Arbitration CAS 2013/A/3256 Fenerbahçe Spor Kulübü v. Union des Associations Européennes de Football (UEFA), award of 11 April 2014 (operative part of 28 August 2013)

Panel: Mr Manfred Nan (the Netherlands), President; Prof. Ulrich Haas (Germany); Mr Rui Botica Santos (Portugal)

Football
Disciplinary sanction against a club for match-fixing
Definitions of "match-fixing"
Res judicata
Ne bis in idem
Competence of UEFA to instigate disciplinary proceedings in national match-fixing cases
Standard of proof in match-fixing cases
Liability for match-fixing of a legal entity
Proportionality of the sanction

1. **In its "classic" sense, match-fixing involves a party directly or indirectly influencing or trying to influence the outcome of matches to its own benefit. In a more "modern" sense, match-fixing involves third parties (*i.e.* criminal organisations) attempting to influence the result of a match by inducing athletes, referees or clubs to act in a certain way during a match. The third party fixing the match is not necessarily interested in the outcome of the match, but is interested in certain events to occur on which bets can be placed, in order to make profit. Although third parties are not involved in "classic" match-fixing, the latter is in fact just as treacherous to the integrity of sport, if not more, as match-fixing in its "modern" context.**

2. **The procedural concept of *res iudicata* has two elements: 1) the so-called *"Sperrwirkung"* (prohibition to deal with the matter = *ne bis in idem*), the consequence of this effect being that if a matter (with *res iudicata*) is brought again before the judge, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible; and 2) the so-called *"Bindungswirkung"* (binding effect of the decision), according to which the judge in a second procedure is bound to the outcome of the matter decided in *res iudicata*. The binding effect is only of interest, if the judge asked second has to deal with a preliminary question that has been decided finally by the first judge. The discretion of an appeal body to re-examine the case from both a factual and a legal perspective does not allow it to change the matter in dispute. If the first instance body has limited the scope of the proceedings to a specific matter and this specific matter is the basis of the first instance body decision, a party cannot, without appealing the decision, extend it or introduce a new one before the appeal body and the latter is prevented from extending it by the *"Sperrwirkung"* attached to the principle of *res iudicata*.**

3. Sports disciplinary bodies cannot try a person or an entity again for an offence in relation to which that person or entity has been acquitted already by a final decision of another body based on the same regulatory framework. However, no issue of *ne bis in idem* arises if that person or entity has been acquitted on the basis of a regulatory framework applicable at national level and is tried again based on a regulatory framework applicable at continental level. Also, there is no violation of the *ne bis in idem* principle when, in a "two-stage process", the nature of the suspensions sought in the different disciplinary proceedings was different, the first stage sanction being a minimum "administrative measure" with only national consequences and the second stage measure a final "disciplinary measure" with only European consequences.

4. UEFA has competence to instigate disciplinary proceedings against a club for match-fixing in a national competition. The material and the territorial scope of the sanctions are defined by means of article 2.05 and 2.06 of the UEFA Champions League Regulations in conjunction with article 50(3) of the UEFA Statutes and article 5 of the UEFA Disciplinary Regulations (2008) in a clear and unambiguous way.

5. The standard of proof to be applied in civil law cases is "beyond reasonable doubt". Disciplinary proceedings are – according to constant CAS jurisprudence – considered to be civil in nature. It is typical and usual in disputes of a civil nature that the parties involved never have investigative powers like "national formal interrogation authorities". Therefore, at least according to Swiss law, the "restricted investigative powers" of a party can never justify a reduced standard of proof in civil matters, since otherwise the normal standard of proof in civil matters ("beyond reasonable doubt") would never be applicable. However, Swiss law is not blind vis-à-vis difficulties of proving (*"Beweisnotstand"*). Instead, Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact. In such cases, the standard of proof is "comfortable satisfaction".

6. A legal entity can only be held liable for match-fixing through actions of persons representing or acting on behalf of the legal entity, i.e. its officials. Therefore, the only basis for sanctioning the club as an entity is its liability for the actions of its officials.

7. The range of sanctions imposed in earlier match-fixing cases before CAS vary between a one-year and an eight-year period of ineligibility. This spectrum of sanctions (period of ineligibility between zero and eight year) is comparable to a certain extent to the spectrum of sanctions in doping cases. In view of the analogy between match-fixing cases and doping cases in respect of the standard of proof to be applied, some guidance can be found in the elaborate regime on doping sanctions. In practise, this spectrum would mean that a "standard" match-fixing offence would, in principle,

have to be sanctioned with a two-year period of ineligibility. In case of particularly serious match-fixing offences a higher sanction would have to be imposed and in case of mitigating circumstances the standard two-year period of ineligibility would have to be reduced.

I. PARTIES

1. Fenerbahçe Spor Kulübü (hereinafter: the "Appellant" or "Fenerbahçe") is a professional football club with its registered headquarters in Istanbul, Turkey. Fenerbahçe is a member of the Turkish Football Federation (hereinafter: the "TFF"), which in turn is affiliated to the Union of European Football Associations (hereinafter: "UEFA") and the Fédération Internationale de Football Association (hereinafter: the "FIFA").

2. UEFA (hereinafter also referred to as: the "Respondent") is an association under Swiss law and has its registered headquarters in Nyon, Switzerland. UEFA is the governing body of European football. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the written and oral submissions of the parties and the evidence examined in the course of the proceedings and at the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

4. On 21 February, 26 February, 6 March, 7 March, 20 March, and 9 April 2011 respectively, certain matches were played in the Turkish Süper Lig, of which it was later said that in respect of these matches bribes were paid in order to lose or incentive bonuses were paid by individuals related to Fenerbahçe.

5. On 14 April 2011 a new Turkish law numbered 6222 came into effect. This law made match-fixing a specific criminal offence in Turkey.

6. On 17 April, 22 April 2011 and 1 May 2011 respectively, certain matches were played in the Turkish Süper Lig, of which it was later said that in respect of these matches bribes were paid in order to lose or incentive bonuses were paid by individuals related to Fenerbahçe.

7. On 5 May 2011, Fenerbahçe signed and submitted an UEFA Club Competitions 2011/2012 Admission Criteria Form (hereinafter: the "2011/2012 Admission Form") to UEFA in order to participate in the 2011/2012 UEFA Champions League season, by which it confirmed that *"the above-mentioned club* [*i.e.* Fenerbahçe] *has not been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level since 27 April 2007".*

8. On 8 May, 15 May and 22 May 2011 respectively, certain matches were played in the Turkish Süper Lig, of which it was later said that in respect of these matches bribes were paid in order to lose or incentive bonuses were paid by individuals related to Fenerbahçe.

9. On 22 May 2011, Fenerbahçe won the Turkish Süper Lig and qualified automatically for the group stage of the UEFA Champions League in the 2011/2012 season.

10. On 3 July 2011, the Turkish police arrested and detained 61 individuals as part of investigations pursued in matters concerning match-fixing within Turkish football. B., President of Fenerbahçe, C., Vice-president of Fenerbahçe, D., Board member of Fenerbahçe, E., Board member of Fenerbahçe, F., Manager of Fenerbahçe, and G., Finance Director of Fenerbahçe, were among the persons who were suspected of having conducted match-fixing activities in respect of several matches played during the (second half of the) football season 2010/2011.

11. On 11 July 2011, the Executive Committee of the TFF requested the Ethics Committee of the TFF to commence with an investigation on match-fixing in Turkish football.

12. On 20 July 2011, the Turkish public prosecutor provided the TFF Ethics Committee with information and material in relation to the criminal investigation.

13. On 22 August 2011, a meeting took place between Mr Pierre Cornu, UEFA Chief Legal Counsel for Integrity and Regulatory Affairs, TFF Officials and Mr Mehmet Berk, state prosecutor in Turkey.

14. On 23 August 2011, Mr Gianni Infantino, UEFA General Secretary, issued a letter to the TFF with, *inter alia*, the following content:

"(…) [G]iven the evidence that now exists, it appears to us that Fenerbache [sic] *should not be eligible to participate in the UEFA Champions League this season. In the circumstances, it also appears that the appropriate course of action would now be for Fenerbache* [sic] *to withdraw its participation from the UEFA Champions League for this season. Alternatively, the TFF may withdraw the club from the competition.*

We should point out that if one or other of these paths of action is not taken and UEFA has to open its own Disciplinary Procedures against the club (whether now or in the coming months) an eventual sanction is likely to be considerably more severe, in particular, if the club is found guilty of lying when it completed the Admission Criteria form confirming that it had not been involved in any match-fixing activity since April 2007. Whilst we cannot predict the form of sanction that might finally be imposed we can advise that in some other cases of

match-fixing (e.g. CAS 2009/A/1920) clubs have been banned from participation in UEFA club competitions for up to eight years.

For the sake of completeness, we must also advise you that, if the TFF does not deal with this matter now this will also lead to appropriate disciplinary steps being taken against the TFF. As you will understand, UEFA cannot accept, in all these circumstances, that Fenerbache [sic] *starts in the UEFA Champions League this season and is then subsequently excluded from the competition because involvement in match-fixing is finally established. (…)".*

15. On 24 August 2011, the Executive Committee of the TFF informed UEFA that *"we decided that Fenerbahçe FC will not participate to UEFA Champions League competition this season"*.

16. On 25 August 2011, following an appeal of Fenerbahçe against the decision of the TFF Executive Committee, the TFF Arbitral Committee rejected Fenerbahçe's appeal and application for a stay of the TFF's decision to withdraw it from the Champions League for the 2011/2012 season.

17. On 1 September 2011, Fenerbahçe filed a statement of appeal and/or a request for arbitration with the Court of Arbitration for Sport (hereinafter: "CAS"). This submission included a request for provisional measures, which was rejected by CAS on 9 September 2011.

18. On 3 November 2011, CAS rejected a subsequent request for provisional measures of Fenerbahçe.

19. On 2 December 2011, the Turkish public prosecutor issued a criminal indictment against numerous individuals, including officials of Fenerbahçe.

20. On 3 January 2012, the TFF Professional Football Disciplinary Committee (hereinafter: the "TFF PFDC") instigated disciplinary proceedings against Fenerbahçe and other Turkish football clubs, as well as numerous individuals concerning the alleged match-fixing.

21. On 12 or 15 February 2012, the UEFA Disciplinary Inspector received the Police Digest.

22. On 25 April 2012, Fenerbahçe withdrew its appeal filed with CAS on 1 September 2011. The TFF's decision to withdraw Fenerbahçe from the 2011/2012 Champions League season thereby became final and binding.

B. The TFF Ethics Committee Report

23. On 26 April 2012, the TFF Ethics Committee issued its report, investigating match-fixing allegations in respect of several individual matches, including matches of Fenerbahçe. The relevant conclusions and findings in this report are given below.

24. Regarding the match between Gençlerbirligi and Fenerbahçe of 7 March 2011, the TFF Ethics Committee came, *inter alia*, to the following conclusions in respect of Fenerbahçe officials and Fenerbahçe itself:

"There is no sufficient evidence to form an opinion that B. was involved in or attempted to match fixing activities;

D. attempted to match fixing activities;

(…)

There is no sufficient evidence to establish substantial grounds to believe that G. was involved in or attempted to match fixing activities;

(…)

Although match fixing activities should be attributed to Fenerbahçe Sports Club as D. is Board Member of Fenerbahçe, there is no proof showing that other board members of Fenerbahçe Club were aware of such activities. Particularly D. stated in his verbal statement to TFF Ethics Committee that Board of Directors took the decisions in the meetings about the transactions he would carry out on behalf of the club and also assignments and authorization were decided in those meetings but there are no documents or decisions in the file that D. was assigned or authorized in this match. Furthermore as stated in inspector's report no abnormalities of football players of Gençlerbirliği were observed during the match".

25. Regarding the match between Fenerbahçe and IBB Spor of 1 May 2011, the TFF Ethics Committee came, *inter alia*, to the following conclusions in respect of Fenerbahçe officials:

"There is no sufficient evidence to form an opinion establish that B. was involved in or attempted to match fixing activities. (…)

There is no sufficient eveidence to form an opinion that D. was involved in or attempted to match fixing activities. (…)

There is no sufficient evidence to establish substantial grounds to believe that F. was involved in or attempted to match fixing activities; There is no sufficient evidence to establish substantial grounds to believe that G. was involved in or attempted to match fixing activities;

(…)

Due to the monetary relationship between H. and K. which could not be related with Fenerbahçe Sports Club executives; the survey reports and in the course of the competition; being unable to observe any abnormality resulting to a suspicion in regard with [IBB Spor] *players' performance; it is considered to be appropriate for not to attribute the match-fixing allegations to Fenerbahçe Club".*

26. Regarding the match between Fenerbahçe and MKE Ankaragücü of 15 May 2011, the TFF Ethics Committee came, *inter alia*, to the following conclusions:

"B.: not found to have any relation with the concrete event in this competition;

D.: attempted match fixing;

F.: attempted match fixing;

(…)

C.: sufficient evidence was not found in direction of match fixing attempt;

(…)

Although D. is the Board Member of Fenerbahçe Sports Club, match fixing attempt is considered to be attributed to Fenerbahçe Sports Club[1]; as no evidence was found in regard with the other board members of Fenerbahçe Sports Club's awareness of the event; especially in D.'s verbal statement to TFF Ethics Committee, although he declared that the Board of Directors has resolved for delegation of authority and assignment relating to his transactions on behalf of the club; no resolution or document was found relating to any delegation of authority nor assignment of D. relating to this competition; in addition, no abnormality is observed to legitimate the doubt of Ankaragücü players' game in the pitch in the inspection reports and in the course of the match".

27. Regarding the match between Sivasspor and Fenerbahçe of 22 May 2011, the TFF Ethics Committee came, *inter alia*, to the following conclusion:

"There is no sufficient evidence to form an opinion about B.;

There are is [sic] *sufficient evidence to form an opinion about D.;*

(…)

There is no sufficient evidence to form an opinion about G.".

C. The Decisions of the TFF PFDC

28. On 6 May 2012, the TFF PFDC issued its decisions, sanctioning D., Board member of Fenerbahçe, C., Vice-president of Fenerbahçe, and F., Manager of Fenerbahçe, with bans on exercising any football-related activity for three years, one year and one year respectively, however acquitting B., Fenerbahçe and the other Turkish football clubs.

29. Regarding the match between Gençlerbirligi and Fenerbahçe of 7 March 2011, the TFF PFDC came, *inter alia*, to the following conclusions:

[1] Although it appears from the wording of this conclusion that Fenerbahçe was considered guilty of match-fixing, the TFF Ethics Committee came to the conclusion that Fenerbahçe could not be held responsible for the actions of D.

"1- THERE ARE NO GROUNDS FOR THE IMPOSITION OF A SANCTION on Fenerbahçe A.Ş. Club brought before on charges of influencing the match result, (majority)

(…)

3- THERE ARE NO GROUNDS FOR THE IMPOSITION OF A SANCTION on B. (majority), (…) G. (…) brought before on charges of influencing the match result,

4- Pursuant to the article 58/2-a of the Football Disciplinary Regulations, A BAN ON EXERCISING ANY FOOTBALL RELATED ACTIVITY FOR A PERIOD OF ONE (1) YEAR shall be imposed on D. for attempting to influence match result, (…)".

30. The majority of the TFF PFDC thus came to the conclusion that there were no grounds to impose a sanction on B. and Fenerbahçe in respect of this match. However, the dissenting opinion concludes as follows:

"Due to the opinion reached that B., who was brought before out committee pursuant to the "influencing match results" infringements stipulated in art. 58 of FDR, committed the attributed crime in the case at hand, whereas he should have been sanctioned with "a ban on exercising any football related activity for a year" pursuant to the previous text of FDR 58/2, ruling on the decision above decision is unjust and unlawful. I disagree with the majority opinion.

Whereas pursuant to FDR art. 58/1-b a sanction of "relegation to a lower division" should have been imposed on the club, ruling on the decision above is unjust and unlawful. I disagree with the majority opinion".

31. Regarding the match between Fenerbahçe and IBB Spor of 1 May 2011, the TFF PFDC came, *inter alia*, to the following conclusions:

"1- THERE ARE NO GROUNDS FOR THE IMPOSITION OF A SANCTION on Fenerbahçe A.Ş. Club (majority) and [IBB Spor] *brought before on charges of influencing the match result,*

2- THERE ARE NO GROUNDS FOR THE IMPOSITION OF A SANCTION on B. (majority), D., G., F. (…) brought before on charges of influencing the match result".

32. The majority of the TFF PFDC thus came to the conclusion that there were no grounds to impose a sanction on B. and Fenerbahçe in respect of this match. However, the dissenting opinion concludes as follows:

"Whereas it must be decided that B., who was forwarded for violation of "affecting the result of competition" in 58th article of FDT, is given the "PENALTY OF DEPROVATION OF RIGHTS FOR ONE YEAR" as per FTD 58/2 since conviction that B. committed the crime attributed to himself has been reached, decision above is unjust and unlawful. Therefore I do not agree with the majority opinion.

Again likewise, whereas forwarded Fenerbahçe Club about this competition must be given the "PENALTY OF RELEGATION TO THE LOWER LEAGUE" as per FTD 58/1-b article, decision above is unjust and unlawful. Therefore I do not agree with the majority opinion".

33. Regarding the match between Fenerbahçe and MKE Ankaragücü of 15 May 2011, the TFF PFDC came, *inter alia*, to the following conclusions:

"1 THERE ARE NO GROUNDS FOR THE IMPOSITION OF A SANCTION on Fenerbahçe A.Ş. Club, brought before on charges of influencing the match result, (By majority of votes)

(…)

4 THERE ARE NO GROUNDS FOR THE IMPOSITION OF A SANCTION on B. (…) brought before on charges of influencing the match result,

5 D. be sanctioned with A BAN ON EXERCISING ANY FOOTBALL RELATED ACTIVITY FOR A PERIOD OF A YEAR pursuant to art. 58/2-a of FDR for attempting to influence the result of this match. (…)

6 F. be sanctioned with A BAN ON EXERCISING ANY FOOTBALL RELATED ACTIVITY FOR A PERIOD OF A YEAR pursuant to art. 58/2-a of FDR for attempting to influence the result of this match".

34. The majority of the TFF PFDC thus came to the conclusion that no sanction was to be imposed on Fenerbahçe in respect of this match. However, the dissenting concludes as follows:

"Whereas a sanction should have been imposed pursuant to the relevant article of the regulations, a decision stating that "there are no grounds for the imposition of a sanction" on Fenerbahçe brought before our Committee with regard to this match, is unjust and unlawful".

35. The TFF PFDC did not render a decision regarding the alleged fixing of the match between Sivasspor and Fenerbahçe of 22 May 2011 by Fenerbahçe officials.

D. The Decisions of the TFF Board of Appeals

36. On 4 June 2012, following twelve appeals having been filed against the TFF PFDC decisions, the TFF Board of Appeals dismissed all the appeals and confirmed the TFF PFDC decisions, which decisions have become final and binding.

37. Regarding the involvement of D. in attempting to fix the match between Gençlerbirligi and Fenerbahçe of 7 March 2011, the TFF Board of Appeals came to the following conclusion:

"TO APPROVE THE PUNISHMENT OF BAN ON EXERCISING ANY FOOTBALL RELATED ACTIVITY FOR A PERIOD OF 1 YEAR imposed on D. for attempting to influence the match result pursuant to article 58/2-a of Football Disciplinary Regulations with the resolution nos. E.2011/2012-10 and K.2011/2012-1341 dated 06.05.2012 in relation with Gençlerbirliği-Fenerbahçe AŞ competition played on 07.03.2011,"

38. The TFF Board of Appeals did not address the alleged involvement of Fenerbahçe officials in an attempt to fix the match between Fenerbahçe and IBB Spor of 1 May 2011, as none of the Fenerbahçe officials that were accused of having attempted to fix this match were convicted by the TFF PFDC.

39. Regarding the match between Fenerbahçe and MKE Ankaragücü of 15 May 2011, the TFF Board of Appeals came to the following conclusion:

"TO APPROVE THE PUNISHMENT OF BAN ON EXERCISING ANY FOOTBALL RELATED ACTIVITY FOR A PERIOD OF 1 YEAR imposed on D. for incomplete attempt to influence the match result pursuant to article 58/2-a of Football Disciplinary Regulations with the resolution nos. E.2011/2012-10, K.2011/2012- 1355 dated 06.05.2012 in relation with Fenerbahçe AŞ-MKE Ankaragücü competition played on 15.05.2011.

(…)

Reject the objection made by F. and APPROVE THE PENALTY OF DEPRIVATION OF RIGHTS FOR 1 YEAR imposed by PFDC pursuant to the 58/2-a article of FDR about F. for attempt to influence the match result by the resolution no. E.2011/2012-10, K.2011/2012-1355 dated 06.05.2012 with regard to Fenerbahçe AŞ – MKE Ankaragücü match played on 15.05.2011".

40. The TFF Board of Appeals did not address the alleged fixing of the match between Sivasspor and Fenerbahçe of 22 May 2011 by Fenerbahçe officials as the TFF PFDC did not render a decision in this respect.

E. The Decision of the 16th High Criminal Court of Istanbul

41. On 4 June 2012, UEFA was provided with the TFF Ethics Committee Report published on 26 April 2012.

42. On 7 June 2012, the UEFA General Secretary issued a letter to the chairman of the UEFA Control and Disciplinary Body (hereinafter: the "UEFA CDB") requesting it to open disciplinary proceedings against Fenerbahçe.

43. On 17 June 2012, an internal email was sent by a Legal Counsel of UEFA Disciplinary Services to Mr David Casserly, an UEFA Disciplinary Inspector, to which the letter of 7 June 2012 was attached. A carbon copy (cc) of this email was sent to two email addresses from Fenerbahçe.

44. On 18 June 2012, the UEFA Disciplinary Inspector submitted a brief report to Fenerbahçe and to UEFA Disciplinary services, whereby he concluded that in light of the fact that the final reasoned decisions of the TFF Board of Appeals were not yet provided, *"no final decision may be issued by the* [UEFA CDB] *(…) until the* [UEFA CDB] *has had the opportunity to consider the final reasoned decisions of the TFF Board of Appeals".*

45. On 20 June 2012, UEFA received copies of the final reasoned decisions of the TFF Board of Appeals.

46. Also on 20 June 2012, the UEFA Disciplinary Inspector informed UEFA Disciplinary Services of his opinion that given the *"very large volume of documents to be analysed and presented to the CDB"* he was of the opinion that *"it would appear that at its meeting tomorrow, the CDB will not yet be in a position to issue a final decision as to whether Fenerbahçe has been involved in match-fixing since April 2007"*. The UEFA Disciplinary Inspector furthermore submitted that *"pending a final determination of that issue, Fenerbahçe should continue to be considered eligible for the UEFA Champions League, as in the absence of a finding against the club, Fenerbahçe continues to fulfil the relevant criteria for admission"*.

47. On 21 June 2012, the UEFA CDB rendered a decision allowing the UEFA Disciplinary Inspector and Fenerbahçe to file additional written submissions and confirmed that Fenerbahçe was eligible to participate in the UEFA Champions League season 2012/2013 pending a final decision of the UEFA CDB on this matter.

48. On 2 July 2012, the 16th High Criminal Court in Istanbul, Turkey, decided that a criminal organisation had been formed under the leadership of B. and that match-fixing and incentive bonus activity by officials of Fenerbahçe had taken place during 13 matches of the season 2010/2011. Of the 93 persons that were tried, 48 were convicted. Among the persons convicted were the following Fenerbahçe officials:

1. B., President of Fenerbahçe, sentenced to two years and six months for establishing a criminal organisation and sentenced to an additional three years and nine months of imprisonment and to a fine of Turkish Lire (hereinafter: "TRY") 1,312,500 for committing the crime of match-fixing in four matches and for committing the crime of incentive bonus in three matches.

2. C., Vice-president of Fenerbahçe, sentenced to one year and three months of imprisonment because of being a member of a criminal organisation and sentenced to an additional, and not suspended one year, 10 months and 14 days of imprisonment for providing an incentive bonus in order to influence the outright result of one match and of being involved in match-fixing in order to influence the outright result in two matches.

3. D., Board member of Fenerbahçe, sentenced to one year and three months of imprisonment because of being a member of a criminal organisation and sentenced to an additional, and not suspended one year, 25 (sic) months and 15 days of imprisonment and a fine of TRY 900,000 for committing the crime of match-fixing in two matches and for committing the crime of incentive bonus in three matches.

