

STRIKES AND LOCKOUTS IN TURKEY'S FOOTBALL INDUSTRY

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ABSTRACT

Football is a sport that influences the entire world. Today, a football industry with millions of supporters and big budgets has emerged. This study examines the strike and lockout in Turkey's football industry. Football players in Turkey have a very low rate of unionization unlike the European football industry, which has high levels of union awareness and high rates of organization. It also addresses strike and lockout examples within the football industry all over the World. Strike and lockout in Turkish football will be explained with regard to Act No. 6356 on Trade Unions and Collective Labor Agreements.

Keywords: Football, lockout, strike

TÜRKİYE'DE FUTBOL ENDÜSTRİSİNDEKİ GREVLER VE LOKAVTLAR

ÖZ

Futbol, tüm dünyayı etkisi altına bir spor dalıdır. Günümüzde milyonlarca taraftara ve büyük bütçelere sahip bir futbol endüstrisi ortaya çıkmıştır. Bu çalışmada Türkiye'de futbol endüstrisindeki grev ve lokavt incelenmektedir. Özellikle Avrupa'da futbolda sendika bilinci ve örgütlenme oranı yüksekken Türkiye'de futbolda, Türk futbolcularının sendikalaşma oranı çok düşük seviyededir. Ayrıca çalışmada, tüm dünya futbolundaki grev ve lokavt örnekleri ele alınmaktadır. Türkiye'de futbolda grev ve lokavt konusu 6356 sayılı Sendikalar ve Toplu İş Sözleşmesi Kanunu ile açıklanacaktır.

Anahtar Kelimeler: Futbol, lokavt, grev

INTRODUCTION

The first football club in the world was founded in Sheffield, England on October 24, 1857, with the name Sheffield FC. The Sheffield Rules, written by the club, are known as the first football rulebook (Tezcan, 2014: 40). Since then, the popularity of football has continuously increased in the world. Today, football is an industry with a massive fan base and large amounts of money. Its market has grown, and incomes from broadcasting and transfer fees for players have also increased. Football is a favorite sport in Turkey, and people follow it very enthusiastically.

Football now has a more cosmopolitan structure that goes beyond just sports. As a byproduct of the industrial age, football is now involved in business life, entertainment and even affects politics. Football has become a socio-economic phenomenon with economic and political dimensions (Akşar, 2005: 10). Football is an important part of consumer society. For example, in national leagues, supporters of champion teams buy products that have their teams' colors, and celebrations also involve entertainment and consumption, especially in the Champion's League or the World Cup. Companies that invest in the football industry increase their share of the market, and their sales of products increase (Talimciler, 2008: 94).

For this reason, a secure and transparent financial composition has gained value with regards to accountability for football clubs, which draw the attention for the large fundings they manage and their public offerings. Club managers and stakeholders make use of financial performance indicators in knowledge acquisition and decision making. In recent years, UEFA, the Union of European Football Associations, a high authority in European football imposed some sanctions with regards to the financial status of football clubs as gauged by financial performance criteria. The most important of these sanctions is financial fair play criteria (Güngör, 2014: 17).

The first football industry employees that come to mind are football players. Today, there industrial labour laws, social security laws and laws on trade unions and collective bargaining are regarding footballers.

1. UNIONIZATION IN TURKISH FOOTBALL

According to the Code of Obligations, professional sportspeople can benefit from trade union rights. The legal basis for individuals to become trade union members is given in the seventeenth article and the fourth paragraph of the second article of the Law on Trade Unions and Collective Labour Agreements Law No. 6356.

Certain aspects apart from the development of unionism, sports laws and regulations in the chapter regarding special provisions, may also provide important benefits for sportsmen's health conditions, sports establishments and in the fight against doping (Üçışık, 2011: 165).

In the Regulation on the Businesses published in the Official Gazette dated 19.12.2012 and numbered 28502, Accommodation and Entertainment Affairs are listed as the number 18. The Regulation on Lines of Business published in the Official Gazette No. 28502 on December 19, 2012, made it possible for professional athletes to organize themselves by sport. The right to form trade unions was formalized, and the Football Employees' Union (FUTBOL-SEN) was established (Öztuna, 2016: 474).

