



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2015/A/4345 Trabzonspor Sportif Yatirim A.S. v. UEFA
CAS 2015/A/4347 Fenerbahçe SK v. Trabzonspor A.S. and UEFA

ARBITRAL AWARD

delivered by the

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Chairman: Mr Jean-Philippe **Rochat**, Attorney-at-law, Lausanne, Switzerland

Arbitrators: Mr Philippe **Sands** Q.C., Barrister, London, United Kingdom
Dr Jan **Räker**, Attorney-at-law, Stuttgart, Germany

Ad hoc Clerk: Ms Christina **Rouvinez**, Attorney-at-law, Lausanne, Switzerland

in the arbitrations between

TRABZONSPOR SPORTIF YATIRIM VE FUTBOL İŞLETMECİLİĞİ A.Ş., Trabzon, Turkey
Represented by Mr Sébastien Besson and Mr Antonio Rigozzi, Attorneys-at-law, Geneva,
Switzerland

-Trabzonspor-

UNION OF EUROPEAN FOOTBALL ASSOCIATIONS, Nyon, Switzerland
Represented by Mr Emilio García Silvero, Head of Disciplinary and Integrity

-UEFA-

and

FENERBAHÇE SPOR KÜLÜBÜ, Istanbul, Turkey
Represented by Mr Christian Keidel, Attorney-at-law, Munich, Germany

-Fenerbahçe S.K.-

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I. PARTIES

1. Trabzonspor Sportif Yatirim ve Futbol İşletmeciliği A.Ş. (hereinafter, “Trabzonspor”) is a professional football club with its registered headquarters in Istanbul, Turkey.
2. Fenerbahçe Spor Kulübü (hereinafter, “Fenerbahçe S.K.”) is a sports club headquartered in Istanbul whose purpose is, *inter alia*, to administer the Turkish professional football club Fenerbahçe Futbol A.Ş., a joint-stock company of which Fenerbahçe S.K. owns 63% of the stock. Fenerbahçe Futbol A. Ş. is a member of the Turkish Football Federation (hereinafter, “TFF”), which is in turn affiliated to the Union of European Football Associations (hereinafter, “UEFA”) and the Fédération Internationale de Football Association (hereinafter, “FIFA”). Unlike Fenerbahçe Futbol A. Ş., Fenerbahçe S.K. is not a member of the TFF.
3. UEFA is an association under Swiss law with its registered headquarters in Nyon, Switzerland. UEFA is the governing body of European football. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

II. FACTUAL BACKGROUND

4. This section of this final award sets out a brief summary of the main relevant facts, as established on the basis of the Parties’ written and oral submissions and of the evidence examined in the course of the proceedings. Additional facts ascertained by the Panel, where material, are set out within other sections of this final award. Whereas the Panel has considered all factual allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this final award only to facts, submissions and evidence considered relevant to adjudicate the present matter.

A. Background facts

5. This arbitration arises in connection with the 2010/2011 Turkish Süper Lig Championship (hereinafter, “the 2010/2011 Turkish Süper Lig”). The matches played during the second half of the championship and outcome of the 2010/2011 Turkish Süper Lig has opposed and continues to oppose acrimoniously various Turkish football clubs, and in particular the professional football clubs of Fenerbahçe and Trabzonspor, in the context of several cross-complaints filed before the UEFA.
6. In the context of the aforementioned complaints, it was indeed later alleged that the outcome of certain matches played during the 2010/2011 Turkish Süper Lig had been influenced by the payment of bribes or incentive bonuses by certain individuals related to Fenerbahçe and Trabzonspor.
7. In the context of this arbitration, Fenerbahçe S.K. alleges in essence that Trabzonspor was involved in fixing and/or attempting to fix the three following matches which took place during the last days of the 2010/2011 Turkish Süper Lig, when both teams were involved in a tight race in winning the championship:
 - the Karabükspor vs. Fenerbahçe match played on 8 May 2011 in Karabük;

- the Fenerbahçe vs. Ankaragücü match played on 15 May 2011 in Istanbul;
 - the Sivasspor vs. Fenerbahçe match played on 22 May 2011 in Sivas;
8. It is, in essence, Fenerbahçe S.K.'s position in the present dispute that it was in Trabzonspor's interest for Fenerbahçe S.K. to lose points in these matches so that Trabzonspor could win the 2010/2011 Turkish Süper Lig.
 9. On 22 May 2011, Fenerbahçe won the 2010/2011 Turkish Süper Lig and qualified automatically for the group stage of the UEFA Champions League for the season 2011/2012.
 10. In the summer of 2011, Turkish police began an investigation into 19 football matches suspected of having been fixed. By 10 July 2011, 61 individuals had been arrested, including club managers and Turkish national players, as having been involved in activities aimed at influencing the outcome of various domestic matches.
 11. In particular, various officials of Fenerbahçe as well as the President of Trabzonspor, Mr Sadir Sener, and the security officer of the club, Mr Zeki Mazlum, were involved in investigations conducted by Turkish prosecutors which ultimately gave rise to a criminal trial before the 16th Criminal Court in Istanbul.
 12. On 2 July 2012 the 16th Criminal Court of Istanbul decided that match-fixing and incentive bonus activity by officials of Fenerbahçe had taken place during 13 matches of the season 2010/2011. Of the 93 persons that were tried, 48 were convicted. Among those convicted were several officials of Fenerbahçe. In turn, Mr Sadri Sener and Mr Zeki Mazlum of Trabzonspor were acquitted of all charges.
 13. With respect to two of the three matches at stake in this arbitration and the acquittal of Mr Sener and Mr Mazlum, the 2 July 2012 Decision of the 16th Criminal Court of Istanbul reads as follows in its relevant parts:

“67- SADRI ŞENER:

Despite the fact that a criminal case has been filed against the accused, SADRI ŞENER, alleging that had been involved in match fixing in order to influence the outright results of Fenerbahçe - Ankaragücü football match played on 15.05.2011 and Sivasspor – Fenerbahçe football match played on 22.05.2011 in the Turkish Professional Super League through match fixing and incentive bonus, he shall BE ACQUITTED because any final and persuasive proofs above suspicion which are sufficient for punishing him for the crime charged have not been found and in this context, the accused has not been proven guilty of the crime charged pursuant to the article 223/2-e of the Code of Criminal Procedure.”

“93- ZEKİ MAZLUM:

Despite the fact that a criminal case has been filed against the accused, ZEKİ MAZLUM, alleging that he had committed the crime of incentive bonus in order to influence the outright result of Sivasspor-Fenerbahçe football match played on

22.05.2011 in the Turkish Professional Super League, he shall BE ACQUITTED because any final and persuasive proofs above suspicion which are sufficient for punishing him for the crime charged have not been found and in this context, the accused has not been proven guilty of the crime charged pursuant to the article 223/2-e of the Code of Criminal Procedure.”

14. On 6 May 2014, Trabzonspor signed and submitted the 2014/2015 Admission Criteria Form for the UEFA Europa League Club Competitions without disclosing any information in relation to the above-mentioned proceedings.

B. The Decision of the Control and Disciplinary Body of UEFA

15. On 18 June 2014, Fenerbahçe S.K. filed a formal complaint under before the UEFA Control, Ethics and Disciplinary Body (hereinafter, “UEFA CEDB) requesting UEFA to declare Trabzonspor ineligible to participate in UEFA competitions, in particular in the 2014/2015 UEFA Europa League, and to impose disciplinary sanctions against Trabzonspor.
16. On 14 July 2014, Trabzonspor, submitted its response to Fenerbahçe S.K.’s Complaint, requesting the UEFA CEDB to dismiss entirely all requests.
17. On 17 July 2014, the UEFA CEDB appointed Jean-Samuel Leuba, a UEFA Ethics and Disciplinary Inspector, to conduct an investigation with regards to the facts asserted in Fenerbahçe S.K.’s complaint.
18. On 5 November 2014, the UEFA Ethics and Disciplinary Inspector submitted a report (hereinafter, the “UEFA EDI Report”) whereby he advised the UEFA CEDB to rule as follows:

“I. 1. The UEFA disciplinary bodies have no jurisdiction to impose disciplinary measures against Trabzonspor AS. for offences committed in the context of the 2010/2011 Turkish Super League. The accusations submitted by Fenerbahçe SK on 18 June 2014 are therefore dismissed.

In the alternative:

2. The accusations submitted by Fenerbahçe SK on 18 June 2014 are dismissed due to a lack of reliable evidence to support the complaints relating to three Turkish Super League matches played during the 2010/11 season.

