

HEALTH-RELATED ACTIVITIES IN TURKISH FOOTBALL LAW

YENER ÜNVER & JOCELYNE ALAYAN

Özyeğin University, Faculty of Law, Istanbul, Turkey

E-mail: yener.unver@ozyegin.edu.tr; jocelyne.alayan@ozyegin.edu.tr

Abstract Unlawful action cannot be justified even when it is committed in sport or the health field. Although character-wise, both fields are covered by different legal rules, both of them lie under the discipline of law and must be conducted within the rule of law. Theoretically, doping can be considered as fraud, although to this date, no doping actions were incriminated. It is regulated as a disciplinary offense (Turkish Football Federal Disciplinary Directive, art. 61). The usage and possession of drugs by athletes is considered a criminal offense (Turkish Criminal Code, art. 18 & ors.) and a legitimate reason for an athlete's contract termination. A football player who organizes or uses a counterfeit report concealing a health problem or represents a fraudulent statement to the official authority is considered to have committed a fraud crime (Turkish Criminal Code, art. 24 & ors.) as well as a disciplinary offense (Turkish Football Federal Disciplinary Directive, art. 47-48).

Keywords:

doping,
counterfeit
health
report,
counterfeit
medicine
procurement,
fraudulent
statement to
official
authority,
prohibited
substance
usage

Z ZDRAVJEM POVEZANE DEJAVNOSTI V PRAVU TURŠKEGA NOGOMETA

YENER ÜNVER IN JOCELYNE ALAYAN

Univerza Özyeğin, Pravna fakulteta, Istanbul, Turčija
E-pošta: yener.unver@ozyegin.edu.tr; jocelyne.alayan@ozyegin.edu.tr

Ključne besede:

doping,
ponarejeno
poročilo o
zdravstvenem
stanju,
naročilo
ponarejenih
zdravil,
lažna
izjava
uradnemu
organu,
uporaba
prepovedanih
snovi

Povzetek Nezakonitega ravnanja ni mogoče upravičiti, tudi kadar je storjeno na športnem ali zdravstvenem področju. Čeprav značajsko, obe področji zajemata različna pravna pravila, pa spadata obe v disciplino prava in ju je treba voditi v skladu s pravili zakona. Teoretično gledano lahko doping štejeemo za goljufijo, čeprav do danes, nobena dopinška dejanja niso bila inkriminirana. Doping je urejen kot disciplinski prekršek. Uživanje in posedovanje drog v športu velja za kaznivo dejanje in upravičen razlog za odpoved pogodbe športniku. Nogometni igralec, ki sestavi ali uporabi ponarejeno poročilo, ki prikriva zdravstvene težave ali predstavlja goljufivo izjavo uradnemu organu, stori s tem kaznivo dejanje goljufije, kakor tudi disciplinski prekršek.

1 Introduction

Neither sport nor health sector can represent a safe domain for unlawful actions. Despite the fact that both fields are covered by a different body of rules, both of them lie under the discipline of law and must be conducted within the rule of law. However, when the legal system and the administrative (preventive/discipline) mechanism do not function properly, athletes, audience, and concerned institutions might tend to commit the same harmful actions repeatedly. The undermentioned breaches do not restrict the damages to the athletes but rather exceeds it to threaten society.

2 Chosen subjects related to health law

2.1 Athletes doping methods and ways of usage

2.1.1 Doping is a restricted and a heavy sanctioned action

The Turkish Law does not criminalize resorting to doping in sport under any specific article (Ünver, 2007: 552; Ünver, 2008: 41-94). Although theoretically speaking, some doping actions can be laid under fraud crimes, to this moment, there has been no conviction verdict related to doping. According to the Turkish Football Federation Disciplinary Directive, doping is considered as a disciplinary offense (Turkish Football Federation Disciplinary Directive, art. 61).

Article 18 of the Turkish Football Federation Ethics Committee Instruction, entitled "Disgraceful Actions", mentioned some behavioral principles. According to this article, it was noticed that committing the action of doping was considered among the disgraceful actions. According to article 22 of the Ethics Committee Instruction, in case of breach of any of the mentioned principles, providing that certain conditions are met, and as a sportive and repulsive sanctions, in addition to warning, condemnation, peaceful condemnation, condemnation through visual or written media, to help eliminate the violation's negative effects on society, the person in violation can give lectures or participate in sport organizations. Persons who do not comply with the sanction decision of the Ethics Committee shall be subject to the disciplinary sanction imposed by the disciplinary committee of the football federation, following the clause on violation of the football disciplinary directive.

