Arbitration CAS 2014/A/3628 Eskişehirspor Kulübü v. Union of European Football Association (UEFA), award of 2 September 2014 (operative part of 7 July 2014)

Panel: Mr José Juan Pintó (Spain), President; Mr Jean-Philippe Rochat (Switzerland); Mr Mark Hovell (United Kingdom)

Football
Eligibility following match-fixing allegations
Request for evidentiary measures under Article R44.3 CAS Code
Nature of the ineligibility measure provided by Article 2.08 UEFA Europa League Regulations
Scope of the ineligibility measure provided by Article 2.08 UEFA Europa League Regulations
Admissibility in sports arbitration of evidence not (always) admissible in civil or criminal proceedings
Indirect involvement of a club in an activity aimed at arranging or influencing the outcome of the games
Inapplicability of the principle of criminal law "nulla poena sine culpa" to an administrative measure
Impossibility to take mitigating circumstances into account

1. **In order for a request to be granted under art. R44.3 of the CAS Code aimed at ordering the other party to produce documents in its custody or under its control, the party shall demonstrate to the panel that such documents are likely to exist and to be relevant.**

2. **The ineligibility measure under article 2.08 of the UEFA Europa League Regulations (UEL Regulations) is merely an administrative measure resulting from an infringement of the admission criteria of the UEL competition, which deprives the club that has been directly or indirectly involved in match-fixing of the right to participate in the UEL competition during one year, without prejudice of the potential sanctions that UEFA may impose due to this infringement. This "administrative measure" is not to be considered as a sanction. Article 2.08 is aimed not to sanction the club but to protect the values and objectives of UEFA's competition, its reputation and integrity.**

3. **In line with the broad interpretation given by CAS jurisprudence and with UEFA's zero tolerance to match-fixing, not only those activities intended to fraudulently determine the result of a match but also those activities that could somehow have an unlawful influence on the match fall under the scope of article 2.08 of the UEL regulations. In this respect, third party bonuses for playing well is an activity clearly aimed at influencing the outcome of a match. They are therefore are not only included in the activities envisaged under article 2.08 of the UEL Regulations, but also (i) constitute a breach of the UEFA's statutory objectives and principles, (ii) exert an influence on the competition, and (iii) could imply an undue advantage for the offeror. Moreover, third party bonuses infringe the proper fair play that shall govern the world of football, the integrity of the competition, and are a clear breach of the sporting values.**

4. **Even if evidence may not be admissible in a civil or criminal state court, this does not automatically prevent a sport federation or an arbitration tribunal from taking such evidence into account. In this respect, although the sport federation must make its decision autonomously and independently on the basis of all of the factual circumstances and evidences available to it, (i) the content of wiretaps, (ii) the evidence and findings from the criminal investigation performed by the national authorities (i.e. Police Digest), (iii) the different judgments passed by national Criminal Courts can be relied upon, especially in cases of match-fixing where the sport federation does not have the same resources and cannot undertake the same type of investigation that the public authorities do.**

5. **As for the purpose of article 2.08 of the UEL Regulations, a coach has to be considered as a club official, aiming at arranging or influencing the outcome of a match in a non-sportive way. Therefore, the club can be considered as being indirectly involved in an activity aimed at influencing the outcome of a match as a result of the acts executed by the coach of the club.**

6. **Considering the purpose and the wording of article 2.08 of the UEL Regulations, to declare a club ineligible under this provision it is irrelevant whether the latter had any degree of culpability in connection with the prohibited activities. Even recognizing that the principle of criminal law *"nulla poena sine culpa"* could be applicable in some cases to the relationships between a sport association and a club, this principle nevertheless does not apply to every measure taken by an association, especially when this measure is not of a disciplinary nature but of an administrative one.**

7. **Considering that the measure under article 2.08 of the UEL Regulations is an administrative measure and does not have a disciplinary nature, the one-year ineligibility period is to be applied automatically. As a consequence, (i) it is not possible to annul the administrative measure on the basis of no fault or negligence and (ii) the one-year ineligibility period cannot be subject to a probationary period. .**

I. THE PARTIES

1. Eskişehirspor Kulübü (hereinafter "Eskişehirspor", the "Club" or the "Appellant") is a Turkish professional football club with seat in Eskişehir, Turkey. It is a member of the Turkish Football Federation (hereinafter the "TFF") which is affiliated to the Union des Associations Européennes de Football (hereinafter "UEFA") which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter "FIFA").

2. UEFA (hereinafter also referred to as the "Respondent") is an association under Swiss law and has its headquarters in Nyon, Switzerland. It is the governing body of European football and

exercises regulatory, supervisory and disciplinary functions over national federations, club, officials and players in Europe. It annually organizes the international football competition called the UEFA Europa League, in which different professional football teams from all over the European continent participate.

II. THE FACTS

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, statements and the evidence produced. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. The Panel refers in its Award only to the submissions and evidence it deems necessary to explain its reasoning. However, the Panel has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings.

II.1 FACTUAL BACKGROUND

A. Eskişehirspor's qualification for the UEFA Europa League 2014/2015

4. During the 2013/2014 Turkish sporting season, Eskişehirspor achieved the sporting results needed to qualify for the participation in the UEFA Europa League 2014/2015 (hereinafter "UEL").

5. On 9 May 2014, Eskişehirspor submitted an admission criteria form for the UEFA Club Competitions 2014/2015 (hereinafter "the Admission Criteria Form"), where it disclosed the following information:

"On 3 July 2011, many people had been taken into custody by police and on 10 July 2011, 61 individuals had been arrested, including club officials and professional players on match-fixing allegations.

F.C. Eskişehirspor's Head Coach A., Player B., Player C. and Sportive Director D. were among those alleged involved individuals.

Turkish Football Federation has cleared Eskişehirspor as a result of disciplinary proceedings and no Sanction is forced upon our club. F.C. Eskişehirspor was never a part of the trial process in both 16th High Criminal Court and 5th Court of Appeals nor in any Turkish Football Federation Disciplinary Bodies. All the actions occurred were individual acts which our club was not a part of.

On 10 August 2012, Istanbul 16th High Criminal Court announced findings of its decision regarding the case and sentenced Eskişehirspor's Head coach A. with 11 Months and 7 Days of imprisonment and Player B. with 7.5 Months of imprisonment.

Lastly, Director D. and player C. was [sic] *acquitted of all the accusations by the verdict of the Istanbul 16th High Criminal Court and no Punishment is given to the individuals.*

On 17.01.2014, the 5th Criminal Chamber of the Court of Appeals approved the verdict of the Istanbul 16th High Criminal Court against A. and B. as it is in accordance with the Turkish Criminal Code.

Eskişehirspor was not a defendant in the proceedings before the state court and the verdict was not given against our club but against individuals related to the club. […]".

6. On 19 May 2014, pursuant to article 2.13 of the Regulations of the UEFA Europa League 2014/15 (hereinafter the "UEL Regulations"), the UEFA General Secretary forwarded the Admission Criteria Form to the UEFA Control and Disciplinary Body, on the grounds that the Club appeared not to have met all the conditions for the admission into the competition. At the same time, the UEFA General Secretary informed Eskişehirspor that UEFA had initiated an investigation with regard to its potential breach of the UEL admission criteria.

B. The UEFA Disciplinary Inspector Report

7. On 20 May 2014, the UEFA Disciplinary Inspector (hereinafter the "DI") filed a report (hereinafter the "DI Report") before the UEFA Control and Disciplinary Body (hereinafter the "UCDB"), which relevant part reads as follows[1]:

"On 3 July 2011, the Turkish police arrested and detained 61 individuals as part of its investigation into alleged match fixing within Turkish football. It emerges from the file provided by the Turkish prosecutor to the TFF that two matches in the domestic league were concerning the club of Eskişehirspor.

In the context of the investigation, criminal as well as disciplinary proceedings were opened against the Eskişehirspor head coach A. and the player B.

Decisions of the Turkish Football Federation

Eskişehirspor vs. Fenerbahçe SK played on 9 April 2011

The player B. and the head coach A. of Eskişehirspor were brought before the Professional Football Disciplinary Committee of the TFF (PFDC) for the alleged attempt to influence the result of the match Eskişehirspor vs. Fenerbahçe SK played on 9 April 2011. In its decision dated 6 May 2012, the PFDC declared that there were no grounds for the imposition of sanction on the player B. and the coach A. for having influenced the above-mentioned match.

Eskişehirspor vs Trabzonspor played on 22 April 2011

On 6 May 2012 the PFDC sanctioned the player B. with "…a ban of exercising any football related activity for a period of 2 years for attempting to influence the result of this match".

[1] As it has been summarised by the UEFA Appeals Body in the Appealed Decision.

Having reached the opinion, "that the said [person was] engaged in intense activities to affect the match result and, such actions were quite affective to achieve desired result thus an opinion has been formed that [he] attempted to such activities".

The coach however was found not guilty regarding this match.

Decision of the 16th High Criminal Court

On 2 July 2012, the Istanbul 16th High Criminal Court rendered its decision, whose grounds were released on 10 August 2012.

The decision of the court was based on a large-scale investigation into match fixing in Turkish football in which the wiretap was used, witnesses testimonies delivered, etc.

The Court judged that a criminal organisation was formed under the leadership of the President of the Fenerbahçe SK President E. and it had been proven that match-fixing and incentive bonus were made during 13 matches of the season 2010/2011, including Eskişehirspor vs. Fenerbahçe SK of 9 April 2011 and Eskişehirspor vs Trabzonspor played on 22 April 2011.

The Criminal Court was convinced that Eskişehirspor head coach, A. and the player, B., were involved in match fixing under Turkish law. Consequently, Eskişehirspor head coach, A. was sentenced to ***1 year and six months*** *of imprisonment "due to being a member of the crime organization established in the leadership of E. in order to influence the match results in Turkish Professional Super League via match-fixing and incentive bonus".*

He was also sentenced to ***1 year and six months*** *of imprisonment and* ***four thousand days of punitive fine*** *"due to the fact that it is established that he committed the crime of match-fixing in Eskişehirspor vs Trabzonspor competition played on 22/04/2011".*

Eskişehirspor player B., was sentenced to ***1 year and six months*** *in prison and four thousand days of punitive fine due to the fact he "has been proven guilty of the crime, providing incentive bonus in order to influence the outright result of Eskişehirspor vs Trabzonspor football match played on 22.04.2011 in the Turkish Professional League".*

Furthermore, he was sentenced to imprisonment for a ***term of nine months and subject to a judicial fine of two thousand days*** *due to the fact that the crime "had been committed with the promise of providing incentive bonus".*

In relation to the match Eskişehirspor vs. Fenerbahçe played on 9 April 2011, Eskişehirspor player B. was acquitted of the charge of fraud by involvement in match fixing because "match fixing and incentive bonus had not been defined as an actual crime prior to the Law numbered 6222".

Turkish Law No. 6222 in which match-fixing was included as a crime was passed on 14 April 2011, four days after that match.

All these decisions were appealed before the Supreme Court of Turkey. On 17 January 2014, the 5th Criminal Chamber of the Supreme Court of Istanbul rendered a decision regarding the appeals against the Criminal Decision. The Supreme Court confirmed all the appealed decisions".

8. In the DI Report, the DI requested the UCDB to:

1. "Refer the case to the UEFA Appeals Body in accordance with Article 34 (3) of the UEFA Statutes and Article 24 (4) UEFA DR.

2. Based on Article 2.08 of the UEL Regulations, declare Eskişehirspor ineligible to participate in the UEFA Europa League 2014-2015.

3. Based on Article 2.09 of the UEL Regulations, impose an additional sanction against Eskişehirspor of one additional season of exclusion from any future UEFA Competitions as well as a EUR 300.000 fine (three hundred thousand euro)".

C. The proceedings before the UCDB and the UEFA Appeals Body

9. On 21 May 2014, the UEFA administration informed Eskişehirspor of the instigation of proceedings in accordance with the UEFA Disciplinary Regulations (hereinafter referred to as "UEFA DR" or the "DR"), attaching the DI Report along with its correspondence.