II. Trabzonspor AS is found guilty of violating Articles 11 and 12 of the 2013 UEFA Disciplinary Regulations and is therefore fined EUR 10,000.”

19. On 11 December 2014, the UEFA CEDB issued its decision (hereinafter, the “UEFA CEDB Decision”) with the following operative part :

“ 1. To fine Trabzonspor A.Ş. EUR 10’000 for failing to complete properly the Admission Criteria Form for the UEFA Club Competitions 2014/2015.

2. All other motions or prayers for relief submitted by Fenerbahçe SK in its complaint lodged on 18 June 2014 are dismissed.”

20. By telefax dated 15 December 2014 addressed to Fenerbahçe S.K. and Trabzonspor, UEFA communicated the foregoing operative part of the UEFA CEDB Decision to both Parties.
21. On 17 December 2014, Trabzonspor requested that UEFA CEDB communicate the grounds of the UEFA CEDB Decision.
22. The grounds of the UEFA CEDB Decision were notified to Trabzonspor on 27 March 2015.
23. UEFA submits that, on 17 April 2015, upon request of Fenerbahçe S.K., UEFA notified to Fenerbahçe S.K. a copy of the grounds of the UEFA CEDB Decision on the basis of Article 45 of the UEFA Disciplinary Regulations.
24. Regarding Fenerbahçe S.K.’s allegation of match-fixing during the 2010/2011 Turkish Süper Lig, the UEFA CEDB Decision found the following :

“

16. *It shall be recalled that these proceedings are civil in nature and, thus, in accordance with a long lasting CAS jurisprudence, the standard of proof is the comfortable satisfaction of the Panel, if not a lower one like the “balance of probabilities” (see amongst others, CAS 2010/A/226, CAS 2008/A/1370 & 1376, CAS 2008/A/1583 and 1584, CAS 2007/4/1411 and CAS 2004/4/602).*
17. *Nevertheless and after having carefully analysed all documents of the present case file, this UEFA disciplinary body complies with the assertions handled over by the UEFA Ethics and Disciplinary Inspector in his report. Hence, the Control, Ethics and Disciplinary Body considers concerning the match Fenerbahçe SK v MKE Ankaragücü, played on 15 May 2011, that it is not possible to conclude, under the standard of proof above-mentioned, that Trabzonspor AŞ representatives or officials attempted to pay bonuses to MKE Ankaragücü or its players. With regard to the match Sivasspor v Fenerbahçe SK, played on 22 May 2011, and under the same standard of proof, the examination of the evidence and explanations submitted by Trabzonspor AŞ creates sufficient doubt to rule out the possibility of Trabzonspor AŞ or its representatives being found guilty. Finally, concerning the match Karabükspor v Fenerbahçe SK, played on 8 May 2011, the Control, Ethics and Disciplinary considers that the testimony is very indirect to lead to punish Trabzonspor AS.*
18. *Bearing the above in mind, the Control, Ethics and Disciplinary Body deems that Fenerbahçe A.S. has not sufficiently sustained its complaint in order to allow the Panel to decide on its comfortable satisfaction that indeed the fact occurred as the complainant tries to portray.*
19. *Consequently, the Control, Ethics and Disciplinary Body deems under its comfortable satisfaction that, in light of the current circumstances and*

documents included in the case file, Trabzonspor AS is not to be punished for having incurred in match fixing activities.”

25. Regarding its decision to impose a disciplinary sanction on Trabzonspor for failing to properly complete the Admission Criteria Form for the UEFA Club Competitions 2014/2015, the UEFA CEDB held the following:

“

23 *This UEFA disciplinary body notes that even if the match fixing claim forwarded by Fenerbahçe SK cannot be definitively followed by a comfortable satisfaction standard of proof, it is uncontested that Trabzonspor AS did not disclose by means of the admission form of the UEFA Europa League season 2014/2015 the information about those criminal procedures and the disciplinary procedures conducted by the Turkish Football Federation authorities in relation to 2010/11 Turkish Super League matches.*

24. *It shall be recalled that clubs willing to participate at UEFA competitions must complete the so called “admission form” which contains a clause in which the club confirms that it has not been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level since 27 April 2007.*

[...]

26. *However, the Control, Ethics and Disciplinary Body recalls that, since the season 2014/2015, the above admission form contains a last paragraph stating that “the undersigned acknowledge that failure to complete this form properly could lead to disciplinary proceedings before the competent UEFA bodies”. Thus, the Club was well aware of its duty to inform about the above criminal and disciplinary proceedings mentioned above, as well as that disciplinary proceedings may be opened in this regard.*

27. *Furthermore, the Control, Ethics and Disciplinary Body deems that even if Trabzonspor AS was admitted by UEFA to play in previous seasons of the UEFA competitions it does not follow that the latter is exempted of including this information in the admission form, which for the fight of match fixing activities appears to be a relevant tool.”*

C. The Decision of the Appeals Body of UEFA

26. On 30 March 2015, Trabzonspor submitted its declaration of intention to appeal the UEFA CEDB Decision before the UEFA Appeals Body and submitted its grounds for appeal on 2 April 2015. In its appeal Trabzonspor submitted, in essence, that the UEFA CEDB Decision should be partially set aside in relation to the disciplinary sanction it imposed on Trabzonspor for having incorrectly completed the Admission Criteria Form for the UEFA Club Competitions 2014/2015.
27. On 20 April 2015, Fenerbahçe S.K. likewise filed a declaration of intention to appeal the UEFA CEDB Decision before the UEFA Appeals Body and submitted its grounds for appeal on 27 April 2015. In its appeal Fenerbahçe submitted, in essence, that the

UEFA CEDB Decision should be partially set aside in relation to its dismissal of Fenerbahçe S.K.'s complaint of alleged match-fixing by Trabzonspor.

28. Both appeals were joined into a same consolidated proceeding. Each of Trabzonspor, Fenerbahçe S.K. and the UEFA EDI were invited to file replies to the respective appeals.
29. In its reply dated 4 May 2015, the UEFA EDI submitted that the UEFA CEDB Decision should be upheld in full.
30. On 17 September 2015, the UEFA Appeals Body issued its decision (hereinafter, the "Appealed Decision"), with the following operative part, which reads as follows in its relevant sections:

"
1. The appeal lodged by Trabzonspor A.S. against the UEFA Control, Ethics and Disciplinary Body's decision of 11 December 2014 is dismissed.

2. The appeal lodged by Fenerbahçe SK against the UEFA Control, Ethics and Disciplinary Body's decision of 11 December 2014 is dismissed.

3. All other motions or prayers for relief are dismissed.

[...]"

31. By telefax dated 28 September 2015 addressed to Trabzonspor, Fenerbahçe S.K. and the UEFA EDI, UEFA notified the foregoing operative part of the Appealed Decision.
32. On the same day, Trabzonspor requested that the UEFA Appeals Body communicate the grounds of the Appealed Decision.
33. The grounds of the Appealed Decision were notified on 8 December 2015 to Trabzonspor, Fenerbahçe S.K. and the UEFA EDI.
34. The UEFA Appeals Body dismissed Fenerbahçe S.K.'s appeal on the grounds, in essence, that it lacked the necessary standing to appeal. The Appealed Decision reads as follows in its relevant part:

"22. *Under Article 53 (1) DR, the parties directly affected by a decision and the ethics and disciplinary inspector all have the right to appeal.*

[...]"