Furthermore, the Turkish Football Federation Directive also contains anti-doping instructions. The directive holds detailed information related to anti-doping training and awareness-raising activities, research and coordination concerning the formation of an anti-doping board and doping control room, and procedures necessary to control doping. This directive explicitly prohibits football players smoking, alcohol use, banned substances, and doping methods, particularly those mentioned on the banned list. The positive aspect of the directive, within the framework of a detailed program, is enlightening and teaching the effect and damage of doping on sports in general and on athletes in particular and stress on the healthy execution of sport and protection of athletes' health.

According to article 36 of the Turkish Football Federation Directive, acting against sportsmanship and sport ethics (violation of health instructions can also be considered as a violation of sport ethics), and the violation of the instructional rules mentioned in article 46 of the directive (which contains rules governing health matters) is considered as a disciplinary violation.

According to article 48 of the TFF directive, titled "Forgery and Deception", changes or fraud conducted on the license or compliance documents, or the use by the player himself or a third person with player's consent, is considered organized crime. It is also emphasized, according to this article's last paragraph that any fraud practiced on any documents other than those mentioned before is also considered a disciplinary offense.

Concerning this subject and besides the Turkish Football Federation Directive there are also 2 other directives, 1) Teams Structuring and Functioning Directive and 2) Health Board Internal Directive. In these, both directives, various boards, principles, and structures have been included to facilitate balance in sport and sports health, which ensures, first footballers' health protection and second health-oriented development of the sport.

2.1.2 The necessity for doping public trial

The European Court of Human Rights (ECtHR), concerning the judgment in the case *Mutu & Pechstein vs. Switzerland*¹, had provided an assessment related to the lawfulness of proceedings brought about by professional athletes before the Court of Arbitration of Sport (CAS). According to the assessment the court was not considered to violate article 6 § 1 of the European Convention of Human Rights (ECHR) regarding the right to a fair trial concerning the allegation of lack of independence of the Court of Arbitration of Sport, on the other hand, the CAS was found to violate article 6 § 1 in the case of the second applicant (Ms. Pechstein), concerning the lack of a public hearing before the CAS. The ECtHR held that CAS arbitration proceedings must provide arbitration parties with all guarantees necessary to ensure a fair trial. In the discussed case, the European Court concluded that the investigation conducted into the merits of the sanctions imposed due to doping allegations brought by the applicants and the investigation conducted before the CAS is a matter of public scrutiny that requires a public hearing. Since the athletes' trial has not been held publically, the ECtHR decided that there had been a violation of article 6 § 1 of the ECHR. It is worth noting that, directly after the ECtHR took this decision, CAS first held hearing was conducted publicly and published online.

Regarding Turkey, generally, no hearing is required. Occasionally, in case of objections against heavy sanctions imposed by the Disciplinary Board on the club or senior executives, even though the Arbitration Board investigates such complaints, the hearing is not held publicly.

2.2 Usage of narcotics

Usage and possession of narcotics by athletes is considered a crime (Turkish Criminal Law, Art. 188 & ors.), a disciplinary offense (Turkish Football Federal Disciplinary Directive, Art. 36), and a justified reason for an athlete's contract termination.

¹ European Court of Human Rights, Press Release, *Mutu & Pechstein vs Switzerland*, applications no. 40575/10 and no. 67474/10, ECHR 324 (2018), Retrieved from: <http://hudoc.echr.coe.int/eng?i=001-186434>.

2.3 Documentation forgery actions

Turkish Football Federation's detailed content "Professional Athlete Health Council Report" is considered as an example. This report contains the following information: the football player's data, the number of player's last season's played matches, detailed questions related to the player's health condition. Each branch of this report is signed by a specialized doctor, the club's doctor, and the player himself. In this health report, respectively stated are the player's general health history, cardiovascular system, respiratory system, ear-nose-throat, genitourinary system, nervous system, previous febrile diseases, currently used drugs, vaccines, allergies, musculoskeletal system, laboratory examinations (biochemistry and microbiology), systematic examination, neurology, head and neck, abdominal examination, oral health, movement system examination and cardiovascular system (blood pressure, electrocardiogram and ECO cardiogram) information and test results. At the end of the report, it will be determined whether the player is health-wise qualified to play football and the report will be signed by each related branch doctor along with the signature of the health institution manager.

