, on account of their profession being football, and that at no point had they been asked whether or not to accept the Arbitration Committee's jurisdiction over their disputes. In view of the foregoing, they argued that the Arbitration Committee should be considered a compulsory arbitration tribunal like those previously examined by the Court in its judgments of *Suda v. the Czech Republic* (no. 1643/06, 28 October 2010) and *Mutu and Pechstein* (cited above).

170. The Government submitted that the Arbitration Committee formed part of the compulsory arbitration mechanism established within the TFF in accordance with the requirements of FIFA and UEFA to settle specific football disputes in an expeditious and cost-effective manner. They argued that, given the *sui generis* nature of football disputes, the guarantees of Article 6 did not apply to the proceedings before the Arbitration Committee.

(b) The Court's assessment

(i) General principles

171. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 84, 29 November 2016, and *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18).

172. The right of access to a court, as secured by Article 6 § 1, is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. The final decision as to observance of the

Convention's requirements rests with the Court, which must be persuaded that the limitations applied do not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Lupeni Greek Catholic Parish and Others*, cited above, § 89; *Eiffage S.A. and Others v. Switzerland* (dec.), no. 1742/05, 15 September 2009; *Osman v. the United Kingdom*, 28 October 1998, § 147, *Reports of Judgments and Decisions* 1998-VIII; and *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).

173. This access to a court is not necessarily to be understood as access to a court of law of the classic kind, integrated within the standard judicial machinery of the country; thus, the "tribunal" may be a body set up to determine a limited number of specific issues, provided always that it offers the appropriate guarantees (see *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 201, Series A no. 102). Article 6 does not therefore preclude the establishment of arbitral tribunals in order to settle certain pecuniary disputes between individuals (see *Suda*, cited above, § 48).

174. In addition, a distinction must be drawn between voluntary arbitration and compulsory arbitration. If arbitration is compulsory, in the sense of being required by law, the parties have no option but to refer their dispute to an arbitral tribunal, which must afford the safeguards secured by Article 6 § 1 of the Convention (ibid., § 49).

(ii) Application of these principles of the present case

175. At the outset, the Court points out that there is no dispute between the parties regarding the compulsory nature of proceedings before the Arbitration Committee.

176. As regards the first applicant, it observes that at the material time the applicable rules of the TFF, namely the former TFF Law, provided for the compulsory jurisdiction of the Arbitration Committee in respect of contractual disputes. Accordingly, contrary to the case of first applicant in *Mutu and Pechstein*, the applicable rules did not leave him or the Club the choice to determine the forum for the settlement of their disputes arising under their contracts but imposed arbitration before the legal committees of the TFF.

177. As regards the fifth applicant, it notes that Article 59 § 3 of the Constitution provides for the compulsory jurisdiction of sports arbitration tribunals in respect of disputes relating to the discipline and administration of sports. In the specific case of football, the applicable rules of the TFF, namely the former CRC Directive, provide that the decisions of the CRC may only be appealed to the Arbitration Committee.

178. In this connection, the Court notes that the present applications differ from *Kolgu* where the applicant, having signed an additional protocol with his club, had the liberty to bring his dispute to the TFF or have recourse to the civil courts and voluntarily chose to accept the system provided by the TFF for the settlement of his dispute (*Kolgu v. Turkey* (dec.), no. 2935/07, 27 August 2013, § 44).

179. The Court takes note of the Government's submissions that it is in the interest of the settlement of disputes arising in a professional sports context to refer them to a specialised body which is able to give a ruling swiftly and inexpensively. It is true that recourse to a single and specialised arbitral tribunal facilitates a certain procedural uniformity and strengthens legal certainty and a non-State mechanism of dispute settlement could be an appropriate solution in this field, having also regard to the relevant rules of FIFA and UEFA.

180. Having said that, in the light of its findings in *Mutu and Pechstein*, the Court considers that the *sui generis* nature of football disputes and the special features of the dispute resolution mechanism of the Arbitration Committee is not sufficient to deprive the applicants of the protections of a fair trial guaranteed by Article 6 § 1 of the Convention.

181. Consequently, the Court considers that the arbitration proceedings before the Arbitration Committee were compulsory arbitration proceedings and therefore had to afford the safeguards provided for under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Mutu and Pechstein*, cited above, § 123). The Court would also stress that, contrary to the CAS, the Arbitration Committee's rulings were final and therefore not amenable to judicial review by any court.

2. Is the Arbitration Committee "independent" and "impartial"?

(a) The parties' submissions

(i) The first applicant's submissions (application no. 30226/10)

182. Referring to the rules under the TFF Statutes governing the composition of the Congress, the first applicant argued that only a small fraction of its delegates represented the interests of football players, whereas the majority of delegates acted on behalf of football clubs. He submitted that, contrary to the Government's argument, the Congress decided in a manner which favoured the interests of clubs but not players or other stakeholders of football. He further submitted that since the Congress elected the Board of Directors and thereby indirectly elected members of the Arbitration Committee, players and clubs could not be considered to have equal influence in the composition of the Arbitration Committee. In his view, because representatives of clubs made up a large portion of the Congress, the Board of Directors was effectively controlled and managed by clubs and therefore the Arbitration Committee protected its interests.

183. He also disagreed with the Government's submissions that the FIFA and UEFA Statutes did not set out the principles as to what constituted an "independent and impartial court of arbitration", and that the legal committees of the TFF were in compliance with FIFA and UEFA rules and therefore independent. Referring to FIFA Circular no. 1010, the applicant argued that FIFA clearly set out the criteria that needed to be satisfied for an arbitration tribunal to be considered independent and impartial (see paragraphs 136 and 137 above). In that connection, he also pointed to the memorandum of understanding entered into between UEFA and the European division of the *Fédération internationale des associations de footballeurs professionnels* (FIFPro), which also recommended the implementation of proper arbitration procedures to settle football-related disputes (see paragraph 141 above).