26. *If the Appeals Body applies the above-described considerations over the specific facts of this case, we must conclude that Fenerhace is not a party "directly affected" by the Decision in the sense of Article 53 (1) DR. First, it becomes obvious that Fenerbahçe is not the direct addressee of the Decision. Second, in no way Fenerbahçe is "directly affected" by the Decision which, for evident reasons, has a disciplinary impact exclusively on Trabzonspor. By no means, the potential rights of Fenerhabce are affected by the Decision.*

27. *In the eyes of the Appeals Body, the mere fact that Fenerbahçe lodges a complaint in accordance with Article 48 DR does not transform the complainant in a party directly affected by a potential decision of the relevant UEFA disciplinary body. By the same token, the simple fact the complainant is dissatisfied with the outcome of the Decision does not change its legal status before the UEFA Appeals Body in accordance with Article 523 (1) DR. Within UEFA disciplinary proceedings, this status derives from the said article and looking at the CAS Jurisprudence and the facts of this procedure the UEFA Appeals Body cannot grant such status to Fenerbahçe.*
28. *Due to Fenerbahçe's lack of standing to appeal, its appeal in the current proceedings must be dismissed."*
35. The UEFA Appeals Body likewise dismissed Trabzonspor's appeal on the following grounds:
- "38. *In the current proceeding, it is notorious that the President of Trabzonspor, Mr. Sadir Sener, and the security officer of the club, Mr. Zeki Mazlum, were both involved in investigations conducted by the Turkish prosecutors deriving in a criminal procedure before the 16th Criminal Court of Istanbul. In the course of the mentioned criminal procedure, both individuals were accused of being involved in activities aimed at influencing the outcome of different domestic matches. Despite the accusations, the 16th Criminal Court of Istanbul finally acquitted the individuals of Trabzonspor of all criminal charges.*
39. *In the eyes of the Appeals Body, the above-mentioned facts clearly show that, even if the individuals of the club were finally acquitted by the 16th Criminal Court of Istanbul for match-fixing offences at domestic level, Trabzonspor, by means of various individuals (notably, its President), participated at national level in some way or the other in serious criminal procedures based on alleged match fixing activities. Regardless of the outcome of the said criminal proceedings in Turkey, the UEFA Appeals body considers that this decidedly relevant information falls under the club's obligation foreseen in Article 2.07 UEL Regulations in combination with Article 11 and 12 DR.*
- [...]
47. *The Appeals Body considers that, at least, the combination of Article 12 DR with the renovated Admission Form for UEFA Clubs Competitions 14/15 (in which a specific clause was inserted following the CAS suggestions), offer enough legal basis to impose disciplinary measures on Trabzonspor for failing to complete properly the Admission Form for UEFA Club Competitions 14/15.*
- [...]
51. *As a final remark, the Appeals Body considers that the offence committed by Trabzonspor deserves a higher financial sanction as the one imposed by the UEFA first-instance disciplinary body. With respect to the CEDB, if the system admits that failing to report such important information can be solved with a small fine, other clubs might be tempted to follow Trabzonspor's approach. By*

doing so, potential clubs could avoid UEFA's disciplinary proceedings under the context described at paragraph 43 of this decision. However, for obvious reasons, the Appeals Body review cannot be beyond the sanction imposed by the CEBD. This would constitute a ruling of ultra petita.

52. *On the basis of the above, the Appeals Body has no option but to uphold the initial decision and reject the appeal."*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 18 December 2015, in accordance with Article R48 of the Code for Sports-related Arbitration (hereinafter, the "CAS Code") Trabzonspor filed before the CAS Court office a statement of appeal and appeal brief directed against UEFA (hereinafter, "Trabzonspor's Appeal Brief") in relation to the Appealed decision. The prayers for relief stated therein read as follows:

"111. In light of the above developments, the Appellant respectfully requests the Panel to issue an award:

- I. setting aside the UEFA Appeals Body decision of 8 December 2015 insofar as it sanctions Trabzonspor;*
- II. declaring that Trabzonspor did not fail to properly complete the Admission Form for the UEFA Club Competitions 2014-15;*
- III. ordering UEFA to pay Trabzonspor an amount of CHF 44,133.50 for legal costs related to the UEFA proceedings and EUR 3,000 for the costs related to the UEFA proceedings;*
- IV. ordering UEFA to pay all the arbitration costs including the non-reimbursable CAS filing fee of CHF 1,000; and*
- V. ordering UEFA to pay a substantial contribution towards the Appellant's arbitration related costs."*

37. In its Appeal Brief, Trabzonspor requested that the case be submitted to a sole arbitrator.

38. The case was registered under the reference CAS 2015/A/4345.

39. On 18 December 2015, Fenerbahçe S.K. likewise filed before the CAS Court Office a Statement of Appeal (hereinafter, "Fenerbahçe S.K.'s Statement of Appeal") directed against Trabzonspor and UEFA with respect to the Appealed Decision. The prayers for relief stated therein read as follows:

- "I. to annul the UEFA Appeals Body decision dated 17 September 2015;*
- II. to accept Fenerbahçe S.K.'s complaint filed with UEFA on 18 June 2014; and consequently, to*

1. declare Trabzonspor A.S. ineligible to participate in the next UEFA competition it qualifies for and

2. impose sanctions on Trabzonspor A.S. as it deems appropriate in accordance with the applicable regulations;

III. to order Trabzonspor A.S. and UEFA to bear, jointly and severally, the entire costs of these arbitration proceedings as well as the costs of the proceedings before the UEFA.”

40. In its Statement of Appeal, Fenerbahçe S.K. nominated Mr Jean-Philippe Rochat, attorney-at-law in Lausanne, Switzerland, as an arbitrator.
41. The case was registered under the reference CAS 2015/A/4347.
42. Pursuant to Article S20 of the CAS Code, the aforementioned appeals were assigned to the Appeals Arbitration Division of the CAS.
43. On 21 December 2015, in accordance with Article R52 CAS Code, the CAS Court Office, *inter alia*, invited the Parties to inform on whether they would agree to consolidate the proceedings CAS 2015/A/4345 and CAS 2015/A/4347. Noting Fenerbahçe S.K.’s appointment of Mr Jean-Philippe Rochat as an arbitrator in the CAS 2015/A/4347 proceedings, the CAS Court Office invited Trabzonspor and UEFA to jointly nominate an arbitrator in accordance with Article R53 CAS Code.
44. In sum, whereas Fenerbahçe S.K. and Trabzonspor informed that they did not object to the consolidation of proceedings, UEFA objected to such consolidation. In its letter dated 23 December 2015, UEFA also requested that the Parties’ dispute be referred to a Panel of three arbitrators.
45. On 29 December 2015, Trabzonspor informed the CAS Court Office that it wished to appoint an arbitrator, no matter whether the proceedings would be consolidated or not, and appointed Mr Philippe Sands Q.C., Barrister in London, United Kingdom, as its arbitrator.
46. On 4 January 2016, in accordance with Article R52 CAS Code, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to consolidate the proceedings and to appoint a three-member Panel.
47. On 14 January 2016, UEFA informed the CAS Court Office that it wished to appoint an arbitrator and appointed Mr Jan Räker, attorney-at-law in Stuttgart, Germany. UEFA further suggested that Mr Jean-Philippe Rochat be appointed as President of the Panel.
48. On the same day, the CAS Court Office invited Fenerbahçe S.K. and Trabzonspor to state whether they would agree to Mr Jean-Philippe Rochat’s appointment as President of the Panel. Both parties approved such appointment.
49. On 15 January 2016, in accordance with Article R51 CAS Code, Fenerbahçe S.K. submitted its appeal brief (hereinafter, “Fenerbahçe S.K.’s Appeal Brief”).

50. On 2 March 2016, in accordance with Article R55 CAS Code, UEFA filed its answer to Trabzonspor's Appeal Brief (hereinafter, "UEFA's Answer"), with the following prayers for relief:

"122. UEFA respectfully requests CAS to issue an Award:

1. Declaring the Appeal of Trabzonspor without merits and to dismiss all other prayers for relief of Trabzonspor.

2. In any event, ordering Trabzonspor to bear all costs of these arbitration proceedings and to award UEFA with a contribution to the legal fees incurred at an amount of EUR 50'000."

51. On 2 March 2016, in accordance with Article R55 CAS Code, Trabzonspor filed its answer to Fenerbahçe's Appeal Brief (hereinafter, "Trabzonspor's Answer to Fenerbahçe's Appeal Brief", with the following prayers for relief:

"261. Based on the foregoing developments, Trabzonspor respectfully requests the CAS to issue an award:

i. Declaring the Appeal inadmissible;

ii. In the alternative to i., dismissing the Appeal on the merits;

iii. Rejecting all prayers for relief sought by Fenerbahçe;

iv. Confirming the Decision under Appeal insofar as it dismissed Fenerbahçe's appeal for lack of standing to appeal;

v. Ordering Fenerbahçe to reimburse Trabzonspor's legal costs related to the UEFA proceedings of CHF 44,133.50 and Trabzonspor's costs related to the UEFA proceedings of EUR 3,000;

vi. Ordering Fenerbahçe to pay a significant contribution towards the legal fees and other expenses incurred by Trabzonspor in connection with these proceedings."

52. In its Answer to Fenerbahçe's Appeal Brief, Trabzonspor submitted a motion to bifurcate the proceedings in the following terms (hereinafter, "Trabzonspor's Motion to Bifurcate"):

"246. Trabzonspor respectfully requests that the present proceedings be bifurcated so as to decide on jurisdiction [...], standing [...] and the admissibility of [Fenerbahçe's appeal] [...]"