Table 1: Number of Sports Union Members in Turkey

	2013 (July) Membership	2014 (July) Membership	2015 (July) Membership	2016 (January) Membership
Futbol-Sen	342	329	250	228
Spor-Emek-Sen	11	11	10	10
Spor-Sen	0	-	-	-

Source: Official Gazette (Citation of Statistics Related to Employee Numbers in Lines of Business and Union Members)

The Football Employees' Union (FUTBOL-SEN) had 225 members in 2016. According to Article 4 of the Law no. 6356, the auxiliary works carried out in a workplace are also counted from the line of business. Unionization exists only in football among professional sports in Turkey. The first was the Professional Footballers' Union, founded on May 31, 1965. There is also an organization called the Association of Professional Footballers in Turkey, but it is not considered a trade union because it is only an association (Aydın et al., 2017: 1882). Below in table 2 "in January 2017 Number of Members of sports unions in Turkey" is given.

Table 2: Number of Sports Union Members in Turkey in January 2017

	2013 (July) Membership
Tourism, Hotel and Sport Workers' Union (Tüm Emek Sen)	57
Revolutionary Sports Workers Union (Spor Emek-Sen)	9
Football Workers Union (Futbol Sen)	133

Source: Official Gazette (Citation of Statistics Related to Employee Numbers in Lines of Business and Union Members)

2. STRIKE IN TURKISH FOOTBALL

The definition of strike is found in Article 58 of the Law on Trade Unions and Collective Bargaining No. 6356, and stipulate that there is a strike in a workplace if employees stop working collectively in order to halt activity in the workplace or to interfere with work in a significant way, or to obey a decision given by an organization for the same purpose.

Article 54 of the Constitution of the Republic of Turkey says: “During negotiations for collective labor agreements, workers have the right to strike if a dispute arises. The use of this right and employers’ lockout procedures, conditions and exceptions are regulated by law. The right to strike and lockout cannot be used in a manner contrary to the rules of goodwill, to destroy society or to destroy national wealth. The workplaces and conditions under which strikes and lockouts can be prohibited or postponed are regulated by law. In the event of prohibiting or delaying strikes and lockouts, at the end of the delayed cases, the dispute shall be resolved by the Supreme Arbitration Board. The case may be appealed to the Supreme Arbitration Board by agreeing with the parties at every stage of the dispute. The decisions of the Supreme Arbitration Board are definitive and deemed as a collective bargaining agreement. The establishment and duties of the Supreme Arbitration Board are regulated by law. The work of those who do not participate in strikes cannot be interfered with in any way by strikers”. Clearly, the Constitution dictates that strikes and lockouts can only be done as part of collective interest disputes. The procedures and principles regarding the use of these rights are regulated by law (Canbolat, 2013: 252).

The right to strike is a basic social and economic right and has a constitutional guarantee. It is protected by constitutional safeguards as well as national and international regulations. One of the international instruments that recognize and protects the right to strike is the International Labor Organization, and in particular, ILO’s Right to Organize Freedom of Association and Protection of the Right to Organise Convention No.87. (Güney and Aslanova, 2014: 269).

In the year 2010, the constitutional provision, “politically motivated strikes and lockouts, solidarity strikes and lockouts, general strikes and lockouts, occupation of workplace, slowing of work, reduction of duty and other resistance cannot be done” in the Article 53 of the 7th paragraph was abolished by a constitutional amendment done in accordance with Law No. 5982, Amendment of Certain Articles

of the Constitution of Republic of Turkey, due to its incompatibility with international conventions and universal workers' rights. The new Law No. 6356 rearranged the definition of strike and lockout by removing the statement that deemed such actions unlawful in Articles 58 and 59. With regard to criminal provisions, Law No.6356 converted prison sentences into administrative fines (Dereli, 2013: 62). According to Law No. 6356, a strike deemed as a legal strike if it is made in accordance with professional interest, which it defines as protecting or improving the economic, social and work conditions of workers. Since the law requires professional purpose as a condition for a strike to be deemed as legal, a strike with no professional purpose is nevertheless deemed to be an unlawful strike. Political strikes, general strikes, and solidarity strike are unlawful in the Turkish legal system (Canikliođlu, 2013: 291-292).