184. He further relied on the findings in the Ombudsman's decision of 27 July 2018 and recited the relevant parts containing the opinion of an academic on whether proceedings before the PFDC and the Arbitration Committee were independent and impartial. He submitted that the Ombudsman, contrary to the Government's assertion, had found that there were certain indications to suggest that the Arbitration Committee lacked independence and impartiality and had recommended that the Government make the necessary changes in the TFF legislation to ensure the independence and impartiality of proceedings before the Arbitration Committee.

(ii) The fifth applicant's submissions (application no. 5506/16)

185. The applicant argued that members of the CRC were appointed by the Board of Directors upon the recommendation of the President and that the Board of Directors had the power to suspend or remove any member of the CRC. He further argued that the fact that the term of office of the CRC was equal to that of the Board of Directors showed that the CRC was fully dependent on the Board of Directors and ultimately the President. He also noted that because members of the CRC owed their position to the Board of Directors, they felt a sort of indebtedness towards the Board of Directors and the President. Referring to the CRC Directive, he argued that the fact that the list of referees was submitted to the Board of Directors for prior approval also supported his contention that the CRC did not decide in an independent manner when determining the levels of assistant referees.

186. The applicant maintained that the same considerations applied to the Arbitration Committee. Referring to the relevant provisions of the TFF Statutes, the applicant submitted that members of the Arbitration Committee were also appointed by the Board of Directors upon the recommendation of the President. Their term of office was the same as that of the Board of Directors and the internal rules of procedure of the Arbitration Committee were also determined by the same. He drew attention to the fact that no

safeguards were provided in the legislation to protect members of the Arbitration Committee against outside pressures and added that they had no option but to act in accordance with unofficial requests or wishes of the Board of Directors and the President.

187. The applicant also argued that it could not be reasonably expected that the Arbitration Committee would decide in an independent manner, having regard to the fact that its headquarters were located in the same building as the TFF's main building, that the TFF's staff carried out the secretarial and administrative work of the Arbitration Committee and that it did not have a separate legal personality or budget.

(iii) The Government's submissions

188. The Government first drew attention to the fact that the Congress had the authority to adopt or amend the TFF Statutes, which provided detailed rules governing the appointment and term of office of members of the Arbitration Committee. Referring to the relevant provisions of the TFF Statutes governing the composition of the Congress, they noted that football players, along with many other individuals from the football community, were represented in the Congress.

189. The Government went on to point to the relevant provisions of the TFF Law and the TFF Statutes which governed the way in which members of the Arbitration Committee were appointed, the qualifications required to become a member, the tenure of members, as well as the duties of the Arbitration Committee. They submitted that the TFF Law clearly provided that the Arbitration Committee had to be independent and impartial in its duties. The fact that it was based at the TFF's headquarters and had no separate legal personality could not be construed as prejudicing the independence and impartiality of proceedings before it.

190. Referring to the FIFA and UEFA Statutes, they contended that the structure of the TFF's central organisation was largely based on the organisational structure of the legal and disciplinary bodies of FIFA and UEFA. They added that the FIFA and UEFA Statutes did not provide any hard-and-fast rules on the organisation and composition of arbitration tribunals. The Statutes referred to an "independent and impartial court of arbitration" but did not set forth the criteria required to be satisfied. Accordingly, the TFF enjoyed discretion in the way it designed and structured the Arbitration Committee.

191. The Government submitted that there had been much debate about the independence and impartiality of arbitration tribunals which adjudicated on sports-related disputes, including the CAS. They noted that there were arguments on both sides as to whether the Arbitration Committee was independent and impartial. In their view, these arguments mattered little because the Court had already delivered the final verdict on its independence and impartiality. Relying on the relevant part of the Court's

decision in *Kolgu*, they argued that by declaring the applicant's complaints about the independence and impartiality of the Arbitration Committee manifestly ill-founded, the Court had definitively concluded that the Arbitration Committee could not be considered to be lacking independence and impartiality.

192. The Government further relied on the Court's findings in *Sramek v. Austria* (no. 8790/79, §§ 37-38, 22 October 1984) and *Campbell and Fell v. the United Kingdom* (nos. 7819/77 and 7878/77, §§ 77-74, 28 June 1984). They argued that the manner of appointment of members of the Arbitration Committee was not sufficient, in itself, to cast doubt on their independence and impartiality, and that what was important was whether they were bound by the instructions of the Board of Directors when making their decisions. They referred to the relevant provision of the TFF Law which provided that the Arbitration Committee had to be independent and impartial in its duties. They also referred to the restriction on members sitting on any other body or organ of the TFF or working for any member of the TFF or any other private-law governed legal entity. Lastly, they noted that the TFF Statutes guaranteed the independence and impartiality of members of the Arbitration Committee by stating that they would not be replaced unless they resigned or were deemed to have withdrawn.

193. Lastly, the Government disagreed with the fifth applicant's contention that the list of referees was submitted to the Board of Directors for prior approval. They maintained that no prior approval was needed for the list of referees, unless there was any objection, in which case the list was reviewed by the Board of Directors before the CRC published it.

(b) The Court's assessment

(i) General principles

194. The Court reiterates that under Article 6 § 1 a "tribunal" must always be "established by law". This expression reflects the principle of the rule of law, which is inherent in the system of protection established by the Convention and its Protocols. An organ which has not been established in accordance with the will of the legislature would necessarily lack the legitimacy required in a democratic society to hear the cases of individuals. The phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also the composition of the bench in each case (see *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002). The "law" referred to in this provision is therefore not only the legislation on the establishment and competence of judicial organs, but also any other provision of domestic law of which any breach would cause the participation of one or more judges in the examination of the case to be unlawful.

