

Sports Law

in Turkey

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REGULATORY

Governance structure

What is the regulatory governance structure in professional sport in your jurisdiction?

The general regulatory authority regarding the professional sport in Turkey is the General Directorate of Sports, established under the Ministry of Youth and Sports. In addition to that, federations are also authorised to publish instructions regarding the discipline and transfer rules in sports.

On the other hand, the Turkish Football Federation has a special statute in terms of governance that enables it to make further arrangements regarding professional football compared to other federations in Turkey.

Protection from liability

To what extent are participants protected from liability for their on-field actions under civil and criminal law?

There are no specific regulations regarding the liability of the athletes and other persons working on the field. The liability of the athletes will be evaluated under general provisions of civil and criminal law.

The on-field actions that cause harm to the other persons constitute tort and must be evaluated under the relevant provisions of Code of Obligations. For tort liability to occur, there must be (1) illegal action, (2) damage, (3) negligence, and (4) a causal link between the illegal action and the damage. In addition to that, if the action of the athlete constitutes a crime, the criminal provisions will also apply.

There are general rules determined regarding the fouls in sports competitions. An athlete must comply with these rules during a competition. Not complying with such rules will make the relevant action illegal. Within this context, civil and criminal liability of the athlete may occur.

Another aspect that should be considered while determining the liability of the athlete is 'accepted risk'. Determining the limits of the accepted risk is important while determining the liability of the athletes. Generally, the limits of the accepted risk are considered as the game rules. However, some behaviour that complies with the game rules may also be deemed illegal provided that the action is contrary to fair play.

Doping regulation

What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

Turkey is a party to the United Nations Educational, Science and Cultural Organization's International Convention Against Doping in Sports and adapted the convention into the domestic legislation.

To institutionalise and carry out the fight against doping, Turkish Anti-Doping Commission was established in Turkey, in 2011. The Anti-Doping Commission issued the Turkey Anti-Doping Guideline in 2011, which is also approved by the World Anti-Doping Agency.

The Turkish Football Federation, Turkish Basketball Federation and Turkish Volleyball Federation also issued anti-doping guidelines for their branches under the Anti-Doping Guideline.

As the liability issue, there are no specific provisions regarding doping under Turkish law. In case damage occurs due to doping use, the general provisions of the Turkish law regarding the contractual liability or tort will apply. On the other

hand, criminal liability due to doping use is not regulated under Turkish law.

Financial controls

What financial controls exist for participant organisations within professional sport?

Each federation in Turkey issue instructions regarding financial regulations for their branches. The framework of financial obligations and sanctions in case of a violation is determined within the scope of these instructions.

To ensure financial fair play in football, Turkish Football Federation issued an instruction in June 2019, which is in line with the UEFA's instructions, imposing a spending limit to the football clubs for the season 2020–2021. In the case of exceeding this limit, sanctions such as a warning, transfer ban, deleting the league points and an administrative fine will be imposed on the clubs on a pro-rata basis.

DISPUTE RESOLUTION

Jurisdiction

Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

The disputes regarding the disciplinary and management issues are solely subjected to arbitration and these disputes cannot be held before the general national courts. Disputes that do not fall within the scope of the above-mentioned subjects can be held before the national courts, or any other authority determined by the contract between the parties of the dispute, if any, including the dispute resolution authorities of federations.

Arbitration authorities who have jurisdiction over the sports disputes are different for football disputes and other sports.

The competent authority for the football disputes that are within the scope of disciplinary and management issues is the chambers of the Turkish Football Federation. The decisions of the Turkish Football Federation's chambers can be appealed to the Turkish Football Federation's Arbitration Board.

The disputes regarding the disciplinary issues and management in other sports branches must be held before the chambers of the related federation. The decisions of such federations must be appealed to the General Directorate of Sports' Arbitration Board. Also, the General Directorate of Sports' Arbitration Board has jurisdiction over the disputes between the federations and clubs, athletes, coaches, referees and disputes between the clubs, except those arising from transfer, service, organisation agreements.

Enforcement

How are decisions of domestic professional sports regulatory bodies enforced?