10. On the same day, the Chairman of the UCDB informed Eskişehirspor that the case was going to be referred directly to the UEFA Appeals Body (hereinafter the "UAB") in accordance with article 23.3 and 24.4 of the UEFA DR.

11. On 2 June 2014, a hearing took place before the UAB. On the same day the UAB rendered a decision (hereinafter referred to as the "Appealed Decision"), ruling that *"1. Eskişehirspor is not eligible to participate in the next (1) 2014/15 UEFA Europa League season".*

12. On 6 June 2014, UEFA notified Eskişehirspor of the Appealed Decision.

II.2 THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

13. On 13 June 2013, Eskişehirspor filed a Statement of Appeal with the CAS Court Office, requesting:

"Subject to supplementing or otherwise amending the present prayer for relief at a later stage of the proceedings, the Appellant is hereby requesting the CAS:

a. To grant the procedural requests filed by the Appellant in Sections 4 (document production) and 5 (suspension of the Appeal Brief time-limit) above;

b. to annul the decision of the UEFA Appeals Body dated 2 June 2014;

c. to declare that Eskişehirspor is eligible to participate in the 2014/2015 UEFA Europa League and to order UEFA to take any and all necessary measures to allow such participation;

d. alternatively, to impose a sanction/period of ineligibility against Eskişehirspor which shall be deferred for a probatory period of five (5) years;

e. in any case, to order to the Respondent to pay the entire costs of the present arbitration, if any;

f. in any case, to order the Respondent to pay the entire costs for the Appellant's legal representation and assistance as well as other costs incurred by the Appellant in connection with this arbitration".

In particular, in its Statement of Appeal, Eskişehirspor requested the CAS to ask UEFA to produce (i) a copy of the entire file from the *FC Steaua Buçuresti* match-fixing case (reference number 26127), and (ii) a copy of the UEFA Europa League admission forms that the Turkish clubs *Kardemir Karabükspor Kulübü* and *Bursaspor Kulübü Derneği* had submitted before UEFA.

14. On 18 June 2014, UEFA sent a letter to the CAS indicating it had no objection to the procedural calendar suggested by the Appellant, though it did object to the Appellant's request for a copy of the *FC Steaua Bucuresti* file since all UEFA disciplinary proceedings and its files are kept confidential. Moreover, in regards to its request for a copy of the admission forms of the other Turkish clubs, the Appellant was not entitled to receive copies of these documents, and they were also irrelevant for the case.

15. On 19 June 2014, in view of the parties' agreement to an expedited procedural calendar the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, confirmed the following calendar: (i) Appeal Brief to be filed on 24 June 2014 noon CET; (ii) Answer to be filed on 1 July 2014 noon CET; (iii) hearing to take place on 3 July 2014; and (iv) operative part of the award to be rendered by 7 July 2014.

16. On 23 June 2014, the Appellant filed its Appeal Brief, submitting the following requests for relief:

i) "to annul the decision of the UEFA Appeals Body dated 2 June 2014;

ii) to declare that Eskişehirspor is eligible to participate in the 2014/2015 UEFA Europa League and to order UEFA to take any and all necessary measures to allow such participation;

iii) alternatively, to impose a sanction/period of ineligibility against Eskişehirspor which shall be deferred for a probationary period of five (5) years;

iv) in any case, to order UEFA to pay the entire costs of the present arbitration, if any;

v) in any case, to order the Respondent to pay the entire costs for the Appellant's legal representation and assistance as well as other costs incurred by the Appellant in connection with this arbitration".

17. On 26 June 2014, pursuant to Article R54 of Code of Sports-related arbitration (hereinafter "the CAS Code"), and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel to hear the appeal had been constituted as follows: (i) Mr. José Juan Pintó, attorney-at-Law in Barcelona (Spain), as President of the Panel; (ii) Mr. Jean-Philippe Rochat, attorney-at-Law in Lausanne (Switzerland) as arbitrator nominated by the Appellant; (iii) Mr. Mark A. Hovell, solicitor in Manchester (United Kingdom) as arbitrator nominated by the Respondent.

18. On 30 June 2014, the Appellant filed before the CAS a "Supplemental Submission" to its Appeal Brief, producing, as a new fact to take into account in the proceedings, the judgment passed on 25 June 2014 by the 13th Court of Aggravated Felony of Istanbul.

19. On the same day, the CAS Court office informed UEFA about the "Supplemental Submission" that the Appellant had filed, inviting it to file its position with regard to the admissibility of this new submission. In a separate letter dated the same day, the CAS Court Office informed Eskişehirspor that the Panel had decided to reject its request for evidentiary measures and that the grounds of this decision would be included in the award on the merits.

20. On 1 July 2014, the Respondent filed its Answer to the Appeal whereby it requested the CAS to grant an award:

- *"Rejecting the reliefs sought by Eskişehirspor.*
- *Confirming the decision under appeal.*
- *Ordering Eskişehirspor to pay all of the costs of this arbitration and a significant contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings".*

21. On the same date, the Respondent filed a brief before the CAS with its comments on the admissibility of the "Supplemental Submission" filed by the Appellant. In particular, UEFA did not oppose to its admission because it did not change the correctness of the Appealed Decision, in particular because: (i) CAS jurisprudence has confirmed the admissibility of the use of wiretaps collected at national or international level (CAS 2011/A/2426), (ii) UEFA can rely, but is not bound by, a decision of a national State Court when assessing whether or not a club has been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match, (iii) the CAS can freely assess the numerous pieces of evidence at hand, and (iv) the representatives of Eskişehirspor are not concerned by the verdict to partially rehear the criminal case in front of the Turkish State Courts.

22. On 3 July 2014, a hearing was held in Lausanne, Switzerland.

23. The following persons attended the hearing:

a) For the Appellant:

1) Mr. Oytun Süllü, attorney of Eskişehirspor;

2) Mr. Alexis Schoeb, attorney of Eskişehirspor;

3) Mr. […], President of Eskişehirspor;

4) Mr. […]; Vice-President of Eskişehirspor; and

5) Mr. […]; CEO of Eskişehirspor.

b) For the Respondent:

1) Dr. Emilio García Silvero, UEFA's Head of Disciplinary and Integrity;

2) Mr. Carlos Schneider, UEFA's Disciplinary lawyer;

3) Mr. Miguel Liétard, UEFA's Disciplinary Inspector; and

4) Mr. James Mungavin, UEFA's Disciplinary Researcher.

24. Mr. William Sternheimer, Managing Counsel and Head of Arbitration for CAS, and Mr. Yago Vázquez Moraga, *ad hoc* clerk, assisted the Panel at the hearing.

25. At the outset of the hearing, both parties confirmed not to have any objections as to the constitution and composition of the Panel, and not to object to the jurisdiction of the CAS. Afterwards, the Panel invited the parties to file their position with regard to the nature of the present dispute (whether it was of disciplinary or ordinary nature) for the mere purpose of the potential procedural costs involved.

26. During the hearing, the Parties had the opportunity to present their case, to submit their arguments, and to answer the questions asked by the Panel. At the end of the hearing both parties expressly declared that they did not have any objection with the procedure and that their right to be heard had been respected.

27. On 7 July 2014, the operative part of this Arbitral Award was communicated to the parties.

II.3 SUMMARY OF THE PARTIES' SUBMISSIONS

28. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has

carefully considered all the submissions made by the parties, even if no explicit reference is made in what immediately follows.

II.3.1 THE APPELLANT

A. As to the facts

a.1. With regard to the facts leading to the present dispute

29. The contract signed with the player B. (hereinafter the "Player") established that he was responsible for not being involved *"in betting or similar forbidden activities"* (clause 7.k) and that *"If the club finds out that the player is involved in betting or similar activities, the club is going to unilaterally terminate the contract"* (clause 8). In addition, before the 2010/2011 season, the Club implemented new Disciplinary Regulations including in its article 6, para. 6, the following definition of "Unlawful Acts": *"In case the player commits or attempts to commit any unlawful act, clear match fixing or inducement or any acts which can affect the result of a match, "iddaa" or similar betting games (including online betting/gambling) directly or indirectly and involves in any kind of crime"*.

30. The contract signed with A. (hereinafter the "Coach" or "A".), included several bonuses in case the club qualify in the first 6 places of the Turkish Super League.

31. The club finished the 2010/2011 Turkish Super League season in 7th place, 12 points out of a UEL spot which means that, ultimately, if the match-fixing allegations against the Player and the Coach were true, then the Club lost its chance to qualify for the UEL in 2011/12 by having dropped valuable points.

32. On 12 August 2011, the club unilaterally terminated the contracts of the Player and the Coach due to their respective arrests on 3 July 2011, and subsequent incarcerations based on the match-fixing allegations.

33. With regard to the criminal proceedings in Turkey, in early 2014, the judges involved in rendering the state Court decision of the 16th High Criminal Court against the Player and the Coach and the prosecutor in the case were removed from the case and arrested.

a.2. Challenge of the facts reported by the DI

34. The Appealed Decision erroneously determined that the factual allegations against the Coach and the Player *"were not contested"* by the Club, though the Club indeed contested these allegations. The Club's position was that it was not aware of the specific events alleged by the DI because it was only a third party, and thus none of the Club's executives had knowledge of the alleged violations before the Player and the Coach were arrested. In addition, the Club was not involved in the criminal proceedings in Turkey and, therefore, never had access to the criminal files.

35. That being said, the Club noted the following discrepancies that were not considered by the UAB:

i. According to CAS jurisprudence (CAS 2013/A/3258), a relevant consideration in assessing whether a match has been fixed by the officials of a club is the extent and nature of the benefit of the club of winning the particular match. At the time of the matches at stake, the Club was in sixth place. Pursuant to their contracts, the Coach and the Player would have earned a bonus given this result. The Club cannot understand why the accused individuals would risk these earnings and their individual success related to their possible participation in the 2011/2012 UEL for a bribe allegedly offered by Fenerbahçe.

ii. Regarding the assertions made by the UAB concerning the Eskişehirspor vs. Fenerbahçe match played on 9 April 2011 (hereinafter "Match 1"), apart from the wiretaps of some conversations, the DI did not provide any evidence to prove the match-fixing accusation and thus failed to meet his burden of proof.

In particular, (i) there is no evidence of how the money was allegedly transferred to the Player (there is no proof that the money was inside the bag that the alleged intermediary, F., was carrying when he left the hotel, and indeed the Player asserts that inside the bag there was a watch[2]), (ii) the Appealed Decision found that F. was picked up by the Player's driver at the hotel, when indeed, according to the criminal records, it was picked up at an entertainment venue, (iii) the UAB assumes that if Fenerbahçe knew the Club's lineup a few hours before the match it was because this information came from the Coach, but it did not prove that assertion and indeed, it is standard for teams to announce their lineups to the public about an hour before the kickoff, and (iv) the UAB did not take into account that the Player only entered the match at the 70th minute, and thus did not have enough time to influence the outcome of the match.

iii. With regard to the assertions made by the UAB concerning the Eskişehirspor vs. Trabzonspor match played on 22 April 2011 (hereinafter "Match 2"), (i) even though none of the wiretaps highlighted in the Appealed Decision involve the Coach, in the Appealed Decision, the UAB found that the Coach was involved in the alleged match-fixing, (ii) the quotes from the wiretaps the UAB used to prove there was match-fixing activity *("everything is fine, I've just had a meeting with the guys"* and *"we need to beat them"*) do not prove *per se* that there was a match-fixing arrangement, and (iii) the determination that the Player received the money from F. at an ice cream shop is not sustained by any evidence.