53. On the same day, in accordance with Article R55 CAS Code, UEFA also filed its answer to Fenerbahçe's Appeal Brief, with the following prayers for relief:

"114. UEFA respectfully requests CAS to issue an Award:

1. *Declaring the Appeal of Fenerbahçe inadmissible and confirm the Appealed Decision.*
 2. *In the alternative, rejecting the Appeal of Fenerbahçe and confirm the Appealed decision.*
 3. *In any event, dismissing all the prayers for relief of Fenerbahçe, and confirm the Appealed Decision.*
 4. *In any event, ordering Fenerbahçe to bear all the costs of these arbitration proceedings and to award UEFA with a contribution to the legal fees incurred at an amount of EUR 50'000."*
54. On 30 May 2016, the CAS Court Office invited the Parties to attend the hearing to be held on 28 September 2016 and invited the Parties to sign and return the Order of Procedure which all Parties ultimately did.
55. On 28 September 2016, a hearing was held at the CAS Court Office in Lausanne. The Panel was assisted by Ms Christina Rouvinez (*ad hoc* clerk) and by Mr José Luis Andrade (CAS counsel).
56. The hearing was attended:
- a) for Trabzonspor: by representatives of Trabzonspor assisted by their Swiss counsel, Prof. Sébastien Besson, Prof. Antonio Rigozzi and Ms Brianna Quinn.
 - b) for Fenerbahçe S.K.: by representatives of Fenerbahçe assisted by their German counsel, Mr Christian Keidel and Mr Alexander Engelhard.
 - c) for UEFA: by Mr Emilio García Silvero and Mr Carlos Schneider of UEFA.
57. At the beginning of the hearing, the Parties confirmed that they had no objection as to the Panel's composition and to the conduct of the proceedings up the hearing.
58. The Parties did not file any witness statements in support of their respective briefs nor did they request that any witness be called for oral testimony at the hearing. Consequently, no witnesses were heard by the Panel during the hearing.
59. Notwithstanding Trabzonspor's Motion to Bifurcate, the Parties were granted the opportunity to plead all arguments, including on the merits, they wished to put forth in this arbitration.
60. After the Parties' final pleadings, the President closed the hearing and announced that an arbitral award would be rendered. Subsequently, all Parties expressly confirmed that their right to be heard and their right to equal treatment had been fully respected in this arbitration.

IV. SUMMARY OF THE PARTIES' POSITIONS

61. The following overview of the Parties' positions is in summary form and does not purport to include every argument asserted by the Parties. The Parties' detailed positions will be analysed, where necessary, in further detail in the following sections of this award. The Panel has carefully considered all arguments and evidence put forth, even if there is no specific reference to those submissions in the following section or in other parts of this award.

A. Matter CAS 2015/A/4347

62. Fenerbahçe S.K.'s position in the matter CAS 2015/A/4347 may, in essence, be summarized as follows:

- CAS jurisdiction: Fenerbahçe S.K. submits that CAS has jurisdiction to adjudicate its appeal on the basis of Articles 62 and 63 of the UEFA Statutes.
- Standing to appeal: It is recalled, in relation to the allegations made by Fenerbahçe S.K. against Trabzonspor, that the UEFA CEDB found in first instance that Fenerbahçe S.K. had not sufficiently sustained its complaint, and therefore not met the required threshold of proving that Trabzonspor had indeed influenced the outcome of the incriminated matches. The Appealed Decision then dismissed Fenerbahçe S.K.'s appeal against the UEFA CEDB Decision on the grounds, in essence, that it lacked the necessary standing to appeal as it was not "*directly affected*" by the UEFA CEDB Decision as required by Article 62(2) of the UEFA Statutes. Fenerbahçe S.K. alleges that it has standing to appeal the Appealed Decision as it is "*directly affected*" by the Appealed Decision as required by Article 62(2) of the UEFA Statutes.
- On the merits, Fenerbahçe S.K. stresses that while it has been itself severely punished by UEFA for its involvement in the 2011 Turkish match fixing scandal – a sanction which was confirmed subsequently by a decision passed by CAS in the matter CAS 2013/A/3256 – Trabzonspor, until today, has managed to avoid any such harsh punishment and has been able to compete in multiple UEFA competitions since the events occurred; Fenerbahçe S.K. takes issue with this, since it is its position that Trabzonspor attempted to influence the outcome of various matches during the 2010/2011 Turkish Süper Lig.

Fenerbahçe S.K. asserts that Trabzonspor violated UEFA regulations by attempting to influence, in its favour, the outcome of three matches played during the 2010/2011 Turkish Süper Lig, namely the Fenerbahçe vs. Ankaragücü match played on 15 May 2011 in Istanbul, the Sivasspor vs. Fenerbahçe match played on 22 May 2011 in Sivas and the Karabükspor vs. Fenerbahçe match played on 8 May 2011 in Karabük. To uphold its allegations, Fenerbahçe S.K. relies in this arbitration exclusively on the documentary evidence filed in support of its Appeal Brief. Such evidence (and notably the written transcripts of wiretapped conversations of various Trabzonspor officials) was in essence obtained in the context of the criminal proceedings which were conducted as of 2011 in Turkey; Fenerbahçe S.K. likewise relies on the findings

of the Turkish prosecutor in charge of aforementioned investigations and of the 16th Court of Felony.

- As the result of the above, it is Fenerbahçe S.K.'s position that Trabzonspor's involvement in match-fixing activities must be sanctioned by i) an administrative measure, that is a one year exclusion from UEFA competitions according to Fenerbahçe S.K., in application of Article 2.08 of the UEFA Europa League Regulations and Article 4.02 of the UEFA Champions League Regulations; ii) a disciplinary sanction (that is a further exclusion from UEFA competitions) pronounced on the basis of Article 2.09 of the UEFA Europa League Regulation and Article 4.03 of the UEFA Champions League Regulations; and iii) a fine.
- Fine imposed on Trabzonspor by the Appealed Decision: as part of its appeal, Fenerbahçe S.K. also submits that the fine imposed on Trabzonspor by the UEFA CEDB must be increased. Fenerbahçe stresses that after the 2013/2014 season, Trabzonspor took the 4th position of the Turkish Süper Lig, thereby qualifying for the 2014/2015 UEFA Europa League. Fenerbahçe S.K. takes issue with the manner in which Trabzonspor completed the Admission Criteria Form for the 2014/2015 UEFA Club Competitions and submits that Trabzonspor should have disclosed its involvement in the allegedly fixed matches when completing the aforementioned Form. Fenerbahçe S.K. refers to the Appealed Decision to argue a fine of EUR 10'000 is insufficient to reflect the seriousness of Trabzonspor's misconduct.

63. Trabzonspor's position in the matter CAS 2015/A/4347 may, in essence, be summarized as follows:

- CAS jurisdiction: CAS's jurisdiction to adjudicate the appeal filed by Fenerbahçe S.K. against the Appealed Decision is contested by Trabzonspor. Trabzonspor submits that Fenerbahçe S.K. is not a member of the TFF (and therefore not an indirect member of UEFA) and that consequently its appeal must be dismissed for lack of jurisdiction.
- Standing to appeal: Trabzonspor emphasizes that Fenerbahçe S.K.'s appeal to the UEFA Appeals Body was dismissed for lack of standing to appeal and that the same conclusion must be reached in the present arbitration. It is Trabzonspor's position that Fenerbahçe S.K. is not "*directly affected*" by the Appealed Decision as is expressly required by Article 62(2) of the UEFA Statutes. Consequently, Trabzonspor seeks an award dismissing Fenerbahçe's appeal against the Appealed Decision for lack of standing.
- On the merits, Trabzonspor contests Fenerbahçe S.K.'s allegations of match-fixing and submits that all of its prayers for relief on the merits of the present dispute should be dismissed. Trabzonspor asserts that the burden of proof lies on Fenerbahçe S.K. to establish that the evidence presented in support of its allegations is sufficient. Trabzonspor emphasizes that, to date, all evidence relied upon by Fenerbahçe S.K. has been considered as insufficient by the Turkish disciplinary and criminal authorities and by UEFA. Trabzonspor submits in essence that no new documentary evidence was filed by Fenerbahçe

S.K. in the context of this arbitration, that Fenerbahçe S.K. did not call any witnesses to be heard by the Panel, and that its speculative interpretations of limited extracts of a few wiretaps is insufficient to sustain its allegations of match-fixing.

Concerning the sanctions that Fenerbahçe S.K.'s submits should be imposed on Trabzonspor, Trabzonspor underlines, in essence that there is no legal basis for any of the three types of sanctions envisaged by Fenerbahçe.