The federations are authorised to enforce the decisions of the regulatory bodies and arbitration boards. No court's order is necessary to enforce such decisions.

Court enforcement

Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

According to the article 59/3 of the Turkish Constitution, it is necessary to apply to compulsory arbitration against the decisions of the sports federations regarding discipline and management. The decisions of the arbitral tribunals are final and the parties cannot appeal such decisions. Within this scope, it is not possible to file a lawsuit in local courts against the decisions of the arbitration boards regarding discipline and management.

However, parties can file an annulment lawsuit before the courts against the decisions of the Turkish Football Federation Dispute Resolution Committee, which falls out of the discipline and management issues.

SPONSORSHIP AND IMAGE RIGHTS

Concept of image rights

Is the concept of an individual's image right legally recognised in your jurisdiction?

An image right is not regulated under Turkish law. However, 'image right fees' are defined in the Club Licensing and Financial Fair Play Guideline of the Turkish Football Federation as the amount payable to the personnel for the right to benefited from his or her image or reputation as a result of the contract made for the activities that are not related to football.

There are no further regulations regarding the limits and requirements of the image right, however, the parties can establish contacts regarding the image rights and determine a cost for image right, under the principle of freedom of contract.

Commercialisation and protection

What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Commercialisation of the image rights is permitted under Turkish law, in accordance with the principle of freedom of contract. However, there is no specific legislation regulating the image right.

How are image rights used commercially by professional organisations within sport?

The scope of the usage right of the professional organisations on the image right is determined according to the scope of the contract. Generally, strong clubs such as Galatasaray, Fenerbahçe and Beşiktaş can make contracts regarding image rights because of their financial power. It is generally decided with these organisations that the income to be obtained from all kinds of organisations, especially advertisements, will belong to the club.

Morality clauses

How can morality clauses be drafted, and are they enforceable?

The sports club can add a morality clause to the contracts of athletes. However, it is not possible to make these arrangements related to indispensable issues, such as personal rights. In addition, these clauses cannot violate the personal rights of the athletes. If such an arrangement is made, the relevant clause will be deemed invalid and will not have any consequences.

Restrictions

Are there any restrictions on sponsorship or marketing in professional sport?

Real and legal persons can be a sponsor of the federations, youth and sports clubs, athletes, sports facilities and organisations and can make advertisement through such persons and institutions.

However, there are some restrictions provided under Turkish law in terms of advertisement. Within this scope, there advertising of alcohol and tobacco products is prohibited. This prohibition is not limited to the sports events and within this scope, alcohol and tobacco brands cannot be sponsors.

In addition to the above, there are also some restrictions specific to sports activities. Sponsorship transactions and advertisements must not (1) disrupt public order, (2) discriminate (3) violate the general moral rules and manners (4) encourage harmful and bad habits, and (5) use prohibited signs and logos.

Since the restrictions listed above are open to interpretation and the limits are not clearly drawn, the restrictions may expand according to the understanding of administration.

BRAND MANAGEMENT

Protecting brands

How can sports organisations protect their brand value?

Branding has great importance for sports organisations, especially for income generation and gaining supporters for the club. The first step of branding is the protection of intellectual property rights. The organisations must register the trademarks, distinctive symbols, slogans and logos, to expand the protection area and prevent unauthorised use by others. Preventing the sale of counterfeit merchandise is also an important step to be taken for protecting the brand value.

The sponsorship is another important aspect of increasing brand value. Although sponsorship is generally seen as increasing the brand value of the sponsor, it also increases the value of the sponsored party. The right sponsorship agreements will cause the clubs to appear with important market players, and add up to their brand value.

How can individuals protect their brands?

Individuals can also register their brands, trademarks, slogans and other intellectual or industrial properties in Turkey. Registering these intellectual and industrial properties before the Turkish Trademark and Patent Institution will expand the protection. If the above-mentioned intellectual and industrial properties are not registered, these can be protected with general provisions provided that it is generally known that these belong to the athlete.

Cybersquatting

How can sports brands and individuals prevent cybersquatting?