[2] In the written statement filed by the Appellant with its Appeal Brief, the Player asserts: *"Long years before he gave me a watch as a gift, my wife seized the watch. I encountered with F. and he asked me why I didn't wear the watch. F. sent me a watch with his driver in a plastic bag. He did not give it personally. After all, money would not even fit into this bag".*

a.3. The factual allegations as determined by the 16th High Criminal Court's decision are subject to annulment and a re-hearing

36. All of the evidence used to determine the Club's involvement in match-fixing was founded on the judgments of the 16th High Criminal Court of Istanbul which, in turn, based its conclusions on the Police Digest created by the Istanbul police. However, on 6 June 2014, the newly appointed prosecutor in the 16th Court issued an opinion in which he found the following *("Examination of Conditions for the Reasons of Rehearing"*): *"[…] the reasons of rehearing are legally described as 'having the quality of necessitating the exoneration of the accused or punishment of the accused with a lower punishment upon the application of the legal provision when new facts or new evidences are put forth and they are considered alone or with previously submitted evidences' […]".*

37. The entire basis of the 16th High Criminal Court's decision is now subject to a *de novo* review by the Turkish courts and, consequently, could no longer constitute the basis for finding the Club guilty of match-fixing.

38. On 25 June 2014, the 13th Court of Aggravated Felony issued a decision by which it decided to cancel the verdicts against the Fenerbahçe officials and re-open the criminal case. This decision is based on an amendment of the Turkish law regarding the use of wiretaps in criminal investigations. In particular:

"The crime of setting and organization to commit a crime as provided in article 220 of Turkish Penal Code was removed from the catalogue crimes that are monitored by means of the technical instruments provided in article 140 of the Code of Criminal Procedure and for which communication is identified, listened and recorded as regulated in article 135 of the Code of Criminal Procedure as a result of the amendment with Law 6526.

In the file presented to our court, certain actions approved by the Supreme Court are related with the crimes listed in article 220 of the Code of Criminal Procedure, which were removed from the catalogue crimes for which communication is defined, listened and recorded and monitored by means of technical instruments.

It is possible that reaching different judicial results among the accused persons for whom the verdicts are approved and for whom the prosecution is ongoing for the same event would damage the trust in justice".

39. Therefore, the 13th Court of Aggravated Felony found that the criminal law no longer allowed for the use of wiretap evidence for the crimes that the accused Fenerbahçe officials were found guilty of committing.

a.4. The Appealed Decision incorrectly ruled that the Club was guilty of fixing matches which Fenerbahçe was not found guilty of fixing

40. There is a distinction between the completed act of match-fixing and a match-fixing attempt. In order for a match-fixing arrangement to occur, a party (the perpetrator) has to offer a benefit to another party (the recipient) in connection with a match to have the recipient influence the result of the match. On the contrary, without an agreement between the two parties, there is no match-fixing arrangement; there is only an attempt.

41. In the present case, the Appealed Decision found that the Club was guilty based on the premise that Fenerbahçe officials allegedly conspired with the Coach and the Player to fix the two relevant matches. Consequently, the Club, as the alleged recipient of the benefit derived from the match-fixing arrangement, can only be found guilty of match-fixing if Fenerbahçe, the perpetrator, is also found guilty of match-fixing. However, in some previous cases decided by the UEFA bodies and by the CAS in connection with the matches at stake (the "Fenerbahçe case"), Fenerbahçe was not found guilty of any match-fixing activity with regard to Match 1 and Match 2. In particular, regarding Match 1, neither UEFA nor the CAS found Fenerbahçe guilty of fixing the Fenerbahçe vs. Eskişehirspor match. In addition, in CAS 2013/A/3256, the CAS overturned the UAB decision (that found Fenerbahçe guilty of fixing eight matches) in relation to the Eskişehirspor vs. Trabzonspor match.

42. In conclusion, even though Fenerbahçe was not found guilty of fixing these two matches, the UAB determined that the Club was guilty of fixing these two matches, which amounts to punishing the victim of the scheme instead of the its perpetrators.

a.5. The Coach is not a club representative

43. The Appealed Decision wrongfully determined that the Coach was a legal representative of the Club. The distinction between a club official and a simple employee is important for strict liability purposes. If a person is a club official, his actions are more likely to implicate the club because he acts not only on his own behalf but as representative of the club. But if the person is merely an employee, he can only act on his own behalf because he has no legal authority to bind the club with his actions.

44. The Appealed Decision considered that the Coach was a key official and that his actions could bind the Club under articles 6.1 and 11.1 of the UEFA DR. However, according to the Coach's contract he had no legal authority to act on behalf of the Club. In addition, unlike several club executives with other clubs, almost immediately after his arrest the Club terminated the contract of the Coach, which proves he was a mere employee.

a.6. Accepting a bonus for winning Match 2 cannot be qualified as "match-fixing"

45. Allegedly, the Player and the Coach accepted an offer for an incentive bonus from Fenerbahçe for performing well in the match against Trabzonspor. The Appealed Decision disregards the important difference that exists between a third party incentive for playing well and actual match-fixing. The habit of third party payments to players to perform well in certain matches has been a widespread phenomenon in European football, in particular in Spain.

46. The fact that some national federations and football leagues explicitly prohibit third party payments (i.e. Spanish Football Federation or the English Premier League) irrespective of the provisions prohibiting match-fixing, proves that both are two separate issues that deserve to be treated accordingly. Then, if the general match-fixing prohibition were understood to include

such third party incentives, as UEFA contends that its regulations do, there would be no need for separate regulations in two of the best leagues in the world.

47. The wording of article 2.08 of the UEL Regulations goes beyond the article's actual scope of application and thus must be interpreted restrictively. This restrictive interpretation is corroborated by the wording of article 5.2.j of the UEFA DR[3], which additional requirements (i.e. that the accused must have (i) exerted influence over a match, (ii) breached the statutory objectives of UEFA and (iii) aimed to achieve an advantage that is undue) indeed reduces the scope of application of article 2.08 of the UEL Regulations. There is no reason to believe that Article 2.08 of the UEL Regulations is intended to have a broader scope of application than Article 5.2.j of the UEFA DR.

48. However, in the present case:

- *"Exerting an influence"* requires that the accused altered the approach taken by one or more persons involved in the match. By contrast, in the case at stake it is obvious that the Player and the Coach were obligated to perform well and win the game in any event by virtue of their contractual obligations with the Club and, therefore, offering them an extra incentive to perform well could not have influenced Match 2.

- Offering a bonus for performing well is not a breach of the statutory objectives of UEFA. Indeed this is widely used in modern football in order to provide "extra motivation" to perform well. Even CAS has expressly confirmed that there is a *"wide-spread practice of bonuses"* that is *"perfectly legal"* (cf. CAS 98/200, para. 39).

- Someone offering an incentive bonus does not gain an undue advantage if the player/team concerned indeed performs well, because this is precisely the goal of any sports competition: to perform as well as possible.

49. None of the relevant UEFA regulations explicitly outlaw this behavior. As a consequence, even if the alleged behavior of the Coach and the Player before the Club's game against Trabzonspor is proven to be true, it does not fall under article 2.08 of the UEL Regulations and article 5 of the UEFA DR.

B. As to the merits

b.1. No strict liability for induced employees according to Article 6 of the UEFA DR (2008)

50. The Appealed Decision considered that the Club was responsible for the action of its former Coach and Player pursuant to article 6 of the UEFA DR, which establishes a system of strict liability.

[3] Which reads as follows: *"who acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of behavior in breach of the statutory objectives of UEFA with a view to gaining an undue advantage"*.

51. Under Swiss Law, sports associations enjoy considerable autonomy to adopt and implement regulations. However, this autonomy is limited by the rules that protect the interests of the members, which prohibit associations to adopt rules (Art. 63, al. 2 Swiss Civil Code) or decisions in contradiction with the mandatory law and/or with general legal principles and fundamental values. This has been also recognized by the CAS, among others, in the award TAS 2007/O/1381.

52. In particular, the legal principle *"nulla poena sine culpa"* apply to disciplinary sanctions and measures pronounced by sports associations in Switzerland. This principle prohibits the application of a strict liability system which permits a court to find an alleged offender is liable (and therefore to impose a sanction) even if the person acted without intention. Indeed, Swiss criminal law does not recognize the strict liability principle.

53. The CAS has declared (CAS 2008/A/1583) that the application of a system of strict liability is possible depending on the specificity of the case and after a careful evaluation of the interests involved, i.e. a balance of the interests between the right of a member of the association to be protected and the principle of freedom of associations. The Appealed Decision -referring to CAS 2013/A/3256- acknowledged that the measures deriving from article 2.08 UEL Regulations were of a disciplinary nature. Indeed, the CAS has already considered the non-admission of a club from participating in the UEFA Champions League (based on eligibility conditions) as a sanction in a disciplinary matter in a previous case (CAS 2008/A/1583).

54. As a consequence, the decision to declare the Appellant ineligible to participate in the next UEL is a disciplinary sanction that shall be analyzed in the light of the fundamental legal principles and thus shall comply with the fundamental principle *"nulla poena sine culpa"*.

55. Contrary to previous cases decided by the CAS, this is the first case in which a club who is the victim of a match-fixing arrangement is being sanctioned. In addition, the principle of strict liability has been applied in the past in cases related to supporters and anti-doping, which are different to the one at stake. In particular:

- Contrary to cases involving club supporters (i.e. CAS 2002/A/423 and CAS 2007/A/1217), UEFA has disciplinary power over players and coaches, and therefore could impose sanctions on the two individuals. By penalizing the Appellant for the behavior of the Player and the Coach, it is not *"in fact the latter who are targeted"* and who *"will be liable to pay the penalty imposed on their club"*. Furthermore, the sanction requested is not *"the only way in which UEFA has any chance of achieving its objectives"*, since it could directly sanction the individuals involved in match-fixing. Finally, the requested sanction would not have a *"preventive and deterrent"* effect.

- In cases related with anti-doping rule violations (i.e. CAS 94/129, CAS 95/141), the rules regarding strict liability are different because in such cases the athlete always has the opportunity to prove that he/she bore no fault/no negligence to avoid a suspension. This opportunity for the athlete to prove that he/she committed no fault was indeed introduced to respect the principle of *"nulla poena sine culpa"*. It shall be underlined that the WADA

Code stipulates another strict liability system, providing that once a banned substance is discovered in the athlete's sample, the athlete must automatically be disqualified from the competition in question without any possibility for him/her to rebut this presumption of guilt. However, this strict liability is justified by the fact that it would be shocking to include an athlete who had not competed using the same means as his/her opponents. The same situation could apply, for instance, in football, where it would be shocking for a club to qualify for a European competition if such qualification was somehow the product of match-fixing, which is not the case at stake. In this circumstance, a strict liability system should undoubtedly apply to prevent the club from participation in the corresponding competition, even in the absence of fault, to ensure the fairness of the competition.

b.2. Determination of the Disciplinary measure

56. Although article 17.1 of the UEFA DR explicitly requires that the deciding body consider mitigating circumstances when sanctioning a club, the Appealed Decision considered the Club's arguments in this regard as *"irrelevant"*.

57. In his report, the DI referred to one CAS award (2013/A/3256) whereby it decided to *"find some guidance"* in the regime of sanctions for anti-doping rule violations based on (a) similar standard of proof and (b) similar periods of ineligibility. However, this analogy is not possible, because sanctions for doping offences are clearly enlisted in a different UEFA Regulation and thus it should be rejected. Notwithstanding this, in case the CAS follows the previous panel's line of argument based on doping violations, then it is obvious that the Appellant is not responsible for any "standard" match-fixing and that, on the contrary, it fulfils all of the requirements that lead to the elimination of any sanction due to "No fault or negligence" because it took all the appropriate measures and could not have impeded the alleged violations.