- Fine imposed on Trabzonspor in the Appealed Decision: Trabzonspor submits that Fenerbahçe S.K.'s prayer for relief in relation to the fine Trabzonspor was imposed by the Appealed Decision should likewise be dismissed and refers in full to the arguments it developed on this issue in the context of its brief filed in the matter CAS/2015/4345. In addition, Trabzonspor stresses that CAS does not have the power to increase the fine imposed on Trabzonspor and refers to CAS case law which confirms its view that CAS cannot interfere with a sanction that has been imposed at the UEFA CEDB level and not appealed by UEFA before the UEFA Appeals Body; accordingly, to the extent that Fenerbahçe's appeal is inadmissible for lack of standing, the fact that UEFA did not file an independent appeal means that any increase of the sanction would be *ultra petita* within the meaning of Article 190(2)(c) of the Swiss Private International Law Act (hereinafter, "PILA").

64. UEFA's position in the matter CAS 2015/A/4347 may, in essence, be summarized as follows:

- CAS jurisdiction: CAS' jurisdiction to adjudicate the appeal filed by Fenerbahçe S.K. is not disputed by UEFA.
- Standing to appeal: UEFA submits that Fenerbahçe S.K. is not "*directly affected*" by the Appealed Decision as required by Article 62(2) of the UEFA Statutes. Consequently, UEFA submits that Fenerbahçe S.K.'s appeal is not admissible and that the Appealed Decision must be confirmed.
- Merits: UEFA stresses the importance of the efforts it is undertaking to combat match-fixing and recalls that several cases led it to retain the existence of such practices and to sanction certain football clubs. UEFA submits that it may only declare a club inadmissible to play if on the basis of all evidence available, it reaches the comfortable satisfaction that a club has indeed been involved in illicit activities. In the present case, UEFA recalls that the UEFA disciplinary bodies have reviewed all information available in relation to Trabzonspor and decided, after thorough investigation, that the evidence did not meet the required threshold to declare Trabzonspor ineligible to participate in UEFA competitions. UEFA submits that according to CAS case law, CAS must exercise its power of review with restraint when reassessing the discretionary decision taken by an association. UEFA submits that CAS should only interfere in the exercise of this discretion of the UEFA if it comes to the conclusion that the Appealed Decision should be considered as grossly and evidently disproportionate.

Concerning the administrative measures and disciplinary sanctions that Fenerbahçe S.K. requires to be imposed on Trabzonspor, UEFA recalls that Fenerbahçe S.K. has no standing in these proceedings and that CAS case law makes it clear that a non-affected party has no legal interest worthy of protection to require that a sanction be imposed on a third party or that such sanction be increased.

In view of the foregoing, UEFA requests CAS to declare Fenerbahçe S.K. appeal inadmissible and to confirm the Appealed Decision in full.

B. Matter CAS 2015/A/4345

65. Trabzonspor's position in the matter CAS 2015/A/4345 may, in essence, be summarized as follows:

- CAS jurisdiction: Trabzonspor submits that CAS has jurisdiction to adjudicate its appeal on the basis of Articles 62 and 63 of the UEFA Statutes.
- Standing to appeal: Trabzonspor submits that it has standing to appeal the Appealed Decision as it is "*directly affected*" by the Appealed Decision as required by Article 62(2) of the UEFA Statutes, in light of the fact that i) the UEFA CEDB Decision imposed a fine on Trabzonspor for an alleged disciplinary offense and that ii) the UEFA Appeals Body dismissed Trabzonspor's appeal against the same.
- Merits: Trabzonspor's appeal seeks to set aside partially the Appealed Decision insofar as it sanctions Trabzonspor for failing to properly complete the 2014/2015 Admission Form for the UEFA Club Competitions. On the merits of its appeal, Trabzonspor asserts that it correctly filled out the 2014/2015 Admission Form for the UEFA Club Competitions: it is Trabzonspor's position that it had no information to report in relation to the Turkish match-fixing scandal since it was never "directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level" in the sense of Article 2.07(g) of the 2014/2015 UEFA Europa League Regulations. It is further Trabzonspor's position that the UEFA disciplinary instances erred in interpreting the aforementioned provision to mean that European clubs must also confirm that they have not been involved in proceedings involving match-fixing (particularly when such proceedings have absolved the relevant club). Likewise, Article 12 of the UEFA Disciplinary Regulations cannot be a proper legal basis for sanctioning Trabzonspor.

66. UEFA's position in the matter CAS 2015/A/4345 may, in essence, be summarized as follows:

- CAS jurisdiction: CAS's jurisdiction to adjudicate Trabzonspor's appeal is not disputed by UEFA.
- Standing to appeal: Trabzonspor's standing to appeal is not disputed by UEFA.

- Merits: UEFA argues that Trabzonspor's appeal must be rejected. UEFA submits, in essence, that Trabzonspor was under a duty to report in the 2014/2015 Admission Form for the UEFA Club Competitions that two of its most senior officials were involved in the criminal proceedings conducted in Turkey in relation to the match-fixing scandal. Accordingly, UEFA submits that the appeal of Trabzonspor must be rejected and the Appealed Decision confirmed.

V. ISSUES

67. The Panel finds that the present dispute falls to be adjudicated in two parts. Notwithstanding the consolidation of proceedings - which was justified in view of the fact that they opposed, in essence, the same Parties in relation to the same Appealed Decision - the cases CAS 2015/A/4347 and CAS 2015/A/4345 raise distinct issues and will - after the Panel's decision on its jurisdiction to adjudicate the present dispute - be examined by the Panel one after the other in the sections of this award that follow.
68. In view of the foregoing, the following issues lie before the Panel for adjudication:
- In relation to the matter CAS 2015/A/4347, the Panel must address the following issues:
 - Does CAS have jurisdiction to adjudicate Fenerbahçe S.K.'s appeal against the Appealed Decision?
 - Does Fenerbahçe S.K. have standing to appeal the Appealed Decision?
 - If the Panel concludes that it has jurisdiction to adjudicate the merits of Fenerbahçe S.K.'s appeal, is the evidence on record sufficient to sanction Trabzonspor in relation to the allegations of match-fixing put forth by Fenerbahçe S.K.? If so, is there sufficient legal basis for the administrative measures requested by Fenerbahçe S.K.?
 - May Fenerbahçe S.K. appeal the Appealed Decision with respect to the fine imposed on Trabzonspor in relation to way it filled out the 2014/2015 Admission Form for the UEFA Club Competitions?
 - In relation to the matter CAS 2015/A/4345, the Panel must address the following issues:
 - Should Trabzonspor have mentioned in the 2014/2015 Admission Form for the UEFA Club Competitions information relating to the proceedings opened in Turkey in relation to the 2010/2011 Turkish Süper Lig?
 - If so, which sanction should be pronounced against Trabzonspor?

VI. CAS JURISDICTION

A. Applicable rules

69. Articles R47 *et seq.* of the CAS Code set out the special provisions applicable to the Appeal Arbitration Procedure.

70. Pursuant to Article R47 of the CAS Code:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.

71. UEFA is the governing body of European football. It is an association of associations, *i.e.* the umbrella organisation for national football associations across Europe. According to Article 5 of the UEFA Statutes (Edition 2014), membership of UEFA is open to national football associations. Pursuant to Article 7bis of the UEFA Statutes member associations are under an obligation to comply, in particular, with the UEFA Statutes and must include such obligation in their respective statutes, as well as a provision obliging their respective members to comply with the UEFA Statutes. According to Article 59 of the UEFA Statutes, each member association must include in its statutes a provision whereby the association and its leagues, clubs, players and officials agree to recognise the jurisdiction of CAS as provided in the UEFA Statutes.

72. CAS’ jurisdiction as an appeal arbitration body in relation to decisions rendered by a UEFA organ derives from Article 62(1) of the UEFA Statutes which reads as follows:

“Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”.

B. CAS jurisdiction in relation to the matter CAS 2015/A/4347

73. CAS’ jurisdiction to adjudicate Fenerbahçe S.K.’s appeal against the Appealed Decision is disputed by Trabzonspor. Trabzonspor submits, in essence, that only a member of a national football association which is in turn member of UEFA may rely, as an indirect member of UEFA, on Article 62(1) of the UEFA Statutes. Trabzonspor observes that Fenerbahçe A.S. is the only member of TFF and that the agreement to arbitrate contained in the UEFA Statutes cannot be extended to Fenerbahçe A.S.’ mother company.