195. The Court further reiterates that an authority which is not classified as one of the courts of the State may, for the purposes of Article 6 § 1, fall within the concept of a "tribunal" in the substantive sense of this expression (see *Sramek v. Austria*, cited above, § 36). A court or tribunal is characterised in that substantive sense by its judicial function, that is to say determining matters within its competence on the basis of legal rules, with full jurisdiction and after proceedings conducted in a prescribed manner (see ibid., and *Cyprus v. Turkey* [GC], no. 25781/94, § 233, ECHR 2001-IV). A power of decision is inherent in the very notion of "tribunal". The procedure before it must ensure the "determination of the matters in dispute" as required by Article 6 § 1 (see *Benthem v. the Netherlands*, 23 October 1985, § 40, Series A no. 97). For the purposes of Article 6 § 1, a tribunal need not be a court of law integrated within the standard judicial machinery. It may be set up to deal with specific subject matter which can be appropriately administered outside the ordinary court system (see *Rolf Gustafson v. Sweden*, 1 July 1997, § 45, *Reports* 1997-IV). In addition, only an institution that has full jurisdiction and satisfies a number of requirements, such as independence from the executive and also from the parties, merits the designation "tribunal" within the meaning of Article 6 § 1 (see *Beaumartin v. France*, 24 November 1994, § 38, Series A no. 296-B, and *Di Giovanni v. Italy*, no. 51160/06, § 52, 9 July 2013).

196. In order to establish whether a tribunal can be considered to be "independent" within the meaning of Article 6 § 1, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see *Findlay v. the United Kingdom*, 25 February 1997, § 73, *Reports* 1997-I, and *Brudnicka and Others v. Poland*, no. 54723/00, § 38, ECHR 2005-II).

197. Impartiality normally denotes the absence of prejudice or bias. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, among other authorities, *Fey v. Austria*, 24 February 1993, §§ 27, 28 and 30, Series A no. 255-A, and *Wettstein v. Switzerland*, no. 33958/96, § 42, ECHR 2000‑XII).

198. However, there is no watertight division between the two notions since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test) (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119,

ECHR 2005-XIII). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports* 1996-III).

199. In this connection, even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Morice v. France* [GC], no. 29369/10, § 78, ECHR 2015, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 106, ECHR 2013).

200. Lastly, the concepts of independence and objective impartiality are closely linked and, depending on the circumstances, may require joint examination (see *Sacilor-Lormines v. France*, no. 65411/01, § 62, ECHR 2006-XIII).

(ii) Application of those principles to the present case

201. The Court must first ascertain whether the Arbitration Committee could be regarded as an "independent and impartial tribunal established by law" within the meaning of that Article and the principles laid down in paragraphs above, at the time when it adjudicated the applicants' respective cases (see *Mutu and Pechstein*, cited above, § 148).

202. It observes that at the time of the proceedings concerning the first applicant the legal framework governing the Arbitration Committee was laid down by the former TFF Law, which is a piece of primary legislation emanating from Parliament. The former TFF Law described in sufficient details the different features of the Arbitration Committee, such as its competence and composition and the appointment, tenure and requisite qualifications of its members. Its provisions were complemented by the former Arbitration Directive, which contained detailed rules with respect to the procedure before the Arbitration Committee.

203. It further observes that Article 59 § 3 of the Constitution, in force at the time of the proceedings forming the subject matter of application no. 5506/16, expressly gave sports arbitration tribunals the authority to decide on sports disputes. While the TFF Law, which repealed and replaced the former TFF Law, is not as detailed as its predecessor, it also provides that the Arbitration Committee is the highest legal committee of the TFF, which renders final and binding decisions on football disputes. The TFF Statutes, adopted by the Congress, broadly describes the fundamental characteristics of the Arbitration Committee such as its composition, appointment, tenure and competence and leaves it to the Board of Directors to issue directives governing particular aspects of the proceedings.

204. At the time when it adjudicated the applicants' respective cases, by the combined effect of the primary and secondary legislation, the

Arbitration Committee had the appearance of a "tribunal established by law" within the meaning of Article 6 § 1, and this point was not in fact expressly disputed by the applicants. It remains to be ascertained whether it could be regarded as "independent" and "impartial" within the meaning of that provision.

205. The Court notes at the outset that the applicants did not call into question the subjective impartiality of any member of the Arbitration Committee who decided on their disputes, but rather their independence and objective impartiality. They argued that members of the Arbitration Committee, on account of their manner of appointment, term of office and remuneration, were not independent from the Board of Directors but decided in accordance with the instructions of the Board of Directors.

206. The Court considers that it is difficult to dissociate the question of impartiality from that of independence, as the arguments advanced by the applicants to contest both the independence and objective impartiality of the Arbitration Committee are based on the same factual considerations. The Court will accordingly consider both issues together (see, *mutatis mutandis*, *Langborger v. Sweeden*, 22 June 1989, § 32, Series A no. 155).

207. As regards the Government's objection that the Court has previously dealt with the question of the independence and impartiality of the Arbitration Committee, the Court reiterates that it has already found that a distinction must be drawn between the present applications and the case of *Kolgu*. At time of the impugned proceedings, the Arbitration Committee had exclusive jurisdiction over football disputes and the applicants had no choice but to accept its competence, whereas in *Kolgu* the applicant voluntarily referred his dispute to the TFF's bodies. In this connection, the Court also notes that while the Constitutional Court's decision of 18 January 2018 paved the way for settlement of contractual disputes before ordinary State courts, it entered into force on 3 March 2019 and did not in any way benefit the first applicant. The Government's argument must therefore be dismissed and a fresh examination as to whether the Arbitration Committee, as a compulsory forum for different kinds of football-related disputes, fulfilled, at the material time, the requirements of independence and impartiality under Article 6 of the Convention, needs to be carried out.