Cybersquatting can be prevented by applying to the ICANN arbitration, if applicable. In addition to that, if the domain name copied includes a registered trademark, cybersquatting can be prevented with the provisions regarding the protection of the trademark. Lastly, cybersquatting can be prevented with unfair competition provisions of the Turkish Commercial Code, if the domain name also constitutes unfair competition.

Media coverage

How can individuals and organisations protect against adverse media coverage?

Individuals and organisations can protect themselves against adverse media coverage by applying to national courts if the media coverage violates their personal rights or constitutes unfair competition. By applying to the court, individuals and organisations can request from the court to decide to cease the media coverage or compensation. In addition, the court can also decide that the defendant publish or broadcast an apology.

With the recent changes made in Law on Regulation of Publications on The Internet and Suppression of Crimes Committed by Means of Such Publications, the individuals also can directly apply to the social network provider for removal of such media coverage if it also published through a social media platform.

Lastly, the parties can use their right to be forgotten against the past media coverage that violates their personal rights.

BROADCASTING

Regulations

Which broadcasting regulations are particularly relevant to professional sports?

There is no general regulation provided by Turkish law regarding the broadcasting of sports competitions.

Each federation enacts the necessary instructions regarding its own broadcasting rights. Within this concept, generally, the federations have the broadcasting rights of their branches and make the necessary arrangements for transferring or licensing such rights.

Restriction of illegal broadcasting

What means are available to restrict illegal broadcasting of professional sports events?

Illegal broadcasting constitutes a violation of the right to communication to the public under the Intellectual Property Law. The right owners of the professional sports events can seek (1) preliminary injunctions, (2) civil actions and (3) criminal actions against the infringer.

In cases where an illegal broadcast is made through the internet, rights owners can apply to the service or content provider for removal of the content. The service and content providers are obliged to remove the content within three days upon this application. In cases where an infringement continues, the right holders can apply to the Public Prosecutor's Office for suspension of the service being provided by the content provider.

EVENT ORGANISATION

Regulation

What are the key regulatory issues for venue hire and event organisation?

Instructions of the federations generally regulate the rules of venue hire and event organisation.

These instructions generally oblige the organisers to obtain the permission of the relevant federation. To obtain such permission, the organisers must fulfil the standards set by the relevant federation, especially the health standards. In addition, necessary measures must be taken regarding the facilities, approval of the federations from abroad, if necessary.

Ambush marketing

What protections exist against ambush marketing for events?

Turkish law does not provide a specific regulation regarding ambush marketing. Protection against ambush marketing can be exercised with advertisement law, intellectual property law or unfair competition law. The most effective remedy that can be sought against ambush marketing is filing a complaint before the Turkish Advertising Board. In addition, the parties can seek compensation if the ambush marketing caused any damage.

Ticket sale and resale

Can restrictions be imposed on ticket sale and resale?

Turkish authorities introduced an electronic ticket, also known as Passolig, in recent years, for preventing violent conduct during competition, and black-market sales of the tickets.

Currently, electronic tickets are in use for the top and second football leagues in Turkey. For the other sports branches or the other leagues of football, the electronic tickets are not applicable. However, it is expected that the coverage of the electronic tickets will expand to other branches and other leagues in the future.

Electronic tickets are personal and cannot be used by another person. Also, reselling a ticket is strictly prohibited.

IMMIGRATION

Work permits and visas

What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

The athletes, coaches and administrative staff who wish to work in Turkey must obtain a working permit and visa. The application for a work permit must be made to the Ministry of Labour and Social Security. If the applicant is abroad, the application can also be done through Turkish diplomatic offices.

In addition, according to the regulation recently published by the Youth and Sports Directorate, foreign persons who will obtain an athlete's licence in Turkey must have a residence permit for at least one year. However, if the athlete already has a working permit obtaining an additional residence permit is not necessary.

What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

There are three types of work permits in Turkey, which are limited, indefinite and independent.

Foreigners who would like to start a business in Turkey can apply for an independent working permit. An indefinite working permit, on the other hand, is only given to foreigners who have a long-term residence permit or who have worked for at least eight years in Turkey. The limited working permit is not subject to additional requirements such as the independent and indefinite work permit, however, it is granted for a relatively shorter time, one year. The limited working permit can be extended.