The 2014 European Union Turkey Progress Report reports that, in the area of social dialogue, restrictions on and the double threshold for collective bargaining, uncertainties in the protection against dismissal of union members and organizations, gaps in collective bargaining and strike rights issues are still the most significant problems in this area. With the amendment to the Union and Collective Labor Law, the line of work threshold for the trade union's collective bargaining agreement (the ratio of trade union members to the workforce in the line of work, including the workplace) is permanently set at 10%, and at least 50% of the employees in the company, which is a major obstacle to unions' ability to make collective bargaining agreements (European Commission, 2014). The definition of a competence is found in the 41st article of Law No. 2822 (Law no. 2822, which was the law before 6356) "the workers' trade union representing at least ten percent of the workers engaged in a given branch of activity and more than half of the workers employed in the workplace and the workers in the enterprise to be covered by the collective labour agreement shall be authorised to conclude a collective labour agreement covering the workplace or enterprise in question". Law No. 6356 has changed this issue. The definition of a competence is found in the 12th article of Law No. 6356 of the Trade Unions and Collective Bargaining Agreement, which says that "the workers' trade union representing at least 1% of the workers engaged in a given branch of activity and more than half of the workers employed in the workplace and 40% of the workers in the enterprise to be covered by the collective labour agreement shall be authorised to conclude a collective labour agreement covering the workplace or enterprise in question".

The 2016 European Union Turkey Progress Report states that in 2015 collective bargaining agreements covered only 7.5% of private-sector employees, and that this rate is well below that of European Union member states. It emphasized

that the lack of legal barriers, such as the double threshold for of collective bargaining power and the lack of the right to strike by public officials, are contrary to European standards and ILO commitments (European Commission, 2016: 64).

In the football industry, the strike issue is different from other industries. It is a known fact that employees do not have enough protection to bargain with their employers, except for a few popular players that have few bargaining power against the employers, in spite of institutionalization in the sports sector. Today's economic conditions make players' unionization unavoidable in order to acquire bargaining power and secure the future, to avoid submission to the conditions imposed by employers (clubs) and to solve income inequality in the market (Alay, 2007: 54).

In football, boycotts and reactions are limited to clubs, and there is little working class solidarity. It is understandable why some footballers do not want to unionize and strike since this could trigger individual professional concerns. These events, which are rapidly spreading among footballers, even if the media, which reveals the appeal of Turkish football, do not adequately address them, but the thought-provoking thing here is why there is no labor solidarity with adequate sanction power despite the fact that there are many applicants to the dispute settlement council, and a silent labor struggle is underway (Ataçocuğu, 2013: 98).

There have also been strikes in the football world. We see the first examples in England. Jimmy Hill, as president of the Professional Footballers' Association, initiated action to raise the maximum wage (£20 a week in 1958). After the threat of a strike, negotiations were held, and a decision was made to raise the wage in 1961. Jimmy Hill was a former Brentford and Fulham player, and a trade union leader (Sherwin, 2015).

Football players in the first and second league in Spain made a decision to strike in the first two weeks of the 2011-2012 season. The Spanish Football Association (AFE) announced that their decision to strike for two weeks due to a dispute with the Professional Football League (LFP). AFI President Rubiales, together with Spanish national soccer players Iker Casillas, Carlos Puyol and Xabi Alonso, and a group of footballers, said that the strike decision was made unanimously: "We do not want more money as footballers, we just want our contracts to be completely fulfilled. We want footballers who are not paid their salaries for more than three months to be entitled to cancel their contracts unilaterally" (Tuncer, 2011). Iker Casillas, Carlos Puyol, Xabi Alonso are successful European footballers who have supported other players who have not been able to obtain their salaries. The Spanish Football Players Association (AFE), which is united under a union organization, shows that footballers can take a class point of view and that a legal union has sanction power (Ataçocuğu and Zelyurt, 2016: 105).