In cases where the player resorts to document forgery or uses such a document to conceal health problems, or if the player offers a fake statement to the relevant authority, such action will constitute a fraud crime (Turkish Criminal Law, Art. 204 & ors.) and a disciplinary offense (Turkish Football Federation Disciplinary Directive, Art. 47-48). Such actions are also considered a basis for contract termination.

Undoubtedly, as it is agreed in doping cases, fraudulent documents act, besides being considered a sport disciplinary offense, breach of contract, and unjust acts. These actions are also considered crimes and might be the subject of criminal cases.

2.4 Football player's contracts related to health conditions provisions

Athlete's health is of utmost importance in ensuring football players' maximum performance. Clubs must benefit from football player's full abilities in return for the down payment and the monthly salary paid. For this purpose, the clubs include provisions, related to harmful substances usage, into the contracts and if necessary, into the club's internal disciplinary regulations.

Turkish Football Federation's Professional Football Agreement Form contains, on one side, the player's personal data, and on the other side, the club's institutional data. The form also includes rules related to payments, special provisions, and the contract's duration. Regarding the "special Provisions" titled section, the contract signed between the club and the football players states the following:

"... the football player should not seek medical examination or treatment in any health institution other than the club's medical team without its knowledge and written permission. Any rest report obtained from any health institution without the written permission of the club shall be deemed invalid, and the football player must in all cases be examined by the medical team or hospital specified by the club. The football player agrees and undertakes that reports organized in case of emergency by other medical institutions shall be presented for examination, during the report validation period and at first reasonable opportunity, by the specified hospital or physician. In case of compliance with this condition, the report received organized by another medical institution shall be considered as if received following the provisions of the signed contract. In case the football player acts contrary to this obligation, the player shall be fined in accordance to the provisions of the club's disciplinary directive, in case such conduct is continued despite the written warning of the club, the club shall have the right to terminate the contract based of violation of contract's conditions. If the player does not report any injury, illness or disability, to the club, on time, and/or seek medical treatment in an unspecified medical institution or doctor, without the written permission of the club, and/or does not comply with the treatment and training program designed by the club, the player shall be entitled to pay all related costs and the club shall have the power, without any previous notice, to terminate the contract, and shall have the right to compensation for the total amount of the contract.

...the player agrees and undertakes, that in case of player's injury, previous to the contract signing, becomes chronic, and the player fails, due to this injury, to participate in four competitions during the season, and on condition that the player's payments due, till the date this injury becomes chronic again, is fully paid, the club shall have the right to unilateral termination of the contract.

... the player consents to comply with the regulations related to substance and medicine usage and is obliged to inform the club's health department, as soon as possible, regarding all kind of medicine and substances used in private life or during holidays.

... In case of any kind of doping examination performed to the player by the Turkish Football Federation authority or the club's health department, if the player tests positive for doping, the club shall have the right to unilateral termination of the contract. In such cases, the club shall have the right to contract termination without any previous notice and shall be entitled to the compensation amount corresponds to the total price of the player's contract.

... According to this document, the professional football player shall not, under any circumstances, consume alcohol or smoke,.... And he accepts and declares his awareness of such actions being restricted. In the event that the player resort to previously mentioned actions, the club shall have the right to contract termination, without notice, and the right to receive compensation corresponds to the total amount of the contract. The player undertakes, in accordance with this document, to play solitarily or in the category designated by the club, and to participate in matches, in the category determined by the club, which is a matter subject to change by time and in various periods.

Since the prohibitions as mentioned above are under the "Special Provisions" section of the player's contract, any violation of these provisions shall grant the club the right to terminate the contract without prior notice. Furthermore, due to these provisions violation, the player shall be obliged to participate in the sport matches, solitarily or within the category specified by the club.

In this regard, the Turkish Football Federation Health Teams Structures and Operations Instructions Provisions and Health Team Contracts, prepared according to these provisions, should be taken into consideration.

2.5 Conditions mentioned in medical board reports and the effect of these conditions on sports contracts

Medical board reports are of concern for both football clubs and the Turkish Football Federation. For this reason, the Turkish Football Federation requires medical board reports to grant a license.