74. In turn, Fenerbahçe S.K. does not contest the fact that it was not a member of TFF at the time it initiated the proceedings before UEFA and that – to date – it is still not a member of TFF. During the hearing, questioned by the Panel on the issue of CAS’ jurisdiction, counsel for Fenerbahçe S.K. explained that Fenerbahçe S.K. was a member of TFF until 2011 but that as of that date Fenerbahçe A.S. had replaced it as a member of TFF. Fenerbahçe S.K. has put forth that its purpose is, *inter alia*, to administer Fenerbahçe Futbol A.Ş., a joint-stock company of which Fenerbahçe S.K. owns 63% of the stock. Fenerbahçe S.K. has likewise put forth that UEFA at no time took issue

with the fact that the complaint had been filed by Fenerbahçe S.K. and not by Fenerbahçe A.S. As a result of the foregoing, it is Fenerbahçe S.K.'s position that CAS nonetheless has jurisdiction to adjudicate its appeal. Fenerbahçe S.K. therefore relies on Article 62(1) UEFA Statutes to claim that CAS has jurisdiction to adjudicate its appeal.

75. UEFA has observed, in essence, that it had always treated Fenerbahçe S.K. as the football club, and thus as the correct legal entity in the proceedings conducted before the UEFA disciplinary bodies. UEFA stresses that it only has knowledge of the identity of its own members, *i.e.* the various national football associations, and may not be required to have knowledge of which entities form part of the national associations.
76. In assessing whether it has jurisdiction to adjudicate the appeal filed by Fenerbahçe S.K., the Panel is guided by the following considerations.
77. The Panel first wishes to emphasize that Fenerbahçe S.K. has not argued in support of its case on jurisdiction that it entered into a “*specific arbitration agreement*” that would grant jurisdiction to CAS as an appeals body – *i.e.* one of the possibilities foreseen by Article R47 of the CAS Code - with TFF or UEFA. Fenerbahçe S.K. has indeed exclusively relied on the UEFA Statutes to submit that CAS has jurisdiction to hear its appeal.
78. Further, the Panel notes that it is uncontested among the Parties that Fenerbahçe S.K. is not a member of TFF. As Fenerbahçe S.K. is not a member of the TFF, the Panel observes that such fact would lead to the *prima facie* conclusion that Fenerbahçe S.K. is not bound by the statutes of a national football association obliging it to comply with the UEFA Statutes and may not, in turn, (indirectly) rely on the provisions of the UEFA Statutes. Such a conclusion would thus prevent Fenerbahçe S.K. from relying in particular on Article 62(1) of the UEFA Statutes to claim that CAS has jurisdiction to adjudicate its appeal.
79. Finally, the Panel is unconvinced about the possibility of considering that the agreement to arbitrate contained at Article 62(1) of the UEFA Statutes could bind the majority shareholder of an indirect member of UEFA, as put forth by Fenerbahçe S.K.
80. In considering this issue, the Panel notes that according to Article 64(1), the UEFA Statutes are governed by Swiss law. In the present case, Swiss law thus applies to the determination of the scope of the aforementioned agreement to arbitrate.
81. Stock-companies, limited liabilities companies and other legal entities have their own separate identity and existence under Swiss law (Article 53 of the Swiss Civil Code). Thus, they must be distinguished, in fact and in law, from their shareholders and other affiliated persons. A long standing practice based on the principle of good faith has been developed in Swiss law according to which the independent status of a legal entity must nonetheless be disregarded and the economic reality be considered as decisive where insisting on the separate existence of such legal entity would amount to an abuse of rights (theory of “*Durchgriffshaftung*”) (see BERGER/KELLERHALS, *International and domestic arbitration in Switzerland*, 2nd Edition, N 526 *et seq.*). An abuse of rights will be retained, for example, when a company was established for the sole purpose of avoiding contractual or statutory obligations (see in particular, Decision of the Swiss Federal Tribunal 113 II 31, para. 2c). The theory of *Durchgriff* does not give rise to an

extension of the arbitration agreement but rather to a substitution of one of the parties involved in concluding it. In other words, the effects of the agreement concluded by the legal entity in question will be reallocated to the person (controlling shareholder, parent company) that has sought to hide behind it.

82. In the case at bar, absent any indication of an abuse of rights, the Panel finds itself in difficulty applying the theory of *Durchgriff* to allow Fenerbahçe S.K. to rely on Article 62(1) of the UEFA Statutes.
83. Based on the foregoing, the Panel finds that CAS' jurisdiction to adjudicate the matter CAS/2015/4347 must be denied.

C. CAS jurisdiction in relation to the matter CAS 2015/A/4345

84. CAS' jurisdiction to adjudicate Trabzonspor's appeal against the Appealed Decision is not contested. Further reference is made to the Order of Procedure signed by Trabzonspor and UEFA according to which both Parties agreed to CAS jurisdiction.
85. In light of the foregoing, CAS has jurisdiction to adjudicate the matter CAS 2015/A/4345.

VII. THE PANEL'S CONSIDERATIONS ON THE MATTER CAS 2015/A/4347: FENERBAHÇE S. K.'S STANDING TO APPEAL

86. In view of the Panel's finding regarding CAS jurisdiction in the procedure CAS 2015/A/4347, the question related to the standing to appeal of Fenerbahçe S. K., which is an issue linked to the merits of the case, does not need to be addressed any more.
87. However, in delivering this final award, the Panel notes that Fenerbahçe S.K.'s appeal in case CAS 2015/A/4347 would have been dismissed for lack of standing even if the Panel would have upheld jurisdiction. Indeed, the Panel stresses that, as developed above in relation to the Panel's decision on jurisdiction, the Appellant Fenerbahçe S.K. is a shareholder of the professional football club Fenerbahçe Futbol A.Ş. As it is not a member of the TFF, it may not rely on the UEFA Statutes. As a mere shareholder of a professional football club, it cannot be "directly affected" by the decision under review in the sense of Article 62(2) of the UEFA Statutes. Furthermore, Fenerbahçe S.K. was not the addressee of the Decision challenged and was not directly affected by it; at least Fenerbahçe S. K. did not establish how a modification or the annulment of the Appealed Decision would have a concrete factual or legal impact on Fenerbahçe S.K. Finally, the Panel does not follow Fenerbahçe S.K.'s argument that it would have a legitimate interest to appeal since it has an interest in being treated equally by UEFA in its efforts to combat match-fixing.

VIII. DECISION ON THE MATTER CAS/2015/4345

A. The Parties' positions

88. Trabzonspor's appeal is a partial appeal which seeks to set aside partially the Appealed Decision insofar as it sanctions Trabzonspor for failing to properly complete the 2014/2015 Admission Form for the UEFA Club Competitions. It is recalled that the Appealed Decision found in essence that even if the individuals related to Trabzonspor were finally acquitted for match-fixing at domestic level, those individuals (and notably Trabzonspor's president) had been involved in criminal proceedings relating to alleged match-fixing activities. Regardless of the outcome of those proceedings, the UEFA Appeals Body found that the club was under a duty to disclose such information in the 2014/2015 Admission Form for the UEFA Club competitions.
89. Trabzonspor submits that it correctly filed out the 2014/2015 Admission Form for the UEFA Club Competitions: it is Trabzonspor's position in this arbitration that it had no information to report in relation to the Turkish match-fixing scandal since it was never "*directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level*" in the sense of Article 2.07(g) of the 2014/2015 UEFA Europa League Regulations. It is Trabzonspor's position that the UEFA disciplinary instances erred in interpreting the aforementioned provision to mean that European clubs must also confirm that they have not been involved in proceedings involving match-fixing (particularly when such proceedings have absolved the relevant club). Likewise, Article 12 of the UEFA Disciplinary Regulations cannot be a proper legal basis for sanctioning Trabzonspor.
90. It is UEFA's position, in essence, that Trabzonspor failed to fully cooperate with UEFA whilst "deliberately hiding" relevant information in the context of its match-fixing activities and thus infringed Articles 11 and 12 of the UEFA Disciplinary Regulations (Edition 2013). Moreover, UEFA submits that Trabzonspor failed to comply with its obligation to disclose that its officials has been involved in past and no longer pending domestic proceedings relating to match-fixing activities and thus violated Article 2.07 and 4.01 of the UEFA Europa League Regulations.