4. E., Board member of Fenerbahçe, sentenced to one year and six months of imprisonment (suspended for five years) because of being a member of a criminal organisation and sentenced to an additional, and not suspended one year, one month

and 15 days of imprisonment and a TRY 135,000 fine due to the fact that it was established that he committed the crime of incentive bonus in one match.

5. F., Manager of Fenerbahçe, sentenced to one year and three months of imprisonment (suspended for five years) because of being a member of a criminal organisation and sentenced to an additional, and not suspended 11 months and 7 days of imprisonment and a TRY 15,625 fine due to the fact that it was established that he committed the crime of match-fixing in one match.

6. G., Finance Director of Fenerbahçe, sentenced to one year and three months of imprisonment (suspended for five years) because of being a member of a criminal organisation and sentenced to an additional, and not suspended one year and three months of imprisonment and a TRY 49,980 fine for providing an incentive bonus in order to influence the outright result of one match and of being involved in match-fixing in order to influence the outright result in two matches.

49. In respect of the match between Gençlerbirliği and Fenerbahçe of 7 March 2011, the 16th High Criminal Court of Istanbul ruled as follows in respect of the individuals:

"C) Despite the fact that a civil lawsuit was initiated against the defendant B. with the demand of sentencing him with the crime of fraud due to the fact that he conducted match-fixing and gave incentive bonus in the Turkish Professional Super League in Manisaspor – Trabzonspor competition played on 21.02.2011, Fenerbahçe – Kasımpaşa competition played on 26.02.2011, Bursaspor – İBB Spor competition played on 06.03.2011, Gençlerbirligi – Trabzonspor competition played on 20.03.2011 and Eskişehirspor – Fenerbahçe competition played on 09.04.2011; TO ABSOLVE him as per the article 223/2-a of CCP due to the fact that actions of match-fixing and incentive bonus were not defined as a crime before the Law no. 6222, and that these actions were not particularly regulated in the criminal law, in summary, due to the fact that these actions were not defined as a crime,[2]

(…)

Despite the fact that a civil lawsuit was initiated against the defendant D. with the demand of sentencing him with the crime of fraud due to the fact that he conducted match-fixing in the Turkish Professional Super League in Manisaspor-Trabzonspor competition played on 21.02.2011, Fenerbahçe-Kasimpaşa competition played on 26.02.2011, Bursaspor-İBB Spor competition played on 06.03.2011, Gençlerbirliği-Fenerbahçe competition played on 07.03.2011, Eskişehirspor-Fenerbahçe competition played on 09.04.2011, Gençlerbirliği-Trabzonspor competition played on 20.03.2011; TO ABSOLVE him as per article 223/2-a of CCP due to the fact that actions of match-fixing and incentive bonus were not defined as a crime before

[2] Although the reasoning of the decision of the 16th High Criminal Court in Istanbul reflects that B. is guilty of having attempted to fix the match between Gençlerbirligi and Fenerbahçe, the Panel observes that the operative part of the decision neither convicts B. for his involvement in this match, nor is B. acquitted due to the fact that Law 6222 had not entered into force yet. It appears to the Panel that the 16th High Criminal Court in Istanbul omitted to mention this specific match in this paragraph of the operative part of the decision, acquitting B.

the Law no. 6222, and that these actions were not particularly regulated in the criminal law, in summary, due to the fact that these actions were not defined as a crime,

(…)

Despite the fact that a criminal case has been filed against the accused, G., alleging that he had committed the crime of fraud by involvement in match fixing in Manisaspor-Trabzonspor football match played on 21.02.2011 and Fenerbahçe-Kasımpaşa football match played on 26.02.2011, Gençlerbirliği-Fenerbahçe football match played on 07.03.2011, Gençlerbirliği-Trabzonspor football match played on 09.04.2011 in the Turkish Professional Super League, he shall be acquitted because the match fixing and incentive bonus had not been defined as an actual crime prior to the Law numbered 6222 and that this act is not specially regulated in the penalty laws and briefly, the act charged is not defined as a crime in the law pursuant to the article 223/2-a of the Code of Criminal Procedure".

50. Regarding the match between Fenerbahçe and IBB Spor of 1 May 2011, the 16th High Criminal Court of Istanbul came to the following conclusion:

"a) TO SENTENCE Defendant B. WITH 3 YEARS OF IMPRISONMENT by divergence from the lower limit as per the article 11/1 of Law no 6222 as amended by Law no 6259 – which is in compliance with his actions and which is in favour of him in terms of all of its results – by taking account of method of the crime and the significance and the value of the subject of the crime due to the fact that it is established that B. committed the crime of match-fixing in Fenerbahçe – IBB Spor competition played on 01.05.2011, in Karabük – Fenerbahçe competition played on 08.05.2011, Fenerbahçe – Ankaragücü competition played on 15.05.2011, in Sivasspor – Fenerbahçe competition played on 22.05.2011 in order to influence the match results; and the crime of incentive bonus in Trabzonspor – Bursaspor competition played on 17.04.2011, Eskişehirspor – Trabzonspor competition played on 22.04.2011, and Trabzonspor – IBB Spor competition played on 15.05.2011 in order to influence the match results in Turkish Professional Football League,

(…)

D) Despite the fact that a civil lawsuit was initiated against the defendant F. with the demand of sentencing him due to match-fixing in Fenerbahçe – İBB Spor competition – played on 01.05.2011 in Turkish Professional Super League – in order to influence that result of the competition, TO ABSOLVE him as per article 223/2-e of CCP due to the fact that no precise, sufficient and persuasive evidence – indicating that he needs to be sentenced for imputed offences – could be acquired, and that it could not be established that the defendant committed the charged crimes,

(…)

D) Despite the fact that a civil lawsuit was initiated against the defendant D. with the demand of sentencing him due to the crime of match-fixing via giving incentive bonus in Turkish Professional Super League in Fenerbahçe – İBB Spor competition played on 01.05.2011, TO ABSOLVE him as per article 223/2-e of CCP due to the fact that no precise, sufficient and persuasive evidence – indicating that he needs to be senctenced for imputed offences – could be acquired, and that it could not be established that the defendant committed the charged crimes,

(…)

a) Since the accused, G., has been proven guilty of the crimes, incentive bonus in order to influence the outright result of Eskişehirspor-Trabzonspor football match played on 22.04.2011 and match-fixing in IBB Spor-Fenerbahçe football match played on 01.05.2011 and Sivasspor-Fenerbahçe football match played on 22.05.2011 in the Turkish Professional Super League, he shall be SENTENCED TO IMPRISONMENT OF ONE YEAR AND SIX MONTHS AND SUBJECT TO A JUDICIAL FINE OF TWO THOUSAND DAYS (…)".

51. Regarding the match between Fenerbahçe and MKE Ankaragücü of 15 May 2011, the 16th High Criminal Court of Istanbul came to the following conclusion:

"a) TO SENTENCE Defendant B. WITH 3 YEARS OF IMPRISONMENT by divergence from the lower limit as per the article 11/1 of Law no 6222 as amended by Law no 6259 – which is in compliance with his actions and which is in favour of him in terms of all of its results – by taking account of method of the crime and the significance and the value of the subject of the crime due to the fact that it is established that B. committed the crime of match-fixing in Fenerbahçe – IBB Spor competition played on 01.05.2011, in Karabük – Fenerbahçe competition played on 08.05.2011, Fenerbahçe – Ankaragücü competition played on 15.05.2011, in Sivasspor – Fenerbahçe competition played on 22.05.2011 in order to influence the match results; and the crime of incentive bonus in Trabzonspor – Bursaspor competition played on 17.04.2011, Eskişehirspor – Trabzonspor competition played on 22.04.2011, and Trabzonspor – IBB Spor competition played on 15.05.2011 in order to influence the match results in Turkish Professional Football League,

(…)

TO SENTENCE the defendant F. WITH ONE YEAR AND SIX MONTHS OF IMPRISONMENT and ONE THOUSAND DAYS OF PUNITIVE FINE as per the article 11/1 of Law no 6222 – as amended by the Law no 6259, which is in compliance with his actions and which is in favour of him in terms of all of its results – by taking account of method of the crime and the significance and the value of the subject of the crime due to the fact that it is established that he committed the crime of match-fixing in Ankaragücü – Fenerbahçe competition played on 15/05/2011,

(…)

TO SENTENCE Defendant D. WITH 1 YEAR 8 MONTHS OF IMPRISONMENT and 8000 DAYS OF PUNITIVE FINE by divergence from the lower limit as per the article 11/1 of Law no 6222 as amended by Law no 6259 – which is in compliance with his actions and which is in favour of him in terms of all of its results – by taking account of method of the crime and the significance and the value of the subject of the crime due to the fact that it is established that D. committed the crime of match-fixing in Trabzonspor – Bursaspor competition played on 17.04.2011, Esikişehirspor – Trabzonspor competition played on 22.04.2011, Trabzonspor – İBB Spor competition played on 15.05.2011, Fenerbahçe – Ankaragücü competition played on 15.05.2011, Sivasspor – Fenerbahçe competition played on 22.05.2011 in order to influence the match results in Turkish Professional Football League,

(…)

The accused, C. has been proven guilty of providing an incentive bonus in order to influence the outright result of Eskişehirspor-Trabzonspor match played on 22.04.2011 and of being involved in match fixing in order to influence the outright result of Karabük-Fenerbahçe match played on 08.05.2011 and Fenerbahçe-Ankaragücü match played on 15.05.2011 in the Turkish Professional Super League, he shall be SENTENCED TO IMPRISONMENT OF ONE YEAR AND SIX MONTHS AND SUBJECT TO A PUNITIVE FINE OF TWO THOUSAND DAYS by divergence from the lower limit upon discretion considering his manner of committing the crime and significance and value of the subject of the crime as per the article 11/1 due to the act (attempt to do match fixing) requiring the severest punishment with reference to the article 11/10 of the Law numbered 6222 which applies to this act and is in favour in respect of all its consequences".

52. Regarding the match between Sivasspor and Fenerbahçe of 22 May 2011, the 16th High Criminal Court of Istanbul came to the following conclusion:

"a) TO SENTENCE Defendant B. WITH 3 YEARS OF IMPRISONMENT by divergence from the lower limit as per the article 11/1 of Law no 6222 as amended by Law no 6259 – which is in compliance with his actions and which is in favour of him in terms of all of its results – by taking account of method of the crime and the significance and the value of the subject of the crime due to the fact that it is established that B. committed the crime of match-fixing in Fenerbahçe – IBB Spor competition played on 01.05.2011, in Karabük – Fenerbahçe competition played on 08.05.2011, Fenerbahçe – Ankaragücü competition played on 15.05.2011, in Sivasspor – Fenerbahçe competition played on 22.05.2011 in order to influence the match results; and the crime of incentive bonus in Trabzonspor – Bursaspor competition played on 17.04.2011, Eskişehirspor – Trabzonspor competition played on 22.04.2011, and Trabzonspor – IBB Spor competition played on 15.05.2011 in order to influence the match results in Turkish Professional Football League,

(…)

TO SENTENCE Defendant D. WITH 1 YEAR 8 MONTHS OF IMPRISONMENT and 8000 DAYS OF PUNITIVE FINE by divergence from the lower limit as per the article 11/1 of Law no 6222 as amended by Law no 6259 – which is in compliance with his actions and which is in favour of him in terms of all of its results – by taking account of method of the crime and the significance and the value of the subject of the crime due to the fact that it is established that D. committed the crime of match-fixing in Trabzonspor – Bursaspor competition played on 17.04.2011, Esikişehirspor – Trabzonspor competition played on 22.04.2011, Trabzonspor – İBB Spor competition played on 15.05.2011, Fenerbahçe – Ankaragücü competition played on 15.05.2011, Sivasspor – Fenerbahçe competition played on 22.05.2011 in order to influence the match results in Turkish Professional Football League,

(…)

a) Since the accused, G., has been proven guilty of the crimes, incentive bonus in order to influence the outright result of Eskişehirspor-Trabzonspor football match played on 22.04.2011 and match-fixing in IBB Spor-Fenerbahçe football match played on 01.05.2011 and Sivasspor-Fenerbahçe football match played on 22.05.2011 in the Turkish Professional Super League, he shall be SENTENCED TO IMPRISONMENT OF ONE YEAR AND SIX MONTHS AND SUBJECT TO A JUDICIAL FINE OF TWO THOUSAND DAYS by divergence from the lower limit upon discretion

considering his manner of committing the crime and the significance and value of the subject of the crime and the severity of his offense based on his intention as per the article 11/1 due to his act requiring the severest punishment with reference to the article 11/10 of the Law numbered 6222 amended by the Law numbered 6259 which applies to his act and is in favor of him with respect to all its consequences".

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

53. On 6 November 2012, the UEFA Disciplinary Inspector received translations of the decision of the 16th High Criminal Court in Istanbul, Turkey.

54. On 31 May 2013, the UEFA Disciplinary Inspector issued his report in respect of the disciplinary proceedings against Fenerbahçe.

55. On 19 July 2013, after the UEFA proceedings had already finished, the Turkish Supreme Court prosecutor issued his report in respect of the appeals lodged by the individuals, requesting the confirmation of all the convictions as pronounced by the 16th High Criminal Court in Istanbul, Turkey. On 10 June 2013, the UEFA Head of Disciplinary and Integrity Services informed Fenerbahçe of the instigation of proceedings against it and submitted the UEFA Disciplinary Inspector's report dated 31 May 2013 (hereinafter: the "UEFA Disciplinary Report").

56. On 20 June 2013, Fenerbahçe filed its response.

57. On 22 June 2013, the UEFA Control and Disciplinary Body passed its decision (hereinafter: the "UEFA CDB Decision"), with the following operative part:

"To exclude Fenerbahçe SK from participating in the next three (3) UEFA club competitions for which they would qualify. Nevertheless, the third season is deferred for a probationary period of five years".

58. On 25 June 2013, the grounds of the UEFA CDB Decision were communicated to the parties.

59. In respect of the match between Gençlerbirliği and Fenerbahçe of 7 March 2011, the UEFA CDB considered it established that Fenerbahçe had been involved in:

"influencing the result of the match Gençlerbirliği vs. [Fenerbahçe] *of 7 March 2011, with in particular payments made to players of Gençlerbirliği".*

60. In respect of the match between Fenerbahçe and IBB Spor of 1 May 2011, the UEFA CDB considered it established that Fenerbahçe had been involved in:

"influencing the result of the matches [Fenerbahçe] *v.* [IBB Spor] *of 1 May 2011 (with in particular payments made to players of IBB Spor)".*

61. In respect of the match between Fenerbahçe and MKE Ankaragücü of 15 May 2011, the UEFA CDB considered it established that Fenerbahçe had been involved in:

"influence the result of a match between MKE Ankaragücü and [Fenerbahçe] *of 15 May 2011, with in particular direct contacts with players of MKE Ankaragücü".*

62. In respect of the match between Sivasspor and Fenerbahçe of 22 May 2011, the UEFA CDB considered it established that Fenerbahçe had been involved in:

"influencing the result of the matches (…) Sivasspor vs. [Fenerbahçe] *of 22 May 2011 (with in particular payments offered and possibly made to a player of the other team to play in favour of* [Fenerbahçe]*".*

G. The Decision of the Appeals Body of UEFA

63. On 26 June 2013, Fenerbahçe submitted a declaration of intention to appeal against the UEFA DCB Decision.

64. On 28 June 2013, Fenerbahçe requested a stay of the UEFA CDB Decision.

65. On 5 July 2013, Fenerbahçe submitted the grounds for its appeal and requested the sanction imposed in the UEFA CDB Decision to be cancelled.

66. On 8 July 2013, the UEFA Appeals Body rejected the application for a stay.

67. On 9 July 2013, the UEFA Disciplinary Inspector filed his reply to the appeal within the deadline set by the Chairman of the UEFA Appeals Body, requesting that the appeal be rejected and the costs charged accordingly.

68. On 10 July 2013, the UEFA Appeals Body passed its decision (hereinafter: the "Appealed Decision"), with, *inter alia*, the following operative part:

"1. The appeal lodged by Fenerbahçe SK is partially admitted and the Control and Disciplinary Body's decision of 22 June 2013 is partially upheld.

2. Fenerbahçe SK is excluded from participating in the next two (2) UEFA club competitions for which it would qualify. (…)".

69. On 15 July 2013, the grounds of the Appealed Decision were communicated to the parties.

70. In respect of the match between Gençlerbirliği and Fenerbahçe of 7 March 2011, the UEFA Appeals Body concluded as follows:

"The Appeals Body is satisfied that the Executive Committee member of Fenerbahçe SK D. had played a direct role in fixing the match Gençlerbirliği vs. Fenerbahçe played on 7 March 2011 of the 2010/2011 Turkish Super Lig. Numerous evidentiary elements support this conclusion, notably those contained in the Police Digest, the Ethics committee report, the decision of the TFF disciplinary bodies and the decision of the 16th High criminal court".

71. In respect of the match between Fenerbahçe and IBB Spor of 1 May 2011, the UEFA Appeals Body concluded as follows:

"In view of all the elements of the case file and having examined the Police digest and the 16th High criminal court decision, the Appeals Body is satisfied that the President of Fenerbahçe SK, B., concluded match fixing activities in regard to the match Fenerbahçe vs. IBB Spor, played 1 May 2011".

72. In respect of the match between Fenerbahçe and MKE Ankaragücü of 15 May 2011, the UEFA Appeals Body concluded as follows:

"After examination [sic] *all the elements of the case file, the Appeals Body is satisfied that there was an attempt to fix the match between Fenerbahçe and Ankaragügü* [sic] *played on 15 May 2011 of the 2010/2011 Turkish Super Lig. Consequently, the Appeals Body believes that the President of Fenerbahçe SK, B., a Fenerbahçe SK Executive Committee member D., Fenerbahçe SK Vice President C. and Youth Division Director F., took an active part in these match-fixing activities. The evidence submitted provided support to this conclusion of the Appeals Body, notably the Police Digest, the Ethics committee report, the decision of the TFF disciplinary bodies and the decision of the 16th High criminal court of Istanbul".*

73. In respect of the match between Sivasspor and Fenerbahçe of 22 May 2011, the UEFA Appeals Body concluded as follows:

"After taking into account a variety of evidence resulting firstly from the Police Digest and secondly from the 16th High criminal court decision, the Appeals Body considers that it is established that the President of Fenerbahçe SK, B., and a Fenerbahçe SK Executive Committee member, D., conducted match-fixing in the match between Sivasspor and Fenerbahçe played on 22 May 2011".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

74. On 16 July 2013, Fenerbahçe filed a statement of appeal with the CAS Court Office. The statement of appeal was directed at UEFA (as first respondent), Beşiktaş Jimnastik Kulübü (hereinafter: "Beşiktaş") (as second respondent) and Bursaspor Kulübü Derneği (hereinafter: "Bursaspor") (as third respondent) and contained an urgent application for a stay of the Appealed Decision. The Appellant nominated Mr Ulrich Haas, Professor in Zurich, Switzerland, as arbitrator.

75. On 17 July 2013, UEFA objected to Beşiktaş and Bursaspor being called as respondents in the present matter. UEFA did not object to the request for a stay of execution of the Appealed Decision provided that an expedited procedural calendar is agreed upon by CAS.

76. On 18 July 2013, Bursaspor filed an answer to the Appellant's request for stay of the Appealed Decision, concluding that such request must be rejected.

77. Also on 18 July 2013, the Appellant agreed to the exclusion of Beşiktaş and Bursaspor from this case and in fact withdrew, without prejudice, its appeal against these clubs. The Appellant furthermore informed CAS that the parties had agreed on a procedural calendar.

78. Also on 18 July 2013, the CAS Court Office acknowledged the Appellant's withdrawal of its appeal against Beşiktaş and Bursaspor and that the arbitration would proceed with UEFA as the sole respondent. Furthermore, in view of the parties' agreement to an expedited procedural calendar, the CAS Court Office confirmed, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Appealed Decision is stayed.[3] Furthermore, the CAS Court Office acknowledged the parties agreement to the following procedural calendar, which was subsequently implemented:

- Appeal brief to be filed on 26 July 2013;
- Answer to be filed on 9 August 2013;
- Hearing to take place between 21 and 23 August 2013;
- Operative part of the award to be rendered by 28 August 2013.

79. Also on 18 July 2013, Bursaspor reiterated its objection to a stay of the proceedings.

80. Also on 18 July 2013, the CAS Court Office informed Bursaspor, as indicated in its previous letter of the same date, that it is no longer considered as a party to the present proceedings. Furthermore, Bursaspor was informed that its answer to the Appellant's request for a stay had been filed outside the deadline prescribed (18 July 2013 midday) in the CAS letter of 17 July 2013 and is therefore deemed inadmissible. The CAS also took into consideration that this is a sports disciplinary case between the Appellant and UEFA and that only the latter is interested in the stay of its decision.

81. On 19 July 2013, Bursaspor filed a request for intervention in the present procedure pursuant to Article R41.3 and R41.4 of the Code of Sports-related Arbitration (hereinafter: the "CAS Code").

82. On 22 July 2013, the Respondent nominated Mr Rui Botica Santos, attorney-at-law in Lisbon, Portugal, as arbitrator.

83. On 26 July 2013, the Appellant filed its appeal brief. This document contained a statement of the facts and legal arguments. The Appellant challenged the Appealed Decision rendered by the UEFA Appeals Body on 10 July 2013, submitting the following requests for relief:

[3] Contrary to what was widely published in the press, CAS did not take a decision on the Appellant's application for stay, the Deputy President of the CAS Appeals Arbitration Division only confirmed the application for a stay following UEFA's agreement thereto.

"1. to annul the decision of the UEFA Appeals Body dated 10 July 2013 and declare that no sanction shall be imposed on Fenerbahçe Spor Kulübü with respect to the allegations of match-fixing in 2011 and of not properly completing the 2011/12 UEFA Club Competitions Admission Criteria Form;

2. alternatively, to annul the decision of the UEFA Appeals Body dated 10 July 2013 and refer the case back to the UEFA Appeals Body;

3. alternatively, to suspend the present proceedings until 30 October 2013, when the Turkish Supreme Court is expected to have issued a final decision on the criminal proceedings;

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

5. 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, to be submitted by the Appellant at a later stage of this proceedings".

84. On 29 and 30 July 2013 respectively, the Appellant and the Respondent requested Bursaspor's request for intervention to be rejected.

85. On 30 July 2013, pursuant to Article R54 of 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 appointed to decide the present matter was constituted by:

- Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands, as President;
- Mr Ulrich Haas, Professor in Zurich, Switzerland; and
- Mr Rui Botica Santos, Attorney-at-law in Lisbon, Portugal, as arbitrators.

86. On 9 August 2013, the CAS Court Office informed Bursaspor that the Panel decided to reject its request for intervention on the basis that, *"in the specific circumstances of this case,* [Bursaspor] *does not have a legal interest in the present matter which can establish or justify the intervention. This case is purely of a disciplinary nature between the Appellant and UEFA following match-fixing allegations and charges. In fact,* [Bursaspor] *does not and cannot have any claim against one of the parties to the proceedings in this respect".*

87. Also on 9 August 2013, the CAS Court Office invited the parties to provisionally book the dates of 21 August 2013 and 22 August 2013 in the morning for the hearing in the present matter.

88. Also on 9 August 2013, the Respondent filed its answer whereby it requested CAS to decide the following:

"a. To dismiss the Appeal.

b. To confirm the decision of the Appeals Body of UEFA and order that Fenerbahçe Spor Kulübü is excluded from participating in the next two (2) UEFA club competitions for which it would otherwise be qualified, commencing with the 2013/2014 competition.

c. To award UEFA its costs of the proceedings.

d. To charge any arbitration costs to Fenerbahçe Spor Kulübü".

89. On 14 August 2013, the Appellant requested the Panel to reschedule the hearing to be held on 22 August 2013 (afternoon) and on 23 August 2013 as the President of the Appellant and 8 witnesses called by the Appellant would be unable to attend a hearing on 21 August 2013 as the Appellant was scheduled to play against the English football club Arsenal FC in the UEFA Champions League Play-off in Istanbul on 21 August 2013, 20:45 (CET).