208. The Court will examine in turn the different features of the Arbitration Committee.

209. As regards the manner of appointment of the Arbitration Committee, it notes that members are appointed by the Board of Directors upon the recommendation of the President. Provided that the candidates possess the qualifications stipulated in the TFF legislation, the Board of Directors enjoys unfettered discretion in choosing who will serve on the Arbitration Committee. 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 this connection, the Court reiterates

that the manner of appointment of the members of a tribunal does not in itself undermine the independence and impartiality of that adjudicatory body, provided that once appointed the members are not subject to any pressure, do not receive any instructions and perform their duties with complete independence (see *Zolotas v. Greece*, no. 38240/02, § 24, 2 June 2005). The Court notes that the applicants did not complain about the members of the Arbitration Committee receiving any instruction or being subject to any pressure from the Board of Directors when deciding on the their individual cases. No such instruction or pressure can be discerned from the case files either. The Court will therefore examine whether sufficient safeguards were in place so as to ensure that the members of the Arbitration Committee performed their duties with the required level of independence.

210. The Court will first look at the composition of the Congress and the Board of Directors under both the previous and current legal frameworks. As regards the first applicant, it notes that the former TFF Law provided that all retired footballers and referees, without limitation in number, who satisfy the criteria set forth therein were eligible to become members of the Congress (see paragraph 56 above). However, retired footballers and referees, because of the stringency of the criteria imposed by the former TFF Law, remained very small in number compared to the representatives of football clubs. Turning to the fifth applicant's case, the Court notes that the TFF Statutes, as amended on 29 June 2011, have modified the criteria imposed by the former TFF Law, but capped the number of retired footballers and referees who can be included in the composition of the Congress to five each (see paragraph 60 above). Accordingly, the representatives of football clubs continued to make up the majority of the Congress at the time of the proceedings relating to the fifth applicant. In addition to retired footballers and referees, each of the presidents of the footballers and referees' associations were allowed to participate and vote in the meetings of the Congress under the TFF's rules as in force at the time of the impugned proceedings concerning both applicants.

211. The Court considers that the same considerations also apply to the Board of Directors. It notes that neither the former nor the current legal frameworks contain any rule which precludes a former member or executive of a football club from serving on the Board of Directors. On the contrary, the TFF Statutes require individuals who are chairmen or members of the board of a football club to resign before being appointed to the Board of Directors (see paragraph 65 above). In the Court's view, this attests to the fact that even though having previous experience in a football club has never been a prerequisite to becoming a member, the Board of Directors has always largely consisted of members or executives of football clubs. Those who could be considered to represent the interests of football other than those of clubs have always been the minority in the Board of Directors.

212. Turning to the composition of the Arbitration Committee, the Court notes that it is exclusively composed of lay assessors, who are required to have a legal education and at least five years' professional experience. As a result, people who serve on the Arbitration Committee are mostly either lawyers or academics specialising in sports law. The Court observes that this was also the case for the panels which adjudicated on the present disputes. The Court has previously held that lay assessors who have special knowledge and experience of the subject matter of the dispute contribute to the understanding of the issues at stake and are highly qualified for the adjudication of special disputes (see *AB Kurt Kellermann v. Sweden*, no. 41579/98, § 60, 26 October 2004). The fact that the Arbitration Committee is exclusively composed of lay assessors does not pose any problem for the Court. It notes, however, that members of the Arbitration Committee are not immune from any action which may be brought against them in connection with the discharge of their duties and are not bound by any rules of professional conduct. They are not required to swear an oath or make a solemn declaration before taking up their duties (compare and contrast *Engel and Others*, cited above, § 30).

213. The Court will next examine the term of office of members of the Arbitration Committee. It notes that the TFF legislation does not set a fixed term for them and provides that the duration of their mandate is the same as that of the Board of Directors and the President. It further notes that the TFF rules forbid the premature replacement or removal of members of the Arbitration Committee before the end of their mandate unless they resign or withdraw from membership. Although the members enjoy security of tenure, the fact that the term of their office is limited to that of the Board of Directors unduly aligns the tenure of the members of the Arbitration Committee with the executive body, the Board of Directors, thus calling into question the guarantees of independence and impartiality required by Article 6 of the Convention.

214. The Court notes that the applicable rules of the TFF provide that members of the Arbitration Committee receive remuneration as well as travel expenses and an accommodation allowance from the TFF, and the amounts paid to them are determined by the Board of Directors. The Court reiterates that in *Mutu and Pechstein*, it found that, by making an analogy with the national courts which are always financed by the State budget, the CAS cannot be said to lack independence and impartiality solely on account its financial arrangements (cited above, § 151). In the present case, the Court sees no reason to depart from its findings in *Mutu and Pechstein*. The fact that members of the Arbitration Committee receive remuneration for each deliberation they attend and have their expenses reimbursed by the executive body of the TFF, the Board of Directors, is not in and of itself sufficient to conclude that the Arbitration Committee lacks independence and impartiality.

215. The Court further notes that under the applicable rules of the TFF members of the Arbitration Committee are under an obligation to decide independently. The rules also specify that individuals who sit on the Board of Directors are not allowed to become members of the Arbitration Committee. In addition, by referring to the relevant rules of civil and criminal procedure, they allow a party to request the withdrawal of a member of the Arbitration Committee. The Court, however, observes that the applicable rules do not require a member to disclose circumstances which may affect his or her independence and impartiality. More importantly, 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 is challenged by the parties. Also, the rules do not specify which body is competent to decide on such a challenge (compare and contrast, *Mutu and Pechstein*, cited above, § 36).

216. In the light of the above, the Court discerns the existence of a number of strong organisational and structural ties between the Board of Directors and the Arbitration Committee. While this does not imply a hierarchical relationship between the two bodies, it gives an indication as to the significant level of influence that the Board of Directors enjoys over the functioning of the Arbitration Committee.

217. In assessing the independence and impartiality of compulsory arbitration organs like the Arbitration Committee within sports, the Court will next examine whether the Arbitration Committee was composed of members who could not be regarded as independent and impartial, whether objectively or subjectively, vis-à-vis the professional organisations which were inevitably involved in such proceedings (see, *mutatis mutandis*, *Mutu and Pechstein*, cited above, § 157).