58. In the case at stake the following mitigating circumstances appear:

- The Appellant was a victim of the match-fixing scheme rather than the perpetrator.
- UEFA has never sanctioned a victim for inducement by a third party. In the previous decisions *(Olympiakos Volou, Fenerbahçe, Steaua Bucureşti* and *Beşiktas),* UEFA only sanctioned the team that initiated the match-fixing for its own benefit. Furthermore, in all other domestic match-fixing cases, prominent club officials of the sanctioned team were involved in the activity.
- The Club took all possible precautionary measures to avoid this situation.
- The Club had the best possible reaction to the match-fixing scandal by terminating the contracts of the Player and the Coach without delay after their arrests for match-fixing.
- The Club did not receive any benefit from the match-fixing.

- There were no damages to UEFA's competitions based on the fact that the alleged match-fixing did not help the Club to qualify for the UEL 2014/15.

59. These mitigating circumstances justify the elimination of the one year sanction or making it subject to a probationary period. The reviewing of the relevant jurisprudence (*Fenerbahçe, Beşiktas, Olympiakos Volou, Steaua Bucureşti, Sivasspor*) demonstrates that the sanction is grossly disproportionate. In particular, the only case known by the Appellant that involved an incentive bonus before the present proceeding was the disciplinary proceeding against *Steaua Bucureşti*, with a one year ban subject to a five year probationary period. Therefore, the 1-year ban imposed on the Appellant could not be the *"minimum sanction"*. For this reason, the sanction imposed on the Appellant ultimately cannot not exceed the sanction imposed on *Steaua Bucureşti* in 2013.

II.3.2 THE RESPONDENT

A. As to the facts

a.1. The match fixing activities of Eskişehirspor's Coach and Player

60. In the proceedings before UEFA, the Appellant did not contest the fact that its Coach and Player were involved in match-fixing activities. It is untrue that the Appellant did not have all the information because it was able to access the information during the proceedings before the TFF.

61. On 30 April 2012, about one week before its Disciplinary Bodies rendered their decisions concerning the Appellant, the TFF decided to amend art. 58 of the Turkish Disciplinary Regulations with the purpose of avoiding the need to relegate some important Turkish clubs to a lower division. Under the previous version of the regulations, influencing or attempting to influence the outcome of a match would have resulted in the relegation of the club concerned. However, under the new version, there is a distinction between *"effectively influencing"* the result of a match and *"attempting to influence"* it, with only a milder potential sanction being imposed on the club for committing the latter.

62. On 2 July 2012, the Istanbul 16th High Criminal Court rendered its decision, where it determined that a criminal organisation was formed under the leadership of Fenerbahçe´s president, and that it was proved that match-fixing and incentive bonus activity took place during 13 matches of the 2010/2011 season. In particular, with regard to Match 1 and Match 2, the Criminal Court considered (pages 318 to 327 and 359 to 379 of the Criminal Court Decision) all the evidence related to these matches. In particular, the Court examined the following evidence: *"communication specification decisions and protocols; physical tacking protocols; search, distraint, arrest; custody decisions and protocols; detailed telephone reviews and sim card solution protocols; bank accounts bills; suspect/witness/complainant statements; Court interrogations, arrests; expertise reports; safe custody receipts; judicial record and identity registries; report by the Tax Audit Committee; Capital Market Committee Audit*

Report; Account expense details of Fenerbahçe; defendant defences; witness, complainant and intervenant [Sic] statements; […]".

63. The Criminal Court convicted the Coach and the Player of involvement in match-fixing activity under Law 6222. Furthermore, the Supreme Court of Turkey upheld all the convictions of the Coach and Player with respect to these matches.

64. Notably, with regard to the Match 1 (Eskişehirspor vs. Fenerbahçe on 9 April 2011):

- The decision of the Professional Football Disciplinary Committee of the TFF (hereinafter the "PFDC") of 6 May 2012 decided that *"there are no grounds for the imposition of a sanction on […] B., C., G., A. […]"*. The decision was based mainly on the fact that there were no abnormalities found in the betting patterns for the match.

- The Decision of the Istanbul 16th High Criminal Court declared that, prior to the match between the Club and Fenerbahçe, the Coach and the Player were contacted for match-fixing (i.e. to "not to perform at their best of their abilities") by Fenerbahçe's intermediary, F., (hereinafter the "Intermediary"). As demonstrated by the wiretaps, Fenerbahçe paid 250,000 Dollars ("250 gram" in their encoded vocabulary) through its Intermediary for the deal (which was later increased up to 300,000 USD).

  The contacts were initiated weeks before the match. It has been proven that the Intermediary met (together with 2 other intermediaries) the Coach in a café on 7 April 2014. In addition, the Intermediary spoke with the Player on the evening before the match, who confirmed that several of the Club's players had accepted the deal *("they are all here, no problem with us"*, *"you fix more uniforms there and tell him"*). Furthermore, following a physical pursuit operation by the police, it had been established that the Intermediary had left his hotel earlier with a bag in his hand, that the Player sent his driver H. to pick him up, and that when the Intermediary came back to the hotel he no longer had the bag with him. During all this time, the car that had picked up the Intermediary was parked in front of the Player's residence.

  The involvement of the Coach is also proved, and it was concluded from a conversation between Fenerbahçe's president and the Intermediary that the Coach had informed the Intermediary that he would not field a proper team to beat Fenerbahçe. Specifically, Fenerbahçe officials knew the Club's line-up prior to the match, which was confirmed once the match began.

65. With regard to the Match 2 (Eskişehirspor vs. Trabzonspor on 22 April 2011):

- The decision of the PFDC of 6 May 2012 decided that there were no grounds for the imposition of a sanction on the Coach, but it decided that the Player, *"B. be sanctioned with a ban on exercising any football related activity for a period of 2 years […] for attempting to influence the result of this match"*. The PFDC reach the conclusion that *"the said persons* [the Player and Fenerbahçe's officials] *were engaged in intense activities to affect the match result and, such actions were*

quite effective to achieve desired result thus an opinion has been formed that they attempted to such activities. Therefore it has been resolved that sanctions of attempting to affect match result shall be imposed on him".

- The Decision of the Istanbul 16th High Criminal Court declared that, through its Intermediary, Fenerbahçe made a deal with the Coach and the Player in order to incentivize the team's performance during this match. It should be taken into account that at this stage (end of the 29th week of the Turkish Super League) Fenerbahçe would become champion if it won all of its remaining matches and if Eskişehirspor took 2 points from Trabzonspor by at least drawing.

  As the wiretaps demonstrate, the set up for the incentive bonus was expressly agreed between the Player and the Intermediary *("everything is fine, I've just had a meeting with the guys"*; *"we need to beat them", "I'm getting them one by one… it is not like err I can't get them all at the same time and make it like a conference… I am getting by 2, 2, 3, 3, I am talking to them all",* etc.). The police investigations proved that a conversation took place between the Intermediary and one of the Fenerbahçe's board members in which the first informed the latter about the players that were going to play and that the Player (who was referred to as "captain") would come onto the field in the second half.

  Concerning how the players received the incentive bonus, the Intermediary and the Player refer to this money in several wiretaps as *"the uniforms"* or as *"supplies"* (*"tell him that we haven't received any supplies yet"*). Finally, the delivery of the money took place sometime after the match in an ice cream shop in Istanbul, where the Intermediary gave the money to the Player (*"I'll* [the Intermediary] *be there tomorrow, yeah, yeah, I'll pop in the ice cream shop and leave my ice cream there, okay brother"*).

66. The Istanbul 16th High Criminal Court imposed the following sanctions:

- Among other sanctions, the Coach was sentenced to 1 year and 6 months of imprisonment for being a member of the criminal organization established by the President of Fenerbahçe. He was also sentenced to *"1 year and six months of imprisonment and four thousand days of punitive fine due to the fact that it is established that he committed the crime of match-fixing in Eskişehirspor – Trabzonspor competition played on 22/04/2011".*

- The Player was acquitted of the charge of fraud by involvement in match fixing in Match 1 because *"match fixing and incentive bonus had not been defined as an actual crime prior to the Law numbered 6222".* However, he was sentenced to 1 year and 6 months in prison and four thousand days of punitive fine due to the fact that he *"has been proven guilty of the crime, providing incentive bonus in order to influence the outright result of Eskişehirspor-Trabzonspor football match played on 22.04.2011".* He was sentenced to imprisonment for a term of nine months and subject to a judicial fine of two thousand days due to the fact that he *"had been committed with the promise of providing incentive bonus".*

67. The Decision of the 5th Criminal Chamber of the Supreme Court of Istanbul of 17 January 2014, confirmed the findings of the Criminal Court in relation to the participation of the Player and the Coach in the fixing of Match 1 and Match 2.

68. In addition, on 15 July 2013, in connection with the Fenerbahçe case, the UAB confirmed that Fenerbahçe had made attempts to influence the result of Match 2. Fenerbahçe appealed this decision before the CAS, which rendered an award (CAS 2013/A/3256) confirming its match-fixing activity. However, for different reasons, in this award the CAS did not analyse the facts submitted in the present matter in relation to either Match 1 or Match 2.

a.2. With regard to the facts described by the Appellant

69. Further to the statements filed to refute the interpretation of the facts and the objections filed by the Appellant (that the Panel deems unnecessary to relate herein) the Respondent makes the following comments to the arguments given by the Club:

- With regard to the rehearing of the Criminal Court case, it notes that (i) it appears from the Prosecutor's opinion that the motion for a re-evaluation of the sanctions is exclusively related to the crime of being members of a criminal organization, and not for the crime of participation in activities to influence the result of football matches; (ii) the criminal proceedings in relation to the Intermediary have only been referred back to the first instance, in relation to the question whether the sanction imposed to him shall be conditional or not, but the facts and findings and indictments of the case have all been confirmed; (iii) the Supreme Court has not remitted the proceedings against the Coach and the Player back to the Criminal Court, and the Criminal Court decision is therefore final and binding in relation to the participation of the accused in the match fixing.

- With regard to the previous CAS award in connection with these matches and Fenerbahçe (CAS 2013/A/3256), it should be noted that the CAS only decided not to take Match 2 into consideration when determining Fenerbahçe's involvement in match-fixing activities (because, in any event, those activities and Fenerbahçe's liability were clear). Furthermore, Fenerbahçe's involvement in the match-fixing activities is not the object of the present proceedings.

- Under the applicable rules, there is no need for disciplinary proceedings to be opened against individuals involved in match-fixing to find that a club has been involved in these activities (CAS 2013/A/3256).

- The Coach, as an official of the club, is considered a representative of a club under the UEFA DR. Under the UEFA DR, coaches fall under the category of "officials" and as such act as representatives of the clubs. This is also established in the FIFA Statutes.

- Incentive bonuses fall under the scope of art. 2.08 of the UE Regulations. This was even confirmed by the Appellant in the hearing held before the UAB, where it stated *"I honestly*

don't have a very clear [view] *whether a club paying another club to play so well and to have an incentive to win the game is a real influence or not… eh… based on this honestly I would say yes.. definitely it has an influence on the game.. definitely… whether it is right or not… honestly I agree with you […]".*

There is no doubt that the payment of incentive bonuses are made to exert a direct influence on the outcome of a match, especially when they are made (i) from third parties with a direct interest (sporting or financial) in the outcome of a match in question and (ii) in such a hidden, secret, conspiracy way as agreed by the Appellant with Fenerbahçe.

70. The UAB correctly concluded that the Appellant was directly and/or indirectly involved in arranging or influencing the outcome of Match 1 and Match 2. It is striking that, on the one hand, the Club attempts to make the Panel believe that its Coach and its Player were not involved in such activities but, on the other hand, it directly acknowledges their involvement in such activities by having their employment contracts terminated exclusively on that basis.

B. As to the merits

b.1. Article 6 of the UEFA DR: the concept of strict liability

71. The principle of strict liability is explicitly foreseen in the applicable rules, accepted by the Appellant. According to this principle (art. 6.1 UEFA DR) clubs that participate in UEFA competitions bear direct responsibility, even if they are not at fault, for the conduct of their players, officials, members, supporters and any other persons exercising a function on behalf of the association or club. The object of this rule is clearly to ensure that clubs shoulder the responsibility of individuals, as they are obliged to comply with UEFA's objectives.

