

Turkish Match Fixing: Criminal Law's Interaction With Sports

10 Oct 2012

First published as a featured article in World Sports Law Report, Volume 9, issue 9, September 2011

Turkish football fans were shocked by the evening news on July 3. Aziz Yıldırım, President of the popular Turkish football club Fenerbahçe, was arrested in an early morning raid.

The operation was triggered eight months prior when the President of a small sports team in northern Turkey complained about threats being made against him by his predecessor.

In the course of the investigation the police discovered evidence of match fixing arranged by a criminal organization. This criminal organisation is accused of being established exclusively for match fixing purposes. The investigation reached its peak on July 3, 2011 with the arrest of Yıldırım. Police also conducted searches at the club headquarters of Beşiktaş SC, Trabzon SC and Sivas SC.

Currently, 29 people are under arrest as part of the match fixing probe. Some are accused of receiving benefits from the match-fixing organization while others are accused of being active participants.

Football fans may recall the importance of Fenerbahçe in the Turkish football league. Three major teams, one of which is Fenerbahçe, dominate the league. Until the probe, Fenerbahçe was having some of the most successful years of its history under the leadership of Yıldırım, who was a charismatic and prominent President who devoted all of his time and wealth to the club.

Fenerbahçe had won five championships in the last 13 years under Yıldırım's Presidency. Fenerbahçe became the first Turkish club to be listed in Deloitte's Football Money League for the 2007-2008 season with a turnover of EURO 111.3 million. Both Fenerbahçe and Yıldırım were the rising stars of the Turkish Sports industry

The New Law

On March 31, 2011 the law numbered 6222 on the Prevention of Violence and Disorder in Sports ('Law 6222') was enacted. Article 11 of Law 6222 introduced the definition of a new crime to the Turkish legal system.

Pursuant to Article of Law 6222, a person who gives a financial or any other kind of benefit to another person in order to affect the result of a sports competition will be charged with imprisonment between five to 12 years. If the benefit is in the form of an incentive the punishment is halved. Since the official allegation of the public prosecutor has not yet been prepared and as revealing information regarding the preliminary investigation is still restricted, there is no information about the facts of the claim except for rumors.

Along with its President, Fenerbahçe is also under scrutiny by UEFA and the Turkish Football Federation. According to the federation's Football Disciplinary Rules, a club that affects the result of a game will be subject to relegation to a lower league and, depending on the case, additional penalty points.

The Turkish Football Federation forwarded the case to its ethics committee for determination of the facts and evidence. A decision should be reached before the beginning of the 2011-2012 football season, the starting date of which has been postponed to September.

Accordingly, the ethics committee claimed the evidence from the public prosecutor pursuant to Article 19 of Law 6222. However, due to the restrictions on revealing information regarding the preliminary investigation only selected documents have been submitted to the ethics committee. In addition, the ethics committee was not allowed to share the documents with the clubs. Therefore, the defense rights of the clubs who were accused of match fixing were restricted. Under these conditions, the ethics committee has taken a very controversial approach and resolved not to give a final decision until the relevant court accepts the official allegations and until the judge decides that the committee may receive the entire court file without any restrictions.

Although the committee's approach was heavily criticized by the sports authorities it was obvious that a decision without a proper defense would not be just. Therefore, under current conditions, the interim decision of the ethics committee seems to be the only solution. On the other hand, Aziz Yıldırım's continued detention requires strong evidence of the existence of a crime. Since his arrest and detention is ongoing the committee's decision could create a future problem in the Turkish football leagues as the uncertainty of Fenerbahçe and other teams involved will continue until a decision is reached.

It must be noted that criminal proceedings in Turkey are intolerably slow and in some cases there has been a wait of more than three years for the acceptance of official allegations. Turkey has also been sanctioned many times by the European Court of Justice for its long legal processes

Under these conditions the practical approach of the Ethics Committee to roll the ball to the public prosecutor seems to be a solution for the time being. On the other hand, the timetables of the ethics committee and the ordinary courts cannot be the same; the federation must not use the excuse of the slow-moving Turkish legal system for postponing the decision against accused teams and individuals.

Since the internal problems of the Turkish Football League are also problems for UEFA and the Turkish Federation's decision is important for the UEFA Champions League, all these developments also created tension in UEFA.

UEFA's chief disciplinary inspector and Legal Counsel for Integrity and Regulatory Affairs, Pierre Cornu, visited the Turkish Football Federation and the public prosecutor on August 22 to get more information about the match-fixing probe in Turkey. On August 23 UEFA notified the Turkish Football Federation that it needed to take action in order to prevent Fenerbahçe from joining the Champions League.

This notification was beyond a notice; UEFA also made it clear that if the Turkish federation insisted on Fenerbahçe's participation UEFA may ban all Turkish teams, including the Turkish national team, from all international competitions for up to eight years. Further to the notification from UEFA, the Turkish federation withdrew Fenerbahçe from the Champions League and the UEFA Emergency Panel replaced Fenerbahçe with Trabzonspor SC.

Further to these developments, Fenerbahçe made the next move and requested the federation to drop them to the lower league. However, this request was not made with a written declaration, but via a press conference. Due to this fact, the federation deemed it unnecessary to give a decision on this request.

Under these conditions it is very important for the ethics committee not to postpone its final decision for too long and to find a way to gather its own set of evidence. Otherwise, Fenerbahçe and the Turkish football industry will continue to lose.

In criminal law, a person who is under investigation is considered innocent until the final decision of the court. Despite this general rule of criminal law, the public prosecutor determined strong evidence of the existence of a crime and continues to keep the President of Fenerbahçe under arrest; this should compel the ethics committee to act even faster in reaching a decision.

Related Attorneys

- BENAN ARSEVEN

Moroglu Arseven | www.morogluarseven.com