218. As concerns contractual disputes, the Court notes that the crux of the first applicant's argument is that members of the Arbitration Committee had an implicit bias towards football clubs because of the structural inequality between clubs and players in the composition of the Congress and the Board of Directors.

219. Having regard to its findings above concerning the composition of the Congress and the Board of Directors (see paragraphs 210 and 211 above), the Court considers that the fact that the players do not enjoy the same level of representation as clubs may be considered to tip the balance in favour of clubs in proceedings before the Arbitration Committee concerning their contractual disputes with their players. In this connection, the Court would stress that at the material time, all members of the Arbitration Committee who decided on the applicant's case were appointed by the Board of Directors, which was predominantly composed of former members or executives of football clubs.

220. Moreover, even though in reality the interests of clubs are not always aligned given that they compete against each other and are not all of

the same rank and power, the outcome of a contractual dispute between a club and player has implications on other disputes of a similar kind and a decision in favour of a player could constitute a precedent on which other players could rely in their disputes with their respective clubs.

221. As regards disputes of a regulatory nature, the Court notes that the fifth applicant submitted that there were two main reasons as to why the Arbitration Committee could not have been expected to decide in an independent and impartial manner on his objection against the list of referees prepared by the CRC: firstly, the Board of Directors enjoyed a considerable amount of influence over both the CRC and the Arbitration Committee, and secondly, the lists of referees prepared by the CRC were submitted to the Board of Directors for prior approval. The Court observes that the CRC is a standing committee of the TFF, mostly composed of retired referees, which is appointed by the Board of Directors upon the recommendation of the President. It also notes that the tenure of its members is the same as that of the Board of Directors and that their remuneration is determined by the same. In addition, the Board of Directors sets the rules governing the composition, principles and procedure of the functioning of the CRC. In addition, the applicable rules of the TFF require the CRC to submit the lists of referees that it has prepared to the Board of Directors for approval. An objection against the list of referees prepared by the CRC and the question whether or not the CRC acted in accordance with the applicable rules of the TFF is settled by the Arbitration Committee.

222. In the light of the above, having regard to the Court's findings as regards the structural deficiencies of the Arbitration Committee illustrated above on account of the vast powers given to the Board of Directors over its organisation and operation, the Court considers that the applicants had 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, would approach their case with the necessary independence and impartiality.

223. It follows that there has been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

224. In application no. 5506/16, the applicant further complained under Article 6 § 1 of the Convention that the Arbitration Committee's refusal to hold a hearing before deciding on his objection against the CRC's decision had violated his right to a fair hearing, that the principle of adversarial proceedings had been breached on account of its failure to forward the submissions of the CRC to him, and that the immunity of its decisions from judicial review had constituted a violation of his right of access to a court.

225. The Government contested the applicants' arguments.

226. The Court considers that the applicant's remaining complaints under Article 6 may be declared admissible. It notes that it has already held that the proceedings before the Arbitration Committee were compulsory arbitration proceedings and therefore the guarantees of Article 6 § 1 of the Convention had to apply. Having regard to its findings that the Arbitration Committee did not satisfy the requirements of independence and impartiality under Article 6 § 1 of the Convention, it considers that the applicant's complaints about the fairness of the proceedings before the Arbitration Committee, including the right of access to a court, do not need to be examined separately.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE SECOND, THIRD AND FOURTH APPLICANTS

227. In applications nos. 17880/11, 17887/11 and 17891/11, the applicants further complained that the disciplinary sanction imposed by the Arbitration Committee had deprived them of their future income, that is to say the money they would have received if they had not been banned for a year, in violation of Article 1 of Protocol No. 1 to the Convention. They further complained under Article 13 of the Convention that they had been unable to lodge an appeal against the Arbitration Committee's decision.

228. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

229. The Government argued that the applicants' complaint under Article 1 of Protocol No. 1 was incompatible *ratione materiae* with the provisions of the Convention. Relying on the Court's case-law, they maintained that future income is only a "possession" once it has been earned or an enforceable claim to it exists. They drew attention to the fact that the applicants had not been able to provide the agreements that they had signed

with their club and had failed to show that the ban imposed on them had caused the termination of their employment.

230. The applicants contested the Government's arguments.

231. The Court reiterates that Article 1 of Protocol No. 1 applies only to a person's existing possessions and does not create a right to acquire property (see *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011). Future income cannot be considered to constitute "possessions" unless it has already been earned or is definitely payable (see *Erkan v. Turkey* (dec.), no. 29840/03, 24 March 2005, and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 64, ECHR 2007-I).

232. The Court notes that the ban imposed on the applicants precluded them from playing in football matches for a year. However, in the absence of any contract entered into between the applicants and their club or any proof of payments or benefits (see paragraph 155 above), the Court is unable to ascertain whether the ban actually prevented the applicants from receiving remuneration or any other benefits from their club. It further observes that the applicants did not provide the Court with proof of termination of the employment relationship with their club and adduce any evidence as to the losses that they had suffered as a result.

233. In these circumstances, the Court considers that the applicants' complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

234. The Court further reiterates that Article 13 guarantees a remedy at the national level to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured within the domestic legal order. However, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention (see *Gökçe and Demirel v. Turkey*, no. 51839/99, § 69, 22 June 2006)

235. Having regard to its findings concerning the incompatibility *ratione materiae* of the applicants' complaints under Article 1 of Protocol No. 1, the Court considers that the applicants have not presented an "arguable claim" for that grievance which would have required a remedy under Article 13 of the Convention.

236. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

237. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

238. Article 46 of the Convention provides:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

..."