Another example is from Italy. The captains of the teams in the First Football League of Italy (Serie A) informed footballers that the league will not start until their rights are guaranteed. The captains of twenty teams in Serie A stated in a joint letter to the public that the 2011-2012 season scheduled to start on August 27 would not start unless an agreement was reached between the Football Association (AIC) and Serie A league managers to regulate player rights. This caused a crisis between the AIC and the league managers and created a two-time strike threat before that put the upcoming season in crisis before it even started (Sabah, 2011).

The Chilean Professional Footballer's Association (SIFUP) stated that, in the 2016-2017 season, the governing body of the football leagues decided to go on strike with a unanimous decision to defer the leagues in order to protest the relegation and promotion of the clubs and the payment of salaries of footballers (NTV Spor, 2016).

The Danish women's soccer team started a strike in 2017 due to a dispute over wages during the World Cup competition. Later, when there were important matches, the strike was abandoned, and a temporary agreement was reached with the Danish Football Association (DBU). According to the union of the players, the women demanded that the association "make a reasonable financial proposal" to them and called for signing a collective wage agreement. The players received an average of 14 thousand kroner (1,880 euros) per month. The salaries of their male colleagues have not been announced. The issue of equality between male and female players has been on the rise in a growing number of football associations around the world. In early October, the Norwegian women's team won a groundbreaking victory, earning the same wages as their male colleagues. The Swedish women's team also has held similar discussions (AFP, 2017).

Another example of a footballers' strike was in Argentina. Argentine soccer players who were unable to collect their pay for nearly four months in 2017 announced that their conditions had not been met before the start of the Primera Liga and that they could go on to strike. As a result of lengthy negotiations with the government, a payment plan of around \$35 million was created. However, the Argentine government was able to pay only 22 million of it to clubs, which was not enough to pay the clubs' debts (HaberTürk, 2017).

There are no examples of football strikes in Turkey. In Turkish football, collective bargaining, strike, and lockout instances do not occur due to problems related to work conditions, wage issues caused by the industrial structure of football, labor limiting items added by the federation, football clubs not paying insurance premiums, players' lack of pension rights of the, unfair income distribution among leagues; however, the main problem remains the lack of class and union awareness in Turkish football (Ataçocuğu, 2013: 101).

3. LOCKOUT IN TURKISH FOOTBALL

The definition of a lockout is found in the 59th article of Law No. 6356 of the Trade Unions and Collective Bargaining Agreement, which says that an employer, his or her deputy or an organization removing workers being from their jobs collectively in such a way as to cause activity to cease altogether in the workplace is a lockout. In case of a dispute arising during collective labor negotiations and a strike is called by a trade union, a lockout that is done in accordance with the provisions of this law is called a legal lockout. A lockout done before the conditions required for a legal lockout are met is unlawful.

Article 54 of the Constitution of the Republic of Turkey declares that workers have the right to strike if a dispute arises during collective bargaining. The terms, conditions, and exceptions of the use of this right and the employer's application for a lockout are regulated by law. The right to strike and lockout cannot be used in a manner contrary to the rules of goodwill, to destroy society or to destroy national wealth. The conditions and workplaces where strikes and lockouts can be prohibited or postponed are regulated by law.

Lockouts are an uncommon practice in sports. Lockouts in America occurred in American football in 1968 and 1970. In baseball, they happened in 1976 and 1990. None of these lockouts prevented normal seasons from being played. In 1994-1995, a lockout event that prevented the season from being played occurred in hockey. It lasted 103 days (Staudohar, 1999: 4).

Apart from football, we can give examples to lockouts from the world, especially from the USA. In 2012, a lockout was done in the American professional ice hockey league (NHL). Players Union Acting President Donald Fehr said they were unhappy with the current deal and insisted on signing a new contract that would increase the players' rights, but the NHL representative argued that the existing conditions were fair and reasonable. A lockout was declared on 15 October 15, 2012, and the league did not start. In New York, the NHL League Management and Players Association (NHLPA) reached an agreement at the end of a 16-hour meeting between the parties, ending a 113-day lockout and signing a new 10-year deal (Bursada Bugün, 2013).