B. The Panel's decision on the merits

1) The Panel's scope of review

91. Under Article R57 of the CAS Code the Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

2) Applicable law and regulations

92. Article R58 of the CAS Code provides as follows in relation to the law applicable to the merits of an appeal to CAS against the decision of an association, federation or sports-related body:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

93. Throughout the disciplinary proceedings at issue, UEFA has applied the UEFA Rules and Regulations. Their application to the merits of the present appeal is not contested by Trabzonspor.
94. Consequently, the merits of Trabzonspor’s appeal against the Appealed Decision fall to be adjudicated on the basis of the following provisions:
- The UEFA Statutes (Edition 2014);
 - The UEFA Disciplinary Regulations (Edition 2013) (see Article 4 of the UEFA Disciplinary Regulations);
 - The UEFA 2014/2015 Europa League Regulations (hereinafter, the “UEFA ELR”).
95. The foregoing rules and regulations are all governed by Swiss law.
- 3) Should Trabzonspor have mentioned in its 2014/2015 Admission Form for the UEFA Club Competitions the information relating to the proceedings opened in Turkey in relation to the 2010/2011 Turkish Süper Lig ?
96. The issue before the Panel is to determine whether, in application of the relevant UEFA rules and regulations, Trabzonspor was under a duty to disclose in the 2014/2015 Admission Form for the UEFA Club Competitions that two of its officials had been implicated in the criminal investigations opened in relation to the 2010/2011 Turkish Süper Lig.
97. In adjudicating the aforementioned issue, the Panel is guided, in particular, by the following facts, which are not disputed by UEFA:
- The three matches at stake in this arbitration were played in 2011;
 - On 2 July 2012 the 16th Criminal Court of Istanbul decided that match-fixing and incentive bonus activity by officials of Fenerbahçe had taken place during 13 matches of the season 2010/2011. Of the 93 persons that were tried, 48 were convicted. Among the convicted were several officials of Fenerbahçe. In turn, Mr Sadri Sener and Mr Zeki Mazlum of Trabzonspor were acquitted of all charges;
 - On 6 May 2014, i.e. nearly two years after the acquittal of Trabzonspor’s officials in relation to the 2010/2011 Turkish Süper Lig, Trabzonspor signed and submitted the 2014/2015 Admission Criteria Form for the UEFA Europa League Club Competitions without disclosing any information in relation to the above-mentioned proceedings.

98. In reaching its decision, the Panel has examined the following relevant provisions.

➤ UEFA Statutes

Article 52:

“Disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game, and contravention of UEFA’s Statutes, regulations, decisions and directives as shall be in force from time to time.”

Article 53.1:

“The following disciplinary measures may be imposed against Member Associations and clubs:

- a) a warning,*
- b) a reprimand,*
- c) a fine,*
- [...]*
- n) disqualification from competitions in progress and/or exclusion from future competitions.”*

➤ UEFA Disciplinary Regulations

Article 11:

- “1 Member associations and clubs, as well as their players, officials and members, must respect the Laws of the Game, as well as UEFA’s Statutes, regulations directives and decisions, and comply with the principles of loyalty, integrity and sportsmanship.*
- 2 For example, a breach of these principles is committed by anyone:*
 - a) who engages in or attempts to engage in active or passive bribery and/or corruption;*
 - b) whose conduct is insulting or otherwise violates the basis rules of decent conduct;*
 - c) who uses sporting events for manifestations of a non-sporting nature;*
 - d) whose conduct brings the sport of football, and UEFA in particular, into disrepute;*
 - e) who does not abide by decisions or directives of the UEFA Organs for the Administration of Justice, or decisions of the Court of Arbitration for Sport involving the UEFA as a party;**[...]*
- 3 Breaches of the above-mentioned principles and rules are punished by means of disciplinary measures.”*

Article 12.1:

“All persons bound by UEFA’s rules and regulations must refrain from any behaviour that damages or could damage the integrity of matches and competitions and must cooperate fully with UEFA at all times in its efforts to combat such behaviour.”

Article 12.2:

“The integrity of matches and competitions is violated, for example, by anyone:

a) who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party;

b) who participates directly or indirectly in betting or similar activities relating to competition matches or who has a direct or indirect financial interest in such activities;

c) who uses or provides others with information that is not publicly available, which is obtained through his position in football, and damages or could damage the integrity of a match or competition;

d) who does not immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition;

e) who does not immediately and voluntarily report to UEFA any behaviour he is aware of that may fall within the scope of this article. ”

➤ UEFA ELR

Article 2.07: Admission criteria

“To be eligible to participate in the competition, a club must fulfil the following criteria:

a) it must have qualified for the competition on sporting merit;

b) it must fill in the official entry documents (i.e. all documents containing all the information deemed necessary by the UEFA administration for ascertaining compliance with the admission criteria) [...]

c) it must have obtained a licence issued in accordance with [...]

d) it must comply with the rules aimed at ensuring the integrity of the competition as defined in Article 3;

e) it must confirm in writing that the club itself, as well as its players and officials, agree to respect the statutes, regulations, directives and decisions of UEFA;

f) it must confirm in writing that the club itself, as well as its players and officials, agree to recognise the jurisdiction of the Court of Arbitration for Sport (CAS) [...]

g) it must not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. on 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level and must confirm this to the UEFA administration in writing.”

Article 4.01:

“On entering the competition, participating clubs agree:

[...]

l) to update the UEFA administration in writing within 14 working days about any facts and information related to the admission criteria (see paragraph 2.07) that have changed since the admission of the club (including changes affecting the official entry documents);

m) to inform the UEFA administration about any disciplinary procedure opened against the club and/or its players and/or its officials by its association and/or its professional league for allegedly arranging or influencing the outcome of a match at national level. The same applies for any football-related procedure opened by a state authority against the club and/or its players and/or its officials based on the criminal code.”

- The 2014/2015 Admission Form for the UEFA Club Competitions, filled in by Trabzonspor, which reads as follows in its relevant part:

“N.B.: This form is based on Articles 2.04(b), 2.04(d), 2.04(e), 2.04(f), 2.04(g), 4.01(f), 4.01(n), and 4.01(o) of the Regulations of the UEFA for the Champions League 2014/15 as well as Articles 2.07(b), 2.07(d), 2.07(e), 2.07(f), 2.07(g), 4.01(f), 4.01(l) and 4.01(m) of the Regulations of the UEFA Europa League 2014/15.

[...]

The undersigned, for and on behalf of the above-mentioned club or the corresponding member association, hereby:

[...]

f) confirms that the above-mentioned club has not been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level since 27 April 2007;

[...]”

99. The Panel notes that under Swiss law, the starting point for interpreting a legal provision is its literal interpretation. As consistently held by the Swiss Federal Tribunal there is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review (see FT 137 IV 180, 184; see also CAS 2013/A/3365 Juventus FC v. Chelsea FC and CAS 2013/A/3366 A.S. Livorno Calcio S.p.A. v. Chelsea FC, para. 139 and references cited). If the provision under review is clear and unambiguous, an authority applying the provision is bound to follow its literal meaning, provided it expresses its true meaning (see AUER/MALINVERNI/HOTTELIER, Droit constitutionnel Suisse, Volume I, N 1481 et seq.). If a text is not clear and if several interpretations are possible, one must determine the true scope of the provision by analysing its relation with other provisions (systematic interpretation), its legislative history (historic interpretation) and the spirit and intent the provision (teleological interpretation) (see AUER/MALINVERNI/HOTTELIER, Droit constitutionnel Suisse, Volume I, N 1481 et seq.).
100. The Panel first turns to Articles 11 and 12 of the UEFA Disciplinary Regulations, and in particular to Article 12.2 e), upon which the Appealed Decision based its decision to sanction Trabzonspor.
101. The Panel agrees with UEFA that a club willing to participate in a UEFA competition must be guided, as required by the applicable provisions, by the principles of loyalty, sportsmanship and integrity. The Panel likewise follows the Appealed Decision in stressing that UEFA's fight against match-fixing is vital to football. However, these general considerations may not in of themselves supersede the literal interpretation of a legal provision. In turning to this literal interpretation, the Panel finds that the plain meaning of the provisions under scrutiny cannot be interpreted in such a way as to require a reasonable reader (including a club) – which has always denied being implicated in match-fixing activities - to understand that it should have disclosed that some of its officials had been tried and acquitted in earlier proceedings that had terminated and resulted in an acquittal nearly two years before the club completed the Admission Form in issue. Unlike other provisions of the UEFA, the provisions under review – which contain a detailed list of situations to report - do not expressly mention a duty to report that national proceedings had been opened in connection with match fixing allegations. As a result, Trabzonspor could in good faith, on the basis of a plain meaning of the provisions, argue that it was not required to mention the information.
102. Likewise, in turning to the wording of Article 2.07(g) UEFA ELR, the Panel finds that the plain meaning of the provision cannot be interpreted to reasonably lead a club to understand it should have disclosed that some of its officials had been tried and acquitted in past proceedings that were no longer pending at the time the club completed the Admission Form. Unlike other provisions of the UEFA, Article 2.07(g) does not expressly mention a duty to report that national proceedings had been opened against club officials in connection with match fixing allegations.
103. Article 4.01(m) UEFA ELR – put forth by the UEFA for the first time in the context of the present proceedings before CAS, although the reference to this provision expressly appeared on the 2014/2015 Admission Form for the UEFA Club Competitions – imposes on a club a duty “to inform the UEFA administration about any disciplinary procedure opened against the club and/or its players and/or its officials by its

association and/or its professional league for allegedly arranging or influencing the outcome of a match at national level". The same duty applies "for any football-related procedure opened by a state authority against the club and/or its players and/or its officials based on the criminal code."