The professional athletes, coaching and administrative staff can apply for any kind of the permit, provided that they meet the requirements. However, they are mostly eligible to obtain a limited working permit.

Residency requirements

What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Athletes, coaching and administrative staff must apply for an indefinite residence permit to stay in Turkey for a long-term stay or permanently.

The requirements for obtaining an indefinite residence permit are:

- living in Turkey for the past eight years continuously;
- not receiving social aid in the past three years;
- having sufficient and regular income;
- having valid health insurance; and
- not posing a threat to public order or security.

In addition, the athletes, coaches and administrative staff can apply for Turkish citizenship if they are living in Turkey continuously for the past five years. Also, a special provision for athletes is provided, enabling them to acquire Turkish citizenship without having to need to be living in Turkey in the past five years provided that they have given extraordinary service in the sport.

Becoming a citizen is a better option for long-term stay since the indefinite residence permit can be cancelled if the person has left the country for one year.

Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

The families of professional athletes, coaching and administrative staff must also apply for a residence permit in accordance with the general provisions.

In addition to that the families can apply for a 'family residence permit' if the person has a work permit. Family residence permit can be granted to a spouse, minor child or spouse's minor child, and dependent child or spouse's dependent child.

SPORTS UNIONS

Incorporation and regulation

How are professional sporting unions incorporated and regulated?

Turkish law does not provide a special regulation regarding the sports unions. The sports unions are subject to the general provisions regulating the unions.

There are two types of unions available under Turkish law, which are the labour unions and the employer unions. The union to be established by the athletes has the characteristics of a labour union while the union to be established by the clubs is considered as an employer union.

The union acquires a legal personality by submitting a petition to the regional authority, stating that a union will be

established, the union statute and the documents and statements showing that the founders of the union have passed the necessary conditions.

Membership

Can professional sports bodies and clubs restrict union membership?

The freedom of association is protected by the Turkish Constitution according to which a person cannot be forced to or restricted from joining or leaving a union.

In the event that an employer, a sports club in such case, pressures the employee, the athlete regarding the union membership, the employer will be obliged to pay compensation to the athlete that is not less than the annual wage of the athlete.

Strike action

Are there any restrictions on professional sports unions taking strike action?

In Turkey, a lawful strike can only be made during the collective employment agreement negotiations between the unions and the employer, if the parties cannot reach an agreement. Apart from this, all strikes are considered illegal under Turkish law.

There is no additional restriction on strikes under Turkish law, regarding the sports. However, in case a strike decision is considered harmful for the general health and national security, the Presidency of the Turkish Republic and postpone the strike.

Although this is called a postponement, in such a case, the parties are obliged to negotiate before a mediator, and if an agreement cannot be reached again, the dispute must be held by the high board of arbitration, which is a board that will be solely established for resolving strike-related disputes.

EMPLOYMENT

Transfers

What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

Each sports federation makes arrangements for transfers in the relevant sports branch. Therefore, different arrangements can be made according to the sports field.

In general, athletes are registered to the federations by the club they have contracted with and they apply for a licence. Since registration and licence procedures are limited to certain periods, clubs must complete transfer transactions within the relevant periods.

Ending contractual obligations

Can individuals buy their way out of their contractual obligations to professional sports clubs?

An athlete can terminate the contract depending on a just cause, such as non-fulfilment of the contract by the club or force majeure such as injury. Also, the athlete has the opportunity to terminate the contract by paying a free release fee, if it is agreed in the contract.

If a free release fee is not agreed with the contract and there is no just cause or force majeure for the termination, the athlete cannot rightfully terminate the contract. In the case of an unlawful termination by the athlete, he or she must compensate the damage owing to the termination. In addition, some penalties can be applied by the relevant federation.

Welfare obligations

What are the key athlete welfare obligations for employers?

Since the relationship between the athlete and club is considered as an employment relationship, the clubs are responsible for making the necessary social security arrangements for the athletes and pay the social security premiums. If such obligations are fulfilled by the clubs, athletes can use free treatment options in public hospitals.

In addition, the sports federations have the authority to regulate the welfare standards of the athletes. Within this scope, the welfare standards vary for different sports branches, in accordance with the relevant federation's regulations.