A. Application of Article 46 of the Convention

239. The Court reiterates that in accordance with Article 46 of the Convention a judgment in which the Court finds a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, among other authorities, *Oleksandr Volkov*, cited above, § 193, and *Broniowski v. Poland* [GC], no 31443/96, § 192, ECHR 2004-V).

240. The Court further reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, among other authorities, *Assanidze v. Georgia* [GC], no 71503/01, §§ 201-203, ECHR 2004-II, and *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

241. The Court notes that the present cases disclose a systemic problem as regards the settlement of football disputes in Turkey. In particular, the violation found indicates that the Arbitration Committee has not been organised in such a way as to ensure its independence from the Board of Directors. Moreover, the TFF Law does not provide appropriate safeguards to protect members of the Arbitration Committee from any outside pressure and enable them to perform their duties with the required level of independence.

242. The Court considers that the nature of the violation found suggests 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.

Without taking a position on the nature and scope of the legislative reform already undertaken, the Court considers 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 status that is commensurate with its powers.

B. Application of Article 41 of the Convention

1. Damage

(a) Pecuniary damage

243. The first applicant claimed 3,962,500 euros (EUR) in respect of pecuniary damage. He argued that the Club owed him EUR 212,500 and that he would have received EUR 3,750,000 from the Club if he had continued to play for five more years.

244. The fifth applicant claimed EUR 123,692 in respect of pecuniary damage to compensate for the losses he had incurred on account of his downgrading to provincial referee level.

245. The Government argued that the sums claimed by the applicants were exorbitant and unsubstantiated by the circumstances of the case.

246. The Court notes that it has found a violation of Article 6 § 1 of the Convention on account of the lack of independence and impartiality of the Arbitration Committee. It reiterates that it cannot speculate as to what the outcome of the proceedings complained of would have been had the violation of Article 6 § 1 of the Convention not occurred (see *Yeltepe v. Turkey*, no. 24087/07, § 37, 14 March 2017). Therefore, it rejects the applicants' claim in respect of pecuniary damage.

(b) Non-pecuniary damage

247. The first and fifth applicants claimed EUR 4,000,000 and EUR 300,000 respectively in respect of non-pecuniary damage as compensation for the emotional distress that they had suffered.

248. The Government contested the sums claimed by the applicants.

249. Having regard to the nature of the violation found, the Court, ruling on an equitable basis, awards EUR 12,500 each to the first and fifth applicants under this head.

2. Costs and expenses

(a) Application no. 30226/10

250. The first applicant claimed EUR 245,591.34 in lawyer's fees and costs and submitted a number of documents in support of his claim. He further claimed, referring to his agreement with Mr Valloni, EUR 30,000 (as

a fixed fee) and 10% of the total amount of pecuniary and non-pecuniary damage awarded to him by the Court (as a success fee). He asked that the award for the costs and expenses of Mr Valloni be paid directly into the latter's bank account.

251. The Government contested the sums claimed by the applicant, arguing that they were excessive and did not exclusively concern the proceedings before the Court.

252. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

253. Turning to the present case, the Court observes that the applicant's Turkish lawyer Mr Bezen represented him on the application to the Court and that, following his resignation, Mr Valloni represented him throughout the remainder of the proceedings before the Court.

As regards the fees of Mr Bezen, the Court notes that the applicant provided time sheets showing that Mr Bezen had carried out a total of one hundred and sixteen hours' legal work on the application to the Court. He also provided copies of bank transfers in the sum of EUR 8,100. It considers the amount of work carried out by Mr Bezen excessive and that it has not been demonstrated that the costs were necessarily and reasonably incurred. In light of the foregoing, the Court considers it reasonable to award the applicant EUR 3,000 in respect of the costs and expenses of Mr Bezen.

As regards the fees of Mr Valloni, the Court notes that the applicant did not submit the legal services agreement with him but supplied a copy of an invoice of 19 September 2018 sent by Mr Valloni for services provided between February and August 2018 for a sum of 4,481.65 Swiss francs (CHF) (equivalent to approximately EUR 3,795 at the relevant time). Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award him EUR 3,975 in respect of the costs and expenses of Mr Valloni, which is to be paid directly into the latter's bank account.

As regards the remainder of his claim for costs and expenses, 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 (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017). The Court accordingly dismisses his remaining claim under this head.

(b) Application no. 5506/16

254. The fifth applicant claimed EUR 3,000 in costs and expenses, including lawyer's fees.

255. The Government submitted that the applicant had failed to provide copies of any contract for legal services or any payment orders confirming these expenses had actually been incurred.

256. Regard being had to the fact that the applicant failed to submit any documents in support of his claim, the Court rejects his claim for costs and expenses.

3. Default interest

257. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join applications nos. 17880/11, 17887/11 and 17891/11 and declare them inadmissible;

2. *Decides*, unanimously, to join applications nos. 30226/10 and 5506/16 and declare admissible the first and fifth applicants' complaints under Article 6 § 1 of the Convention concerning the independence and impartiality of the Arbitration Committee;

3. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention in respect of the first and fifth applicants on account of the lack of independence and impartiality of the Arbitration Committee;

4. *Holds*, unanimously, that it is not necessary to examine the fifth applicant's remaining complaints under Article 6 § 1 of the Convention as regards the fairness of the proceedings and the right of access to a court;

5. *Holds*, unanimously, that the respondent State shall take general measures to address the underlying systemic problem concerning the Arbitration Committee which gave rise to the finding of a violation of Article 6 § 1 of the Convention;

6. *Holds,* unanimously,
   (a) that the respondent State is to pay Ömer Kerim Ali Rıza, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant in respect of costs and expenses of his former representative;
(iii) EUR 3,975 (three thousand nine hundred and seventy-five euros), plus any that may be chargeable to the applicant, in respect of costs and expenses of his current representative, this amount be paid into the bank account designated by the representative;

(b) that the respondent State is to pay Serkan Akal, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,500 (twelve thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses*, by six votes to one, the remainder of the first and fifth applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Bošnjak is annexed to this judgment.