72. The question about the validity of the principle of strict liability under Swiss law and even under the European Convention of Human Rights has already been settled recently by the CAS in its award CAS 2013/A/3139, which expressly confirmed that *"UEFA, by applying the strict liability principle enshrined in Article 6(1) of the UEFA DR, neither violated the legal principle of nulla poena sine lege, nor the ECHR or Swiss procedural public policy".* This has been also confirmed, among others, by CAS 2008/A/1583&1584, CAS 2013/A/3324 and 3329.

73. The authority by which a sporting association may set its own rules and exert its disciplinary powers on its members does not rest on public or penal law, but on civil law. The Swiss Federal Tribunal (Judgment of 21 March 1999) confirmed that only civil law standards are relevant to the disciplinary sanctions imposed by sports associations.

74. The protection of the integrity of the competitions is absolutely essential for UEFA, as match fixing is considered to be the biggest threat to sport because it touches at the very essence of the principles of loyalty, integrity and sportsmanship. Consequently, the Appellant cannot circumvent its responsibility based on the statement that the principle of strict liability shall apply only in cases where the offender is not under UEFA's authority. It is the link between article 6.1 and article 11.1 of the UEFA DR, which reinforces the mechanism of the strict

liability principle over the clubs, holding them responsible for activities aimed at arranging and/or influencing the outcome of the match.

75. CAS jurisprudence has confirmed strict liability may be triggered through officials and players in cases regarding the involvement of clubs in activities aimed to influencing and/or arranging the outcome of a match. Indeed, CAS 2013/A/3297 connected strict liability with the involvement of a club in match fixing activities in a case where only the sporting director of the club was involved.

76. The zero tolerance principle is reinforced by means of the combination of articles 5, 6.1 and 11.1 of the UEFA DR and article 2.08 of the UEL Regulations, as it empowers UEFA with comprehensive means to protect the integrity of its competitions.

b.2. The analogy between match-fixing and doping cases

77. Taking into account that the Appealed Decision did not use any argument related to doping matters (indeed, it expressly denied the analogy between match-fixing and doping cases), the statements made by the Appellant on this regard are irrelevant.

b.3. Proportionality of the decision rendered by the UAB

78. The measure imposed on the Club was entirely reasonable. In view of the applicable regulations, to which the Appellant has expressly submitted, the one-year exclusion from the UEL was indeed the appropriate measure to impose on the Club. Pursuant to article 2.08 of the UEL Regulations and article 50.3 of the UEFA Statutes, once a club has been found to have been directly or indirectly involved in influencing or attempting to influence the outcome of a match at the national or international level, the first consequence shall be its ineligibility to participate in UEFA club competitions for one season.

79. The ineligibility under art. 2.08 of the UEL Regulations is without prejudice to any additional disciplinary measures that may be adopted by the competent disciplinary bodies in accordance with art. 2.09 UEL Regulations. As confirmed by CAS 2013/A/3258, the ineligibility of a club under art. 2.08 of the UEL Regulations refers to a question of admissibility to UEFA's club competitions. There is no doubt as to the effects produced by a club's direct or indirect involvement in activities aimed at arranging or influencing the outcome of a match since April 2007: a club will be declared ineligible to participate in the relevant UEFA competition.

80. The alleged mitigating circumstances are totally irrelevant with regard to the *"admissibility rule"* contemplated in article 2.08 UEL Regulations. By signing the Admission Criteria Form, the Appellant has expressly agreed to be bound by art. 2.08 of the UEL Regulations and, of course, by the consequences of any direct or indirect involvement by the club in match-fixing activities. The Appellant has been involved in these kinds of activities and thus, as a first measure, it must be declared ineligible to participate in UEFA club competitions for one season.

81. There is an absolute legal right that UEFA, being the organiser of the most important European competitions, has to protect: the image and the integrity of its competitions. The one-year ineligibility measure is thus a perfectly legitimate, proportionate and necessary means to protect this interest. Article 2.08 of the UEL Regulations establishes a preventive system to prohibit the participation of clubs in UEFA competitions in circumstances where these clubs have been involved, directly and/or indirectly, in any activity aimed at arranging or influencing the outcome of a match at national or international level.

82. As regards to the arguments made by the Appellant in relation to the case of Fenerbahçe, it should be noted that the said case does not fall under the application of art. 2.08 of the UEL Regulations (correlative, 2.05 of the UEFA Champions League Regulations), but on the basis of article 2.06 of the UEFA Champions League Regulations (correlative, 2.09 of the UEL Regulations). Concerning the question whether the Appellant should be treated in a similar manner that FC Steaua Bucureşti, this has been already examined by the CAS in its recent award CAS 2013/A/3297 where the Appellant in that case pleaded for one-year ineligibility under probationary period based on the FC Steaua Bucureşti decision. In that case, the CAS declared that it did not find the sanction imposed to be discriminatory.

III. LEGAL CONSIDERATIONS

III.1 CAS JURISDICTION

83. The jurisdiction of the CAS, which has not been disputed by any party, arises out of article 62 of the UEFA Statutes, art. 2.07 lit. f and article 30 of the UEL Regulations, in connection with article R47 of the CAS Code. Furthermore, by signing the Admission Criteria Form, the Appellant expressly agreed to recognize the jurisdiction of the CAS.

84. Therefore, the Panel considers that the CAS is competent to rule on this case.

III.2 APPLICABLE LAW

85. Article R58 of the CAS Code envisages the following:

"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".

86. Article 64 of the UEFA Statutes states the following:

a. "These Statutes shall be governed in all respects by Swiss law.

b. The legal forum shall be the headquarters of UEFA. Lausanne (Switzerland) shall be the legal forum for all cases which, in accordance with these Statutes, come under the jurisdiction of CAS".

87. Taking the aforementioned provisions into account, rules and regulations of UEFA shall apply primarily to the present arbitration and, subsidiarily, the Swiss law.

III.3 CONSIDERATIONS AS TO THE MERITS

A. Preliminary issue: the dismissal of the evidentiary measures requested by the Appellant

88. With its Statement of Appeal, the Appellant requested the CAS to order UEFA to produce the following documentation: (i) a copy of the entire file from the *FC Steaua Bucuresti* match-fixing case, and (ii) a copy of the UEFA Europa League admission forms that 2 other Turkish Clubs submitted before UEFA. On 30 June 2014 the CAS Court office informed Eskişehirspor that the Panel had decided to reject its request for evidentiary measures and that the grounds of this decision would be included in the award on the merits.

89. The Panel notes that, under article R44.3 of the CAS Code, *"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant"*. After studying the petition filed by the Appellant, the Panel decided to dismiss it as the Appellant failed to prove that the documents requested are relevant to the case. The Panel notes that both evidentiary measures refer to facts and cases that are not related to the dispute, and considers that the Appellant did not produce convincing arguments as to the potential relevance of them to this case. In addition, it shall also be mentioned that, the entire file and documentation produced by the parties within a procedure are and shall remain confidential, and thus cannot be disclosed to a third party (except for the decision where the case may be).

90. In conclusion, in the Panel's view, the Appellant failed to demonstrate to the Panel that the requested evidentiary measures were relevant for the case at stake, as requested by art. R44.3 of the CAS Code and, consequently, such petition is rejected.

B. General regulatory framework applicable to the present Appeal. Object of the dispute

91. Art 50 of the UEFA Statutes (2014 Edition) provides:

"1 The Executive Committee shall draw up regulations governing the conditions of participation in and the staging of UEFA competitions.

1bis The Executive Committee shall define a club licensing system and in particular:

a) the minimum criteria to be fulfilled by clubs in order to be admitted to UEFA competitions;

b) the licensing process (including the minimum requirements for the licensing bodies);

c) the minimum requirements to be observed by the licensors.

2 It shall be a condition of entry into competition that each Member Association and/or club affiliated to a Member Association agrees to comply with the Statutes, and regulations and decisions of competent Organs made under them.

3 The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures".

92. Under article 1.01 ("Scope of Application") of the UEL Regulations, *"The present regulations govern the rights, duties and responsibilities of all parties participating and involved in the preparation and organisation of the 2014/15 UEFA Europa League including its qualifying phase and the play-offs".*

93. Notably, when regulating the admission criteria of the UEL competition, article 2.07.g) of the UEL Regulations establishes:

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

[…]

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. 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".

94. Furthermore, articles 2.08 and 2.09 of the UEL Regulations foresee:

"2.08 If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been 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, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition.

2.09 In addition to the administrative measure of declaring a club ineligible, as provided for in paragraph 2.08, the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations".

95. Finally, as regards to the admission procedure, article 2.13 of the UEL Regulations establishes that:

"If there is any doubt as to whether a club fulfils other admission criteria than those defined in paragraphs 2.07c) and 2.07d), the UEFA General Secretary refers the case to the UEFA Control and Disciplinary Body, which

decides without delay upon the admission in accordance with the UEFA Disciplinary Regulations. UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these other criteria are or have been met until the end of the competition; if such an investigation reveals that one of these other criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the UEFA Disciplinary Regulations".

96. In light of and taking into account the aforementioned legal framework, the scope of the present proceedings is to determine whether the Appellant was directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match or not and, in that case, what the consequences should be.

C. Starting point: legal nature of the *"administrative measure of declaring a club ineligible"* under article 2.08 of the UEL Regulations

97. While studying the submissions made in these proceedings, the Panel noticed that the treatment given by the parties and by the Appealed Decision to the "administrative measure" under art. 2.08 of the UEL Regulations is quite imprecise and ambiguous. Notably, even though the UEL Regulations expressly qualify the ineligibility period as an "administrative measure", the Panel finds that the UAB describes and treats it as a disciplinary sanction in the Appealed Decision. In addition, most of the CAS Jurisprudence in this regard has settled cases in which UEFA not only imposed this administrative measure, but also disciplinary sanctions in accordance with article 2.09 of the UEL Regulations and the UEFA DR, and thus, with certain exceptions, there was no opportunity to specifically analyze the nature and the scope of the measure under article 2.08 of these Regulations.

98. Even though it might seem otherwise, this is not a trivial semantic question but a very relevant one that has significant implications to the case at stake. For this reason, before assessing the facts in dispute the Panel deems it necessary to define which is the legal nature of the ineligibility measure established under article 2.08 of the UEL Regulations, as this will determine how this measure shall be applied, under which legal principles, and several other legal effects.

99. As the Appealed Decision declares, *"Preserving the uncertainty of the outcome of football matches is UEFA's prime concern. Indeed, it is the raison d'être of organized football. If supporters would know the result of a match in advance or the goals to be scored there would be no sporting interest in watching and/or attending football games. It would spell the end of football. Therefore, UEFA has a zero tolerance policy towards anyone, including club's and association's officials, players or members, who jeopardize the uncertainty of the outcome of football matches"*. The Panel agrees that match-fixing activities constitute one of the most serious breaches of sport principles and, in particular, those of loyalty, integrity, sportsmanship and fair play, and thus clearly jeopardizes the most essential objectives of UEFA. Consequently, to protect the essence of football competitions, it is necessary to be extremely inflexible with match-fixing.

100. As declared by CAS jurisprudence, measures taken by an association with respect to its affiliates can be mainly divided into acts of administration and disciplinary measures (i.e. CAS 2007/A/1381 and CAS 2008/A/1583). To prevent and prosecute match-fixing activities,

UEFA has implemented within its regulations a double regulatory regime, establishing two different kind of measures:

- On the one hand, as an administrative measure (articles 50.3 of the UEFA Statutes and 2.07.g and 2.8 of the UEL Regulations), it has introduced in its Statutes and Competition Regulations a new admission criterion, according to which a club that has been *"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"* becomes automatically ineligible to participate in the corresponding UEFA competition for which it next qualifies and seeks admission.

  This is the first and preventive level of UEFA's fight against match-fixing, aimed to protect the integrity, image and reputation of its competitions.

