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Footballers have the right to speak – international law stands behind them

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This text represents the author's personal views and does not bind the European Court of Human Rights (ECtHR).

When athletes step onto the field of play, talk to the press, or publish a text on social media, they enjoy all the human rights protected by international law, including the freedom of speech, a pillar of our democracies. Nothing in their sport and nothing in their competitions can take this freedom away. No sport is outside the law, no federation above it. And so, when we think about the modern athlete's role in society – one that technology has transformed in the space of a decade – we should keep these principles in mind. They help us to navigate the complex choices that face both the athletes and the institutions of their sport.

Footballers are first and foremost citizens. In Europe, for example, they are protected by the European Convention on Human Rights, which safeguards the dignity and freedom of more than 670 million people across 46 countries in the Council of Europe. Article 10 of the Convention says:

'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...'

The same article recognises that this fundamental human right also comes with responsibility; in certain situations, governments might restrict it:

'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals...'

In other words, we are all citizens, free to speak our minds, but also living members of a society, where the law may sometimes limit our freedom so that we can live together in peace. We understand, for example, the serious harm caused by any speech that incites hatred and violence; we accept the laws that forbid it.

Sports federations and their athletes face the same task: how to strike a balance between freedom and responsibility. We are familiar with the aims of the International Olympic Committee, FIFA, or many other sports bodies which – in the name of a universal humanity – have tried to keep religion and politics away from the field of play. However, the ways in which they do this – their rules and how they apply them – are subject to the same legal scrutiny as any laws passed by a national government.

In recent years, the European Court of Human Rights has heard new complaints in this area. Three cases involving Turkish football remind us that any individual across the 46 members of the Council of Europe can bring their case to the Court. It is the Court that has the final say on whether national institutions have properly applied their own domestic laws. In particular, the Court can assess whether any restrictions to the freedom of speech are justified. Three judgments of the Court, from 2021, show how these questions are affecting professional football:

- 1 In *Sedat Doğan v. Turkey*, the executive of a football club complained that the Turkish Football Federation (TFF) had violated his freedom of speech by imposing fines and sporting sanctions on him. During live TV coverage of a match, Mr Doğan had criticised the TFF's decision to discipline two of his players for wearing t-shirts that paid tribute to Nelson Mandela following his death; the TFF had claimed that Mr Doğan's comments threatened to disrupt the sport.
- 2 In *Naki and AMED Sportif Faaliyetler Kulübü Derneği v. Turkey*, a player had posted on Facebook following a match, devoting his team's victory to the Kurdish victims of oppression and calling for greater freedom in the country. The TFF's disciplinary committee had fined and sanctioned the player, arguing that his comments were ideological propaganda that would incite violence and disorder.
- 3 In *İbrahim Tokmak v. Turkey*, a professional referee had shared on Facebook a post from another person, who had commented on the death of a well-known publisher of a daily newspaper; in his own message, the referee had used strong language to agree with the original post. The TFF's arbitration committee had upheld the sanctions – which effectively withdrew the referee's licence and ended his career – arguing that referees had to be cautious in their social life since the public would attribute their conduct to the TFF, which had a duty to keep itself out of politics.

In all three cases, the European Court of Human Rights recognised the legitimate aims of the TFF's regulations: to maintain peace and order across the sport. However, in each of the cases, the Court ruled that the national bodies had violated article 10 of the Convention – the freedom of speech – and awarded damages to the individuals. In short, the TFF (and the national government) had failed to show that its disciplinary measures were relevant, proportionate, and necessary in a democratic society.

One further case – *Šimunić v. Croatia* – helps us to understand the same questions from a different perspective. This comes at a time when FIFA and other sports bodies are using sanctions to deter hateful and violent speech, which is often racist or homophobic. Here, a national team player had been convicted of addressing hateful nationalistic messages to supporters in a stadium. The Court easily dismissed the player's complaint, since his speech had clearly violated society's need for tolerance and mutual respect.

More significant, though, were the Court's broader comments on the public role of athletes: it noted that a well-known footballer should be aware of their influence on supporters. The Court appears to recognise here that professional athletes with a public profile are inherently political actors – a democratic society might *expect* them to speak out. The United Nations has likewise suggested that sports bodies should *encourage* athletes to serve as role models – public figures with the power to promote peace and human understanding.

In the years to come, sports federations might begin to reconsider what they mean by political 'neutrality' – and ask themselves whether it is justifiable to prevent athletes from speaking on matters of public interest. After all, it is the International Olympic Committee's own Charter that aims to promote human rights and 'peaceful society concerned with the preservation of human dignity'.

For centuries, sport has occupied a central place in our society – it expresses who we are and what we believe in. When our political debates play out in our stadiums, they remind us that we live together, in a community. And like the rest of society, sport too must wrestle with the difficult questions of human freedom and how to protect it in a diverse and changing world. Athletes, powerful and vulnerable in equal measure, stand at the heart of this conversation. They should know that the law stands behind them, protecting their right to speak.

Daniel Rietiker recently published the book Defending Athletes, Players, Clubs and Fans: Manual for human rights education and litigation in sport, in particular before the European Court of Human Rights, Council of Europe Publishing, Strasbourg, 2022.



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