104. Unlike the two aforementioned provisions, this provision expressly refers to state court proceedings opened against officials of a club and based on the criminal code. The issue for the Panel is to determine whether this provision requires a club to declare on the Admission Form any and all criminal state-court proceedings implicating its officials, i.e. including criminal proceedings that have been terminated by an acquittal, prior to the filing of the Admission Form.
105. The Panel notes that the wording of Article 4.01(m), and in particular the use of the verb "opened" is ambiguous. Two different interpretations could thus be derived from this provision. Under a first interpretation put forth by UEFA, it could be argued that this provision requires a club to disclose criminal proceedings "opened" at any point in the past even if they have long ago been terminated, well before the competition at stake. Under a second interpretation, the provision would only require a club to disclose criminal proceedings currently "opened" at the time of the time of the competition at stake. Hence, it may not be determined with certainty on the basis of a mere literal interpretation of Article 4.01(m) whether a club must disclose criminal proceedings that are no longer pending at the date on which it fills out the Admission Form.
106. In determining the true scope of the provision, the Panel decides that the second interpretation of Article 4.01 (m) must be upheld.
107. In reaching its decision, the Panel is guided by the analysis of the entirety of the UEFA ELR and their function. Article 4 UEFA ELR relates to the duties of the clubs submitted to the UEFA ELR. Article 4.01 UEFA ELR contains a list of duties that the clubs must fulfil at a precise point in time, i.e. "on entering the competition" (see Article 4.01 UEFA ELR, first sentence). The disputed provision is part of the list of obligations that must be fulfilled by a club "on entering the competition". It may be derived from this analysis that a club could reasonably expect to have to disclose criminal proceedings that are ongoing "on entering the competition". A more extensive interpretation of the duty to disclose enshrined at Article 4.01 (m) is not supported by a systematic analysis of the UEFA ELR.
108. The Panel has considered UEFA's explanations as to the practical importance of the Admission Criteria Form in UEFA's combat against match-fixing and more generally by the fact that it is far easier for a club to disclose said information than to reasonably expect UEFA to oversee all civil or criminal proceedings conducted at national level affecting each of its indirect members. In this respect, the Panel notes that it may thus well be that UEFA's intention is to require the clubs to disclose any past criminal proceedings, even if such proceedings have been terminated. However, the Panel finds that a club cannot reasonably understand of Article 4.01 (m) that it must disclose such information. Following UEFA's interpretation would lead to the consequence that the actual wording of Article 4.01 (m) would impose on a club to disclose proceedings terminated by acquittal many years – or even decades - before the competition at stake. Absent an express provision requiring the clubs to do so – which the UEFA would be

free to add to its ELR – such a conclusion appears unpersuasive and does not convince the Panel.

109. In the case at bar, the Panel is comforted in its view by the fact that UEFA was – as admitted by UEFA during the hearing – well informed of the facts and procedures opened in Turkey in relation to the 2010/2011 Turkish Süper Lig at the time of the filing by Trabzonspor of the 2014/2015 Admission Criteria Form (if not before). It did not object to the manner in which Trabzonspor completed the form at stake (or any other form completed by Trabzonspor after 2011). UEFA’s knowledge of the proceedings at stake is likewise supported by the documents on record and notably by the UEFA DI Report of 5 November 2014 which reads as follows in its relevant part:

“B. As Trabzonspor A.S. points out, it is true that UEFA was relatively well informed about the facts and procedures relating to the Turkish Super League matches. [...]”

110. In view of the above, the Panel finds that Trabzonspor did not fail to complete properly the Admission Criteria Form for the UEFA Club Competitions 2014/2015 as decided in the UEFA CEED Decision (see point 1, operative part of the UEFA CEED Decision). Accordingly, Trabzonspor A.Ş. should not have been fined EUR 10’000.
111. Based on the foregoing, the Panel finds that the appeal lodged by Trabzonspor must be admitted.

IX. COSTS

A. The Panel’s decision on costs in relation to the matter CAS 2015/A/4347

112. Article R64.4 of the CAS Code provides that, at the end of the proceedings, the CAS Court Office shall determine the final amount of the costs of the arbitration, which shall include the CAS Court Office fee, the administrative costs of CAS (calculated in accordance with the CAS scale), the costs and fees of the arbitrators (calculated in accordance with the CAS fee scale), a contribution towards the expenses of CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties.
113. Article R64.5 of the CAS Code provides that in the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.
114. Having taken into consideration the outcome of the arbitration, the Panel is of the view that the costs of the arbitration, as calculated by the CAS, shall be borne exclusively by Fenerbahçe S.K. In addition, whilst the Panel notes that UEFA did not use external counsel, Fenerbahçe S.K. shall make a contribution of CHF 3’000 towards the legal fees and other expenses of Trabzonspor.

B. The Panel's decision on costs in relation to the matter CAS 2015/A/4345

115. The Panel finds that the appeal filed by Trabzonspor against the Appealed Decision in the matter CAS/2015/4345 was an appeal filed in relation to a decision which was exclusively of a disciplinary nature. Hence, Article R65 *et seq.* are applicable to the Panel's decision in relation to the costs of the matter at bar.

116. Article R65.1 of the CAS Code reads as follows in its relevant part:

"This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body."

117. Article R65.2 of the CAS Code provides the following in its relevant part:

"Subject to Article R.65.2 para, 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated on accordance with the CAS fee scale, together with the costs of CAS are borne by CAS."

Upon submission of a statement of appeal, the Appellant shall pay a non-refundable Court office fee of Swiss francs 1'000.- without which CAS shall not proceed and the appeal shall be deemed withdrawn."

118. Article R65.3 of the CAS Code provides the following:

"Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution toward its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such a contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties."

119. It follows from the foregoing that the fees and costs of the arbitrators in relation to matter CAS/2015/4345 shall be borne by CAS. Besides the CHF 1'000.- Court Office fee paid by Trabzonspor, which is non-refundable, any other costs of CAS shall be borne by CAS.

120. Having taken into consideration the outcome of the arbitration, the Panel decides that UEFA shall make a contribution of CHF 3'000 towards the legal fees and other expenses of Trabzonspor.

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

In the case CAS 2015/A/4347

1. The jurisdiction of CAS to adjudicate Fenerbahçe S.K.'s appeal against the decision of the UEFA Appeals Body of 8 December 2015 is denied.
2. The costs related to the arbitration procedure CAS 2015/A/4347, to be determined and served to the parties by the CAS Court Office, shall be borne entirely by Fenerbahçe S.K.
3. Fenerbahçe S.K. is ordered to pay to Trabzonspor an amount of CHF 3'000 as compensation towards the latter's legal costs and expenses incurred in connection with the present proceedings.
4. UEFA shall bear its own legal costs and expenses incurred in connection with the present proceedings.
5. All other motions or prayers for relief are dismissed.

In the case CAS 2015/A/4345

6. The appeal filed by Trabzonspor against the decision of the UEFA Appeals Body of 8 December 2015 is partially upheld.
7. Trabzonspor did not fail to properly complete the Admission Form for the UEFA Club Competitions 2014-15.
8. Point 1 and point 4 – insofar as it ordered Trabzonspor to bear the costs of the proceedings in the amount of EUR 2,000 - of the dispositive of the decision of the UEFA Appeals Body of 8 December 2015 are set aside.
9. The award CAS 2015/A/4345 is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) already paid and to be retained by the CAS.
10. UEFA is ordered to pay to Trabzonspor an amount of CHF 3'000 as compensation towards the latter's legal costs and expenses incurred in connection with the present proceedings.
11. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 13 April 2017