- On the other hand, UEFA has adapted its Disciplinary Regulations to this new threat to football, expressly including match-fixing offences therein in order to be able to prosecute and sanction match-fixing activities. In particular, in its Disciplinary Regulations (art. 5.2.j of the UEFA DR of 2008, which are applicable to the present case), it has defined as a breach of UEFA's principles of conduct to *"act in a way that is likely to exert an influence on the progress and/or the result of a match by means of behavior in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party"*. Therefore, any offence of this kind is subject to the disciplinary regime established in the UEFA DR.

  This is the second and sanctioning level of UEFA's fight against match-fixing, aimed to punish match-fixing activities.

101. In order to coordinate these two separate measures, UEFA has established that the administrative measure under art. 2.08 of the UEL Regulations will be applicable *"without prejudice to any possible disciplinary measures"* (article 50.3 of its Statutes) that may be adopted by the competent disciplinary bodies (art. 2.09 of the UEL Regulations). Finally, from a procedural perspective, taking into account that the potential breach of this admission criterion needs to be proven, UEFA has established (art. 2.13 of the UEL Regulations) that when there is any doubt as to whether a club fulfils it or not, the UEFA General Secretary will refer the case to the UCDB to decide upon the admission in accordance with the UEFA DR (i.e. through the Disciplinary Proceedings and its procedural rules).

102. Taking into account this regulatory framework, the Panel is of the opinion that, as it has been declared by CAS in previous occasions (i.e. TAS 2011/A/2528 or CAS 2013/A/3258), the measure of ineligibility under article 2.08 is of an administrative nature, linked to the organization of UEFA's competitions. Notably, the Panel shares the approach given to this matter in CAS 2013/A/3258, and thus *"considers that Art. 2.08 UELR above is a regulatory provision whose main purpose is to establish the eligibility criteria and the conditions of participation in UEFA competitions and not to punish a club. In the Panel's view even if the application of Art. 2.08 UELR may have the effect to exclude a club from a UEFA competition, the relevant provision is not of a sanctionatory nature. This is also confirmed by the wording of Art. 50 (3) UEFA-Statutes which reads as follows: 'The admission*

to a UEFA competition of a Member Association or a club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures", implicitly excluding its sanctionatory nature".

103. In this respect, contrary to what was declared by the panel in case CAS 2013/A/3256 (referred to by the Appellant in its submissions), the Panel does not deem that this "administrative measure" is to be considered as a sanction. Even though ineligibility for a competition is surely harmful for the affected club, this does not automatically transform the regulatory provision into a sanction. Indeed, this detrimental effect of the measure would also occur in case the club does not meet any of the other relevant admissibility criteria of the competition (for example, in case one of its players does not agree to respect the statutes, regulations, directives and decisions of UEFA, as per art. 2.07.e) of the UEL Regulations), without turning the correlative ineligibility into a sanction.

104. In the Panel's view, art. 2.08 of the UEL Regulations is aimed not to sanction the club but to protect the values and objectives of UEFA's competition, its reputation and integrity, and not only to prevent a club which has violated such values from taking part in the competitions organized by UEFA (i.e. to protect the integrity of the competition), but to also to dispel any shadow of doubt in the public about the integrity, the values and the fair play of its competitions (i.e. to protect the reputation of the competition).

105. The Panel finds that the administrative nature of the measure is clearly confirmed by the fact that:

- The wording of article 2.09 of the UEL Rules *("In addition to the administrative measure of declaring a club ineligible […] the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations")* creates a clear distinction between the two types of measures. The first one, which is of an administrative nature, should be automatically applicable, while the second one, which is of a disciplinary nature, would be only applicable *"if the circumstances so justify"*.

- The conduct that leads to the application of the administrative measure (to *"have been 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"*) is different to the offence leading to the disciplinary sanction *("who acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of a behavior in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party")*. For the sake of completeness, it should be noted that this distinction in the conduct described as match-fixing is also maintained in the UEFA DR of 2013.

  As it can be seen, the conduct that entails the application of the administrative measure is broader and more generic than the one established for the disciplinary offence which, in line with its sanctioning character, is more restrictive and accurate. Indeed, to commit the match-fixing offence established by the UEFA DR the offender must meet several

requirements that the conduct banned by the admission criterion does not require, mainly that:

- the offender (not necessary the club but its players, officials, etc.) must have had an active role in the match-fixing activity (*"who acts in a way"* in order to *"exert an influence"*), contrary to the potential passive and indirect role envisaged in the administrative measure (to *"have been directly and/or indirectly involved")*. From a semantic perspective, it is clear that to act (take action, do something) is different than to be involved (to be implicated in or associated with something);

- the offender must perform this activity "*with a view to gaining an undue advantage for himself or a third party"*, which is not required in order to merely *"be directly or indirectly involved"* in a match-fixing activity.

This is precisely why article 2.09 of the UEL Regulations envisages that disciplinary sanctions will be applied only *"if the circumstances so justify"*, and not automatically, as in the case of the administrative measure.

- While the administrative measure is only applicable to clubs (because it refers to an admissibility criterion to participate in the UEFA competitions), the disciplinary sanctions could be imposed to all persons who are bound by UEFA's rules and regulations (i.e. member associations and their officials, clubs and their officials, match officials, players, etc.).

- The time limits applicable to each measure are totally different. While under article 2.08 the administrative measure would be applied to any club found to have been directly or indirectly involved in match fixing since 27 April 2007, the disciplinary sanctions under article 2.09 are subject to the statute of limitations established by article 7 of the UEFA DR (2008) - currently article 10 of its 2013 Edition -. This means that article 2.08 of the UEL Regulations *"brought an aggravation to the prescription regulations contained in the UEFA Disciplinary Regulations. It is in other words a lex specialis to the time-barring regulations found in the UEFA DR 2006 and UEFA DR 2013 because it contains itself a time-barring rule. Hence, Art. 2.05 of the RCL declares all violations committed after 27 April 2007 as imprescriptible"* (CAS 2013/A/3297).

106. For these reasons, in the Panel's view, the ineligibility measure under art. 2.08 of the UEL Regulations is clearly of a different nature compared to the measure under art. 2.09 and the UEFA DR. The ineligibility measure is merely an administrative measure resulting from an infringement of the admission criteria of the UEL competition, which deprives the club that has been directly or indirectly involved in match-fixing of the right to participate in the UEL competition during one year, without prejudice of the potential sanctions that UEFA may impose due to this infringement.

107. The Panel notes that UEFA's capacity to implement this kind of admissibility criteria and ineligibility measure derives from the autonomy that sports associations have under Swiss Law

to adopt and implement their own regulations. Moreover, in the Panel's view, this administrative measure adopted by UEFA under its legal autonomy does not infringe any mandatory law and/or legal principle. On the contrary, UEFA has a clear and lawful interest in adopting this regulation in order to fulfil its associative purposes and principles. As has been already declared by the CAS (CAS 2011/A/2528), *"It is firmly in the interest of UEFA, as the organizer of sports competitions, that the integrity of its competitions is upheld and perceived by the public. The panel considers it undeniably in UEFA's interest to show the public that it takes all measures necessary to safeguard the integrity of its competitions. The panel recognizes that the UEFA Control and Disciplinary Body's decision helps to protect that interests, given the serious damage that Olympiakos Volou FC's participation in the 2011/2012 UEFA Europa League could cause to UEFA's image and that of its competitions".*

108. In any case, the Panel further notes that by signing the Admission Criteria Form, the Appellant expressly accepted that the infringement of this admission criterion would lead to its ineligibility to participate in the UEL for one year (see CAS 2013/A/3297 in this respect).

109. The foregoing entails the following three important consequences for the present case:

i. firstly, in connection with the ineligibility measure under art. 2.08 of the UEL Regulations, the UEFA DR are only applicable with regard to procedural matters, but not to substantive ones;

ii. secondly, since the ineligibility measure is not of a disciplinary nature, the fundamental legal principles that could potentially be applicable to disciplinary matters are not relevant to the present case; and

iii. thirdly, with regard to the costs of the present appeal, since this procedure is not *"exclusively of a disciplinary nature",* article R65 of the CAS Code is not applicable.

110. As a consequence, the Panel shall deal with the present case under the fundamental premise that the one year ineligibility period established by art. 2.08 of the UEL Regulations is an administrative measure that does not have a disciplinary or sanctioning nature.

D. The activity defined in article 2.08 of the UEL Regulations

111. The Panel notes that the conduct described in article 2.08 of the UEL Regulations is very broad and thus needs to be determined on a case by case basis. In this regard, the Panel entirely endorses the considerations made by the CAS in the case CAS 2013/A/3258, according to which:

"128. The Panel further considers that Art. 2.08 UELR does not tell precisely which activities are required for a club to be considered directly or indirectly involved in match fixing. Therefore, at this stage of its reasoning, the Panel must consider the legal requirements of said provision. […]

129. According to CAS jurisprudence (CAS 2013/A/3047) and Swiss law, there are four coequal methods of interpretation. They are the grammatical (seeks after the semantically meaning of the word or phrase), the

systematical (seeks after the systematic position of an article in the legal texture of the greater whole), the historical (seeks after the original intention of the rule) and the teleological method (seeks after the spirit and purpose of the statue) of interpretation (Ernst A. Kramer, Juristische Methodenlehre, p. 57 ff., p. 85 ff.; 116 ff.; BGE 135 III 112 E. 3.3.2). While interpreting a statute, the judge has to seek for an objectively right and satisfying decision, taking account of the normative context and the ratio legis (BGE 135 III 112 E. 3.3.2). Thereby no interpretation method prevails over another. Rather, the judge has to choose those methodical arguments that allow approximating the ratio legis as close as possible (Ernst A. Kramer, Juristische Methodenlehre, p. 122)".

112. Firstly, from a grammatical perspective, the Panel notes that the conduct under art. 2.08 of the UEL Regulations requires that UEFA concludes to its comfortable satisfaction that the following elements are present in the specific case:

    i. the applicant club has been involved in *"any activity aimed at arranging or influencing the outcome of a match"*;

    ii. the activity should be "aimed to", and thus *"it is not necessary to establish that the activity achieved its purpose, or even that it went very far. It is enough that there was an attempt"* (CAS 2013/A/3258).

    iii. the involvement of the club in the prohibited activity has been direct or indirect;

    iv. the activity should have been performed since the entry into force of article 50.3 of the UEFA Statutes (i.e. 27 April 2007);

    v. the unlawful activity relates both to national or international matches

113. Even though the Panel considers that it is impossible to determine *ex ante* all the potential types of activities and/or involvements that could be subsumed under art. 2.08 of the UEL Regulations, and that such determination shall be made on a case by case basis, it notes that in any case, taking into account the explained legal context and considering the spirit of this provision (in line with the zero tolerance against match fixing) to analyze whether a club fulfils this admission criterion or not it shall be taken into consideration that *"the scope of application of article 2.08 UELR is broad. In this sense, the Panel does not agree with the Appellant when it states that this provision only encompasses illicit activities aimed at manipulating the outcome of a match. An activity which might look at first sight licit, might breach Article 2.08 UELR, considering all the circumstances of a case, if this activity might have an influence on the outcome of a particular match"* (CAS 2013/A/3258).

114. In the Panel's view, in light of such a broad formula, it seems clear that this admission criterion is meant to cover all the potential activities *"aimed at arranging or influencing the outcome of a match"*. Following this interpretation (in line with UEFA's zero tolerance to match-fixing), the Panel considers that not only those activities intended to fraudulently determine the result of a match (which main examples could be to have two rival clubs fixing a pre-determined result for a match, to intentionally lose a match, or to have someone paying money to a player/coach/team to make them not to perform at their best of their abilities), but also those activities that could somehow have an unlawful influence in the match (motivating players with bonuses from third

parties, establishing some pre-determined events that would take place during the match but will not have a determining or deciding impact on the result of the match – i.e. spot fixing) fall under the scope of art. 2.08 of the UEL Regulations.