90. Also on 14 August 2013, the CAS Court Office informed the parties that the Panel is unavailable on 23 August 2013 and had therefore decided to hold the hearing on 21 and 22 August 2013 all days. In light of the fact that the Appellant called 55 witnesses to be heard, the parties were informed that the morning of 21 August 2013 would be reserved for the procedural aspects of the case and that the afternoon of 21 August and 22 August 2013 all day would be reserved for hearing the witnesses and the arguments on the merits. In this respect, the parties were granted a deadline to file a hearing schedule for the audition of the witnesses and closing submissions. In light of the Appellant's request of the same day, the Panel considered that *"the parties have agreed to the expedited calendar and it is for the Appellant's President and Board Members – as specified in its letter – to decide whether they wish to attend the hearing or the football match. In respect of the witnesses, the Panel took into account the information provided by the Appellant and confirms to be available to hear these witnesses on 22 August 2013 in the afternoon".*

91. On 16 August 2013, the Appellant submitted a request for evidentiary measures with CAS pursuant to Article R44.3 of the CAS Code. In respect of UEFA's allegation that the Appellant violated article 5 of the UEFA DR 2008 by not properly completing the UEFA 2011/2012 Admission Form, the Appellant requested UEFA to disclose the UEFA Admission Criteria Forms filled in by certain other clubs. If it would appear that these UEFA Admission Criteria Forms are not filled in correctly, this would, in the opinion of the Appellant, corroborate its allegation that UEFA, until the present case, was of the view that *"it could not base a sanction on improperly completing of an UEFA Admission Form before any public knowledge about any investigation against the respective club and (ii) that UEFA by basing the imposed sanction of the Appellant also on the Admission Form 2011/12 violates the principle of equal treatment".*

92. On 19 August 2013, UEFA informed CAS that it did not object to the Appellant's request for disclosure.

93. Also on 19 August 2013, the Appellant provided CAS with a proposed hearing schedule and a witness statement of J., President of the Turkish football club Gençlerbirliği. The Appellant also reduced the number of witnesses to be heard at the hearing to 35.

94. Also on 19 August 2013, UEFA objected to the hearing schedule proposed by the Appellant and proposed an alternative hearing schedule.

95. On 20 August 2013, UEFA provided CAS with an UEFA Admission Criteria Form filled in by the Turkish football club Beşiktas on 9 May 2011. The form was duly signed and did not disclose any information about match-fixing. UEFA informed the Appellant that the other requested documents did not exist, either because these clubs did not fill in any UEFA Admission Criteria Form because this was not yet required by UEFA before the 2009/2010 season, or because these clubs did not fill in any UEFA Admission Criteria Form as the clubs did not qualify for any UEFA club competition in the relevant season.

96. Also on 20 August 2013, the Appellant objected to the hearing schedule proposed by UEFA and reduced the number of witnesses to be heard at the hearing to 32. The Appellant furthermore requested UEFA for three additional UEFA Admission Criteria Forms and to produce these documents at the hearing.

97. On 21 and 22 August 2013, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed not to have any objections as to the constitution and composition of the Panel. Both parties confirmed not to object to the jurisdiction of CAS. The Respondent however objected to the jurisdiction of the UEFA CDB and the Appeals Body of UEFA.

98. In addition to the Panel, Mr William Sternheimer, Managing Counsel & Head of Arbitration to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For the Appellant:

1) Mr Andreas Zagklis, Counsel;
2) Mr Christian Keidel, Counsel;
3) Mr Heiner Kahlert, Counsel;
4) Mr Deniz Tolga Aytöre, Counsel;
5) Mr Abdullah Kaya, Counsel;
6) Mr Ayhan Çopuroğlu, Counsel;
7) Mr Abdurrahim Erol, Counsel;
8) Mr Ahmet Melih Turan, Counsel; and
9) B., President of Fenerbahçe

b) For the Respondent:

1) Dr Jean-Marc Reymond, Counsel;
2) Ms Delphine Rochat, Counsel;
3) Mr Adam Lewis QC, Counsel;
4) Mr Emilio Garcia Silvero, UEFA Head of Disciplinary and Integrity; and
5) Mr Miguel Liétard Fernández-Palacios, UEFA Disciplinary Inspector.

99. The Panel heard evidence from the following persons in order of appearance:

1) I., former Vice-President of Fenerbahçe;
2) L., former Vice-President of Fenerbahçe;
3) Mr Haluk Burcuoğlu, Law Professor in Turkey;
4) Mr Köksal Bayraktar, Criminal law Professor in Turkey;
5) C., Vice-President of Fenerbahçe;
6) D., Board member of Fenerbahçe;
7) G., Finance Director of Fenerbahçe;
8) M., Player agent;
9) N., former football player of Fenerbahçe;
10) P., former goalkeeper of Fenerbahçe;
11) K., Player agent;
12) Q., lawyer of H.;
13) H., former football player of Istanbul Büyükşehir Belediyespor (hereinafter: "IBB Spor")
14) O., Player agent;
15) R., former goalkeeper of Sivasspor;
16) S., President of Sivasspor;
17) T., Player agent;
18) U., Board member of Fenerbahçe;
19) V., former Board member of Fenerbahçe; and
20) B., President of Fenerbahçe

100. Although the Appellant at the commencement of the hearing intended to call 13 other witnesses (B. is not regarded as a witness, but as a representative of the Appellant) and arrangements were made by the Panel and CAS to hear them, during the hearing the Appellant informed the Panel and the Respondent not to call these witnesses.

101. At the occasion of the hearing, Fenerbahçe provided certain additional witness statements of persons that were not able to attend the hearing. At the same time, UEFA provided the three additional UEFA Admission Criteria Forms that were requested by the Appellant on 20 August 2013. All three forms were signed by representatives of the concerning club and neither of the forms indicated that the club had been *"directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level since 27 April 2007"*.

102. Each witness and expert heard by the Panel was invited by its President to tell the truth subject to the sanctions of perjury. Both parties and the Panel had the opportunity to examine and cross-examine the witnesses/experts. The parties then had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

103. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure and that their right to be heard had been respected. The Appellant however stated that the expedited nature of the proceedings was not voluntary and that this is why it requests the matter to be referred back to UEFA. In this respect the Respondent stated that it was entirely satisfied, particularly because the parties had explicitly agreed on expedited proceedings.

104. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

105. On 26 August 2013, following an invitation thereto by the Panel, both parties filed submissions on costs. Although invited thereto by the Panel, neither of the parties filed comments in respect of each other's submissions on costs.

106. On 28 August 2013, the operative part of the award was communicated to the parties, dismissing the appeal.

IV. SUBMISSIONS OF THE PARTIES

107. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Panel has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.

108. The submissions of the Appellant, in essence, may be summarized as follows:

- The Appellant purports that this appeal against a disciplinary sanction imposed by UEFA is, first and foremost, about legal, not factual issues. This holds true for two reasons: First, UEFA violated numerous basic and universally recognized legal principles that would render any sanction by UEFA in this case illegal even if UEFA's factual allegations underlying the sanction were true (*quod non*). Second, for reasons that are evidently all but legal, UEFA decided to conduct a hyper-extended disciplinary procedure which neither left room for respecting some of the most basic procedural rights of the Appellant, nor left time for fact finding and appreciation of evidence that would even come close to doing justice to the factual complexity of the matter at hand. To put it simply, the two instances guaranteed under the UEFA Statutes effectively did not take place. This expedited CAS proceeding is not capable of, much less an appropriate means of, making up the leeway wilfully created by UEFA. Therefore,

should CAS not endorse the Appellant's position that the Appellant cannot be sanctioned in any event, it will have no choice but remit this case back to UEFA for a proper disciplinary procedure that makes an effort of establishing the facts of this complex case within an appropriate time frame that also allows for respecting the Appellant's rights.

- Notwithstanding the above, the Appellant wishes to make clear that it strongly denies the factual allegations made by UEFA. These allegations may sound plausible on the basis of the prejudicial statements and cherry-picked facts that were the basis of UEFA's decision to sanction the Appellant. However, as soon as one makes the effort of taking a closer look at all facts and evidence available, including those exonerating the Appellant, it becomes obvious that the allegations collapse like a house of cards. Unfortunately, UEFA did not make this effort. It should be noted already at this point that UEFA's allegations, in particular in the appealed decision, are frequently so unspecific that it is unclear who, according to UEFA, allegedly did what and at what time. This makes it extremely difficult for the Appellant to even properly defend itself against the allegations.

- The key arguments raised by the Appellant are the following:

- The Appellant maintains that the Appealed Decision is illegal because the UEFA disciplinary bodies did not have any disciplinary competence in the present matter. The match-fixing allegations are related exclusively to Turkish championship games in the 2010/11 season and, thus, do not fall within the disciplinary competence of UEFA pursuant to the UEFA regulations applicable to the case at hand.

- UEFA was prevented from even opening the disciplinary procedure against the Appellant under the principles of *pacta sunt servanda* and *venire contra factum proprium* (or estoppel by waiver). UEFA's Secretary General had expressly promised in writing that such proceedings would not be opened if the TFF withdrew the Appellant from the 2011/12 UEFA Champions League, which the TFF did. Thus, UEFA was obliged to stick with this promise, close the disciplinary procedure and, *a fortiori*, not impose any further sanction on the Appellant.

- The regulations invoked by the UEFA Appeals Body do not meet the requirements of the legality principle (known also as *nulla poena sine lege scripta et certa*), which must be respected by all Swiss associations. The applicable UEFA regulations plainly do not provide the necessary clear and ambiguous legal basis to sanction the alleged offences of the Appellant. Because of the lack of a sufficient legal basis of the sanction imposed, the Appealed Decision must be set aside.

- The Appealed Decision is illegal because it manifestly violates the basic legal principle and human right of *ne bis in idem* on two accounts. The TFF decided to exonerate the Appellant by a final and binding decision that must also be respected by UEFA. Second, the principle is violated because the Appellant already served a sanction when

being excluded from the 2011/2012 Champions League season, and cannot be declared ineligible from UEFA's competitions for a second time two years later.

- The Appealed Decision is illegal because of a fundamental contradiction: the UEFA CDB held in a separate and simultaneously rendered decision that a supplementary report was needed to ascertain whether the five accused officials of the Appellant had committed any offence. Hence, the UEFA CDB acknowledged that no wrongdoing of the Appellant's individual officers could be established on the basis of the facts presented to it thus far. Nevertheless, the UEFA CDB imposed a sanction on the Appellant, holding it liable for the very allegations that it considered unproven with respect to the individual officers.

- The Appealed Decision ignored *res indicata*. This principle requires an adjudicatory body to respect a final and binding decision. For an appellate body, *res indicata* means that it has to respect the first instance decision to the extent it was not challenged. In the UEFA Disciplinary Report, the UEFA Disciplinary Inspector alleged that officers of the Appellant were guilty of (attempted) fixing 13 matches. The UEFA CDB found the Appellant guilty of fixing only five of these matches. The UEFA Disciplinary Inspector did not file a cross-appeal. Under *res indicata*, the UEFA Appeals Body had to respect the UEFA CDB Decision with respect to the eight games for which no offence was established. Instead, the UEFA Appeals Body found the Appellant guilty of fixing three additional matches that were originally alleged in the UEFA Disciplinary Report, but not established in the UEFA CDB Decision. Therefore, the Appealed Decision violated *res indicata* and must be set aside.

- The Appealed Decision violated several basic procedural rights that warrant CAS to remit the proceedings back to UEFA. *Inter alia*, the UEFA Appeals Body allowed the UEFA Disciplinary Inspector to submit more than 900 pages of new evidence less than 24 hours before the hearing of the UEFA Appeals Body. The violations of the procedural rights committed cannot be cured by a *de novo* review through the CAS because (i) the Appellant would be wilfully deprived by UEFA of two instances guaranteed under the UEFA Statutes (2010 and 2012), and (ii) under the time pressure unnecessarily created by UEFA, the file of the case which already contains more than 15.000 pages simply cannot be reviewed *de novo* within an expedited proceeding. Without a valid reason, UEFA submitting its UEFA Disciplinary Report worth more than 3.000 pages regarding the disciplinary violations which allegedly took place two years ago only six weeks before the decisive draw of the 2013/14 UEFA Champions League.

- The merits of the case do not warrant the sanctions imposed. The Appellant is not guilty of match-fixing and UEFA has certainly failed to meet its burden of proof. Even if the match-fixing allegations were correct (*quod non*), sanctioning the Appellant under the regulations applicable to the present case would severely violate the equality principle given that multiple other clubs did not receive such sanction under the same rules. Moreover, even if the Appellant could be sanctioned under the same rules (*quod*

non), the UEFA Appeals Body would have had to weigh the aggravating and mitigating circumstances in order to determine an appropriate sanction. Instead, the UEFA Appeals Body satisfied itself with two and a half lines of platitudes before arriving at a profoundly disproportionate sanction, without even bothering to mention any of the circumstances explained in detail by the Appellant.

- In addition to the abovementioned procedural and substantive flaws of the Appealed Decision, there are numerous other circumstances which do not shed a particularly favourable light on the UEFA proceedings and which support the Appellant's position that it was effectively deprived of two instances. Even though the undersigned representatives had no prior involvement with this case, the UEFA CDB did not deem it necessary to grant even a short extension of the 10-day time limit to file the Response to the UEFA Disciplinary Report. Given that the UEFA Disciplinary Report is based exclusively on third party fact-finding and appreciation of evidence, it is hard to find any explanation why the UEFA Disciplinary Inspector waited until six weeks before the draw for the 2013/14 UEFA Champions League to submit the UEFA Disciplinary Report. The appeal against the UEFA CDB decision not to extend the time limit was decided upon only after the time limit had already passed, thus, leaving the Appellant "in the dark" as to whether its Response had to be submitted within the 10-day time-limit. Due to the inappropriately tight time schedule, the UEFA CDB had less than 40 hours to consider the Response, which comprised 53 pages (primarily) on procedural issues, more than 800 pages on the merits and more than 2000 pages of exhibits. Thus, it came as no surprise to the Appellant that the chairman of the UEFA CDB freely admitted at the hearing that he had been incapable of reading even some of the most crucial documents. In violation of its own rules, the UEFA Appeals Body allowed the UEFA Disciplinary Inspector to basically submit a new report less than 24 hours before the hearing. This additional report contained over 900 pages of exhibits that were in the UEFA Disciplinary Inspector's possession already when he filed his original UEFA Disciplinary Report, most of them more than one year before the UEFA Disciplinary Report was submitted. The UEFA Appeals Body further compounded this violation by heavily relying on these exhibits in the Appealed Decision even though the Appellant did not have an opportunity to properly defend itself against this new report and objected to its admissibility.

- In view of all the above, the Appellant cannot help but wonder whether the reasons behind the expedited and, at the same time, shockingly careless UEFA procedure against it are of a purely legal nature. The Appellant now has to rely on CAS for its first truly independent proceeding after having been denied the two previous instances granted to it under the UEFA Statutes.

- In any event, the Appellant expressly reserves its right to seek further legal action against the violation of some of its most basic legal rights.

109. The submissions of the Respondent, in essence, may be summarised as follows:

- UEFA is of the opinion that this case is about a European football club that in order to have success has been engaged through its highest officials and for a prolonged period of time in very serious, and very far-reaching, match-fixing activities. Players of other clubs were bribed, or otherwise induced to not play well. Criminal investigations have revealed the fixing of more than a dozen of matches, and even more matches influenced with so-called bonus payments. The evidence before CAS, including the evidence collected by the Turkish state authorities, reveals in a shocking way the illicit methods, the aim, and the unlawful actions of the representatives of the Club involved.

- Turkish national criminal courts have issued substantial jail convictions, because they recognised that not only sporting rules, but also criminal rules have been seriously violated. The disciplinary bodies of the TFF have admitted important violations of domestic disciplinary rules and have issued sanctions respectively.

- The decisions of UEFA at stake today before CAS have recognised that the match-fixing activities of the Club and its Officials have violated UEFA rules and must be sanctioned accordingly. Additionally, the UEFA bodies have confirmed that the Club in order to get access to the UEFA competitions has filed an UEFA Admission Form that was deliberately incomplete and inaccurate.

- UEFA is clear of the view that the Appealed Decision must be confirmed in its entirety, and that actually it would be fair to say that the sanctions issued by the UEFA Appeals Body are not only justified and accurate, but even too lenient.

- As both the UEFA CDB and UEFA Appeals Body have found, the Appellant has in breach of article 5 UEFA DR 2008 been *"directly and/or indirectly involved, since the entry into force of Art. 50(3) of the UEFA Statutes (…) in (…) activity aimed at arranging or influencing the outcome of a match at national or international level"* (in the words of article 2.05 UEFA Champions League Regulations 2011/12 (hereinafter: the "UCLR 2011/2012")). The Appellant and its officials (for whose conduct it is responsible under article 6 and/or 11 UEFA DR 2008) have engaged in and/or attempted to engage in match-fixing and have behaved in a way that violates not only the applicable disciplinary regulations but also fundamental sporting principles. Because of their involvement in match-fixing activities, senior Club officials have either criminal convictions imposed by the Turkish High Criminal Court and/or disciplinary sanctions imposed by the TFF. In addition, the Supreme Court Prosecutor has considered the officials' appeals, and his position is that the convictions should be upheld. Furthermore, the Club lied, or at best failed to provide a true and accurate account to UEFA when it completed its Admission Form for the 2011/12 Champions League, since it failed to disclose involvement in match-fixing. UEFA submits that there is copious evidence of a sustained pattern of match-fixing orchestrated by officials at the highest level of the Appellant and that the Appellant, accordingly, has violated applicable UEFA rules, lastly also by submitting a misleading Admission Form.

- Rather tellingly, the Appellant raises a series of technical procedural points in the Appeal Brief, each of which is misconceived, irrelevant and unsustainable for the reasons described further below. What is more, the very fact that each of these points is taken demonstrates the Club's utter lack of confidence in its case on the substance.

- *Competence*. The UEFA CDB and the UEFA Appeals Body were correct that UEFA has competence to impose disciplinary measures when a club has fixed national matches and not UEFA matches. Article 2.06 UCLR 2011/12 provides for disciplinary proceedings flowing from the satisfaction of the standard in article 2.05 (in addition to an administrative decision of one season's ineligibility). Article 2.05 of the UCLR 2011/2012 (and article 50(3) of the UEFA Statutes) specifically state that the standard can be met in relation to *"a match at national or international level"*, and so the Club has expressly contractually agreed to competence. If any further confirmation were needed, in CAS 2011/A/2528, CAS already held that UEFA has jurisdiction over match-fixing in national matches (in that case the club in question was not only excluded from the UEFA Europa League but also subject to further sanctions imposed by the disciplinary bodies of UEFA).

- *Binding contract of representation*. The UEFA CDB and the UEFA Appeals Body were correct that the UEFA letter of 23 August 2011 does not amount to a binding contract of representation by the UEFA Administration that if the TFF withdraws the Appellant for one season there would not be any disciplinary action. The letter simply stated if the Appellant would not be withdrawn, the *"eventual sanction"* in any disciplinary proceedings *"is likely to be considerably more severe"*, in the sense of more severe than it would have been if it were withdrawn.

- *Nulla poena sine lege*. The UEFA CDB and the UEFA Appeals Body do not violate this principle. CAS has long held that disciplinary procedures do not fall to be measured by reference to criminal law standards: In this respect, it must be noted that disciplinary rules enacted by sports authorities are private law (and not criminal law) rules. In any event, the type of conduct for which the Appellant has been sanctioned is clearly specified in article 2.05/2.06 of the UCLR 2011/12, article 50(3) of the UEFA Statutes, and article 5(2)(a)(b)(d) and (j) UEFA DR 2008.

- *Ne bis in idem*. The UEFA CDB and the UEFA Appeals Body do not violate this principle. Again, CAS has held that criminal standards do not apply in disciplinary proceedings. In any event, the Appealed Decision of the UEFA Appeals Body is the first decision of an UEFA body against the Appellant for the match-fixing activities and the violation of UEFA rules mentioned above. No sanction was imposed by UEFA in 2011.

- *Absence of a decision of UEFA against the Club's officials*. The Appellant argues that no sanction shall be taken against the Appellant itself since the UEFA CDB has not decided to sanction the Club's officials. This argument is wrong for many reasons. First, the Appellant seeks to mislead CAS: the UEFA CDB, no doubt for reasons of

efficiency and urgency linked with the on-going European competitions, has decided to issue its decision on liability and sanction against the Appellant as a first step, leaving over to a later stage its decision in relation to the individual officials. Second, it is obvious and well recognised in CAS jurisprudence, that a liability of a club or of a team does not require a sanction of any individuals. Proceedings can be taken against a club alone on the basis of what an official has done. The question is only whether the Appellant is liable for match-fixing activities of its own officials. Finally, it makes no sporting sense that disciplinary action cannot be taken against a club in relation to imminent participation in the Champions League, on the basis that parallel (less urgent) proceedings in relation to individuals have not been concluded.

- *No violation of the* res iudicata *principle*. The Appellant submits that the UEFA Appeals Body did not have the right to find the Appellant guilty of fixing three additional matches which were not established in the UEFA CDB Decision. This argument is hopeless, because the UEFA CDB expressly mentioned in its decision that the list of matches which were found to be fixed was not exhaustive.

- *Right to a fair hearing*. As to the complaints about the fairness of the process before the UEFA CDB and the UEFA Appeals Body, it is long and well-established in CAS jurisprudence that even if there were any procedural failings (which is denied) the *de novo* nature of CAS proceedings cures all procedural defects in lower instances.

- *Immediacy*. The UEFA CDB decision and the Appealed Decision do not violate this principle, relied upon by the Club in the context of its procedural complaint that its right to a fair hearing has supposedly been breached. Again, criminal standards do not apply. Furthermore, under Swiss law as well as pursuant to the applicable disciplinary rules, the disciplinary bodies are entitled to take into account decisions of foreign criminal courts or national federations, and attach to them the weight that the bodies consider appropriate in the circumstances.

- UEFA will demonstrate by reference to four example matches (in the interest of efficiency and without prejudice to its continued reliance on all the matches involved), why all four courts or tribunals and the UEFA CDB and the UEFA Appeals Body were right to be comfortably satisfied that the evidence demonstrated that the Appellant and its Officials were involved in match-fixing.

- *Equality*. The UEFA CDB and the UEFA Appeals Body do not violate this principle. Equality of treatment is nothing to the point where different cases on different facts at different times under different rules have been dealt with. Equality consists of treating similar cases in a similar manner, not different cases in a similar manner.

- *Level of sporting sanction*. There is nothing in the Appellant's points about mitigation, or proportionality of sanction. There is no conceivable basis on which a two year ban from an international club competition (in addition to one year already *de facto* served as a result of the withdrawal of the Club by the TFF) is disproportionate given the

specific facts and circumstances of this case, in particular having regard to the duration and gravity of the offence and the manner in which an entire "programme" of match-fixing was orchestrated by the most senior officials of the Appellant. UEFA is determined to ensure that the guilty are appropriately dealt with, so-called "big" clubs just as "small" clubs. For this reason, the sanctions issued by the UEFA Appeals Body are appropriate, just and well motivated – if not possibly too generous towards the Appellant. The Appealed Decision must be confirmed in its entirety: not to do so would send a tragic wrong message to the world of sport.

V. ADMISSIBILITY

110. The appeal was filed within the deadline of ten days set by article 62(3) of the UEFA Statutes (version 2013). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

111. It follows that the appeal is admissible.

VI. JURISDICTION

112. The jurisdiction of CAS, which is not disputed, derives from article 47 of the UEFA DR (version 2008) as it determines that:

"The UEFA Statutes stipulate which decisions taken by disciplinary bodies may be brought before the Court of Arbitration for Sport, and under which conditions".

and article 62(1) of the UEFA Statutes which reads as follows:

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

113. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.

114. It follows that CAS has jurisdiction to decide on the present dispute.

VII. APPLICABLE LAW

115. Fenerbahçe maintains that, in principle, the UEFA DR (2008) are applicable to the present case together with the UEFA Statutes (2010).

116. With respect to the procedural and organisational issues (*i.e.* time limits, admissibility of evidence, composition of panels etc.), Fenerbahçe has already objected during the hearing before the UEFA Appeals Body to the application of the UEFA DR (2013). In fact, the

procedural and organisational issues must be handled in accordance with the UEFA DR (2012). This follows from the history of the case. The UEFA disciplinary procedure against Fenerbahçe was initiated on the basis of a letter of UEFA's General Secretary to the chairman of the UEFA CDB dated 7 June 2012. Thus, Fenerbahçe considers that it is undisputable that the UEFA disciplinary procedure was initiated under the UEFA DR (2012).

117. UEFA maintains that so far as the substance is concerned, the UEFA Statutes (2010) and the UEFA DR (2008) (*i.e.* the UEFA DR in force at the time the disciplinary offences were committed) are applicable, and in relation to events in 2011/2012, the UCLR for that season. So far as procedure is concerned, the UEFA DR (2013), which came into effect on 1 June 2013 are applicable.

118. Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

119. The Panel notes that article 64(1) of the UEFA Statutes (2010) stipulates the following:

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

120. The parties thus agreed to the application of the various regulations of UEFA, except for the applicable version of the UEFA DR concerning procedural and organisational issues. The subsidiary application of Swiss law is undisputed by the parties. The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

121. In respect of the applicable version of the UEFA DR regarding procedural and organisational issues, the Panel notes that the parties' positions differ in respect of the moment UEFA instigated disciplinary proceedings against Fenerbahçe. Fenerbahçe asserts that such proceedings commenced with the letter of the UEFA Secretary General to the chairman of the UEFA CDB dated 7 June 2012, whereas UEFA avers that the disciplinary proceedings commenced with the letter issued by the UEFA Head of Disciplinary and Integrity Services dated 10 June 2013.

122. Although the Panel is unable to verify when the UEFA CDB exactly instigated disciplinary proceedings against Fenerbahçe officially, the Panel observes that Fenerbahçe became aware of such proceedings on 17 June 2012 at the latest. On that date an internal email was sent by an UEFA Legal Counsel of UEFA Disciplinary Services to an UEFA Disciplinary Inspector to which the letter of 7 June 2012, requesting the opening of disciplinary proceedings against Fenerbahçe was attached. A carbon copy (cc) of this email was sent to two email addresses of Fenerbahçe.

123. In any event, by means of the UEFA decision dated 21 June 2012 where it was decided that the UEFA Disciplinary Inspector and Fenerbahçe were allowed to file additional written submissions and Fenerbahçe was declared eligible to participate in the UEFA Champions League season 2012/2013 pending a final decision of the UEFA CDB on this matter, Fenerbahçe was certainly aware of the fact that disciplinary proceedings were initiated.

124. Since the UEFA DR (2013) only entered into force on 1 June 2013 and UEFA instigated the disciplinary proceedings against Fenerbahçe when the UEFA DR (2012) were in force, the Panel concludes that the UEFA DR (2012) are applicable concerning the procedural and organisational issues.

VIII. PRELIMINARY ISSUE

125. Before entering into the substance of the matter, the Panel wishes to dedicate some words on the definition of "match-fixing". The Panel observes that both parties in their submissions and during their pleadings continuously referred to "match-fixing" as the offence that was allegedly committed by the Appellant.

126. In this respect, the parties drew some parallels with previous CAS awards concerning match-fixing, *i.e.* CAS 2009/A/1920, CAS 2010/A/2172 and CAS 2010/A/2266. This Panel is however of the opinion that there is a fundamental difference between the CAS jurisprudence referred to above and the present case.

127. In the above-mentioned jurisprudence, third parties (*i.e.* criminal organisations) attempted to influence the result of a match by inducing athletes, referees or clubs to act in a certain way during a match. Athletes could be convinced to play badly in exchange of a certain amount of money. This does not necessarily mean that athletes were expected to make their team lose a specific match, it could also mean that a bribed athlete was required to influence certain parts of a match (e.g. causing a corner kick, receiving a red card, or, in the example of cricket: throwing a no-ball). This is generally qualified as "spot-fixing". The third party fixing the match is not necessarily interested in the outcome of the match, but is interested in certain events to occur on which bets can be placed (e.g. betting that the first corner in the match will be for the away team). Third parties can make large profits if bets are placed on an event that finally indeed materializes.

128. This is however not the case in the present matter. As far as the Panel is aware, there are no third parties involved in the present case that tried to make profit by influencing the result of matches, or certain elements of matches. UEFA accuses the Appellant of having influenced the outcome of numerous matches to its own benefit, *i.e.* in order to win the Turkish Süper Lig in the 2010/2011 season.

129. In the opinion of the Panel, the present case therefore concerns the more "classic" match-fixing, as opposed to the "modern" match-fixing. Nevertheless, after having considered the above, the Panel is satisfied that because the Appellant is accused of having tried to directly

or indirectly influence the outcome of football matches, match-fixing is not an inappropriate word and is in fact just as treacherous to the integrity of sport, if not more, as match-fixing in its "modern" context.

IX. MERITS

A. The Main Issues

130. The Panel finds that the present dispute can roughly be divided in two parts. The first part concerns objections of Fenerbahçe in respect of procedural and formal issues, which possibly prevent the Panel from entering into the merits of the case. It flows from the nature of the procedural and formal issues raised by Fenerbahçe, that only if the Panel concludes that such procedural and formal issues are not of such a nature as to obstruct the adjudication of the merits of the case, it will be necessary for the Panel to decide on the question whether in fact Fenerbahçe was engaged in match-fixing activities and/or should be sanctioned for match-fixing activities.

131. In light of the above, the Panel will first adjudicate all the procedural and formal objections raised by Fenerbahçe (a-f) before answering the question, if necessary, whether Fenerbahçe was actually engaged in match-fixing activities (g) and subsequently, if necessary, whether the sanction imposed by UEFA was proportionate (h).

132. In view of the above, the main issues to be resolved by the Panel are:

1) Procedural and formal aspects:
   a) Was the legal principle of *res iudicata* violated by UEFA?
   b) Do the UEFA CDB Decision and the Appealed Decision violate the *ne bis in idem* principle?
   c) Was the UEFA CDB competent to instigate disciplinary proceedings against Fenerbahçe and were the sanctions imposed in accordance with the legality principle?
   d) Was UEFA estopped from instigating disciplinary proceedings against Fenerbahçe because of the UEFA General Secretary's letter dated 23 August 2011?
   e) Can UEFA impose a sanction on Fenerbahçe even if it deems that the level of information obtained in relation to the individuals is not sufficient to issue a sanction against them yet?
   f) Should the disciplinary proceedings be remitted back to UEFA due to a violation of several procedural rights?

2) Merits:

g) Do the merits of the case warrant disciplinary sanctions being imposed on Fenerbahçe?

h) If so, was the sanction imposed on Fenerbahçe proportionate?

1. Procedural and formal aspects

a) Was the legal principle of res iudicata *violated by UEFA?*

(i) The position of the parties

133. Fenerbahçe maintains that UEFA violated the legal principle of *res iudicata* by imposing a sanction based on the alleged fixing of eight matches; Gençlerbirligi v. Fenerbahçe (7 March 2011), Trabzonspor v. Bursaspor (17 April 2011), Eskişehirspor v. Trabzonspor (22 April 2011), Fenerbahçe v. IBB Spor (1 May 2011), Karabükspor v. Fenerbahçe (8 May 2011), MKE Ankaragücü v. Fenerbahçe (15 May 2011), Trabzonspor v. IBB Spor (15 May 2011) and Sivasspor v. Fenerbahçe (22 May 2011)), even though the UEFA CDB did not find the Appellant guilty of three of these matches (Trabzonspor v. Bursaspor (17 April 2011), Eskişehirspor v. Trabzonspor (22 April 2011) and Trabzonspor v. IBB Spor (15 May 2011) and this part of the UEFA CDB Decision became final and binding when the UEFA Disciplinary Inspector failed to (cross-) appeal that decision.

134. On the basis of jurisprudence of CAS and legal literature, the Appellant submits that a violation of *res iudicata* is confirmed by the so-called "triple identity test" according to which the principle of *res iudicata* applies if the identity of the parties is the same, as well as the subject of the matter and the legal grounds. The Appellant is of the opinion that the prerequisites of this test are fulfilled and that it follows from article 58(4) of the UEFA DR (2013)[4] that the UEFA CDB Decision has, in fact, become final and binding with respect to three of the games on which the Decision is based. The UEFA CDB rendered its decision based on only five of the matches presented by the UEFA Disciplinary Inspector. Thereby, the UEFA CDB implicitly decided that no offence was established with respect to the other eight matches invoked by the UEFA Disciplinary Inspector. By including three of the eight matches that the UEFA CDB had failed to establish an offence in its Decision, the UEFA Appeals Body judged three new disciplinary offences within the meaning of article 58(5) of the UEFA DR (2013). According to this provision, new offences may only be judged when they come to light while the appeal proceedings are pending, however, this was clearly not the case here.

[4] The Panel observes that contrary to the Appellant's position regarding the applicable version of the UEFA DR in respect of the procedural and organizational issues, where the Appellant argued that the UEFA DR 2012 should be applied, now the Appellant submits that the UEFA DR 2013 must be applied.

135. UEFA relies on article 62 UEFA DR (2012)[5] in concluding that the UEFA Appeals Body may either confirm, amend or lift the contested decision and that only the punishment cannot be increased and the UEFA Appeals Body in fact reduced the sanction imposed by the UEFA CDB. In any case, the UEFA CDB found that the Appellant was involved in influencing the result of five example matches and expressly mentioned that the list of said matches was non-exhaustive. The UEFA Appeals Body was hence not prevented from examining the Club's involvement in further matches, as long as the "punishment" was not "increased", which was not the case.

(ii) The findings of the Panel

136. As examined *supra* (cf. §115-124), the Panel finds that the UEFA DR (2012) is applicable to the procedural and organisational issues of this case. The Panel notes that article 62 of the UEFA DR (2012) provides, *inter alia*, the following:

> *"1. Within the framework of the appeal, the Appeals Body re-examines the case both factually and legally.*
>
> *2. The appeal decision confirms, amends or lifts the contested decision.*
>
> *3. If the accused is the only party to have lodged an appeal or if the disciplinary inspector appeals in favour of the accused, the punishment cannot be increased.*
>
> *4. If new disciplinary offences come to light while appeal proceedings are pending, they may be judged in the course of the same proceedings".*

137. The Panel observes that the UEFA CDB concluded in its decision that *"(…) on the basis of the evidence available, in particular, but not exhaustively, the* [UEFA CDB] *considers established that Fenerbahçe has been involved in* [influencing the results of five further specified matches] and that the Appellant *"fraudulently and intentionally misled UEFA by completing and submitting (on 5 May 2011) to UEFA the* [2011/2012 Admission Form]*, duly signed by Respondent, without mentioning any involvement in any activity aimed at arranging or influencing the outcome of a match at a national or international level since 27 April 2007"*. This decision was only challenged by the Appellant. It is clear to the Panel that no new disciplinary offences came to light pending the disciplinary proceedings before UEFA. As such, article 62(4) of the UEFA DR (2012) is irrelevant.

138. The Panel observes that the procedural concept of *res iudicata* is defined in Swiss law. (OBERHAMMER/NAEGELI, in OBERHAMMER/DOMEJ/HAAS (Ed), Commentary on Swiss Civil Procedure, 2nd ed. 2014, Art. 236, no. 39 *et seq*.) According thereto *res iudicata* has two elements:

[5] The Panel observes that contrary to UEFA's position in respect of the applicable version of the UEFA DR in respect of the procedural and organizational issues, where UEFA argued that the UEFA DR 2013 should be applied, now UEFA submits that the UEFA DR 2012 must be applied.

1) the so-called *"Sperrwirkung"* (prohibition to deal with the matter = *ne bis in idem*). The consequence of this effect is that if a matter (with *res iudicata*) is brought again before the judge, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible. It is for this reason – e.g. – that article 59(2) of the Swiss Federal Code of Civil Procedure (hereinafter: the "CCP") provides that a claim must be rejected as inadmissible, if the matter falls under *res iudicata*.

2) the so-called *"Bindungswirkung"* (binding effect of the decision). According thereto, the judge in a second procedure is bound to the outcome of the matter decided in *res iudicata*. The binding effect is only of interest, if the judge asked second has to deal with a preliminary question that has been decided finally by the first judge.

139. The Panel finds that although the UEFA Appeals Body did not increase the sanction imposed by the UEFA CDB, the findings on the merits of the UEFA Appeals Body surpassed the findings on the merits of the UEFA CDB. Although this is strictly speaking not prohibited by the UEFA DR (2012), the Panel finds that this is a violation of the principle of *res iudicata*. The discretion of the UEFA Appeals Body to re-examine the case from both a factual and a legal perspective (comparable to the *de novo* competence of CAS pursuant to Article R57 of the CAS Code) neither allows the UEFA Appeals Body to change the matter in dispute, nor is any justification given by UEFA on the basis of which an exception should be made in the present case.

140. Hence, the Panel finds that the Appellant could rely on the findings of the UEFA CDB, *i.e.* it could not reasonably be expected from the Appellant to defend itself against general accusations in respect of matches that were not individually assessed by the UEFA CDB. By discussing and specifically establishing that five matches had been influenced, the UEFA CDB limited the scope of the proceedings to these five matches. If five cases of match-fixing are the basis of the UEFA CDB Decision, UEFA cannot, without appealing the decision of the UEFA CDB, introduce other cases at the appeal stage before the UEFA Appeals Body. A general confirmation of the UEFA CDB stating that this list of five matches is not exhaustive is of no avail in this respect, also taking into account the Appellant's denial of all factual allegations.

141. The Panel thus adheres to the Appellant's position and finds that the scope of the proceedings is limited to the findings of the UEFA CDB on the five matches and that the UEFA Appeals Body was prevented from assessing any additional matches by the *"Sperrwirkung"* attached to the principle of *res iudicata*.

142. Consequently, the Panel will limit itself to assessing only the five matches the Appellant was convicted for in the UEFA CDB Decision, if necessary.

b) Do the UEFA CDB Decision and the Appealed Decision violate the ne bis in idem *principle?*

(i) The position of the parties

143. The Appellant purports that UEFA violated the general legal principle of *ne bis in idem* on two accounts. First, the principle is allegedly violated because the TFF acquitted the Appellant of the match-fixing allegations underlying the Appealed Decision. Second, the principle is violated because the Appellant already served a sanction when being excluded from the 2011/2012 Champions League season, and cannot be declared ineligible from UEFA's competitions for a second time two years later.

144. In this respect, the Appellant refers to a decision dated 2 August 2006 of the UEFA Emergency Panel in respect of the Italian football club *AC Milan* where the following was held:

> *"The question to what extent AC Milan was involved in the improper influencing of the regular course of competition matches in the Italian domestic league was examined by the competent disciplinary bodies of the FIGC. As a result, UEFA does not have the disciplinary jurisdiction to examine the question whether or not AC Milan has committed a disciplinary offence, neither would this be in line with fundamental legal principles, such as 'ne bis in idem'".*

145. The Appellant submits that the exact same argument also applies to the case at hand. The TFF PFDC and the TFF Board of Appeal decided to acquit the Appellant. It is universally accepted that *ne bis in idem* not only prohibits a second sanction, but also prohibits trying a person again for an offence in relation to which that person has been acquitted already by a final decision. Hence, the Appellant finds that UEFA must come to the same conclusion as it did with AC Milan (even though AC Milan was sanctioned by the Italian Football Federation (hereinafter: the "FIGC") while the Appellant was acquitted by the TFF).

146. The Appellant continues by arguing that UEFA cannot claim that its regulations have since changed in a way that would allow UEFA to take a different position in the present matter. The amendments in the different regulations of UEFA did not have any consequence on UEFA's sanctioning powers in respect of national match-fixing cases. The Appellant finds that this is supported by the introduction in 2013 of article 23(4) in the UEFA DR (2013).

147. In respect of the second argument of the Appellant, based on which UEFA allegedly violated the principle of *ne bis in idem*, the Appellant avers that because the Appellant has already been banned from the 2011/2012 Champions League season, the period of ineligibility imposed on the Appellant in the present proceedings qualifies as a second sanction. In this respect the Appellant considers it to be irrelevant that the TFF decided to withdraw it from the 2011/2012 Champions League season and not UEFA. If it has been established that this exclusion can be qualified as a sanction, the Appellant refers to two different tests utilised in CAS jurisprudence in order to determine whether the principle of *ne bis in idem* was violated. The Appellant subsequently concludes that regardless of which of the two tests is applied, the only possible conclusion is that the principle of *ne bis in idem* has been violated by UEFA.

148. The Appellant submits that article 50(3) of the UEFA Statutes is of no avail to UEFA in this respect. In its Appealed Decision the UEFA Appeals Body argued that it flows from this provision that there is a "two stage process". According to the Appellant, this argument of UEFA is flawed. First, because the language of this provision does not make clear that there is indeed a "two stage process". Second, from the UEFA proceedings concerning CAS 2011/A/2528 it derives that also UEFA itself does not apply such "two stage process". There is not one UEFA case known to the Appellant in which such "two stage process" has taken place.

149. Even if UEFA intended to allow a "two stage process", the Appellant submits that such provision could certainly not override the fundamental legal principle of *ne bis in idem*. The whole idea of this principle is to protect those who are subject to an entity's sanctioning powers against the misuse of those powers, which lies in the imposition of multiple sanctions for the same offence. The Appellant illustrates this with the following example: one should imagine the Swiss legislator enacting an article in the Swiss Criminal Code saying that any penalty imposed is *"subject to any further penalties for the same offence"*. While UEFA is not the Swiss legislator and criminal penalties are not disciplinary sanctions imposed by associations, the result must be the same in both cases: the entity bound by *ne bis in idem* cannot abrogate this principle by enacting a provision to that effect.

150. UEFA argues that the Appealed Decision does not violate the principle of *ne bis in idem* on either of the grounds put forward by the Appellant. Pursuant to jurisprudence of the Swiss Federal Tribunal and by prevailing scholarly writings, the procedure governing the adoption of sports disciplinary sanctions is not subject to the procedural guarantees existing in criminal law. Consequently, the Appellant cannot base its appeal on an alleged infringement of the principle of *ne bis in idem*. In the *Valverde* decision of 3 January 2011 (SFT 4A_386/2010), the Swiss Federal Tribunal left the question whether the *ne bis in idem* principle was applicable to sports disciplinary matters unanswered.

151. UEFA continues by arguing that even if one considers that the principle of *ne bis in idem* might be applied in disciplinary sports matters, its conditions are not fulfilled. There is no infringement of the principle of *ne bis in idem* if the two (or more) measures aim at different goals. This is why e.g. *"the prohibition of double prosecution does not prevent trying the same person when the same behaviour may have consequences that are not only criminal but also civil, administrative or disciplinary"* (SFT 4A_386/2010, §9.3.2, with further reference to: HOTTELIER, Commentaire romand, Code de procedure pénale Suisse, 2010, no 8 ad art. 11 CCP). According to UEFA, the circumstances in the present case are in fact very similar to the facts in the *Valverde* case where the Swiss Federal Tribunal considered that the two-year ban from competitions organised by CONI or other Italian sports federations did not prevent CAS from basing a worldwide ban of two years against the Spanish cyclist, on the same facts as relied upon by CONI. Indeed, the Swiss Federal Tribunal considered that the decision taken by CONI was essentially a preventive measure that principally sought to ensure that sport competitions on Italian territory would not be distorted by the involvement of people convicted of violating anti-doping rules. The ban imposed on the Spanish cyclist by CONI was distinct from the ban imposed in the CAS award, the latter measure being repressive in nature above all, to the

extent that its purpose is to issue a worldwide sanction against a professional sportsman affiliated to a sport federation. Like in the *Valverde* case, the decision of the TFF to withdraw the Appellant from the 2011/2012 Champions League season had a clear preventive goal, whereas the UEFA CDB's and UEFA Appeals Body's decisions have a clear repressive purpose.

152. In addition, UEFA submits that it would be contrary to the clear wording of the rules and to common sense to consider that the administrative imposition of one year ineligibility pursuant to article 2.05 of the UCLR (2011/2012) would operate as a legal bar to the UEFA CDB and the UEFA Appeals Body in imposing the appropriate sanction for very serious match-fixing cases in disciplinary proceedings which are specifically contemplated in article 2.06 of the UCLR (2011/2012). It would be nonsensical if no higher sanction could be imposed as a one-year period of ineligibility.

153. UEFA further submits that the Appellant's interpretation of article 2.05 and 2.06 of the UCLR (2011/2012) is contrary to the clear wording of the rules. The arguments of the Appellant do not correspond to the recognised and stable practice of UEFA's disciplinary bodies. After the *FC Porto* case (CAS 2008/A/1583-1584), UEFA was careful in amending its rules so to introduce, with article 2.05 and 2.06 UCLR (2011/2012), a clear "two step procedure", which in fact has been followed since. The administrative measure of article 2.05 can be followed by a second decision, *i.e.* by further disciplinary sanctions where the circumstances so require. The rules do not foresee that the two elements (administrative measure and additional disciplinary sanctions) must be combined in one single decision.

154. Even if the *ne bis in idem* principle would be applicable, UEFA asserts that nevertheless the TFF's decision to withdraw the Appellant from the 2011/2012 Champions League season does not prevent UEFA to impose disciplinary sanctions on the Appellant because (i) it was a decision of the TFF applying its own rules, not of UEFA applying UEFA's rules; (ii) the TFF decided on the basis of its own statutory right to nominate its own clubs to international competitions; (iii) the decision of the TFF was not taken on the basis of article 2.05 UCLR (2011/2012) or any other disciplinary rule of UEFA; (iv) the Appellant originally filed an appeal with CAS, trying to argue that the withdrawal was a decision by UEFA, but finally withdrew its appeal.

155. UEFA finally maintains that the Appellant's reliance on the CAS Award pertaining to the "Osaka rule" (CAS 2011/O/2422) is of no avail to it. First, the issue of whether or not the Appellant has violated UEFA's rules has neither been dealt with by any disciplinary body of the TFF, nor by any other court. Second, the rules of UEFA are clear, and have been enacted so by following the reasoning expressed by CAS in the *FC Porto* case: in case of match-fixing, there is one automatic administrative measure. If the circumstances so require, a disciplinary procedure is opened and disciplinary measures can be taken. The system is, therefore, a two-step process, and by this exactly the opposite to the World Anti-Doping Code (hereinafter: the "WADC"), where a one and single sanction is necessary to justify the equal treatment of athletes and the fight against doping. What CAS has rightfully criticised in CAS 2011/O/2422 is that by adding a sanction, the IOC was violating the "closed, unified" sanctioning system

of the WADC, a code that expressly prohibits signatories to alter the framework of the sanctions.

(ii) The findings of the Panel

156. The Panel commences its analysis by observing that the principle of *ne bis in idem* is applicable to civil proceedings (OBERHAMMER/NAEGELI, in OBERHAMMER/DOMEJ/HAAS (Ed), commentary on Swiss Civil Procedure, 2nd ed. 2014, Art. 236, no. 39 *et seq.*). Therefore, the Panel agrees with the Appellant insofar it expresses the view that sports disciplinary bodies cannot try a person or an entity again for an offence in relation to which that person or entity has been acquitted already by a final decision of another body based on the same regulatory framework.

157. The Panel however finds that this is not the case here because the disciplinary bodies of the TFF acquitted the Appellant on the basis of statutes and regulations of the TFF, whereas UEFA applies its own statutes and regulations. The fact that the TFF acquitted the Appellant does not necessarily mean that the Appellant did not violate the regulations of UEFA and *vice versa*.

158. The Panel understands that the Appellant is of the opinion that the declaration of ineligibility of the Appellant by the TFF for the 2011/2012 Champions League season was a sanction and that it is irrelevant for the application of the *ne bis in idem* principle whether such period of ineligibility was pronounced by the TFF or UEFA.

159. The Panel observes that in order for the sanction pronounced in the Appealed Decision to be regarded as a violation of the principle of *ne bis in idem*, the exclusion of the Appellant from the 2011/2012 Champions League season must be regarded as a sanction as well. The Panel understands that the parties' positions particularly differ in respect of the nature of the decision of the TFF to withdraw the Appellant from the 2011/2012 Champions League season, *i.e.* whether this decision was of a predominant preventive nature or of a predominant punitive nature.

160. The Panel finds that the comparison drawn by the Appellant between the facts of the present case and the decision of the UEFA Emergency Panel dated 2 August 2006 concerning *AC Milan*, are different. After the *AC Milan* decision was rendered, certain amendments have been made to the Statutes and regulations of UEFA. As will be determined below (cf. §190-216), the majority of the Panel finds that UEFA created competence for itself to interfere in national match-fixing cases through a two-stage process (through article 50(3) UEFA Statutes in conjunction with article 2.05 and 2.06 UCLR). This "two-stage process" therefore had already been enacted before the introduction of article 23(4) in the UEFA DR (2013), which the majority of the Panel considers to be a mere confirmation of UEFA's competence in this respect.

161. In respect of the alleged "two stage process", the following provisions are of particular importance:

Article 50(3) UEFA Statutes (2010):

"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".

Article 2.05 UCLR (2011/2012):

"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".

Article 2.06 UCLR (2011/2012):

"In addition to the administrative measure of declaring a club ineligible, as provided for in paragraph 2.05, 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".