For professional football, clubs are obliged to take precautions for the health of players and have a health professional within the club. Also, football players are required to have health checks periodically.

Young athletes

Are there restrictions on the employment and transfer of young athletes?

Turkish law requires the approval of the parents or the other legal representatives of a young athlete, who is under 18, for the athlete to enter into a contract. If such approval is not taken, the contract in question is not valid.

In accordance with that general provision, the instructions issued by the federations also seek the consent of the parents or other legal representatives of the young athlete if he or she is under 18, to be a party of the contracts with clubs.

What are the key child protection rules and safeguarding considerations?

Turkish federations have started to implement children protection rules recently in the various sports branches. Turkish Football Federation, the most effective federation on the child protection, has recently established Wellbeing and Child Protection Unit for exercising the child protection necessities in the leagues involve children by collaborating with clubs and publishing child protection instructions.

Club and country representation

What employment relationship issues arise when athletes represent both club and country?

Playing in national teams would not establish an employment relationship between the national team and the athlete. If an athlete is elected for a national team, competing for the national team is considered as a duty that can be rejected neither by the athlete nor by the club of the athlete. Also, the clubs cannot claim indemnification for the damage occurred due to their athlete to compete for the national team.

In terms of welfare and social security, the clubs are fully responsible for the welfare and social security arrangements of the athletes. The mandatory health insurance that will be provided to the athlete by the clubs must include the injuries that can occur during the period when the athlete competes for the national team.

Selection and eligibility

How are selection and eligibility disputes dealt with by national bodies?

Selection of an athlete for the certain competitions is considered under the management right and authority of the club the athlete is competing for. Therefore, the clubs are free to decide the selection of the athletes. However, this management right and authority cannot be used contrary to the prohibition of discrimination and equal treatment obligation. In such cases, the athlete can terminate the contract with just cause, without paying any compensation.

Within this context, the selection and eligibility disputes are considered as an employment issue in Turkey and evaluated within the limits of the management rights and authority of the clubs.

TAXATION

Key issues

What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

The incomes of the athletes are subject to income tax in Turkey. In principle, the rate of income tax varies between 15 and 40 per cent depending on the yearly income. However, there are some special provisions regarding the income tax of the athletes.

In sports branches subject to league procedure, the fixed rate of income tax is 20 per cent for the athletes in top leagues, 10 per cent for the athletes in the second leagues and 5 per cent for the athletes in other leagues have been determined. In addition, athletes whose yearly income is more than 500,000 lira are also required to give a tax declaration to the authorities. As a result, these athletes are not subject to fixed income tax rates and the rate of their income tax changes in accordance with their yearly income.

However, after the changes, the athletes who earn more than 500,000 lira are also required to declare their earnings at the end of the year and pay income tax at rates varying from 15 to 40 per cent.

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in your jurisdiction?

The structure of the Turkish Football Federation's Arbitration Board is one of the most discussed issues in Turkey, in terms of sports law due to a decision of the European Court of Human Rights, declaring that the Arbitration Board is not an independent authority and therefore cannot be considered as a court, in terms of European Convention of Human Rights. Following this decision, radical changes are expected to be made to the structure of the Arbitration Board to maintain its independence.

Another topic in Turkey is the spending limits the Turkish Football Federation imposed on the clubs competing in the Super League. The spending limits are introduced with Financial Fair Play Instructions of the Turkish Football Federation for the first time. The federation has determined the limits between 429 million lira and 59 million lira.

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

With the start of covid-19 pandemic, the competitions have been postponed and some leagues have been cancelled in 2019–2020 season. After the first impact of the pandemic passed, some of the leagues were completed with restrictions. In addition, some of the competitions will be played without the audience.

Also, there are some measures introduced regarding employment law. Termination of the employment contracts by the employer has been restricted until 17 November 2020, according to which the employer cannot terminate the employment contract unless the employee is violating the moral rules and goodwill. The contracts of the athletes are also under the scope of this restriction.

LAW STATED DATE

Correct on

Give the date on which the information above is accurate.

20 November 2020.