115. For this reason, the Panel shall reject the Appellant's statement in accordance to which *"accepting bonus for winning a match cannot be qualified as "match-fixing"*. First of all, the Panel notes that art. 2.08 of the UEL does not make any explicit reference to a "match-fixing" activity, but to *any activity aimed at arranging or influencing the outcome of a match at national or international level*. In addition, the Panel is of the opinion that a third party bonus for playing well is an activity clearly aimed at influencing the outcome of a match, and hence falls under art. 2.08 of the UEL Regulations. Notably, with regard to the Appellant's statements, the Panel considers that:

- The argument that third parties' payments to players to perform well has been a habit in some European countries, besides being a mere assertion not supported by any evidence, is absolutely irrelevant for this case, and cannot justify the non-application of a UEFA Regulation.

  In addition, the CAS jurisprudence referred to by the Appellant in support of this position (CAS 98/200) is not applicable to third parties' bonuses as, contrary to what the Appellant pretends, it simply declared that bonuses paid by a club to their own players/coaches are perfectly legal, as a fair portion of their remuneration.

- In the same way, taking into account that the applicable regulations in the present case are the UEFA Regulations, it does not matter and is irrelevant how the national federations or associations have regulated third parties' bonuses at national level. Contrary to what the Appellant argues, article 2.08 of the UEL Regulations is intended to have a broader scope of application than the article 5.2.j of the UEFA DR. This is precisely due to the above explained fact that while art. 2.08 of the UEL Regulations establishes an admission criterion for the relevant competition, article 5.2.j of the UEFA DR regulates a disciplinary offence having a more limited scope of application.

116. Therefore, the Panel considers that third party bonuses are not only included in the activities envisaged under art. 2.08 of the UEL Regulations, but also that they (i) constitute a breach of the UEFA's statutory objectives and principles, (ii) exert an influence on the competition, and (iii) could imply an undue advantage for the offeror.

117. The Panel notes that among UEFA's main objectives are a (i) devotion to *"promote football in Europe in a spirit of peace, understanding and fair play"* (art. 2.1.b of the UEFA Statutes) and (ii) to *"ensure that sporting values always prevail over commercial interests"* (art. 2.1.f of the UEFA Statutes). In particular, in its Statutes UEFA establishes that *"'Fair Play' means acting according to ethical principles which, in particular, oppose the concept of sporting success at any price, promote integrity and equal opportunities for all competitors, and emphasise respect of the personality and worth of everyone involved in a sporting event"*.

118. In the Panel's opinion, third party bonuses infringe the proper fair play that shall govern the world of football, the integrity of the competition, and are a clear breach of the sporting values.

Third party bonuses are against the right to equal opportunities for all competitors, because the richest clubs would be in a better position to offer these bonuses, penalizing in fact those other clubs that do not have this economic capacity to boost other teams or players with bonuses, leaving them at a disadvantage in relation to clubs that could pay these bonuses. Additionally, third parties' bonuses threat the integrity of the competition, altering and influencing the natural development and progression of the competition. A team that at the end of the sporting season or the corresponding competition is not risking anything (for example, because no matter the results of its last matches it will not qualify for European competitions, or improve its position in the league table, or qualify for the next match of a tournament), perhaps will not perform to the best of their abilities due to a lack of motivation. Sportsmanship demands that those involved in football competitions (clubs, coaches, players, etc.) are self-motivated to achieve success without seeking financial recompense through third parties' bonuses.

119. Therefore, the fact that a third party is compensating for this lack of motivation by paying a bonus to provide "extra motivation" for another team to perform well evidently exerts influence not only over the outcome of the match but over the competition itself, jeopardizing the integrity of the competition and potentially giving an undue advantage to the third party that is paying this bonus (in case it is also taking part in the competition). Finally, allowing third parties' bonuses could lead to the distortion of football competitions. By having teams that at some point during the competition have nothing to lose or are not risking anything (i.e. that no matter how well they play, they will not advance to a better position) not play well unless they get an "extra motivation" from third clubs that need them to win their matches. This type of situation only promotes the payment of these bonuses and puts the integrity of the competition at risk.

120. For all these reasons the Panel does not share the Appellant's opinion and considers that third parties' bonuses are a kind of activity that falls under art. 2.08 of the UEL Regulation.

E. Burden and standard of proof

121. Due to the private nature of the present proceedings, to determine which party has here the burden of proof, the Panel should follow the rule established in article 8 of the Swiss Civil Code (hereinafter the "CC"), according to which *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. Therefore, as recognized by the DI, in the present case the burden of proof lies on the Respondent.

122. With regard to the applicable standard of proof, the Panel observes that article 2.08 of the UEL Regulations expressly establishes that to determine whether a club fulfils the admission criterion under this article or not the "comfortable satisfaction" standard of proof shall be applied. Moreover it is also important to note that, when signing and submitting its Admission Criteria Form, the Appellant expressly agreed to the application of this specific standard of proof to its admission procedure.

123. Notwithstanding this, article 2.08 of the UEL Regulations does not define this standard of proof. However, the "comfortable satisfaction" standard of proof has been developed by the CAS jurisprudence (i.e. CAS 2009/A/1920, CAS 2013/A/3258, CAS 2010/A/2267, CAS

2010/A/2172) which has defined it by comparison, declaring that it is greater than a mere balance of probability but less than proof beyond a reasonable doubt. In particular, the CAS jurisprudence has clearly established that to reach this comfortable satisfaction, the Panel should have in mind *"the seriousness of allegation which is made"* (i.e. CAS 2005/A/908, CAS 2009/1920). It follows from the above that this standard of proof is then a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be "comfortable satisfied".

124. In short, in the present dispute UEFA must establish the relevant facts leading to the ineligibility of the Appellant *"to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made"*.

F. *In casu*: the potential direct or indirect involvement of the Appellant in the activity under art. 2.08 of the UEL Regulations

125. Taking into account the relevant legal framework, as well as the applicable standard of proof, the Panel shall now assess the facts of the present case, and determine whether they fall under art. 2.08 of the UEL Regulations or not. Taking into account that the scope of these proceedings is to determine if a club is eligible or not to participate in the UEL, the Panel considers that the rules on responsibility contained in the UEFA DR (art. 6 of the 2008 Edition) are not directly applicable. Therefore, the involvement of the club in the prohibited activities should result from and be proven in accordance with the UEL Regulations and the UEFA Statutes, as well as with Swiss law.

126. It appears from the Appealed Decision that *"with regard to the merits of the case and after evaluating all the evidence provided by the parties and included in the file, the Appeals Body establishes its comfortable satisfaction with the fact that a criminal organisation was formed under the leadership of the President of Fenerbahçe SK E. and it has been proven that match-fixing and/or incentive bonus were made during the matches Eskişehirspor vs. Fenerbahçe SK of 9 April 2011 and Eskişehirspor vs. Trabzonspor played on 22 April 2011. The Appeals Body is convinced that head coach, A. and the player, B. were involved"*.

127. Pursuant to art. R57 of the CAS Code, *"The Panel has full power to review the facts and the law"*. Therefore, to determine to its comfortable satisfaction if the Appellant has been directly or indirectly involved in any activity that could fall under 2.08 of the UEL Regulations, the Panel can review all the evidence provided by the parties and determine which should be the applicable law *ad casum*. Furthermore, taking into account the nature of the facts of the case, the Panel should keep in mind that *"corruption is, by its nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoings (CAS 2010/A/2172)"* (CAS 2013/A/3258).

128. After having carefully analyzed all the evidence produced by the parties in the present proceedings and, in particular, (i) all the wiretaps provided by the parties, (ii) the evidence and findings from the criminal investigation performed by the Turkish authorities (i.e. Police Digest), and (iii) the different judgments passed by Turkish Criminal Courts, the Panel finds that:

i. As regards Match 1 (Eskişehirspor vs. Fenerbahçe of 9 April 2011):

The Coach and the Player were contacted by the Intermediary who offered them 250,000 USD (further increased to 300,000 USD) in order to not perform at the best of their abilities in the match. For this purpose, the Intermediary met secretly both individuals before the match (7-8 April 2011 with the Coach and with the Player) and right after it (9 April 2011 with the Player and 11 April 2011 with the Coach). According to the conversations held, the Player apparently confirmed that even some other players of the Club had accepted the deal. In particular, the following conversation was held the day before the match (8 April 2011 at 21:56):

"Player: "I just wanted to ask you if you needed anything… they are all here, no problem with us" […];

Intermediary: "I'll see you before I leave, you send H. [the Player's driver] *okay… you give your uniform";*

Player: "Err he wanted J.'s uniform too, I told J. though, you fix more uniforms there and tell him";

Intermediary: "Okay I will, you send H. after the match and I'll give them to him… nothing wrong is there".

Player: "No, no, nothing is wrong"".

From the physical pursuit operation executed by the Turkish police, it appears that during the meeting held between the Player and the Intermediary on the night of 7 April 2011, the Intermediary gave money to the Player that the former brought in a white bag that was given to the latter.

Moreover, from the conversations held between the Intermediary and Fenerbahçe`s officials during the match and just after it was finished, it also appears that they were disappointed by the fact that the Player was not playing from the beginning of the match *("B. is not in")* and was only fielded around the 62nd minute of the game *("We should sit and talk F. … we shouldn't consider this complete").*

Finally, according to the conversations recorded after the match (which was won by Fenerbahçe 3-1), it appears that the Intermediary paid the rest of the money some time after the match *(Intermediary: "I'm now giving J.'s uniforms to your dealer, I've just got them from the supplier… […]")* and the rest of the money on Monday 11 April 2011 *("I'll tell him you would give the others on Monday").*

Having taken into account:

- the content of the telephone conversations held between the Intermediary, the Coach, the Player *("they are all here, no problem with us"*, *"you fix more uniforms there and tell him"*) and Fenerbahçe's officials,

- the secret code used by the involved individuals *("soldier A"., "250 gram", "I've increased by 50 each, it is green increase", "I'm fully equipped and ready though", "you fix more uniforms", "I've just got them from the supplier")*;

- the meetings held between the Coach, the Player and the Intermediary just before and after the match, that were surrounded by an atmosphere of secrecy, which has no sense in case those individuals were not doing anything wrong (as stated at CAS 2013/A/3258, *"The Panel fails to understand why so much precaution was taken with regard to those meetings, if the parties involved did not have anything to hide"*);

- and, bearing in mind that *"In the case of phone conversations related to match-fixing, the Panel considers that this position is also applicable and people involved in match fixing will avoid using direct words in this regards, in case they might be heard, or wiretapped. As to meetings related to match fixing activities, the Panel has no doubt that they will occur in private, with as less as possible people involved"* (CAS 2013/A/3258);

the Panel considers to its comfortable satisfaction that the Coach and the Player were involved in an activity aimed at arranging or influencing the outcome of Match 1.

ii. As regards Match 2 (Eskişehirspor vs. Trabzonspor of 22 April 2011):

This match was of vital importance to Fenerbahçe (*"the match which would be played in two weeks time is very important, yes we have a bit of hope for tomorrow's but it is in fact Eskişehir who will make us champion" […] "For this match, I mean anything done for this match"*[4]). In these circumstances, from the criminal records appear that (i) the Intermediary met the Coach on 15 April 2011 in Antalya to attempt to offer him an incentive bonus[5] and (ii) that the Intermediary contacted the Player and offered him and the rest of the team an incentive bonus for the match.

The night before the day of the match (21 April 2011 at 21:05) the Player and the Intermediary had the following conversation:

"Player: everything is fine, I've just had a meeting with the guys;

Intermediary: anything wrong;

Player: everything is fine;

Intermediary: You mean all is going well;

Player (laughing): We need to beat them".

[4] Wiretap of a telephone conversation held between K. and L. on 9 April 2011 at 21:09, page 360 of the judgment of the 16th High Criminal Court.
[5] Page 361 of the judgment of the 16th High Criminal Court.