R.S.
S.H.N.

PARTLY CONCURRING PARTLY DISSENTING OPINION OF JUDGE BOŠNJAK

1. In the present case I agree with the other members of the Chamber that there has been a violation of Article 6 § 1 of the Convention in respect of the first and the fifth applicants on account of the lack of independence and impartiality of the Arbitration Committee. That said, I disagree with some of the arguments which they advance in favour of this finding. I am therefore submitting a concurring opinion with regard to that part. Furthermore, I disagee with the majority's outright dismissal of the first and the fifth applicants' claims for pecuniary damages.

A. Lack of independence and impartiality of the Arbitration Committee

2. In my opinion, the Arbitration Committee fails to meet the independence and impartiality requirement for two reasons: (i) the lack of immunity from actions brought against the members of the Arbitration Committee in connection with the exercise of their duties and (ii) the lack of rules fixing the term of office of the Arbitration Committee members, which instead is linked to the duration of the mandate of the Board of Directors.

3. In the absence of any provisions on immunity, a party dissatisfied with a decision given by the Arbitration Committee can start civil or criminal proceedings against a member or members of a particular panel deciding on his or her case. This possibility is all the more preoccupying owing to the fact that apparently no special legal provisions exist limiting liability for damages or engaging the responsibility of the Turkish Football Federation in the Arbitration Committee members' stead. The situation is aggravated by the apparent absence of any legal remedies against the Arbitration Committee's decision. Consequently, the only legal avenue available to a disappointed party eager to continue to fight his or her case would be to seek redress against a member or members of the Arbitration Committee's panel, attempting to satisfy his or her interest through an action for damages or a criminal complaint. In turn, such exposure to civil and criminal actions, even though they are fairly unlikely to end up to the party's satisfaction, might affect the independence and impartiality of the Arbitration Committee members.

4. In its jurisprudence, the Court has emphasised the importance of a sufficiently long term of office for members of judiciary for their independence and impartiality (see, for example, *Incal v. Turkey* (GC), no. 22678/93, § 68, 9 June 1998). In the present case, the rules of the Turkish Football Federation do not specify the duration of the mandate of the Arbitration Committee members. What is more, their mandate is linked to that of the Board of Directors. Consequently, every composition of the

Board of Directors appoints the Arbitration Committee as it wishes. Should a conflict arise between the Board of Directors and the Arbitration Committee, it can easily be resolved to the Board of Directors' satisfaction: the Board resigns, seeks reappointment in the same or a similar composition and, subsequently, appoints a new Arbitration Committee in conformity with its expectations. This set-up makes it unlikely for the Arbitration Committee to decide in a given case in sharp contrast with the Board of Directors' expectations. In such circumstances, the independence and impartiality requirement simply cannot be met.

5. It is my belief that these two shortcomings alone suffice to find a violation of Article 6 § 1 of the Convention. They are correctly, albeit rather pithily, highlighted in the judgment. However, the majority goes on to emphasise some other features of the sport's arbitration system within the Turkish Football Federation, which in my view do not in themselves indicate lack of independence or impartiality of the Arbitration Committee and its members.

6. In my opinion, the judgment unnecessarily contrasts the interests of football clubs with those of the football players. Furthermore, I disagree with the view that an (alleged) "over-representation" of persons from a particular background in a decision-making body affects the validity and/or impartiality of its decisions.

7. While it is true that football brings together several stakeholders (clubs, their owners, players, coaches, other clubs' employees, fans, associations, their employees, referees, and the like), and even though the first applicant's case perfectly shows how their interests can be in sharp contrast in a given situation, I see no systemic separation of interests between them. Equally, interests within a particular group of stakeholders, e.g. clubs, may differ considerably. For example, one club's loss may be another club's gain. Likewise, a club official may be a former player and/or a coach and therefore have a varied background, allowing him or her to change hats easily.

8. The fact that not only the Congress of the Turkish Football Federation but also its Board of Directors largely consists of former (!) members of football clubs does not in itself mean that those two bodies are examples of a type of representative democracy where a particular member of the body represents his or her electors. It rather seems that the Congress and the Board of Directors are not bound by directives from those who have elected them. It may equally be that members of those bodies have been engaged throughout their career in different football-related roles.

9. Be that as it may, the fact that the Congress and the Board of Directors are composed of more people with backgrounds in the administration of clubs than persons who have previously been players, coaches or referees does not make the Arbitration Committee, appointed by the Board of Directors, biased in cases opposing players to their (former)

clubs. For instance, in several High Contracting Parties to the Convention, judges are appointed by the Parliament, which in turn comprises very few members from the lowest social strata. If, in a given court case, an unemployed and uneducated defendant with ethnic, racial or religious minority roots is facing a victim from the middle or upper social class, would that mean that the judge in his or her case is neither independent nor impartial simply because the composition of Parliament is much closer to the victim's background? The majority's logic, as I read it, would suggest that that could be the case. I would find it hard to share that view.

10. In sum, I do not subscribe to the argument that the members of the Arbitration Committee have an implicit bias in favour of football clubs because of the alleged structural inequality between clubs and players in the composition of both the Congress and the Board of Directors. Still, I join the majority in their finding of a violation due to the lack of protection for members of the Arbitration Committee against civil and criminal actions in connection with the exercise of their duties, and with the fact that their term of office coincided with that of the Board of Directors.

B. The claim for pecuniary damages

11. The first applicant claimed a total of 3,962,500 euros in respect of pecuniary damage. He argued that the club owed him 212,500 euros and that he would have additionally earned 3,750,000 euros had he continued to play for five more years.