Another example of a lockout is from basketball. After a 12-year interval (1999-2011), a lockout was declared by the American professional basketball league (NBA) on July 1, 2011. The reason for the lockout was that the team owners wanted to lower the share of income because 22 of the 30 teams had suffered losses, and the players' union did not want to back down on this issue. A strike was called in 1995 in

the NBA. A deal was arranged only 74 days later, and the regular season was played . In 1998 a short season of 52 games was played (a regular-season has 82 games) (SporX, 2011).

Another lockout occurred in the American Football League (NFL). The NFL administration declared a lockout to change the work conditions of the referees in the league. NFL referees work part-time and earn up to \$8,000 per game. In every case, NFL referees need other sources of income to live. With the new arrangement, the NFL administration was taking full advantage of referees' extra revenue opportunities while doing them full-time employees, as well as disrupting their social security and especially their retirement plans. The NFL would spend about \$50 million a year if it accepted the conditions stipulated by the referees' union while their annual income was close to 10 billion dollars. This figure is expected to reach 20 billion dollars in the next decade. The difference between the conditions imposed by the NFL administration and the amount the referees wanted was about nine million dollars a year (Irak, 2012).

To give an example from football, in 2014, Danish football was facing a lockout threat after a dispute between the players' association and the league. The Danish professional footballers' Association, Spillerforeningen, and the Danish Football League, Divisionsforeningen, had a dispute regarding the new collective agreement. While a lockout could threaten the start of the top season in Denmark, some clubs were already affecting the first round of the UEFA Europa League qualifiers (FourFourTwo, 2014). In July 2014, the players' association and the Divisionsforeningen agreed on a new collective bargaining agreement on the matters that the players wanted: better conditions, work hours and more protection for minor league players (Eurosport, 2014).

One of the most frequent criticisms of Turkey by the International Labor Organization is for hampering to strike and lockout. According to Article 33 of the Collective Labor Convention Strikes and Lockouts Law No. 2822, "The Council of Ministers is able to postpone the strike or lockout for general health or national security for a period of sixty days by decree, and if the dispute has not been resolved or referred to a special judge by the end of the postponement, the resolution of the dispute will be done by the Supreme Arbitration Board." This regulation has been criticized by the ILO for resulting in an absolute prohibition of strikes and being open to various arbitrary and subjective influences. On the other hand, since the deferral of a right is a matter of fact, that right must remain assertable. Law No. 2822 has been repealed and Law No. 6356 is currently in place. According to Law No. 6356, if the parties fail to agree on strikes and lockouts to be postponed for reasons such as community health or safety, the dispute shall be resolved by the Supreme Arbitration

Board after the application of one of the parties within six workdays. Otherwise, the authority of the workers' union falls. This rule has the effect of preventing the right to strike and lockout again. The verdict turns the authority of strike postponement to a strike ban resulting in compulsory arbitration (Sarica, 2013: 15-16).

CONCLUSION

Nowadays, football has become an industry that has been driven by huge masses of fans. It is not just a sport but a socio-economic phenomenon. Football is a very popular sport in Turkey and around the world. The first football industry employees that come to mind are football players, and their place in labor law, social security law, trade unions, and collective bargaining law is now on the agenda.

The reason why we do not see collective bargaining, strikes and lockouts in Turkey's football industry are problems of football players related to work conditions, wage issues, unpaid insurance premiums by football clubs, players not having pension rights because premiums are not paid, unfair income distribution between the leagues, which is reflected in the transfer fees of minor league players, but the main reason is the lack of class and union awareness in Turkish football. Footballers may need to know the benefits of being a member of a trade union. One of the reasons that the unions in Turkish football have low levels of the organization may be believed to be due to football players attitudes towards unions. Footballers may need a trade union to resolve the problems that arise from work conditions under a single roof.

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