From the wiretapped conversations and intercepted text messages during the police investigations[6], it appears that Fenerbahçe's board members were informed about the Appellant's line-up several hours before the match started and, in particular, that the Player would come onto the field during the second half.

The day after the match, which ended in a 0-0 draw, the Player sent a text message to the Intermediary stating *"will we meet, the guys are asking about the uniforms"*. After several conversations in which it is apparent that the Intermediary and the Player had some problems regarding the payment of the bonus, they finally met in an ice cream shop in Istanbul, where the Intermediary gave the money to the Player (*"I'll* [the Intermediary] *be there tomorrow, yeah, yeah, I'll pop in the ice cream shop and leave my ice cream there, okay brother"*).

Again, after having taken into account (i) the content of the wiretaps, (ii) the secret code used, (iii) the secret meetings held, and bearing in mind the fact that corruption is, by its nature, concealed, the Panel concludes to its comfortable satisfaction that at least the Player was involved in an activity aimed at arranging or influencing the outcome of Match 2.

129. In this regard, the Panel notes that these conclusions are also in line with the findings reached by the 16th High Criminal Court of Istanbul in its judgment passed on 2 July (which confirmed by the 5th Criminal Chamber of the Supreme Court of Istanbul on 17 January 2014), in which it declared that it had been proven that match-fixing and incentive bonus activities were committed in relation with Match 1 and Match 2. However, due to the fact that match-fixing and incentive bonus had not been defined as an offence under the Turkish Criminal Law until the Turkish Law No. 6222 was passed on 14 April 2011, neither the Coach nor the Player were convicted for match-fixing in connection with the Match 1, while both were convicted for match-fixing in connection with the Match 2, being sentenced to 1 year and 6 months in prison, among other criminal sanctions.

130. In this respect, the Appellant argues that the judgment passed by the 16th High Criminal Court of Istanbul's decision should not be considered because, as per the judgment passed on 25 June 2014 by the 13th Court of Aggravated Felony of Istanbul, the verdicts against the Fenerbahçe officials have been cancelled, and the criminal case has been re-opened. In this regard, the Panel wants to point out that:

- The judgment passed by the 13th Court of Aggravated Felony of Istanbul is based on a procedural evidentiary issue (the amendment of the Turkish Penal Code by the Turkish Law 6526) but not on the incorrect assessment of the facts. In particular, that *"certain actions approved by the Supreme Court are related with the crimes listed in article 220 of the Code of Criminal Procedure* [the crime of setting up an organization to commit crime], *which were removed from the catalogue crimes for which communication is identified, listened and recorded and monitored by means of technical instruments"*. Therefore, since the amendment of the Turkish Penal Code wiretaps

[6] Page 371 of the judgment of the 16th High Criminal Court.

cannot be used to prosecute the crime listed under art. 220 of the Code of Criminal Procedure.

For this reason, taking into account that (i) some of the cases related with the match-fixing investigation were already judged and (ii) some other cases were still being judged, the 13th Court of Aggravated Felony considered that it was possible *"reaching different judicial results among the accused persons for whom the verdicts are approved and for whom the prosecution is ongoing for the same event"*, and thus decided to re-hear, among others, the case of the Intermediary. Therefore, the Panel notes that, in principle, this last judgment does not affect the judgments passed against the Player and the Coach.

- Nevertheless, the Panel deems it necessary to recall to the Appellant that, pursuant to art. 2.08 of the UEL Regulations, *"UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court"*. Accordingly, UEFA is entitled to rely or not on the findings of a state Court, especially in cases of match-fixing where it does not have the same resources and cannot undertake the same type of investigation that the public authorities do. However, UEFA must make its decision autonomously and independently on the basis of all of the factual circumstances and evidences available to it. *"Thus, a criminal conviction from a state court can corroborate, confirm, and/or supplement the impressions acquired and conclusions reached by the federation itself. It is in this way that the decision of the High Court can be used in the present case as an evidentiary indicator of the correctness of the challenged decision of the UEFA Appeals Body"* (CAS 2013/A/3258).

- With regard to the use of these wiretaps as an evidence in the present proceedings, besides remarking that in its judgment the 13th Court of Aggravated Felony has expressly rejected that the wiretap records were fraudulent *("Regarding the claim stating that fraudulence was made on the hearing minutes […] it may not be considered as fraudulence, therefore the request in this regard has been decided to be rejected by unanimous vote")*, the Panel notes that, as has been consistently established by CAS jurisprudence (CAS 2013/A/3297 and CAS 2009/A/1879), even if evidence may not be admissible in a civil or criminal state court, this does not automatically prevent a sport federation or an arbitration tribunal from taking such evidence into account.

  In particular *"the Panel concurs that steps must be taken, in regard to the public interest in finding the truth in match-fixing cases and also in regard to the sport federations' and arbitration tribunals' limited means to secure evidence, to open up the possibility of including evidence in the case although such evidence could potentially have been secured in an inappropriate manner so long as the inclusion of such evidence in the case does not infringe any fundamental values reflected in Swiss procedural public policy"*. (CAS 2013/A/3297).

  Therefore, the Panel considers that the wiretaps produced to the file are deemed valid and admissible evidence for the purposes of the present proceedings, and thus could be taken into account by the Panel to rule the present case.

The Panel hence deems that it is of no importance that the 13th Court of Aggravated Felony of Istanbul has decided to re-hear the case in connection with the Intermediary.

In this context, with regard to the statements made by the Appellant in connection with the previous decisions passed by UEFA and the CAS in the "Fenerbahçe case" (i.e. CAS 2013/A/3256), according to which it would have already been declared that Fenerbahçe was not found guilty of match-fixing activities for either Match 1 or Match 2, the Panel should reject and disregard these submissions because, in any case, this Panel is not bound by any previous decision of UEFA or the CAS, but by the evidences provided to these proceedings.

131. Finally the Panel shall determine whether the activities executed by the Coach and the Player could result in the non-fulfilment by the Appellant of the admission criterion (established by art. 2.07.g) of the UEL Regulations, and thus that it should be declared ineligible to participate in the competition for one football season.

132. The Appellant has raised several objections in connection with the responsibility of the Club for the activities carried out by the Coach and the Player. First of all, the Appellant considers that the Coach was not a legal representative of the Club or an official, but a mere employee. In this regard, the Appellant considers that if a person is a club official his actions are more likely to implicate the club because he acts not only on his own behalf but as representative of the club. On the contrary, if the person is an employee, he cannot bind the club with his actions.

133. The Panel does not share the aforementioned Appellant's opinion and, on the contrary, for the purpose of applying art. 2.08 of the UEL Regulations, agrees with the opinion of the UAB (cfr. page 18 of the Appealed Decision) according to which *"an official is anyone, with the exception of the players, performing an activity connected with football within an association or club, regardless of his title, the type of activity (administrative, sporting or any other) and the duration of the activity"*. Moreover, the Panel notes that this interpretation is in line with the UEFA Statutes, where the term "Official" is defined as *"every board member, committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical or administrative matters at UEFA, a Member Association, League or club as well as all other persons obliged to comply with the UEFA Statutes"*. Therefore, the Panel is of the opinion that, for the purposes of article 2.08 of the UEL Regulations, the Coach has to be considered as a club official.

134. The Appellant considers that the Club was a "victim" of the aforesaid match-fixing activities and that it cannot be responsible for the action of its former Coach and Player, because this would be in breach of the legal principle *"nulla poena sine culpa"*. In this respect, with regard to the allegations made by the parties in connection with the application and interpretation of the "strict liability" system established by article 6 of the UEFA DR, considering that, due to the administrative nature of the measure adopted by UEFA, these regulations are indeed inapplicable to the case at stake (see Section III.3.C above), the Panel shall disregard these allegations and address this issue within the applicable legal framework (i.e. the UEL Regulations and the UEFA Statutes).

135. Taking into account the broad scope of article 2.08 of the UEL Regulations and the particular and specific circumstances of the present case, the Panel concludes that the Appellant was indirectly involved in an activity aimed at influencing the outcome of a match. In the Panel's opinion, there is enough evidence to conclude to the comfortable satisfaction of the Panel that

such an involvement took place at least through the acts executed by the Coach (an official) of the Club (as described in the previous paragraph 128 of this award), aiming at arranging or influencing the outcome of a match in a non-sportive way.

136. In the Panel's view, taking into account the purpose and the wording of art. 2.08 of the UEL Regulations, to declare a club ineligible under this article, it is irrelevant whether the latter had any degree of culpability in connection with the prohibited activities. Even recognizing that the principle of criminal law *"nulla poena sine culpa"* could be applicable in some cases to the relationships between a sport association and a club, this principle nevertheless does not apply to every measure taken by an association, especially when this measure is not of a disciplinary nature but of an administrative one.

137. In addition, the Panel does not find that the consequence under art. 2.08 of the UEL Regulations for the breach of the admission criterion established by art. 2.j of the same regulations, is unjustified, disproportionate or unconnected with the purpose underlying to its adoption, nor contrary to mandatory law or to the fundamental principles and values of Swiss Law (indeed, as an analogy, a similar responsibility could be found in civil Swiss Law with regard to the quasi-objective responsibility of the employer for the damages caused by his employees that establishes art. 55 of the Swiss Code of Obligations). Therefore, in the Panel's view, the interpretation given to art. 2.08 of the UEL Regulations is in line with and does not infringe Swiss Law.

138. Ultimately, the Panel further notes that by signing the Admission Criteria Form, the Appellant expressly accepted to fulfill UEFA's Admission Criteria and, in particular, that if it was to be found to have been involved in activities aimed at arranging or influencing the outcome of a match at national or international level it would be declared ineligible to participate in any UEFA competition for one year. Therefore, the Appellant shall accept the consequences for not meeting these criteria and for having infringed the regulations of the federation or association.

139. As a consequence of the foregoing, the Panel considers that it has been proved to its comfortable satisfaction in the terms of art. 2.08 of the UEL Regulations that the Appellant has been indirectly involved in an activity aimed at influencing the outcome of a match, and thus deems it appropriate to declare the Club ineligible for participating in the 2014/2015 UEL organized by UEFA.

G. About the probationary period requested

140. Finally, the Appellant requests the Panel to consider some alleged mitigating circumstances that, in its opinion, pursuant to art. 11 of the UEFA DR, would justify the elimination of the measure adopted by UEFA or, at least, to make it subject to a probationary period. The Panel notes that the possibility to apply mitigating circumstances to cases like the one at stake (when applying art. 2.08 of the UEL Regulations) has not been analyzed by the CAS yet. In that regard, as declared by the CAS in CAS 2013/A/3297, *"The Panel emphasizes, as a matter of form, that the Panel in this finding has not addressed itself to whether the Panel finds that the necessary regulatory authority is*

available, if occasion should arise, to hand out a sanction according to article 2.05 of the RCL with a probationary period".

141. In the Panel's view, taking into account that the measure under art. 2.08 of the UEL Regulations is not a sanction and does not have a disciplinary nature, art. 11 of the UEFA DR cannot be applied and the ineligibility measure is to be applied automatically. As a consequence, the Panel considers that (i) it is not possible to annul the administrative measure on the basis that the Appellant bears no fault or negligence and (ii) the one-year ineligibility period cannot be subject to a probationary period. In this regard, the Panel wants to highlight that the potential different criteria sustained in the *Steaua Bucureşti* UEFA Decision (reference number 26127) does not bind the Panel of this case (especially when that UEFA decision was rendered without grounds) and thus is irrelevant for the case at stake.

142. As a consequence, pursuant to the applicable regulations, the mitigating circumstances alleged by the Appellant are deemed irrelevant for the present case, and thus the Panel shall confirm the Appealed Decision, declaring the Appellant ineligible to participate in the 2014/2015 UEL.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 13 June 2014 by Eskişehirspor Kulübü against the decision adopted by the UEFA Appeals Body on 2 June 2014 is dismissed.

2. The decision adopted by the UEFA Appeals Body on 2 June 2014 is confirmed.

3. (…).

4. (…).

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