12. I consider it clear that the first applicant's claim for the alleged future earnings in the amount of 3,750,000 euros is manifestly ill-founded. Regardless of the effects that the lack of independence and impartiality of the Arbitration Committee could have had upon the outcome of the proceedings, they could never have led to the first applicant continuing to play for the club for five more seasons and earning the amount claimed. His contract was effective only until 30 June 2008, i.e. for less than six months more after he left the club. He could have continued to play and earn money elsewhere. The majority are therefore correct in dismissing this part of the first applicant's claim for pecuniary damages.

13. The claim for 212,500 euros that the club allegedly owed the first applicant breaks down as follows: (i) 82,500 euros, being the total amount of his salaries for January, February, March, April and May 2008, as per the terms of contract; (ii) 20,000 euros, being the total amount of match appearance fees due to the first applicant for the first half of the 2007/08 season; and (iii) 110,000 (22 x 5,000) euros for the match appearance fees that would have been payable to him had he continued to play for the club until the expiry of the contract.

14. It appears from the Arbitration Committee's award that it granted the first applicant's claim for appearance fees for the first half of the 2007/08

season to a total of 20,000 euros, as well as his claim for monthly wages for the period between 1 January 2008 and 8 April 2008 to a total of 53,860 euros. However, as it on the other hand granted, *inter alia*, the pecuniary fine imposed on the first applicant by the club, and as that amount exceeded the amount due to the first applicant by the club, the first applicant received nothing and was instead required to pay the club the amount of 129,353,38 Turkish liras.

15. The majority reject the first applicant's claim for pecuniary damages, emphasising that they cannot speculate as to what the outcome of the proceedings complained of would have been had the violation of Article 6 § 1 of the Convention not occurred. I argue that such a position is contrary to a number of judgments of this Court, notably with those in *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* (no. 47072/15, §§ 66 and 67, 23 October 2018), *Pélissier and Sassi v. France 5* 5(GC), no. 25444/94, § 80, ECHR 1999-II), *Destrehem v. France* (no. 56651/00, § 52, 18 May 2004), and *Miessen v. Belgium* (no. 31517/12, § 78, 18 October 2016). In all those cases the Court equally held that it could not speculate on the outcome of the proceedings, yet did not find it unreasonable to regard the applicants as having suffered a loss of real opportunities (*perte des chances réelles*) and awarded them a sum in respect of pecuniary damage.

16. According to Article 41 of the Convention, "the Court shall, if necessary, afford just satisfaction to the injured party" when, *inter alia*, "the internal law of the High Contracting Party concerned allows only partial reparation to be made." The Court has held on numerous occasions that the reopening of proceedings should be considered as the most appropriate form of redress (see, among many other authorities, *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, 23 February 2016). Had there been, in the present case, a possibility for the first applicant to request and obtain the reopening of his case before a body meeting the standards of an independent and impartial tribunal, this would dispense this Court from any further consideration regarding his pecuniary damages claim. However, it is undisputed that the first applicant is not in a position to effectively seek any reparation before the domestic authorities. Therefore, in the absence of any award by the Court, the pecuniary damage he allegedly suffered remains unaddressed.

17. When faced with a case of violation of fair trial requirements at the domestic level where a dispute of pecuniary nature was at stake, the Court's position in decision-making regarding just satisfaction is similar to that of the national courts when called upon to decide cases where it is uncertain whether the claimant would earn or otherwise benefit from a certain amount, prize or profit without an illegal act or omission being committed by the defendant. In such situations, many legal systems have developed the "loss of real opportunities" (*perte des chances réelles*) doctrine to the effect

that the amount of damages to be awarded corresponds to the likely amount of the claimant's gain had there been no violation. Should that amount prove to be impossible to assess, the competent body decides on an equitable basis.

18. In the above-mentioned case of *Produkcija Plus storitveno podjetje d.o.o.* (cited above), the violation of Article 6 § 1 of the Convention prevented the applicant company from effectively contesting before the Supreme Court the fine that had been imposed on it. The Court was not in a position to speculate on the likelihood of success in that contestation had the violation not occurred. Consequently, it decided to award the applicant company, on equitable basis, a sum corresponding to half the amount of the fine which the applicant company had not been in a position to contest owing to the violation.

19. In my opinion, the first applicant in this case is in a similar situation. While the Arbitration Committee actually awarded him part of his claim (see § 14 above), he could not collect any part of this award because the Arbitration Committee dismissed his challenge of the fine imposed upon him by the club, as well as his challenge of the club's other claims against him. Had he been successful in this challenge, he would have received a total of 73,860 euros. If the logic underpinning the judgment in *Produkcija Plus storitveno podjetje d.o.o.* (cited above) had been followed in the present case, the first applicant would have been awarded half of that sum, that is to say 36,930 euros. Furthermore, it cannot be ruled out that an unbiased body would have awarded him an additional part of his claim against the club. By making no award at all in respect of pecuniary damages, the majority departed from well-established doctrine that is increasingly reflected in the Court's case-law, without providing reasons.

20. I refrain from conducting a similar analysis in respect of the claim for pecuniary damages of 123,692 euros submitted by the fifth applicant. This corresponds to losses he had allegedly incurred on account of his downgrading to provincial referee. It is not unlikely that for reasons similar to those pertaining to the first applicant's case, the fifth applicant should also have been awarded, on an equitable basis, an amount in just satisfaction in respect of pecuniary damage.

21. For these reasons, I voted against the outright dismissal of the first and fifth applicants' claims for pecuniary damages.

Appendix

List of cases

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence Nationality
1	30226/10	20/04/2010	**Ömer Kerim Ali RIZA** 08/11/1979 Broxbourne British and Turkish
2	17880/11	29/12/2010	**Fatih ARSLAN** 04/04/1974 Muğla Turkish
3	17887/11	29/12/2010	**Şaban SERİN** 26/05/1980 Kocaeli Turkish
4	17891/11	29/12/2010	**Mehmet Erhan BERBER** 22/10/1981 Muğla Turkish
5	5506/16	11/01/2016	**Serkan AKAL** 27/01/1977 Zonguldak Turkish