



## **European network of legal experts in gender equality and non-discrimination**

### **NEWS REPORT**

<b>Country:</b>	Turkey
<b>Title:</b>	The dismissal from the profession of a referee on ground of his sexual orientation
<b>Date:</b>	2 March 2016
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<b>Update of flash report nr:</b>	TR-58
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Lower court, which on 29 December 2015 had ordered the Turkish Football Federation to pay civil damages to a gay referee banned from his profession on the ground of his sexual orientation, publishes its judgment
<b>Ground of discrimination:</b>	Sexual orientation
<b>Source:</b>	National court decision
<b>Field:</b>	Employment
<b>Applicable law:</b>	Turkish Constitution, Article 10; Law on the Establishment and Duties of the Turkish Football Federation, no. 5894, 5 May 2009, Official Gazette, 16 May 2009, Article 3(1)(g); Law of Obligations, no. 818, 22 April 1926, Official Gazette, 29 April 1926, Article 42 (replaced by Law of Obligations, no. 6098, 11 January 2011, Official Gazette, 4 February 2011)

### **Content**

#### **Case development:**

In 2010, a football referee with 14 years of experience was dismissed from his profession by the Turkish Football Federation (TFF) 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 20<sup>th</sup> 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.

On 29 December 2015, the 20<sup>th</sup> Civil Court of First Instance in Istanbul had 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. As usual practice, the Court decided to publish its judgment at a later date.

### **Decision of the Court:**

In early February 2016, the Court published the judgment containing its reasoning.<sup>1</sup> The Court found the TFF's dismissal of the applicant in accordance with its by-laws, which disqualify individuals who are exempted from military service on health grounds from being a referee; to constitute a subjective decision which did not rest on objective criteria and therefore to be legally invalid. The Court noted that the health report which exempted the applicant from military service diagnosed the applicant with "psychosocial disorder" and did not refer to a health problem which would ban the applicant from working as a referee. Thus, held the Court, the TFF's conclusion that the applicant was unfit to be a referee was exclusively based on his sexual orientation, which does not constitute a barrier to an individual's performance of sport activities. Furthermore, the Court stated that this attitude contrasts with the reality of the industry where one frequently encounters homosexual referees and athletes. The Court concluded that the TFF's decision violated the Turkish Constitution's anti-discrimination clause as well as the TFF's own by-laws.

In assessing the amount of damages to be paid to the applicant, the Court relied on Article 42 of the former text of the Law of Obligations, which was in effect at the time when the applicant had filed the case, which tasks the judge to determine the compensation amount in cases where the applicant has difficulty to prove the actual pecuniary costs he incurred or where he cannot be reasonably expected to prove such costs. Accordingly, based on the number of games the applicant was precluded from working during the 2009-2010 football season, the judge awarded him 3,000 NTL in pecuniary damages. Citing the equality clause of the Turkish Constitution and the provisions of the European Convention on Human Rights, the Court awarded the applicant an additional 20,000 NTL in non-pecuniary damages.

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 on the ground of the inadequacy of the amount of the compensation awarded.

### **Key points of analysis:**

While this is the first time a Turkish court awards compensation to an applicant who makes a sexual orientation based discrimination claim under private law, the Court awarded the applicant an extremely low amount of compensation compared to the pecuniary and non-pecuniary losses he had suffered during the past five years. The Court based its calculation of pecuniary damages solely on the one season during which the applicant was not allowed to work as a referee, not taking sufficiently into account the fact that he has been unemployed ever since his dismissal from the profession and has been unable to find new employment due to the media publicity around his sexual orientation.

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<sup>1</sup> Turkey, the 20<sup>th</sup> Civil Court of First Instance in Istanbul (*Istanbul 20. Asliye Hukuk Mahkemesi*), 29.12.2015 (the date of the decision), 03.02.2016 (the date of the writing of the opinion), E. 2010/399, K. 2015/554.