162. The Panel is satisfied to accept that with the introduction of article 50(3) in the UEFA Statutes and article 2.05 and 2.06 in the UCLR, UEFA created a "two-stage process". The first stage (article 2.05) being an "administrative measure", pursuant to which a minimum sanction would have to be imposed on the offender, by excluding it from European competitions for one season. The second stage (article 2.06) being a "disciplinary measure", which sanction would have to be imposed subsequent to the "administrative measure" and is not restricted by a maximum length. The Panel finds that this "two stage process" can be understood from article 50(3) of the UEFA Statutes in conjunction with article 2.06 of the UCLR, particularly because in the latter provision reference is made to "administrative measure" and "disciplinary measure", which, in the opinion of the Panel, one can only understand as to reveal UEFA's intention to differentiate between these two types of measures. Also the words *"in addition to"* seem to create a distinction between the two types of measures. Nevertheless, and for the avoidance of doubt, the Panel wishes to clarify that irrespective of the wording used, proceedings initiated by UEFA on the basis of article 2.05 of the UCLR are disciplinary in nature, because the subject matter in such proceedings is the imposition of a sanction.

163. The Panel finds that the application of such "two stage process", even if the one-year period of ineligibility of the Appellant for UEFA competitions in the 2011/2012 season would not have been imposed by the TFF but by UEFA, which it was not, would not violate the principle of *ne bis in idem*. Both parties referred to jurisprudence of CAS and the Swiss Federal Tribunal in order to corroborate their respective opinions. The Panel adheres with the position put forward by UEFA because the Panel finds that UEFA has a legitimate interest in applying a "two-stage process" in order to exclude clubs from its competitions with immediate effect, before being required to evaluate the violations to its full extent.

164. In respect of the example described by the Appellant, the Panel finds that the comparison does not hold. Although indeed a first sanction was imposed on the Appellant based on article 2.05 of the UCLR, this sanction was only a minimum sanction of one season exclusion from European competitions. Therefore, based on the wording of article 2.06 of the UCLR (and subject to the conditions contained therein), the Appellant could have been aware that an additional appropriate sanction could be imposed on it in a second stage. The Panel finds that if the rules provide for two steps (a minimum and a final sanction), no issue of *ne bis in idem* arises. If a comparison would have to be made, the Panel finds that the following situation would better illustrate the situation: if someone has a claim of CHF 10,000, he can first claim CHF 3,000 and then in a second procedure the remaining CHF 7,000. This does not change the nature of the first CHF 3,000 and no issue of *ne bis in idem* arises, since it is made clear from the beginning that the single procedure is split in two steps.

165. Finally, the Panel finds that it must be taken into account that the Appellant, at least indirectly by filling in the UEFA Admission Form in order to participate in the UEFA Champions League, agreed to be bound by the UCLR (2011/2012), including articles 2.05 and 2.06 and the "two-stage process" enshrined therein.

166. The present situation should be clearly distinguished from the CAS ruling on the so-called "Osaka rule" in CAS 2011/O/2422. There, an athlete was disciplinary sanctioned and was additionally precluded from taking part in the next Olympics. The Panel adheres to the findings of the Panel in CAS 2011/O/2422, in concluding that the exclusion of an athlete from the Olympics could be considered as an illegal additional sanction. However, the main difference is that the World Anti-Doping Code (hereinafter: the "WADC") provides for a rule that prohibits the imposition of additional sanctions, whereas in the UEFA DR no rule exists that prevents UEFA from splitting the procedure in a minimum and – if the circumstances so justify – an additional sanction. The Panel finds that the split in the proceedings can be justified by UEFA's legitimate interest in being able to declare a club ineligible from taking part in its competitions immediately, without the need of first having to instigate complete and comprehensive disciplinary proceedings against such club. The "administrative measure" is therefore not the final sanction, but only a preliminary minimum sanction intended to protect the integrity of the competition. The present situation should therefore be distinguished from the proceedings regarding the "Osaka rule".

167. Insofar as the Appellant intends to argue that UEFA would be prevented from instigating disciplinary proceedings against the Appellant because the TFF has already acquitted the

Appellant in this respect, the Panel finds that this argument must be dismissed. The disciplinary proceedings of the TFF PFDC were based on the internal regulations of the TFF and a possible sanction would only have had national consequences. Disciplinary proceedings initiated by UEFA on the basis of article 2.06 of the UCLR are based on the internal regulations of UEFA and a possible sanction deriving from such proceedings only has European consequences. As such, the "circles" of rights and duties are not identical. In this respect a comparison can be made with the *Valverde* case (CAS 2007/A/1396 & 1402), because the panel in that case considered that the domestic suspension imposed on the athlete by CONI was of a different scope and nature as the worldwide suspension sought by WADA and the UCI, which led the panel to the conclusion that the principle of *ne bis in idem* was not violated. Also in the present case, the Panel finds that the scope and nature of the suspensions sought in the different disciplinary proceedings was different and as such no violation of the *ne bis in idem* principle occurred.

168. Consequently, the Panel finds that UEFA has not violated the principle of *ne bis in idem* by instigating disciplinary proceedings against the Appellant and sanctioning it with a two-year ban from taking part in UEFA competitions.

c) Was the UEFA CDB competent to instigate disciplinary proceedings against Fenerbahçe and were the sanctions imposed in accordance with the legality principle?

(i) The position of the parties

169. The Appellant is of the opinion that UEFA cannot impose sanctions on it because UEFA's competence is limited to European international club football, whereas the allegations of match-fixing in the present case concern national matches. According to the Appellant, the only exception in this respect is the one-year ban provided by article 2.05 of the UCLR (2011/2012).

170. The Appellant maintains that it is a general and well-known principle in the organisation of sport that the disciplinary competence of a sport organisation is limited to competitions organised by that organisation (hereinafter: the "Competition-related competence principle"). According to the Appellant, this Competition-related competence principle was explicitly confirmed by UEFA itself in the *AC Milan* case. AC Milan qualified for the 2006/2007 Champions League season due to its position in the Serie A after the 2005/2006 season, even though the Italian Football Federation had sanctioned the club for alleged match-fixing in the same season. Hence, UEFA was confronted with the question whether AC Milan could be hindered from participating in the 2006/2007 Champions League season considering the FIGC's conclusion that AC Milan had been involved in match-fixing during the previous season in the Serie A. In this respect, the UEFA Emergency Panel, in its decision dated 2 August 2006, held the following:

"The question to what extent AC Milan was involved in the improper influencing of the regular course of competition matches in the Italian domestic league was examined by the competent disciplinary bodies of the

FIGC. As a result, UEFA does not have the disciplinary jurisdiction to examine the question whether or not AC Milan has committed a disciplinary offence (…)".

171. The Appellant submits that the Competition-related competence principle is also enshrined in other official UEFA documents, such as article 2(1), 60 and 74 of the UEFA Statutes (2010). The Competition-related competence principle is also in line with the principle of autonomy of associations. From the above, the Appellant draws the conclusion that the disciplinary competence of international sports federations for disciplinary violations committed in national competitions can only derive from an explicit provision granting such competence.

172. At the time of the alleged offence, UEFA did not have a provision in place similar to article 70(2) and (3) of the FIFA Disciplinary Code, which basically grants FIFA disciplinary power to sanction serious infringements if *"associations, confederations and other sports organizations fail to prosecute serious infringements or fail to prosecute in compliance with the fundamental principles of law"*. Such provision was only adopted by UEFA on 1 June 2013 – more than two years after the alleged match-fixing of the Appellant took place – in article 23(4) of the UEFA DR (2013). Therefore, this rule does not apply to the case at hand.

173. The Appellant further submits that if it were guilty of match-fixing, *quod non*, it could have relied on being sanctioned only by the TFF and, with respect to UEFA competitions, only with the one-year ban provided under article 2.05 UCLR (2011/2012).

174. Hence, the Appellant concludes that UEFA conducted disciplinary proceedings against the Appellant even though the legal basis for such proceedings was adopted more than two years after the alleged disciplinary offence. The UEFA could not sanction the Appellant simply because it did not like the TFF disciplinary decisions, without having a clear and unambiguous authority to do so. UEFA's jurisdiction can neither be derived from article 50(3) of the UEFA Statutes (2010), article 2.05 and 2.06 of the UCLR (2011/2012) or article 5 of the UEFA DR (2008).

175. The Appellant draws the attention of the Panel to the jurisprudence of UEFA's disciplinary bodies and submits that in cases concerning national match-fixing UEFA never applied article 5 of the UEFA DR in such cases (*FC Porto, FC Karpaty Lviv and FC Metalist Kharkiv)*, although article 50(3) of the UEFA Statutes and article 2.05 and 2.06 of the UCLR were already enacted. In contrast thereto, whenever the accusation concerned match-fixing that had occurred in respect to UEFA competitions (CAS 2009/A/1920 and CAS 2010/A/2172), UEFA did apply article 5 of the UEFA DR. The only exception is the case CAS 2011/A/2528, where UEFA erroneously mixed the eligibility rules with disciplinary proceedings pursuant to article 5 UEFA DR. In respect of this particular case, the Appellant submits that no conclusions should be drawn from this decision because UEFA did not discuss the competence for sanctioning at all.

176. Under the chapter in its appeal brief related to the question whether UEFA had a basis to instigate disciplinary proceedings, the Appellant submits that UEFA erroneously found that the Appellant violated article 5 UEFA DR (2008). First, there is no legal basis, much less a

clear and unambiguous one, with respect to improperly completing a form. Likewise, the legal basis invoked for match-fixing is by far too unspecific to serve as a legal basis for the sanctions imposed.

177. In this respect, the Appellant maintains that in both criminal law as well as administrative law, the *nullum crimen, nulla poena sine lege scripta et certa* principle is applicable, *i.e.* an association may not impose any kind of sanction unless there is an express provision in the statutes of that association describing in sufficient clarity and specificity, not only the misconduct but also the applicable sanction.

178. In respect of the improper completion of the UEFA Admission Form, the Appellant asserts that contending that this is a violation of article 5 UEFA DR, and even a "clear" one, is completely untenable. It seems superfluous to the Appellant to even state that article 5 UEFA DR (2008) is not a provision that clearly and unambiguously specifically incriminates the improper completion of a form. Furthermore, not having confessed to an offence is certainly not a further ground for sanctions in addition to the offence not confessed to. In this respect, the Appellant also maintains that there are no decisions known in which not mentioning match-fixing allegations in the UEFA Admission Form was seen as an offence in addition to the initial offence of match-fixing itself.

179. Concerning the alleged offence of match-fixing itself, the Appellant purports that there is no unambiguous provision which provides for a specific link between a specific offence of match-fixing and a specific sanction. The UEFA Statutes do not contain any specific provision stipulating that match-fixing is an offence.

180. UEFA denies that there was any lack of competence for the UEFA CDB and the UEFA Appeals Body. UEFA purports that it is not only against common sense to suppose that a club can cheat as much as it wants in its own country, but that UEFA would have no ability to protect its own competitions by excluding the club. Applicable rules as well as recent CAS jurisprudence confirm that UEFA has the power to sanction a club in circumstances like those of the present case.

181. UEFA submits that article 2.05 and 2.06 of the UCLR and article 50(3) of the UEFA Statutes are clear. Article 2.05 UCLR (2011/2012) makes it possible for UEFA to open disciplinary proceedings if the criteria enshrined in such provision are complied with, which could lead to an initial administrative decision rendering a club ineligible for one season. The standard for such measure to be taken is that UEFA must be comfortably satisfied that the club has had the requisite involvement in relation to *"a match at national or international level"*. Such involvement in either type of match consequently puts a club in breach of article 5 DR (2008).

182. UEFA finds that the Appellant's contention that article 2.06 UCLR (2011/2012) cannot be read as extending to national matches is simply wrong on the face of the explicit and clear wording of the provision. It is clear that the disciplinary proceedings from article 2.06 flow on from the article 2.05 provision, and relate to exactly the same behaviour, provable by reference to the same evidence. The word "possible" in article 50(3) of the UEFA Statutes means

possible in the sense that the disciplinary measures may happen, and the requirement in article 2.06 that circumstances must justify such measures related to the factual circumstances of the offences. Neither form of words limits the disciplinary proceedings to international matches.

183. According to UEFA, article 5 of the UEFA DR (2008) does not confine the obligation on a club to comply with the principles of loyalty, integrity and sportsmanship to UEFA matches. UEFA has a legitimate interest to have cheating clubs not admitted to its competitions, irrespective of where they have cheated. Match-fixing of matches played in the national competition of European associations in membership of UEFA is plainly *"a question of European football"* because it relates to football played in Europe.

184. UEFA further submits that the introduction of article 23(4) in the UEFA DR (2013) does not mean that the already existing jurisprudence of UEFA, which is confirmed by CAS, to declare ineligible to its own international competition and to take additional disciplinary measures for match-fixing in national or international matches is in any form limited. UEFA had jurisdiction in such cases, and still has. The jurisprudence of CAS referred to by UEFA is CAS 2011/A/2528. In this matter CAS upheld a decision of UEFA where both article 2.05 UCLR (2011/2012) was applied and additional disciplinary measures were imposed pursuant to article 2.06 UCLR (2011/2012) following the fixing of a national match[6]. The cases referred to by the Appellant (*AC Milan*, *FC Porto*) predated the introduction of article 2.05/2.06 UCLR (2011/2012) and as such cannot be relied upon.

(ii) The findings of the Panel

aa) Does article 2.06 UCLR require that article 2.05 was previously applied?

185. The Panel will first assess whether the imposition of a period of ineligibility on a club by UEFA pursuant to article 2.05 UCLR (2011/2012) is a *conditio sine qua non* for disciplinary proceedings to be instigated on the basis of article 2.06 UCLR (2011/2012). If this were true, the fact that the TFF and not UEFA withdrew the Appellant from the 2011/2012 Champions League season, would render the UEFA decisions invalid.

186. The Panel observes that article 2.05 of the UCLR (2011/2012) stipulates, *inter alia*, the following:

"(…) 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".

187. The Panel finds it rather logical that UEFA does not instigate proceedings against a club on the basis of article 2.05 of the UCLR if a national sporting body (or other body) has already

[6] The Panel observes that UEFA did not sanction [the club] on the basis of article 2.05 and 2.06 of the UCLR, but on the basis of article 2.08 and 2.09 of the UEFA Europa League Regulations (UELR).

taken a decision to the same effect, *i.e.* imposing a one-year period of ineligibility for UEFA competitions. This should however not prevent UEFA from instigating further disciplinary measures on the basis of article 2.06 of the UCLR against such club if this is deemed necessary based on the particular circumstances of the case.

188. Applying the above general findings to the facts of this particular case, the Panel finds that the withdrawal of the Appellant by the TFF shall be regarded as the imposition of a period of ineligibility equal to a period of ineligibility pronounced by UEFA on the basis of article 2.05 UCLR. In this respect, the Panel thus finds it irrelevant for this purpose which entity finally imposed such period of ineligibility, as article 2.05 UCLR puts both options at the same "level". Neither of these options excludes the possibility of further disciplinary proceedings to be instigated against the club. To the contrary, this possibility is specifically provided for in article 2.06 UCLR.

189. With reference to the words *"[i]n addition to the administrative measure"*, the Panel considers it to be necessary for a period of ineligibility to have been imposed on a club before or together with a disciplinary measure. The Panel thus comes to the conclusion that UEFA was not prevented from instigating disciplinary proceedings against the Appellant because an "administrative measure" equal to the one-year period of ineligibility pursuant to article 2.05 UCLR was imposed. In this respect, UEFA was thus not prevented from instigating disciplinary proceedings on the basis of article 2.06 of the UCLR.

bb) Is there a sufficient legal basis for the disciplinary measure?

190. According to Swiss law (and standing CAS jurisprudence) there must be a sufficiently clear legal basis for a disciplinary measure to be imposed (CAS 2009/A/1823, §9.5; CAS 2012/A/2912, §100). It follows from this requirement that there must be a clear and unambiguous legal basis for the sanction issued by UEFA.

191. In this respect, the Panel adheres to the overview on this issue provided by the CAS panel in CAS 2011/A/2612, §103, which was also recalled by the Appellant:

"According to Swiss association law a federation may base a disciplinary measure against a (direct or indirect) member only on provisions that provide a clear and unambiguous authority to do so (cf. BSK-ZGB/HEINI/SCHERRER, 4th ed. 2010, Art. 70 no. 22; SCHERRER/LUDWIG, Sportrecht, 2. Aufl. 2010, S. 303; see also BK-ZGB/RIEMER, 1990, Art. 70 no. 210; HEINI/PORTMANN/SEEMANN, Grundriss Vereinsrecht, 2009, no. 265). This principle is also part of general considerations of sports law that have been taken into account by CAS Panels in the past irrespective of the (subsidiarily) applicable laws to the merits (cf. CAS 94/129, in Reeb (Ed.) Digest of CAS Awards I 1986 – 1998, p. 187, 194 seq.; 2000/010 in Reeb (Ed.) Digest of CAS Awards II 1998-2000, 2002, p. 658, 663 seq.; 98/218, in Reeb (Ed.) Digest of CAS Awards II 1998-2000, 2002, p. 325, 328 seq.; 2006/A/1041, no. 7.1.1 et seq.; see also FOSTER, in Blackshaw/Siekmann/Soek (Ed.) The Court of Arbitration for Sport 1984-2004, 2006, p. 420, 427 ; RIGOZZI, L'arbitrage international en matière de sport, 2005, no. 1272, 1277). In particular in CAS 94/129 (no. 30, 34) the Panel stated as follows: "Any legal regime should seek to

enable its subjects to assess the consequences of their actions …". Furthermore the Panel stated that while "the fight against doping is arduous, and … may require strict rules, … the rule-makers and the rule-appliers must begin by beings strict with themselves"".

192. Legal certainty requires, *inter alia*, that the applicable provision (in the case at hand article 2.06 of the UCLR) is sufficiently clear as to its material and territorial scope of application.

193. Turning its attention to the material scope of application of article 2.06 UCLR, the Panel has no doubt in concluding that article 5(1) in conjunction with article 5(2)(a) of the UEFA DR (2008) to which article 2.06 UCLR refers, in principle, form a sufficient legal basis for sanctioning the offence of match-fixing and measures to be taken against the Appellant by UEFA. These provisions read as follows:

> *"1. Member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship.*
>
> *2. For example, a breach of these principles is committed by anyone:*
>
> *a) who engages in or attempts to engage in active or passive bribery and/or corruption".*

194. On the basis of article 6(1) and article 11(1)(a) of the UEFA DR (2008) the Appellant can be held responsible and can be sanctioned for disciplinary infringements of its officials. The relevant provisions respectively determine the following:

> *"1. Member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the association or club".*
>
> *"1. Disciplinary measures provided for in Articles 14 and 15 of the present regulations may be taken against member associations or clubs if:*
>
> *a) a team, player, official or member is in breach of Article 5 of the present regulations".*

195. As such, the Panel has no hesitation that match-fixing is an offence that can be sanctioned on the basis of the UEFA DR (2008).

196. What remains to be answered is, thus, whether article 2.06 of the UCLR (and the provisions referred to therein) is a sufficient legal basis also with respect to the territorial scope of application, *i.e.* whether article 2.06 UCLR (in conjunction with article 5(1)(a) of the UEFA DR (2008)) is limited to match-fixing with regard to UEFA matches or whether it also extends to national match-fixing cases.

197. The Panel observes that article 2.06 of the UCLR (2011/2012) determines the following:

"In addition to the administrative measure of declaring a club ineligible, as provided for in paragraph 2.05, 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".

198. The Panel observes that it remains undisputed between the parties that article 2.05 of the UCLR (2011/2012) provides competence to UEFA in national match-fixing cases. Where article 5(1)(a) of the UEFA DR (2008) would normally only apply to competitions organised by UEFA, by means of article 2.05 of the UCLR (2011/2012) the territorial scope of this provision is extended to domestic cases. This does not mean that UEFA has a *carte blanche* in prosecuting clubs for national match-fixing violations. Competence in respect of national match-fixing is provided by the UCLR (and the UEFA Europa League Regulations - hereinafter: the "UELR"). Thus, UEFA's competence is restricted to clubs that are subjected to these UCLR (and the UELR).

199. The majority of the Panel is of the opinion that by means of article 2.06 of the UCLR UEFA's competence for the imposition of "administrative measures" in national match-fixing cases pursuant to article 2.05 of the UCLR is extended to the imposition of disciplinary measures pursuant to article 2.06 UCLR, *i.e.* the extension of the territorial scope of article 5 of the UEFA DR (2008) is maintained.

200. The majority of the Panel finds that if this were to be interpreted any different, this would lead to a situation where a club that is clearly involved in national match-fixing and that qualifies for UEFA competitions, UEFA would only be entitled to issue the minimum sanction (according to article 2.05 UCLR), not however a further sanction (because article 2.06 of the UCLR would not be applicable). The majority of the Panel deems a one-year period of ineligibility to be rather short for a severe offence such as match-fixing and on this basis the majority of the Panel concludes that this could not have been the intention of UEFA in drawing up article 50(3) of the UEFA Statutes and 2.05 and 2.06 of the UCLR.

201. The CAS panel in the matter CAS 2011/A/2528 apparently was of the same opinion as it upheld the imposition of a one-year period of ineligibility from European competitions pursuant to article 2.08 of the UELR (the equivalent to article 2.05 of the UCLR) and additionally, the exclusion of the club from participating in the next three UEFA club competitions for which it would qualify on the basis of article 2.09 of the UELR (equivalent to article 2.06 of the UCLR). This sanction was deferred for a probationary period of five years. UEFA and CAS thus combined an "administrative measure" with a "disciplinary measure" in a national match-fixing case and apparently had no problem with UEFA's competence in imposing a disciplinary sanction on a club for match-fixing in a national competition. Although the CAS panel in CAS 2011/A/2528 did not specifically address this issue in its award, from the fact that a sanction was finally imposed, the majority of the Panel deduces that the other CAS panel came to the conclusion that it was competent on the basis of identical provisions as in the matter at hand.

202. A difference between the case of CAS 2011/A/2528 and the present matter is that in CAS 2011/A/2528 the "administrative measure" and the "disciplinary measure" were pronounced

in the same disciplinary proceedings, whereas in the present proceedings the so-called "two stage process" is applied. The Panel finds that the mere fact that the TFF withdrew the Appellant from the 2011/2012 UEFA Champions League season should not withhold UEFA from imposing a sanction if it would otherwise have imposed such sanction together with the one-year of ineligibility.

203. The fact that in the matter CAS 2011/A/2528, UEFA decided to combine the "administrative measure" and the "disciplinary measure" in one disciplinary proceeding does, in the opinion of the majority of the Panel, not mean that this should always be the case, subject to the criteria in article 2.06 UCLR. The Panel finds that UEFA was perfectly entitled to bifurcate the disciplinary proceedings against the Appellant. The bifurcation of the proceedings regarding the "administrative measure" and the proceedings in respect of the "disciplinary measure" can be justified by the necessity of having to act quickly in respect of the "administrative measure" in order to protect the integrity of the competition, while the imposition of the final and appropriate "disciplinary measure" might require a more comprehensive evaluation of the case.

204. During the hearing the parties were in dispute over what weight should be attributed to the fact that in 2013 UEFA amended article 23(4) of the UEFA DR (2013). The Panel observes that this provision determines the following:

"The Control and Disciplinary Body also has jurisdiction in the event of a UEFA member association and/or its members failing to prosecute, or prosecuting in an inappropriate manner, a serious violation of the UEFA statutory objectives".

205. The parties' positions differ in respect of the meaning of this provision and what UEFA intended to accomplish with it.

206. On 23 May 2013, a press release was communicated by UEFA, which reads, *inter alia*, as follows:

"With respect to match-fixing, additional power has been granted to the UEFA disciplinary bodies, which enables them to act if a UEFA member association fails to punish, or punishes in an inappropriate manner, offences which damage football's essence. The offences targeted relate in particular to match-fixing, corruption and doping".

207. On 31 May 2013, UEFA issued a circular letter (No. 24/2013) to its members. This circular letter, *inter alia*, stipulates the following:

"The new UEFA Disciplinary Regulations are designed to meet three basic objectives: (…) (iii) to provide the UEFA disciplinary bodies with specific competences in matters relating to corruption and match-fixing, also allowing them to tackle match-fixing more effectively at national level".

and

"Thirdly, another new article is introduced whereby the UEFA Control and Disciplinary Body confirms UEFA's jurisdiction in the event of a UEFA member association and/or its members failing to prosecute, or prosecuting in an inappropriate manner, an offence which is likely to harm the essence of football, notably offences of match-fixing, corruption and doping".

208. Based on the wording of article 23(4) of the UEFA DR (2013) itself, the press release and UEFA's previous disciplinary decisions regarding its competence, the Appellant finds that UEFA confirmed that it had no disciplinary competence for disciplinary violations in national competitions according to the UEFA DR (2008), but that such competence was only created with the introduction of article 23(4) in the UEFA DR (2013).