The importance of medical board reports for clubs appears concerning injury conditions. If the club signs the contract with an injured player without conducting the proper medical examinations – the club shall not have the right to terminate the contract due to such injury.

If the club signs a contract, with an injured or sick player, without a player's proper medical examination, the club shall be obliged to fulfill all financial obligations towards the player. For example, African players often suffer from Hepatitis B and might need prolonged treatment, sometimes the player's sickness is not even subject to treatment. That is why it is of utmost importance to get the correct diagnoses upon signing of the contract.

2.6 Sports clubs' internal disciplinary instructions related to the athlete's health

Sports clubs are obliged, one week previous to season initiation, to disclose the content of the disciplinary instructions to players upon contract signing and to submit the communicate annotation to the Turkish Football Federation. Otherwise, the disciplinary instructions will not constitute a base for penalties during that season. If the clubs meet this requirement, then they can apply fines based on the disciplinary instructions.

Turkish clubs, generally, tend to forbid players from smoking or consuming vitamins or other drugs without permission, they also prohibit players to resort to other medical institutions without the club's permission. Especially, non-personnel football players and those having problems with the clubs tend to get medical reports from unspecified medical institutions to escape coming to the club. To prevent such actions, the clubs include related provisions inside contracts and directives. According to such provisions, the football player is forbidden to seek medical treatment in any medical institution without the club's permission. Nevertheless, such provisions are sometimes subject of exploitation by both parties. In such a case, the best reasonable choice, enough to ensure mutual benefit for both parties, is for the football player to seek medical examination in a medical institution of his choice, then to inform, directly after the examination, the medical institution designated by the club.

2.7 Lack of commitment to health obligations, causes of sickness and injuries

Contract provisions related to payment postponement due to health conditions are considered invalid. However, in cases not related to football activities, where the athlete, for instance, breaks his leg while skiing or be the subject of a car accident, related provisions postponing partial payment for 3 or 6 months are added to the contract. Sometimes, Turkish football clubs tend to restrict the player's payment, postpone it or stop paying it for a certain period of time due to player health condition breaching. In this context, just like a player's injuries affect the contract and salary payments. It is of great importance as well to meticulously monitor the health-related duties Football Federation Health Boards and those of the clubs.-

On the other hand, if the player fails to pay attention to health precautions, performs actions considered harmful to his health, or deliberately disrupt his treatment hence fails to properly perform his duties towards the club, the player's contract shall be terminated and the player shall be subject to disciplinary fines as club's compensation.

2.8 Explicit contract regarding the athlete's health and injury condition

The athlete's health condition is important to achieve maximum performance. On the other hand, injury is inevitable in football. Club's responsibilities toward injuries or health problems face by players during football activities cannot be decreased. For example, during the match, the player who suffers from Pneumothorax or hamstring tendon rupture is entitled to full compensation.

On the other side, if it comes to the knowledge of the club, during the contract's period, that the player suffers from a certain injury if the parties tend to fully specify the injury's condition in the contract and sign the contract hereafter, and then the player, due to this specific injury, fails to play the match, on the condition that such a failure is proven by the expert-approved by both parties, a decision, can be made based on the contract, of partial or full suspension of the football player's monthly salary, for a complete period.

3 Conclusion

Health and sports fields are active in most branches of law (Criminal Law, Administrative Law, Civil Law, International Law, Human Rights Law, etc.). Although Health and Sports laws constitute separate specific principles, there are also specific principles and written rules on health-related issues in the sports field. States, sports clubs, and people interested in sport must comply with these rules and ensure that athletes practice within the boundaries of these law rules. Such rules are applied to independent and private sports institutions and people concerned in sport as well as on legal entities. Society and the new generation's physical and mental health are values that the state must protect.

Democratic states must support individuals' health and sport-related rights and support these rights paving the road for individuals to develop their abilities in this regard. State supervision and support in health and sport are of high importance for ensuring healthy future generation, art, and cultural development and individuals' physical and mental health. Sport and health fields are in constant positive competition, with human beings at the core of each of them, completing each other to ensure the best for the human race. Undoubtedly, both fields should be developed, not only with compliance with local rules and private laws but also in compliance with International and Universal Law rules and those developed by supranational sports organizations (UEFA, FIFA, WADA).

Legislation, cases

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