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NEWS REPORT

Country:	Turkey
Title:	Lower court orders the Turkish Football Federation to pay civil damages to a gay referee banned from his profession on the ground of his sexual orientation
Date:	19 January 2016
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Update of flash report nr:	TR-18
<u>Context</u>	
Issue at stake:	The dismissal from the profession of a referee on ground of his sexual orientation
Ground of discrimination:	Sexual orientation
Source:	National court decision (20th Civil Court of First Instance in Istanbul, decision no. 2010/399) ¹
Field:	Employment
Applicable law:	Law of Obligations, no. 6098, 11 January 2011, Official Gazette, 4 February 2011

Content

Case:

In 2010, a football referee with 14 years of experience was dismissed from his profession by the Turkish Football Federation after the disclosure of a health report issued by a military hospital certifying his 'unfitness for military service' on the basis of his sexual orientation. In 2010, the referee filed a civil case with the 20th Civil Court of First Instance in Istanbul against the Turkish Football Federation on the grounds that he had been subjected to discrimination on the basis of his sexual orientation. He claimed that, having lost his job, being stripped of his professional qualifications and rejected from the profession and unable to find new employment due to the Federation's leaking of his health report to the media, he suffered a great deal of financial and emotional damages.

The referee also filed a petition with the Provincial Human Rights Board of Istanbul. As reported in flash report TR-18, the Board decided on 24 December 2012 that the applicant's rights to life, to equality and non-discrimination, to protection of privacy and family life and to employment, had been violated due to the loss of employment, rejection from the profession which prevented him from working as a referee ever again, plus the receipt of death threats and being subjected to negative media reports.

Decision of the Court:

On 29 December 2015, during the 19th hearing, the the 20th Civil Court of First Instance

¹ The minutes of the final hearing have been obtained from the lawyer of the applicant.

in Istanbul issued its ruling in the civil case the applicant had filed in 2010. The Court ordered the Federation to pay the applicant 3,000 NTL (950 Euros) in pecuniary damages and 20,000 NTL (6,300 Euros) in non-pecuniary damages. Since the court has not released its reasoning,² the legal grounds of its decision remain unclear. According to the lawyer of the applicant, the court has likely awarded damages under general tort law. Pursuant to Article 49 of the Law of Obligations, real or legal persons whose faulty or unlawful actions cause damages against an individual are obliged to compensate such damages. In this particular case, by disclosing the confidential medical report of the applicant and leaking it to the press, the Turkish Football Federation has acted unlawfully and caused damages on the applicant.

While the plaintiff had claimed, among others, to have been subjected to discrimination on grounds of sexual orientation, whether the court has agreed with this particular claim remains to be seen. In the meantime, the applicant, who had demanded a total of 110,000 NTL (34,000 Euros) in compensation, is planning to appeal the decision to the Court of Cassation once the court judgment is published. Lower courts are obliged to publish their judgments within one month after issuing them. Accordingly, the judgment in this case is expected by January 29th, 2016. Pending the outcome of a probable appeal, the judgment is not final.

Key points of analysis:

This is the first time a Turkish court awards compensation to an applicant who makes a sexual orientation based discrimination claim under private law. Earlier, courts have found public institutions to have discriminated against their employees on the basis of the latter's sexual orientation. In a precedent-setting judgment issued on 7 November 2014 and published in March 2015, the Council of State had found the rejection from the profession by the Ministry of National Education of a teacher due to his/her sexual orientation to be in violation of the right to privacy and to the protection of the family life protected under Article 20(1) of the Turkish Constitution and Article 8 of the European Convention.³

The December 2015 judgment of the 20th Civil Court of First Instance in Istanbul, however, concerns the rejection from the profession of an individual due to his sexual orientation by a private employer. It is the first court judgment against employment discrimination on the basis of sexual orientation in the private sector.

On the other hand, the compensation amount awarded by the court is extremely low compared to the pecuniary and non-pecuniary losses the applicant had suffered during the past five years.

Internet link source:

Not yet published.

² The court is expected to publish the reasoning of this judgment in January 2016.

³ Turkey, 12th Circuit of the Council of State (*Danıştay Onikinci Dairesi*), 7.11.2014, E. 2011/750, K. 2014/7169.