209. In this respect, UEFA purports that the fact that it introduced article 23(4) in the UEFA DR in 2013 does not mean that the already existing jurisdiction of UEFA, confirmed by CAS in CAS 2011/A/2528, to declare ineligible to its own international competition and to take additional disciplinary measures for match-fixing in national or international matches is in any form limited. UEFA had jurisdiction in such cases and still has it.

210. The majority of the Panel considers the introduction of article 23(4) in the UEFA DR (2013) to be a confirmation of UEFA's disciplinary competence in matters of particular importance to UEFA, despite the fact that such matters should normally be dealt with by national associations.

211. The press release citing the President of UEFA and referred to by the Appellant is not a legally binding document and, moreover, according to the majority of the Panel, it conflicts, at least partially, with the content of UEFA's circular letter. On the one hand, the press release determines that additional power has been granted to the UEFA disciplinary bodies. Whereas, on the other hand, the circular letter states that the UEFA CDB confirms UEFA's jurisdiction, which might be interpreted as if UEFA already had competence and that this competence is now (newly) confirmed.

212. The Panel observes that on 23 May 2013 numerous amendments and structural changes have been made to the UEFA DR (2013). Undoubtedly, the competence of UEFA in national match-fixing cases became clearer in the 2013 version of the UEFA DC, which might exactly have been the intention of UEFA in amending its regulations. The majority of the Panel finds that the competence of the UEFA CDB is indeed widened by article 23(4) UEFA DR (2013), but not in respect of national match-fixing cases. The majority of the Panel finds that this competence already existed before the introduction of the UEFA DR (2013) by means of article 2.05 and 2.06 of the UCLR in conjunction with article 50(3) of the UEFA Statutes and article 5 of the UEFA DR (2008). The majority of the Panel finds that UEFA's reference to additional competence may be explained by the definition *"serious violation"* in article 23(4), which has a wider scope as only match-fixing offences.

213. The majority of the Panel finds that this interpretation of the regulations is strengthened by the decision of the UEFA CDB concerning the Turkish football club Beşiktaş dated 21 June 2013, where the conclusion was reached that *"Beşiktaş JK is not eligible to participate in the UEFA*

Europa League 2013/2014", but that *"This decision is without prejudice to any further disciplinary measure that may be imposed on Beşiktaş JK in due course"*. This case also concerned alleged match-fixing in the Turkish national league.

214. Finally, the majority of the Panel finds that the reasoning of the following chapter d of this award strengthens the conclusion that UEFA had competence to instigate disciplinary proceedings against Fenerbahçe on the basis of article 2.06 UCLR (2011/2012), particularly because the UEFA Letter indicates that already at that time (23 August 2011) UEFA was of the view that a higher sanction could be imposed as a one-year period of ineligibility only. The majority of the Panel finds that this UEFA practise shows that UEFA was of the opinion that it already had competence to instigate disciplinary proceedings against clubs for match-fixing in national matches before the introduction of article 23(4) of the UEFA DR (2013) and as such contradicts the proposition that this competence was only created with the entry into force of this new provision.

215. In respect of the alleged offence of deliberately improperly filling in the UEFA Admission Form for the 2011/2012 UEFA Champions League season, the Panel finds that this is not an offence that can be sanctioned by UEFA on the basis of article 5 UEFA DR (2008). Article 5 of the UEFA DR (2008) does not contain a clear and unambiguous provision incriminating the improper completion of this form. The Admission Form itself neither states that an improper completion would lead to disciplinary proceedings being initiated by UEFA. The Panel also adheres with the Appellant's contention that, unless regulated differently, not confessing to an offence in an Admission Form cannot be sanctioned as a distinct offence, particularly if no proceedings in respect of such alleged offence have been initiated at the moment of filling in the form.

216. Consequently, the majority of the Panel finds that UEFA had competence to instigate disciplinary proceedings against the Appellant and that the sanctions imposed on the Appellant in respect of match-fixing were in accordance with the legality principle, *i.e.* that the material and the territorial scope are defined within the rules and regulations of the UEFA in a clear and unambiguous way. The Panel however also concludes that UEFA did not have competence to instigate disciplinary proceedings against the Appellant for improperly filling in the Admission Form.

d) Was UEFA estopped from instigating disciplinary proceedings against Fenerbahçe because of the UEFA General Secretary's letter dated 23 August 2011?

217. On 23 August 2011, Mr Gianni Infantino, UEFA General Secretary, sent a letter to the President of the TFF, with, *inter alia*, the following content:

"You will also understand that UEFA cannot tolerate a situation where a club from one member association is excluded from our competitions because its national governing body has taken rapid and effective disciplinary action whilst, at the same time, a club from another member association is able to participate in our competitions because its national governing body fails to act. This would effectively penalise those national associations who

are most efficient in dealing with cases of match-fixing and this is exactly the kind of strong and effective football governance that UEFA wishes to promote, not deter. Furthermore, if we do not follow a similar policy approach in relation to matters of such crucial importance this will damage not only the credibility and integrity of UEFA club competitions but will also contradict the principle of equal treatment.

As you know, under the Regulations of the UEFA Champions League (2011/2012 edition) any club that has, since April 2007, been directly or indirectly involved in any activity aimed at influencing the outcome of a match is not eligible to participate in the competition. The period of ineligibility is effective for one year only.

Consequently, given the evidence that now exists, it appears to us that Fenerbache [sic] *should not be eligible to participate in the UEFA Champions League this season. In the circumstances, it also appears that the appropriate course of action would now be for Fenerbache* [sic] *to withdraw its participation from the UEFA Champions League for this season. Alternatively, the TFF may withdraw the club from the competition.*

We should point out that if one or other of these paths of action is not taken and UEFA has to open its own Disciplinary Procedures against the club (whether now or in the coming months) an eventual sanction is likely considerably more severe, in particular, if the club is found guilty of lying when it completed the Admission Criteria form confirming that it had not been involved in any match-fixing activity since April 2007. Whilst we cannot predict the form of sanction that might finally be imposed we can advise that in some other cases of match-fixing (e.g. CAS 2009/A/1920) clubs have been banned from participation in UEFA club competitions for up to eight years.

For the sake of completeness, we must also advise you that, if the TFF does not deal with this matter now this will also lead to appropriate disciplinary steps being taken against the TFF. As you will understand, UEFA cannot accept, in all these circumstances, that Fenerbache [sic] *starts in the UEFA Champions League this season and is then subsequently excluded from the competition because involvement in match-fixing is finally established".*

(i) The position of the parties

218. Given that the TFF decided on the next day, 24 August 2011, to withdraw the Appellant from the 2011/2012 UEFA Champions League season, the Appellant submits that UEFA was prevented from subjecting the Appellant to further punishment for two distinct reasons. First, because a contract was concluded the general principle of *pacta sunt servanda* prevents further punishment. Second, even if no such contract had been concluded, the UEFA Letter and other events that followed prevented UEFA from imposing sanctions on the Appellant on the basis of the doctrines of estoppel by waiver or *venire contra factum proprium*.

219. The Appellant purports that UEFA made a binding offer that was at least implicitly accepted by the TFF, thus concluding a contract by mutual expression of intent. Naturally, the principle of *pacta sunt servanda* applies to all terms of the contract, including UEFA's promise not to open a disciplinary procedure against the Appellant. This contract is, at least partially, a contract for the benefit of a third party, namely the Appellant, which gives the Appellant the right to compel UEFA not to open a disciplinary procedure against it. The Appellant finds that UEFA's offer must be read in a way that UEFA would only open disciplinary proceedings

against the Appellant if neither the Appellant withdrew, nor the TFF removed it from the 2011/2012 Champions League season. This proposition is further confirmed by an internal document of UEFA.

220. The Appellant finds UEFA's interpretation of the UEFA Letter as merely *"inviting the TFF to consider whether it was appropriate"* to remove the Appellant and, thus, qualifying the decision of the TFF as *"voluntary"* and *"absolutely autonomous"* to be absurd.

221. Even if the UEFA Letter and the immediate reaction of the TFF did not lead to a valid contract for the benefit of the Appellant, *quod non*, the Appellant still finds that UEFA would be barred from instigating disciplinary proceedings based on the principles of estoppel by waiver or *venire contra factum proprium*. Under these principles, the party that induces reliance as a result of a statement or any other conduct, is then estopped from taking the action that the other party relied on and believed it would not take.

222. The Appellant submits that it would be punished for its reliance on the UEFA Letter if CAS would allow UEFA to forego its promise and sanction the Appellant even though UEFA had stated repeatedly that it would not do so.

223. UEFA finds that the Appellant's position is contrary to both the wording of the letter itself and to common sense. The UEFA Letter was not on its face an offer, a contract or a representation, but a simple invitation to the TFF to act. The taking of a decision by the TFF meant that the UEFA Administration did not proceed to take a decision under article 2.05 of the UCLR (2011/2012). The TFF decision only applied to the upcoming season, just as a UEFA decision under article 2.05 would have done.

224. According to UEFA, the UEFA Letter simply states that if the Appellant is not withdrawn, the *"eventual sanction"* in any disciplinary proceedings that arise *"is likely to be considerably more severe"*. In fact, the withdrawal of the Appellant by the TFF has most likely resulted in the imposition of a sanction that is less severe than it would have been had the withdrawal not occurred. The Appellant wrongly seeks to characterise the comparison as being between the one-year period of ineligibility imposed by the TFF and future disciplinary measures, when on the face of the UEFA Letter the comparison is between future disciplinary measures after a withdrawal, and future disciplinary measures if there was no withdrawal.

(ii) The findings of the Panel

225. At the occasion of the hearing, the Appellant called as witnesses I., vice-president of Fenerbahçe between 2006 and 2012, and L., vice-president of Fenerbahçe until 19 May 2012. These two witnesses testified about the factual circumstances surrounding the withdrawal of the Appellant by the TFF from the 2011/2012 UEFA Champions League season.

226. Both witnesses confirmed that the Appellant, based on its own statutes, was not able to withdraw from the 2011/2012 UEFA Champions League season, as was requested by UEFA

in its letter dated 23 August 2011 and that the Appellant challenged its withdrawal because it believed that this decision of the TFF was unfair.

227. The Panel finds that in order for a third party to be able to rely on the content of a contract, there must be a contract. In the present case such contract is supposed to have been concluded between UEFA and the TFF. There is however no exchange of declarations between these two entities. Therefore, the Panel is not convinced that a contract has been concluded. Consequently, a third party (the Appellant) cannot derive any rights from such contract. The TFF – being a member of UEFA – merely acted in compliance with an order (or threat) from UEFA, which does not mean that a contract is concluded. As such, the Panel has no difficulties in concluding that UEFA was not estopped from instigating disciplinary proceedings against the Appellant based on this argument.

228. Turning its attention to the Appellant's argument regarding the alleged estoppel by waiver, the Panel finds that UEFA's order (or threat) was only related to the "administrative measure" (i.e. the minimum sanction) and not to any subsequent (appropriate) "disciplinary measures". In this respect the Panel considers it crucial that I. and L. clarified at the occasion of the hearing that they interpreted UEFA's order (or threat) and subsequent explanations in a way that if such order would be followed no disciplinary proceedings at all would be opened by UEFA, but could not confirm that UEFA specifically promised them that it would not open disciplinary proceedings if the Appellant would pull its appeal with CAS against the TFF's withdrawal. The Panel finds that in case of any doubt in respect of the content of the UEFA Letter and subsequent explanations, the Appellant should have clarified and formalised the situation with UEFA.

229. The Panel also deems it relevant that UEFA indeed kept its promise not to impose a minimum sanction according to article 2.05 UCLR on the Appellant after the TFF withdrew the Appellant from the 2011/2012 Champions League season, the remaining question is therefore whether the UEFA Letter was limited only to this one-year period of ineligibility or whether it also extended to the second stage of the "two stage process".

230. The Panel finds that the UEFA Letter was limited to a one-year period of ineligibility during the 2011/2012 season of the UEFA Champions League. The letter determines that *"[c]onsequently, given the evidence that now exists, it appears to us that Fenerbache* [sic] *should not be eligible to participate in the UEFA Champions League this season. In the circumstances, it also appears that the appropriate course of action would now be for Fenerbache* [sic] *to withdraw its participation from the UEFA Champions League for this season. Alternatively, the TFF may withdraw the club from the competition".*

231. As such, the Panel understands that the main intention of UEFA in issuing this letter appears to have been to prevent the participation of the Appellant from the 2011/2012 UEFA Champions League season, not directly the instigation of disciplinary proceedings. If the Appellant or the TFF would not comply with this order, UEFA left open the possibility to pronounce a one-year period of ineligibility itself. The Panel understands that UEFA shared this information without prejudice to the opening of disciplinary proceedings.

232. In this respect, the Panel deems it important that UEFA informed the TFF that "[w]*hilst we cannot predict the form of sanction that might finally be imposed we can advise that in some other cases of match-fixing (e.g. CAS 2009/A/1920) clubs have been banned from participation in UEFA club competitions for up to eight years"*. The majority of the Panel is not convinced by the Appellant why this sentence should be read in another way as that UEFA left open the possibility to pronounce a one-year period of ineligibility and a "disciplinary measure" at the same time, as UEFA finally did in the matter CAS 2011/A/2528.

233. The Panel observes that the UEFA Letter reads, *inter alia*, as follows:

"We should point out that if one or other of these paths of action is not taken and UEFA has to open its own Disciplinary Procedures against the club (whether now or in the coming months) an eventual sanction is likely considerably more severe".

234. In interpreting this sentence, the Panel finds that although the words *"Disciplinary Procedure"* are ambiguous, the Panel understands that UEFA referred to disciplinary proceedings in accordance with article 2.05 UCLR (2011/2012) and not article 2.06. The Panel understands the UEFA Letter as informing the TFF that if the Appellant would not withdraw itself or is withdrawn by the TFF, UEFA would have to open its own disciplinary proceedings on the basis of article 2.05 of the UCLR in order for the Appellant to be declared ineligible to participate in the 2011/2012 UEFA Champions League season. If such proceedings (on the basis of article 2.05 of the UCLR) would have to be opened, the disciplinary sanction deriving from the disciplinary proceedings in respect of article 2.06 of the UCLR, that would follow in any event, were likely to be considerably more severe.

235. The Panel deems the words *"more severe"* to be a comparison between the situation in which the Appellant would decide to withdraw itself or if the TFF would decide to withdraw the Appellant and the situation in which UEFA had to withdraw the Appellant. In any of these two situations UEFA would be entitled to impose severe sanctions on the Appellant, however, if the Appellant and the TFF would not comply with the order, the sanction would be more severe. The Panel finds this to be an important indication that if the Appellant withdrew itself or if the TFF withdrew the Appellant (as finally happened), UEFA would still be entitled to open disciplinary proceedings against the Appellant on the basis of article 2.06 of the UCLR (2011/2012) subject to the prerequisites contained therein and to impose a severe sanction on the Appellant, but less severe as it would have imposed should the Appellant or the TFF not have complied with UEFA's order. The "threat" of imposing a "more severe" sanction, would be nonsensical if such sanction would be limited to a one-year period of ineligibility, as is the maximum period of ineligibility that can be imposed on the basis of article 2.05 of the UCLR. Accordingly, the Panel understands that it was no promise of UEFA that no disciplinary proceedings pursuant to article 2.06 of the UCLR (2011/2012) would be opened.

236. Moreover, the Panel finds that the Appellant did not in good faith rely on the content of the UEFA Letter. The Appellant in fact challenged the content of the UEFA Letter before CAS. Accordingly, the Appellant cannot first challenge the content of the UEFA Letter and now rely on the content of the same letter. The Panel also finds it contradictory that the Appellant

on the one hand entirely disputes UEFA's competence to open disciplinary proceedings against it, but on the other hand maintains that UEFA had competence to open disciplinary proceedings, but, based on the content of the UEFA Letter, is prevented from instigating further disciplinary proceedings in addition to the period of ineligibility already served.

237. In light of the above, the Panel concludes that UEFA was not estopped from instigating disciplinary proceedings against the Appellant based on the content of UEFA's letter dated 23 August 2011 and that the principle of *venire contra factum proprium* was not violated.

e) Can UEFA impose a sanction on Fenerbahçe even if it deems that the level of information obtained in relation to the individuals is not sufficient to issue a sanction against them yet?

(i) The position of the parties

238. The Appellant maintains that the Appealed Decision is illegal because of a fundamental contradiction that has its roots in the proceedings before the previous instance; the proceedings before the UEFA CDB. On 22 June 2013, the UEFA CDB decided to abstain from imposing any sanctions on the individuals as requested by the UEFA Disciplinary Inspector, but decided that *"[t]he Disciplinary Inspector will provide a supplementary report with regard to the proceedings instigated against* [the individuals]*"*.

239. The Appellant asserts that by virtue of this decision, the UEFA CDB clearly admitted that it did not deem the information submitted to it sufficient to sanction any of the five individuals for a breach of article 5 UEFA DR. Notwithstanding this admission, the UEFA CDB rendered a second decision imposing a sanction on the Appellant, holding it liable for the exact same allegations that the UEFA CDB deemed itself insufficiently informed of when it came to the individuals.

240. The Appellant finds that it is a universally accepted principle that a legal entity in and of itself is incapable of "acting", meaning that it can only be held liable indirectly by attributing to it the wrongdoing of human beings. This presupposes that a breach of article 5 UEFA DR (2008) by such individuals must be established before the Appellant can, in a second step, be held liable for such actions under Article 6(1) and 11(1) UEFA DR. In other words, the Appellant's liability is as an accessory to the breaches committed by its officials, failing which there is nothing for which the Appellant could be held liable.

241. The Appellant furthermore submits that the Appealed Decision is so shockingly vague and unspecific about the alleged acts of the individuals that it is extremely difficult for the Appellant to even defend itself against these allegations. Second, it does not make any sense for CAS to decide on the alleged actions of the individuals now, given that the UEFA Disciplinary Inspector is currently engaged in preparing an additional report to shed more light on these very allegations, and that the UEFA CDB sometime in the future will have to take a decision on the basis of this additional report.

242. UEFA argues that the UEFA CDB has decided to focus on the more urgent case of the Appellant and, after having assessed the behaviour of the Appellant through its officials decided to sanction the Appellant. At the same time, the UEFA CDB decided to resolve at a later stage the less urgent cases of the several officials involved, so that the appropriate sanction on each individual would be imposed.

243. Also, UEFA puts forward that the Appellant cannot assert that the UEFA CDB and the UEFA Appeals Body did not actually conclude that named officials were involved as explained below. The UEFA CDB did establish to its comfortable satisfaction that named high-ranked officials of the Appellant have been involved in activities that violate article 5 of the UEFA DR (2008). So too the UEFA Appeals Body held that named officials had been involved in particular identified matches. Simply, the UEFA CDB has not yet taken all the decisions that will address the single position of each individual. It is not the case that either the UEFA CDB, or the UEFA Appeals Body, or in turn CAS, were not or cannot be satisfied that an individual has done something wrong.

244. UEFA finally avers that it is not a *condition sine qua non* that sanctions are imposed on individuals in order for UEFA to sanction a club. Neither article 6, nor article 11 of the UEFA DR (2008) requires formal steps to be taken against individuals in order for a club to be held liable for their conduct. In this respect UEFA purports that also "indirect" influencing the outcome of a match is prohibited and that such indirect involvement could be held to have arisen without any finding against individual officers.

(ii) The findings of the Panel

245. The Panel finds that the UEFA CDB's request for a supplementary report in respect of the individuals and thus to bifurcate the proceedings, did not prevent the UEFA CDB from rendering a decision in respect of the Appellant. It is not a prerequisite under the UEFA DR that individuals are sanctioned before or at the same time the club is sanctioned.

246. The UEFA CDB and the UEFA Appeals Body were able to assess the information provided to it by the UEFA Disciplinary Inspector and on the basis of this information decide that certain persons were engaged in the fixing of certain matches. If the UEFA CDB and the UEFA Appeals Body would have found that only one match was fixed by officials of the Appellant, this would, in the opinion of the Panel, already be sufficient for the Appellant to be liable for this conduct. It is however feasible that the UEFA CDB wanted to have more information in respect of the individuals in order to obtain a complete picture of their conduct so as to impose adequate and proportionate sanctions on them.

247. Consequently, the Panel concludes that UEFA could impose a sanction on Fenerbahçe even if UEFA deemed that the level of information obtained in relation to the individuals was not sufficient to issue a sanction against them yet.

f) Should the disciplinary proceedings be remitted back to UEFA due to a violation of several procedural rights?

(i) The position of the parties

248. The Appellant asserts that the UEFA CDB and the UEFA Appeals Body violated several procedural rights and therefore requests the proceedings to be remitted back to the UEFA bodies by CAS.

249. First, the Appellant maintains that the UEFA Disciplinary Inspector took nearly two years to submit his report on 31 May 2013, which was only made available to the Appellant on 10 June 2013, *i.e.* approximately one month before the draw for the third qualification round was scheduled to take place. The UEFA adjudicatory bodies failed to recognise or were unwilling to accept that the complexity of the matter was clearly not suitable for a "hyper-expedited" last-minute proceedings, which did not leave enough time for the Appellant to properly prepare its defence and for the UEFA bodies to conduct a procedure and issue decisions worthy of adjudicatory bodies.

250. The Appellant further purports that in the proceedings before the UEFA CDB several documents were submitted to it only shortly before the hearing. For example, the Appellant alleges that the UEFA Appeals Body largely based its Appealed Decision on a submission made by the UEFA Disciplinary Inspector approximately 18 hours before the hearing.

251. In this respect, the Appellant finds that there was not even a valid argument of urgency that could be advanced to try and justify UEFA's blatant disregard of some of the Appellant's most fundamental procedural rights. If CAS tolerated proceedings of this nature to take place before UEFA's adjudicatory bodies, this would effectively deprive the Appellant of two of the three instances that the UEFA Statutes expressly guarantee.

252. Moreover, the Appellant avers that UEFA violated the principle of immediacy. The UEFA Disciplinary Inspector merely relied on third-party fact-finding of the disciplinary bodies of the TFF and the 16th High Criminal Court. On the other hand, the Appellant provided first hand evidence by producing 11 witnesses at the hearing before the UEFA Appeals Body, who testified to the events surrounding the allegations. Despite this, the UEFA Appeals Body blindly followed the third-party evidence presented by the UEFA Disciplinary Inspector in violation of the principle of immediacy, without even mentioning any of the witness testimony presented by the Appellant.

253. Finally, the Appellant submits that these violations cannot be remedied by the *de novo* competence of CAS pursuant to Article R57 of the CAS Code. Even in an expedited proceeding, the file is too voluminous in respect of the merits for a proper proceeding under the expedited procedure.

254. Therefore, in order to remedy these violations, the Appellant requests the case to be remitted back to the UEFA CDB.

255. UEFA finds that the Appellant's various arguments in respect of its procedural rights are without merit. First, UEFA refers to the long and well-established jurisprudence of CAS that the *de novo* nature of its jurisdiction, pursuant to Article R57 of the CAS Code, cures any previous procedural defects before an earlier instance.

256. UEFA also maintains that the Appellant and its officials have known the case against them since the carrying out of the TFF disciplinary proceedings and the criminal case.

257. UEFA furthermore finds that there has been no violation of the principle of immediacy. It would be contrary to the wording of the applicable rules and to common sense to consider that in the context of an international sports governing body's regulation of its sport, it should not be able to place reliance *inter alia* upon information and evidence resulting from investigations, decisions and other procedural acts of its national member federations or of state courts and authorities, especially when the evidence is by its nature difficult to be collected. In this respect, UEFA mainly purports that the concept of immediacy, or best evidence, is a criminal law concept and the UEFA disciplinary proceedings do not fall to be measured by reference to criminal law standards.

258. In continuation, UEFA maintains that under Swiss law, with reference to jurisprudence of the Swiss Federal Tribunal, civil tribunals such as sports governing body's disciplinary bodies are permitted to take into account information, evidence and decisions resulting from criminal court proceedings or other sports tribunal proceedings. This is specifically determined in article 2.05 of the UCLR, where it is stated that evidence on which the UEFA CDB and the UEFA Appeals Body may rely expressly includes *"a decision of a national or international sporting body, arbitral tribunal or state court"*; covering therefore both the TFF Decision and the decision of the 16th High Criminal Court in Turkey.

259. Finally, the adjudicatory bodies of UEFA did not limit themselves in relying on the decision of the TFF and the decision of the 16th High Criminal Court in Turkey. UEFA also relied on the Police Digest, the report of the TFF Ethics Committee, the first instance disciplinary decision of the TFF, the Supreme Court Prosecutor's position that the convictions should be upheld and the inadequacy of the purported explanations given by the officials of the Appellant.

(ii) The findings of the Panel

260. The Panel observes that certain information was submitted to the Appellant by UEFA shortly before the hearing. Although it may be true that counsel for the Appellant did not see the documents before, this does not prevent the proceedings to continue as it appears that these documents were mostly translations of documents that were already known to the Appellant. The Panel finds that, at least in the CAS proceedings, both parties had full opportunity to present their case and that the documents that might have been new to the Appellant in the proceedings before the UEFA CDB and the UEFA Appeals Body could have been assessed in detail in the preparation of the case before CAS. Therefore, even if certain procedural rights

of the Appellant were violated in the proceedings before UEFA, this could be repaired by the *de novo* competence of CAS.

261. The Panel adheres with the statements made in this respect in CAS 2009/A/1880-1881, where it was determined that:

"the Panel must point out that there is a long line of CAS awards, even going back many years, which have relied on Art. R57 of the CAS Code ("The Panel shall have full power to review the facts and the law") to firmly establish that the CAS appeals arbitration allows a full de novo hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federation's (or other sports body's) internal procedure. Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made. This is exactly what happened in the present CAS proceedings, where the Appellants were given any opportunity to fully put forward their case and to submit any evidence they wished" (CAS 2009/A/1880-1881, §18-21, with further references to CAS 2003/O/486, §50; TAS 2004/A/549, §31; CAS 2006/A/1153, §53; CAS 2008/A/1594, 109; TAS 2008/A/1582, §54; CAS 2008/A/1394, §21; TAS 2009/A/1879, §71).

262. Which was confirmed in CAS 2012/A/2913:

"Therefore even if a violation of the principle of due process, or of the right to be heard, occurred in the proceedings in respect of which the appeal is brought, it is cured, at least to the extent such violation did not irreparably impair the First Appellant's rights, by a full appeal to the CAS (CAS 94/129; CAS 98/211; CAS 2000/A/274; CAS 2000/A/281; CAS 2000/A/317; CAS 2002/A/378). In fact, the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance "fade to the periphery" (CAS 98/211, citing Swiss doctrine and jurisprudence)".

263. The Panel believes that the Appellant's procedural rights were satisfied in the present arbitration proceedings. The Panel allowed the Appellant to call an initial number of 55 witnesses, a number that finally, on the initiative of the Appellant, was reduced to 19. The Appellant submitted an appeal brief of 122 pages together with 109 exhibits and 12 defences and the hearing lasted for two entire days. The Panel finds that the Appellant fully utilised its right to be heard.

264. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure and that their right to be heard had been respected. The Appellant however stated that the expedited nature of the proceedings was not voluntary and that this is why it requested the matter to be referred back to UEFA.

265. The Panel has some sympathy for the Appellant's difficult evidentiary position in the proceedings before UEFA's adjudicatory bodies, particularly because UEFA has the sole discretion in deciding when to open disciplinary proceedings against a club. In the present case the Panel was not provided with a particular reason why disciplinary proceedings were

only opened in May 2013. Although there is some friction here, the Panel finds that the Appellant chose to abide by the regulations enacted by UEFA by filling in the UEFA Admission Form in order to participate in the UEFA Champions League, as paragraph c) of the form determines that the undersigned (*i.e.* Fenerbahçe) *"agrees that any proceedings before CAS related to the admission to, participation in or exclusion from one of the above-mentioned competitions will be held in an expedited manner in accordance with the Code of Sports-related Arbitration of the CAS and with the directions issued by the CAS;"*. The Appellant thereby consented to expedited proceedings. The filling in of this Admission Form is indeed not totally voluntary as it is a prerequisite for participation in UEFA's European competitions. However, the Appellant, as a member of UEFA (an association under Swiss law) is subject to the rules and regulations enacted by UEFA to which it in general wishes to abide.

266. The Panel does not agree that the Appellant would have effectively lost two instances if CAS would not remit the case back to UEFA. Although there may have been some procedural flaws in the UEFA proceedings, the Appellant had the opportunity to submit a defence, have a hearing and hear witnesses in the proceedings before UEFA's disciplinary bodies. Moreover, the Panel finds that the outcome of the proceedings before UEFA's adjudicatory bodies is correct and that referring the case back to UEFA would solely lead to delays and presumably a confirmation of the sanction that is currently pronounced.

267. Finally, also the alternative request for relief of the Appellant to suspend the present proceedings until 30 October 2013, when the Turkish Supreme Court is expected to have issued a final decision on the criminal proceedings is dismissed. The Panel will make its own evaluation of the five matches that were allegedly fixed. Even if the Turkish Supreme Court would acquit all the persons accused, this would not have any influence on the conclusions of the Panel in these appeal arbitration proceedings.

Conclusion

268. Consequently, the following conclusions can be drawn in respect of the procedural and formal aspects raised by the Appellant:

a) The Panel concludes that UEFA violated the legal principle of *res iudicata* in considering some factual elements in second instance (Appeals Body) which were not part of the procedure before the UEFA CDB and that the scope of the present proceedings is therefore limited to the five matches in respect of which the Appellant was convicted by the UEFA CDB.

b) The Panel concludes that UEFA did not violate the principle of *ne bis in idem*.

c) The (majority of the) Panel concludes that UEFA was competent to instigate disciplinary proceedings in respect of match-fixing against Fenerbahçe and the sanctions pronounced in this respect were in accordance with the legality principle. There is however no clear legal basis to sanction Fenerbahçe for improperly

completing an Admission Form and no distinct sanctions should be imposed in this respect.

d) The Panel concludes that UEFA was not estopped from instigating disciplinary proceedings against Fenerbahçe because of the UEFA General Secretary's letter dated 23 August 2011.

e) The Panel concludes that UEFA could impose a sanction on Fenerbahçe even if it deemed that the level of information obtained in relation to the individuals was not sufficient to issue a sanction against them yet.

f) The Panel concludes that the disciplinary proceedings shall not be remitted back to UEFA due to a violation of several procedural rights.

269. Since the (majority of the) Panel came to the conclusion that it is not prevented from entering into the merits of the case by the procedural and formal issues raised by the Appellant, the Panel will now proceed to assess the question whether Fenerbahçe was indeed involved in match-fixing activities, and if necessary, whether the sanction imposed by UEFA was proportionate. The Panel wishes to clarify that all the references to the "majority of the Panel" in this award solely derive from the discussion on UEFA's territorial competence under article 2.06 of the UCLR (2011/2012).

270. As indicated *supra* the Panel will only assess whether Fenerbahçe was involved in match-fixing activities in relation to the five matches that were specifically mentioned in the UEFA CDB Decision, *i.e.* Gençlerbirliği SK v. Fenerbahçe (7 March 2011), Fenerbahçe v. IBB Spor (1 May 2011), Karabükspor v. Fenerbahçe (8 May 2011), MKE Ankaragücü v. Fenerbahçe (15 May 2011) and Sivasspor v. Fenerbahçe (22 May 2011).

2. Merits

g) Do the merits of the case warrant disciplinary sanctions being imposed on Fenerbahçe?

271. Before assessing the above-mentioned matches one by one in chronological order, the Panel will first establish the applicable standard of proof.

i. The standard of proof to be applied

272. Throughout the proceedings before the UEFA CDB and the UEFA Appeals Body, UEFA consistently applied the standard of proof of "comfortable satisfaction".

273. The Panel observes that article 2.05 of the UCLR determines that *"if (…) UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved (…) 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. (…)"*. As such, the standard of proof to be applied in sanctioning a club on the basis of article 2.05 of the UCLR is "comfortable satisfaction".

274. Article 2.06 of the UCLR does not define the standard of proof to be applied. In principle, therefore, the answer to this question is to be followed from Swiss law that applies subsidiarily in the case at hand (cf. §115 *et seq.*), since the standard of proof – according to Swiss law – is an issue of substantive law.

275. The Panel observes that CAS jurisprudence is inconsistent in its approach to the standard of proof to be applied in civil cases. On the one hand, it is held that *"[u]nder Swiss law, the standard of proof normally applied to a civil claim is whether the alleged facts have been established beyond reasonable doubt, thereby leading to the judges' conviction that the claim is well founded"* (CAS 2006/A/1130). However, on the other hand, CAS jurisprudence determines that the standard of proof in civil law cases is "balance of probability" (e.g. CAS 2011/A/2426, §88, with references to CAS 2010/A/2172, §53; CAS 2009/A/1920, §85); *"the Panel needs to be convinced that an allegation is true by a "balance of probability", i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence"* (CAS 2010/A/2267, §732, with references to CAS 2008/A/1370 & 1376, §127; CAS 2004/A/602, §5.15; TAS 2007/A/1411, §59).

276. This Panel finds that the standard of proof to be applied in civil law cases is "beyond reasonable doubt" (SFT 132 III 715, E. 3.1; BK-ZPO/BRÖNNIMANN, 2012, Art. 157 no. 40).

277. The Panel observes that CAS jurisprudence has sometimes found that the applicable standard of proof in match-fixing cases is "comfortable satisfaction" in analogy to doping cases according to the WADC (CAS 2009/A/1920, §85; CAS 2011/A/2528, §134; CAS 2010/A/2172, §53; CAS 2010/A/2267, §732). According thereto, the standard of comfortable satisfaction is a flexible one, *i.e.* greater than a mere balance of probability but less than proof beyond a reasonable doubt bearing in mind the seriousness of the allegation which is being made (CAS 2004/A/607, §34).

278. The justifications put forward by CAS panels for this departure from the normally applicable standard of proof in civil cases vary. In CAS 2009/A/1920, it was held that:

> *"Taking into account the nature of the conflict in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigating authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match-fixing should be dealt with in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts to the comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made".* (CAS 2009/A/1920, §85)

279. In CAS 2010/A/2172 the panel found that the application of the standard of comfortable satisfaction could also be justified because *"corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing"* (CAS 2010/A/2172, §70).

280. The reasoning in CAS 2009/A/1920 is not easy to follow. Disciplinary proceedings are – according to constant CAS jurisprudence – considered to be civil in nature (CAS 2005/C/976 & 986, §127). It is, however, typical and usual in disputes of a civil nature that the parties

involved never have investigative powers like "national formal interrogation authorities". Therefore, at least according to Swiss law, the "restricted investigative powers" of a party can never justify a reduced standard of proof in civil matters, since otherwise the normal standard of proof in civil matters ("beyond reasonable doubt") would never be applicable.

281. However, this being said, the Panel also notes that Swiss law is not blind vis-à-vis difficulties of proving (*"Beweisnotstand"*). Instead, Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact (SFT 132 III 715, E. 3.1; BK-ZPO/BRÖNNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nd ed. 2013, Art. 157 no. 11). In the case at hand, the Panel acknowledges that there is only circumstantial evidence available to UEFA to prove the facts it relies upon. In view of these difficulties of proving, the Panel is prepared to apply the standard of comfortable satisfaction to the case at hand.

282. Consequently, the Panel has no hesitation to apply the standard of comfortable satisfaction as the standard of proof to which extent the Panel must be convinced that the Appellant was involved in match-fixing. The burden of proof necessarily lies with UEFA.

ii. General arguments of the parties

(i) The position of the parties

283. Besides several match-specific defences submitted by Fenerbahçe, it also made certain general objections in respect of the evidence taken into account by UEFA's disciplinary bodies throughout the proceedings and that certain evidence adduced by the Appellant was not given the appropriate weight.

284. In this respect, Fenerbahçe maintains that UEFA based its allegations mainly on wiretaps conducted by the Istanbul police and that there are several issues with these wiretaps and their presentation, which highlights the flaw in relying on these taps to make a decision. Despite the fact that the UEFA Disciplinary Inspector had the burden of proof and that there were substantial issues with the evidence submitted, the Appealed Decision ruled in favour of a ban on Fenerbahçe. The Appealed Decision failed to take into account the evidence presented by the Appellant that proves that the Appellant was not guilty of match-fixing, including the witness statements which were simply ignored by the UEFA Appeals Body.

285. In this respect, Fenerbahçe submits that, *"given the complexity of this case and the volume of evidence, these arguments will merely be summarised for the Panel in these expedited proceedings"* and it refers to certain individual defence statements of the Fenerbahçe officials accused of match-fixing.

286. Fenerbahçe asserts that the wiretaps as quoted in the UEFA Disciplinary Inspector's report, the UEFA CDB Decision and the Appealed Decision, were the product of mistranslation and omission which is reflected in a report filed in these arbitration proceedings (hereinafter: the "Translation Revision Report"). Fenerbahçe finds that key portions of the original wiretaps were distorted through these mistranslations and omissions in the translations provided by the 16th High Criminal Court in Istanbul. Reliance on these wiretaps is suspect.

287. Furthermore, Fenerbahçe argues that the context of these wiretaps was often skewed based on the introductions provided by the UEFA Disciplinary Inspector in his submissions before UEFA's adjudicatory bodies. The UEFA Disciplinary Inspector cherry-picked excerpts from the wiretaps that would make general statements and then would provide an introductory paragraph that would purportedly add context which was not reflected in the quoted excerpt. According to Fenerbahçe, this practice poisoned any alternative interpretation that the UEFA Appeals Body could find. The UEFA Disciplinary Inspector's submissions contorted the wiretaps in such a way that it appeared that the conversation was about match-fixing when in fact that was not what the conversation was about. Also, Fenerbahçe surmises that the authenticity of the speaker can be questioned with regard to some of these wiretaps because the speaker is not necessarily the person on the line.

288. Furthermore, Fenerbahçe avers that the evidence it relied on during the UEFA proceedings is supported by documentation that undoubtedly exonerates Fenerbahçe, but that this evidence was not even mentioned in the Appealed Decision. Specifically, the Appellant produced a financial report that was prepared by experts of the prosecution during the criminal proceedings. Fenerbahçe asserts that this financial report found that there were no illegal or suspicious activities in either Fenerbahçe's or the individual officials' financial records. Ultimately, for match-fixing to occur, there has to be some benefit received by the player who is fixing the match and these financial records clearly show that no such benefit was ever paid and demonstrate where all the money received by Fenerbahçe was actually spent. Fenerbahçe also relies on reports from TFF officials who were present at the games and who found that no suspicious actions happened on the field in any of these games.

289. UEFA purports that Fenerbahçe breached article 5 of the UEFA DR (2008) on, at least, three accounts: a) the Appellant itself breached article 50(3) of the UEFA Statutes and article 2.05 of the UCLR (2011/2012); b) under article 6 and/or article 11 of the UEFA DR, the Appellant bears responsibility for the actions of its officials, and its officials have acted in a way that brings themselves and the Appellant into breach of articles 5(2)(a), (b), (d) and (j) of the UEFA DR; c) the Appellant itself has provided a false account of its activities when it completed its entry form for the 2011/2012 Champions League season, because it did not disclose the involvement in match-fixing.

290. With reference to CAS 2010/A/2267, UEFA submits that CAS emphasised that the critical nature of maintaining a zero tolerance stance against match-fixing meant that article 5 of the UEFA DR was readily engaged (including in that case by no more than a failure to report). This proposition is also supported by CAS 2010/A/2172.

291. UEFA maintains that on the basis of article 50(3) of the UEFA Statutes in conjunction with article 2.05 and 2.06 of the UCLR it can be concluded that CAS can be comfortably satisfied that there is a breach on this basis. In fact of course, CAS can be comfortably satisfied that club officials did indeed act in a way that went far beyond an incidental involvement, and that on any basis brings them individually and the Appellant into breach of the above-mentioned provisions.

292. UEFA also provided the Panel with a table that gives an overview of Fenerbahçe officials that have been found to have engaged in activity violating article 50(3) of the UEFA Statutes, article 5 of the UEFA DR and article 2.05 and 2.06 of the UCLR. The TFF disciplinary bodies convicted club officials in respect of three of those matches, and a player and an intermediary in respect of a fourth match. Fenerbahçe officials have also been convicted by the criminal court of such activity in seven matches (after Law 6222 came into effect) and were found to have been engaged in such activity in respect of six matches (before Law 6222 specifically made it a crime). The criminal court's convictions have been fully endorsed by the Supreme Court Prosecutor. UEFA relies on all this information and evidence in respect of all these matches and is fully entitled to rely on them for the purposes of the present disciplinary proceedings against the Appellant. *"In the interest of efficiency and brevity, and entirely without prejudice to UEFA's continued reliance on all the matches, UEFA will develop its submissions in relation to four particular examples"*. These four matches are highlighted in the following table provided by UEFA:

Match	**Incentive bonus or bribe to lose**	**TFF Ethics Committee Report**	**Indictment and Police Digest**	**TFF Disciplinary Bodies**	**Criminal Court**	**Supreme Court Prosecutor**
Maniaspor vs. Trabzonspor 21/02/11	Incentive bonus	Attempt established B., D., F.	Charge A(1) B., D. F.		Action occurred but predated 6222 B., D., F., G.	
Fenerbahçe vs. Kasimpasa 26/02/11	Bribe to Lose		Charge A(2) B., D. F.		Action occurred but predated 6222 B., D., F., G.	

Bursaspor vs. Istanbul BB 06/03/11	Incentive bonus	Offence established B., D.	Charge A(3) B., D.		Action occurred but predated 6222 B., D.	
Genclerbirligi vs. Fenerbahçe 07/03/11	Bribe to Lose	Offence established B., D., G.	Charge A(4) PD 516 B., D. F.	Conviction of D. of disciplinary offence	Action occurred but predated 6222 D., G.	
Genclerbirligi vs. Trabzonspor 20/03/11	Incentive bonus	Attempt established B., D.	Charge A(5) B., D.		Action occurred but predated 6222 B., D., G.	
Eskisehirspor vs. Fenerbahçe 09/04/11	Bribe to Lose	Offence established B., D.	Charge A(6) B., D., F., E., C., G.		Action occurred but predated 6222 B., D., F., G.	
14 April 2011	Law 6222 introduced					
Trabzonspor vs. Bursaspor 17/04/11	Incentive bonus	Attempt established B., D., E.	Charge B(1) B., D., E.		Conviction of criminal offence B., D., E.	Criminal Conviction upheld B., D., E.
Eskisehirspor vs. Trabzonspor 22/04/11	Incentive bonus	Attempt established B., D., C.	Charge B(2) B., D., C., G.	Conviction of D. and C. of disciplinary offence	Conviction of criminal offence B., D., C., G.	Criminal Conviction upheld B., D., C., G.

Fenerbahçe vs. IBB Spor 01/05/11	Bribe to Lose	Offence established B.	Charge B(3) PD 661 B., F., G., player and intermediary	Conviction of player and intermediary of disciplinary offence	Conviction of criminal offence B., G., player and intermediary	Criminal Conviction upheld B., G., player and intermediary
Karabukspor vs. Fenerbahçe 08/05/11	Bribe to Lose		Charge B(4) B., E., C., G.		Conviction of criminal offence B., C.	Criminal Conviction upheld B., C.
Fenerbahçe vs. Ankaragucu 15/05/11	Bribe to Lose	Offence established B., D., F., C.	Charge B(5) PD 723 B., D., F., C.	Conviction of D. and F. of disciplinary offence	Conviction of criminal offence B., D., F., C.	Criminal Conviction upheld B., D., F., C.
Trabzonspor vs. Istanbul IBB 15/05/11	Incentive bonus	Attempt established B., D.	Charge B(6) B., D.		Conviction of criminal offence B., D.	Criminal Conviction upheld B., D.
Sivaspor vs. Fenerbahçe 22/05/11	Bribe to Lose	Offence established B., D., G.	Charge B(7) PD 797 B., D., G.		Conviction of criminal offence B., D., G.	Criminal Conviction upheld B., D., G.

B.	B.	President
D.	D.	Board member
C.	C.	Vice-President
G.	G.	Finance Director
F.	F.	Manager
E.	E.	Board member

(ii) The findings of the Panel

293. Before turning its attention to the individual matches, the Panel deems it important to assess certain of these general issues.

294. In respect of Fenerbahçe's allegation that the wiretaps relied on by UEFA provide incorrect or flawed information, the Panel observes that the Translation Revision Report provided by Fenerbahçe concludes that *"we are of the opinion that the original translation is of a very bad quality from a linguistic perspective, contains numerous accuracy* [sic] *and grammar errors, and reflects a very poor knowledge of English on the part of the translator(s), warranting translation from scratch since many parts of the translation are beyond correction"*. The Panel acknowledges the conclusion in the Translation Revision Report regarding the quality of the translations; nevertheless the Panel finds that if no specific objections to the translations are made, the translations of the wiretaps shall be considered accurate. However, if specific objections are made by the Appellant, the Panel will take such objections into account in its analysis. The Panel will therefore critically assess the content of the wiretaps in respect of the individual matches, however, the Panel wishes to clarify already beforehand that the finding that the content of a wiretap has been incorrectly translated, does not mean that all the wiretaps should be neglected as evidence; each wiretap will be assessed on its credibility. In this respect, the Panel deems it important that the original Turkish wiretaps were taken into account as evidence by the TFF Ethics Committee, the TFF PFDC, the TFF Board of Appeals and the 16th High Criminal Court in Istanbul. Regarding the alleged cherry-picking of the UEFA Disciplinary Inspector of the excerpts of the wiretaps, the Panel observes that Fenerbahçe also cherry-picked certain excerpts of the wiretaps in order to prove that they were flawed.

295. The Panel will also certainly take into account the evidence produced by Fenerbahçe that was allegedly neglected throughout the UEFA proceedings. By doing so, the Panel is confident that it repairs any procedural flaws that might have occurred throughout the proceedings before the UEFA CDB and the UEFA Appeals Body.

296. The Panel observes that Fenerbahçe refers to the individual defences of some of its officials in the disciplinary proceedings before the UEFA CDB and summarised their arguments in its written submissions in the present arbitration proceedings. In view of this, the Panel will mainly rely on the summaries prepared by Fenerbahçe and will only address the individual defences if necessary.

297. The Panel observes that UEFA chose to focus on only four of the five matches for which Fenerbahçe was specifically convicted by the UEFA CDB. As such, the Panel finds that it only has the duty to assess these four matches. Any accusations made in respect of additional matches are disregarded. Consequently, and although both the UEFA CDB and the UEFA Appeals Body considered Fenerbahçe guilty of fixing the match between Karabükspor and Fenerbahçe that was played on 8 May 2011, the Panel finds that it is not in a position to assess this match because the facts of this match are disputed and UEFA failed to substantiate its allegations in respect of this match.

298. The Panel finds that the financial reports provided by Fenerbahçe are in principle of limited relevance to the matter at stake. As consistently pointed out in CAS jurisprudence *"corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing"* (CAS 2010/A/2172, §70). The fact that the financial records show that no money has been transferred to the official accounts does not mean that no money could have been transferred to unofficial accounts, or more likely in cash.

299. The Panel also finds that the match reports redacted by the TFF officials at the relevant games are of limited importance. The fact that these TFF officials did not observe any suspicious actions on the pitch does not constitute proof that no match-fixing occurred. Not every instance of bad or underperformance of a player necessarily means that a match was fixed. Football, by its very nature, is a game where mistakes occur. What is at stake here is whether officials of Fenerbahçe were involved in match-fixing activities, either directly or indirectly. Instead, whether matches were actually fixed is not relevant in this respect. The fact that a specific player of the opposing team played badly, is no evidence in itself that this player was involved in match-fixing. For example, if a player is offered money in order not to score in a specific game, this does not necessarily mean that he would have to play badly. Match-fixing can present itself in many ways. An attempt to fix a match typically occurs before the match actually takes place; the performance in the game is only the result of match-fixing. As such, no evidence is required that the match was actually influenced.

300. With respect to UEFA's allegation that Fenerbahçe as an entity violated article 5 of the UEFA DR, the Panel finds that this is not the case. A legal entity can only be held liable for match-fixing through actions of persons representing or acting on behalf of the legal entity, *i.e.* its officials. As the Panel already indicated that under the applicable UEFA regulations the Appellant did not commit a disciplinary infringement by improperly filling in the UEFA Admission Form in order to participate in the 2011/2012 season of the UEFA Champions League, the only basis for sanctioning Fenerbahçe as a club is its liability for the actions of its officials.

301. The Panel observes that it remained undisputed by the parties that B., President, D., Executive Committee member, C., Vice-President, G., Finance Director, F., Manager, and E., Executive Committee member, were officials of Fenerbahçe.

302. Taking into account the above, the Panel will now assess whether these officials of Fenerbahçe were involved in fixing the four matches specifically relied on by UEFA in its Answer submitted to the CAS in these appeal arbitration proceedings.

iii. Gençlerbirliği SK v. Fenerbahçe (7 March 2011)

303. The Appealed Decision states insofar:

"The Appeals Body is satisfied that the Executive Committee member of Fenerbahçe SK D. had played a direct role in fixing the match Gençlerbirliği vs. Fenerbahçe played on 7 March 2011 of the 2010/2011

Turkish Super Lig. Numerous evidentiary elements support this conclusion, notably those contained in the Police Digest, the Ethics committee report, the decision of the TFF disciplinary bodies and the decision of the 16th High criminal court".

(i) The position of the parties

304. Fenerbahçe submits that the UEFA Appeals Body based these conclusions on the Police Digest, the Ethics Committee Report, the decision of the TFF disciplinary bodies and the decision of the 16th High Criminal Court in Istanbul and contends that the Appealed Decision failed to i) name any players to whom payments have been allegedly made to; ii) the amount of these alleged payments; and/or iii) any other allegedly offered incentive bonuses.

305. Based on the previous investigations by the TFF and the 16th High Criminal Court in Istanbul, Fenerbahçe submits that it can only surmise who these players could be. From the indictment before the 16th High Criminal Court it can be derived that there was not enough evidence to indict nine players of Gençlerbirliği, these players were thus not accused of match fixing. The only player of Gençlerbirliği accused of match-fixing by the 16th High Criminal Court regarding this match was X., the goalkeeper of Gençlerbirliği.

306. Fenerbahçe assumes that the allegations in respect of X. were likely based on wiretaps in which D., Executive Committee member of Fenerbahçe, asks G., Fenerbahçe's financial manager, for money – which was allegedly used for match-fixing – and the conversation between P., goalkeeper trainer of Fenerbahçe, and X., who used to keep close contact with P. when X. played for Fenerbahçe in the past.

307. Regarding the allegations against D., Fenerbahçe submits that D. testified that he had previously loaned Fenerbahçe some money to pay player taxes. This conversation was not recorded by the police. The request to the financial manager was merely concerning the repayment of his loan. D. then used this money to pay for a construction project for Fenerbahçe. All of these transactions are reflected in the financial records submitted by D. as part of his defence.

308. In respect of X., Fenerbahçe submits that he was a former goalkeeper of Fenerbahçe and that he worked under the tutelage of P. for four years. Both testified that they became friends during this period. In 2008, both of them left Fenerbahçe. While X. was able to find a job as a goalkeeper, P. was unable to find new employment. Struggling with his finances, P. was able to obtain a loan from his friend, X., to sustain him during these rough times. Subsequently, P. was rehired by Fenerbahçe and was working on paying off his debt to X. He repaid this debt in two instalments: 5,000 Turkish Lira (TRY) (EUR 2,000) on 22 March 2011 and the remaining TRY 6,000 (EUR 2,200) on 5 September 2011. Based on this, Fenerbahçe submits that the only payments made to a Gençlerbirliği player was a payment owed on a debt among friends, not for match-fixing as alleged in the Appealed Decision. Additionally, Fenerbahçe submits that the payment of EUR 4,200 for a Süper Lig player cannot seriously be considered as an indication of match-fixing. During the hearing before CAS, Fenerbahçe further

submitted that X. was not convicted for match-fixing by the Istanbul 16th High Criminal Court.

309. Finally, Fenerbahçe refers to the witness testimony of Y., captain of Gençlerbirliği, who stated that he did not hear of any match-fixing by any of the players.

310. UEFA follows the conclusions reached by the TFF Ethics Committee Report, the disciplinary decisions of the TFF in first instance and appeal and the decision of the 16th High Criminal Court in Istanbul.

311. In respect of the conclusions of the 16th High Criminal Court in Istanbul, UEFA submits that the conclusion was not that there was no match-fixing. Instead, the finding was that there was an attempt of match-fixing, but that these actions predated the entry into force of the Law incriminating such offence.

312. UEFA submits the following account of facts related to this match:

"B. gave instructions to D. and agent N. to have Gençlerbirliği Sports Club executives order their players to play badly.

On 1 March 2011, D. met the agent M. At this meeting M. told him that he has agreed with certain players from Gençlerbirliği to fix the match. The next day on 2 March 2011, D. reported the match fixing to B. On 5 March 2011, D. delivered the money to M., which shall be distributed to the players after the match. M. contacted AA. who is the club manager of Gençlerbirliği.

In addition, N. continued his activities to influence the match result. He informs D. about team squad of Gençlerbirliği. Furthermore, he contacted X. (goalkeeper of Gençlerbirliği) through assistant coach of Gençlerbirliği Z. and AA. who was the manager of Gençlerbirliği club and made a deal to pay him in return of favour of Fenerbahçe. At the same time prior to the competition they promised the goal keeper X. that he would be transferred to Fenerbahçe at the end of the season.

On 07.03.2011 at 20.00, the Gençlerbirliği – Fenerbahçe match began; the first half ended as 2-2 draw; then D. called M. and said that the players were better than expected and he warned him. The end result was Gençlerbirliği: 2 – Fenerbahçe: 4. Gençlerbirliği goalkeeper X. was the goalkeeper in the match. However, after the match B. demands return of the 100.000 USD because the Gençlerbirliği players played well.

On 16 March 2011, Z. and D. met to solve the conflict related to the players' good performance at the match. Z. accepted the non-payment and they agreed upon a payment only to goalkeeper X. The money was transferred to X.'s with the mediation of Fenerbahçe goalkeeper coach P".

(ii) The findings of the Panel

313. Taking into account the above, the Panel now turns its attention to the specific evidence provided by UEFA in respect of the fixing of the match between Gençlerbirliği and Fenerbahçe by Fenerbahçe officials.

314. The Panel observes that it is not disputed by Fenerbahçe that D. received money from Fenerbahçe and that X. received money from P., Fenerbahçe however disagrees with UEFA's explanation that these payments were related to match-fixing and submits that these payments were respectively related to a personal loan/construction project of D. and a personal loan of X.

315. In respect of UEFA's theory, the Panel finds it important to paraphrase certain wiretaps relied on by UEFA and to assess the conclusions drawn therefrom.

316. The following wiretap is a recording of a telephone call between M. and D. on 25 February 2011 at 18:04 hour:

M.: *"I'm fine, I'm at the Wow hotel, they are at the training camp, well you … I've spoken to them… then the other one's got three cards understand, if he is shown a card, no need to talk isn't that right".*

D.: *"So he shouldn't be shown a card then".*

317. The Panel observes that it is not disputed that X. had three yellow cards at the moment of the telephone call and that a player in the Turkish Super Lig is automatically suspended for one match when he records four yellow cards throughout the same season. It is also not disputed that Gençlerbirliği was scheduled to play against Ankaragücü on 26 February 2011, *i.e.* the day after the above-mentioned telephone call.

318. From these factual circumstances and also taking into account the following wiretaps, the Panel concludes that M. and D. were talking about X. and that they did not consider it necessary to talk to X. in case he would be shown a card in the match between Gençlerbirliği and Ankaragücü scheduled for 26 February 2011.

319. The following wiretap is a recording of a telephone call between M. and D. on 26 February 2011 at 16:37 hour:

M.: *"The match finished 4-2".*

D.: *"Okay, yellow card, nay yellow cards".*

M.: *"No, not".*

D.: *"Okay then good".*

320. At the occasion of the hearing, D. confirmed that there would be no reason to talk to X. if he would be shown another yellow card and would thus not play against Fenerbahçe. There were rumours that Trabzonspor would have attempted to pay players of Gençlerbirliği. D. stated that he was pleased that X. would play against Fenerbahçe because if X. would have received such offer from Trabzonspor he would let the President of Gençlerbirliği know. He was happy that the second goalkeeper of Gençlerbirliği would not play.

321. The Panel is comfortably satisfied that this telephone call took place after the end of the match between Gençlerbirliği and Ankaragücü, which started at 14:00 on 26 February 2011 and that the yellow cards were discussed because of their previous conversation about X. The Panel finds it highly suspicious that D. was happy with the fact that X. would be eligible to play against Fenerbahçe on 7 March 2011. Normally, it could be expected from Fenerbahçe that it would be pleased with the fact that the first goalkeeper of an opponent is suspended. The Panel is not convinced by the theory adduced by D. in this respect, but adheres with the theory put forward by UEFA.

322. The following wiretap is a recording of a telephone call between D. and G. on 28 February 2011 at 10:07 hour:

D.: *"So what do we do now any news,…you mentioned something remember,…I mean are there any news anything, he phoned me yesterday to ask if I had things to do with him, I said no I didn't, he is probably leaving today".*

G.: *"Well how much do we owe to them".*

D.: *"Well I need to get 250 and go to err".*

G.: *"We paid another 250 didn't we but biz".*

D.: *"We are deleting the ones in the past though,… look err knows about it, that… you understand who don't you,… we'll speak later".*

323. At the occasion of the hearing, D. stated that the USD 250,000 was related to a construction project of Fenerbahçe. D. was allegedly responsible for all the construction projects of Fenerbahçe, which includes also the projects of the other Olympic branches of Fenerbahçe that are not related to football.

324. The Panel finds the theory adduced by D. rather unlikely. No evidence has been provided whatsoever to prove that D. was indeed working on a construction project for Fenerbahçe at that moment and needed USD 250,000 for this project. In the absence of further evidence having been provided to substantiate the theory of D., the Panel is not convinced that this is truly what happened, particularly because it would have been rather easy to submit such evidence to the Panel, if existent.

325. The following wiretap is a recording of a telephone call between B. and D. on 28 February 2011 at 13:08 hour:

B.: *"I'm going to the airport,… I'm coming back tomorrow evening, take care of it it is of vital importance".*

D.: *"I phoned err, would you please talk to him, I told you something remember,… to G.,…I told you I needed to take some part of it remember".*

B.: *"Okay fine I'll tell him"*.

D.: *"I remembered him in the morning but he wouldn't do anything without informing you"*.

326. At the occasion of the hearing, D. testified that the first part of this conversation was about an injured player and that it was of vital importance that he would be able to play against Gençlerbirliği. The second part of the conversation was about the money D. was to receive from G.

327. The Panel is not convinced that this conversation can be separated in two distinct subjects of conversation. Indeed, it appears that receiving the money from G. was related to a visit of vital importance.

328. The following wiretap is a recording of a telephone call between B. and G. on 28 February 2011 at 13:09 hour:

B.: *"D. will ask something from you,…he will phone you, he spoke to you didn't he,…HE WILL TAKE A TRIP TODAY OKAY,…you speak with him, TRY TO TAKE CARE OF IT NO MATTER HOW MUCH"*.

G.: *"Okay my chairman,… F. would talk to you but,…HE SAID 100% THIS TIME LIKE THE OTHER ONES SAID BUT,… he said he wouldn't do anything if it's not okay"*.

B.: *"We've already given and not taken it back, have we,… ERR IF IT'S 100%, TELL HIM TO GIVE AND DO WHAT IS NECESSARY"*.

329. The following wiretap is a recording of a telephone call between G. and D. on 28 February 2011 at 13:38 hour:

G.: *"Boss did you ask for 250 Turkish lira for the taxes of players or what"*.

D.: *"yes, yes err,… it is urgent I'm going in the evening, I need take it and go,… yeah not lira but American,…you will you do anything"*.

G.: *"Well I've got 150 of it and I am looking for 100"*.

330. At the occasion of the hearing, D. testified that this conversation had nothing to do with taxes, but that he referred to taxes in order for G. to understand that he was talking about premiums for football players. Also, D. testified that the reference to *"take it and go"* concerned authorisation documents of two Swedish football players; this is allegedly what G. had to give to D.

331. Although confirmed by both D. and G., the Panel finds it rather unlikely that the reference to an amount, which is understood to be USD 250,000, in the conversation between D. and G. on 28 February 2011 at 10:07 hour was about a construction project and that the conversation

at 13:38 hour of the same day between the same persons was about premiums for football players or taxes. The Panel observes that there are also certain inconsistencies between the testimonies of D. and G. and the arguments submitted by Fenerbahçe. In the absence of any credible and consistent explanation having been adduced by Fenerbahçe as to why D. and G. were speaking about two different subjects, although both subjects concerned a payment of USD 250,000 within such a short timeframe, the Panel finds the explanation adduced rather unlikely.

332. Fenerbahçe submits that it appears from the above conversation that this money would be used to pay taxes of players and that D. would take care of this during a trip. It allegedly also becomes clear from these conversations that G. needed the authorisation of B. in order to give the requested amount to D.

333. The Panel has serious doubts whether this money was indeed used in order to pay player taxes or premiums for football players, particularly because player taxes would normally be paid in Turkish Lira and not in US Dollars. The Panel finds it rather strange that reference was made to taxes, while D. was actually referring to premiums for football players. Insofar as the money was related to player taxes, the Panel finds it very peculiar that D. needed to *"take it and go"*, if this money was indeed intended for taxes of players there would be no need to take the money, a bank transfer of the money would be sufficient.

334. The following wiretap is a recording of a telephone call between B. and D. on 2 March 2011 at 15:55 hour:

D.: *"I'm on the other side"*.

B.: *"We'll talk in the morning, that man is coming, I'll talk to you before he arrives, how is everything"*.

D.: *"Everything is just fine…we have plowed* [sic] *all the 3 fields,… I hope it will rain and our crops will grow"*.

B.: *"Trabzonspor went a little bit err panicked, they've got panicked today, I've talked to Süleyman today, he sounded like a dead man… they are disturbed because we won't respond though"*.

D.: *"at the moment it's okay my chairman now… it's quite fine"*.

335. UEFA purports that the reference to ploughing the fields is a reference to match-fixing steps; the attempt had been made to influence players, and it remained to be seen whether the attempts would come to fruition. If there had been any legitimate subject, it would not have needed to be discussed cryptically.

336. The Panel observes that it was concluded in the Police Digest that the reference to ploughing the fields refers to influencing the matches of Kayserispor, Bursaspor and Trabzonspor, who were in the first ranks of the Turkish Süper Lig together with Fenerbahçe, in the 24th week of the league.

337. As such, it is not clear to the Panel whether the sentence *"we have plowed* [sic] *all the three fields"* refers to an attempt to fix the match between Gençlerbirliği and Fenerbahçe or whether it refers to match-fixing attempts in the matches of Fenerbahçe's competitors, the Panel has however no doubt in concluding that this reference to "ploughing the fields" was intended cryptically and referred to illegal conduct. The Panel adheres with UEFA's position that if there had been a legitimate subject to discuss, it would have been made clear what that subject was, instead of speaking cryptically. The Panel has no hesitation in establishing that this conversation, in combination with the findings above, is a clear indication that D. was involved in possible illegal conduct with the knowledge of B.

338. The following wiretap is a recording of a telephone call between M. and D. on 2 March 2011 at 18:15 hour:

D.: *"Now you this is okay isn't it you told me the err […]".*

M.: *"BB., and CC. if he plays.*

D.: *"CC., DD".*

M.: *"DD".*

D.: *"Yeah BB".*

M.: *"But maybe he wouldn't let him play, maybe he would let Y. play".*

D.: *"BB., EE., FF. okay"*

M.: *"If GG. plays too, we'll talk to GG. okay… I'm coming over aren't I".*

D.: *"You come over, I'll tell them that I talked to them okay I'm telling you now, I'll tell them it is okay".*

M.: *"You've already talked to them why is he telling lies why would we make the thing into err…I haven't talked to […]* [goalkeeper] *yet, I'm telling you ,…if you say go and talk I'll go and talk on Saturday".*

339. The Panel observes that all the names of the players that are mentioned in this conversation are players of Gençlerbirliği. It concerns BB., CC., DD., Y., EE., FF. and GG. The Panel further understands that M. would talk to the goalkeeper of Gençlerbirliği if D. so desired. The Panel finds it very peculiar that M. would only talk to players of Gençlerbirliği that were going to play against Fenerbahçe (*"if GG. plays too, we'll talk to GG. okay"*) and that D. was informed about this. The Panel considers this to be an indication that certain Gençlerbirliği players were approached by M. in order to talk to them.

340. The following wiretap is a recording of a telephone call between AA., General Manager of Gençlerbirliği, and M. on 5 March 2011 at 19:39 hour:

AA.: *"M. they say 100 euro plus VAT though"*.

M.: *"I then save it I'm going tomorrow,… you deal with the meeting of the chairman it's important, yeah I'm going with the documents, you understand"*.

341. During the hearing, Fenerbahçe argued that this conversation is put in UEFA's submission because they spoke about money. Although UEFA made the impression as if this money was related to match-fixing, Fenerbahçe submits that it was related to the price of a hotel and breakfast. This would explain the reference to EUR 100 plus VAT.

342. The Panel adheres with Fenerbahçe in this respect. Although no evidence has been provided that indeed an amount of EUR 100 plus VAT was spent on a hotel, the Panel deems this to be a credible explanation. In coming to this conclusion, the Panel also took into account that in the remainder of the wiretaps reference is made to an amount of USD 100,000 and not EUR 100,000. Consequently, the Panel will exclude this wiretap from the evidence provided by UEFA.

343. The following wiretap is a recording of a telephone call between D. and M. on 6 March 2011 at 19:59 hour:

D.: *"Have you taken care of your business today"*.

M.: *"I talked everything was fine I watched the training… we'll talk when I arrive"*.

344. The following wiretap is a recording of a telephone call between M. and D. on 6 March 2011 at 22:17 hour:

D.: *"I'll tell you in this way, you say to me that err okay all the things I've said, the things you've said to me"*.

M.: *"So the things I've said are okay but it will be certain tomorrow"*.

D.: *"You come over here in the morning"*.

M.: *"18 people are certain I mean who which one…if you say to me to call you err if you tell me to go I'll go then understand"*.

345. The Panel understands from these conversations that the reason why M. was going to talk with the players was accomplished, although it would only be certain *"tomorrow"*. The Panel therefore understands that the attempt to involve the players in the illegal conduct was successful.

346. On 7 March 2011, Fenerbahçe played the match against Gençlerbirliği. In the first half of the match Fenerbahçe scored two goals, after which Gençlerbirliği also scored two goals. The score at half time was thus 2-2.

347. The following wiretap is a recording of a telephone call between someone called […] and B. on 7 March 2011 at 17:36 hour:

Person ([…]): *"my chairman we got croaked last night…"*.

B.: *"no worries"*.

Person ([…]): *"he says no worries…he mentions of the all of it me I mean I'm thinking but he says no worries for tonight"*.

348. During the hearing, Fenerbahçe argued that this person was not M., but a coordinator. Considering the objection of Fenerbahçe and the fact that UEFA is not sure whether this person was indeed M., the Panel finds that this wiretap must be excluded from the evidence submitted by UEFA.

349. The following wiretap is a recording of a telephone call between D. and N., intermediary, that allegedly negotiated with X. on behalf of D. on 7 March 2011 at 21:01 hour:

D.: *"Why don't you call err"*.

N.: *"I have, I have never seen such a thing before if you only watch on tv you wouldn't believe it such a shame after 2-0 then we conceded 2 goals,… I have called I have I mean I'd say something though he won't stretch his legs, the names I told 2 or 3 of them,… I have called I have before you did but why shouldn't I call"*.

350. The following text message was sent by D. to M. on 7 March 2011 at 21:13 hour:

"??".

351. UEFA adduces that it should be concluded from this wiretap that there would have been no reason for N. to have been asked to make a call to someone in the middle of the match other than to seek to ensure that the bribes were acted upon. Similarly, there would have been no other reason for D. also texting his surprise to M., in the way that he did, unless he was asking why the bribes were not acted upon.

352. The Panel is somewhat more cautious in its conclusions in respect of the wiretap. Although the telephone call raises serious doubts as to the subject of the conversation between D. and the player of Fenerbahçe, the Panel finds that the content of the wiretap is not clear enough to draw any conclusion from this conversation. Nevertheless, the Panel finds the text message to be an indication that D. expected something to happen during the match, but that apparently did not occur. The Panel finds that the most logical conclusion that can be drawn from all the above is that D. expected the Gençlerbirliği players to play badly in order for Fenerbahçe to win the match.

353. The following wiretap is a recording of a telephone call between M. and D. on 8 March 2011 at 11:29 hour:

D.: *"Yeah, I'm glad you've phoned".*

M.: *"D. I'm coming over brother I can never err nobody, I can't talk to anybody either you keep reprehending me there as if I as if what… I don't want it, I've told the guys too do you understand…I told them to excuse me I was a liar do you understand I'll come over in the afternoon okay I'll deliver the thing err okay".*

D.: *"This has nothing to do with the club I mean I was just sending some money to Ankara anyway, they come to our company and get it from you where are you at the moment".*

M.: *"I'm gonna send you that now in the afternoon anyway you know the guys at our place they came back on the bus at night, I gave it to the man who was with me I also gave the direction of your company, they will bring it to you I mean do you understand I just want to get rid of that thing".*

D.: *"I didn't say anything if you are saying to me that it is okay and I'm saying it is not, if you push it surely I will argue with you and you will say that excuse me but it's not okay this time it is not okay,… none of them is okay, secondly I told you last week not to tell this anyone it was between us but what did you do after my word you texted E".*

354. The Panel observes that M. and D. apparently had some kind of dispute and that M. would deliver something to D.'s company through another person.

355. The following wiretap is a recording of a telephone call between D. and HH. on 8 March 2011 at 11:32 hour:

D.: *"Well someone will come to see you at 2 he will say that M. sent him,… he will bring some money on him,… he will bring 100 thousands dollars check it properly okay".*

356. The Panel understands from the sequences of the phone calls above that *"the thing"* that was discussed between D. and M. was apparently USD 100,000 and that a representative of M. would deliver this amount to HH. in the afternoon of 8 March 2011.

357. The following wiretap is a recording of a telephone call between D. and JJ., a man whose role was not clarified by the parties, on 8 March 2011 at 11:39 hour:

D.: *"(…) I gave a hundred to be given to him okay… man you know the conversation we had in the toilet I've been calling him up since the morning but his phone is switched off I was gonna say to him to bring it,… so he said to me I was yelling at him I said to him I would give him a telling-off but you need to say to me that 'D. I'm so sorry it's not okay this time I am sorry these are animal workers did not go by the project this and that the concrete was not poured properly you'll tell them,…I said I just took it from you yeah he said no, no he said on the bus err went to my surprise this crook kept it here it was never delivered err that thing the money".*

JJ.: *"He never took the money to the work site then".*

D.: *"he said look my brother I have a promise I've made… this and that whatever but MM. wouldn't hide it from me would he, he texted me, look buddy you crook I said why would you get MM. in this".*

JJ.: *"What about the other work site, will it be the same as this one".*

D.: *"Not with this I'll personally take care of it I don't need him at all,…sure, sure you know the worker at the groundwork I mean the one at the deepest" I'll take care of it with him, with that one".*

358. In respect of this wiretap UEFA contends that the reference to conversations after the match made clear that D. was complaining about what happened at the match. His reference to the intermediary M. telling him that he was sorry that it was *"not okay this time*" and that the *"animal workers did not go by the project this and that the concrete was not poured properly"* was a reference to the players not acting on the bribe. JJ.'s first question was to ask whether the intermediary had paid the bribe. His second question related to another match.

359. The Panel concludes from the above, in accordance with the theory put forward by UEFA, that D. first gave *"a hundred to be given to him"*, which the Panel understands to be a payment of USD 100,000 to M. This money was apparently not intended for M. himself, but was supposed to be delivered to the "work site" by M.

360. From all the previous wiretaps the Panel is comfortably satisfied that this "work site" is a reference to the players that were approached by M. on behalf of D. and that this payment was made in accordance with an agreement to fix the match between Gençlerbirliği and Fenerbahçe. As such, the Panel finds that the money that was transferred to the Gençlerbirliği players in order to fix this match derived from Fenerbahçe.

361. The following wiretap is a recording of a telephone call between MM., intermediary and according to the individual defence of B. a congress member of Fenerbahçe, and D. on 8 March 2011 at 12:20 hour:

D.: *"I said it was such a shame he should have said that 'look D. it didn't go right I am sorry it didn't go right this time',… I said to him if he wasn't convinced after this phone call I told him to go Altunizade and tell your problems there and I told him I did not recommend that at all".*

MM.: *"All these come from the past you know the things like this happened in the past".*

D.: *"MM. do you know what he used to give to the work sites what he used to give 700's, 900's".*

MM.: *"Do you know what footballers of Gençlerbirliği stated we played for Trabzon but it didn't go right".*

D.: *"Well it is better never mind…".*

362. The following wiretap is a recording of a telephone call between MM. and M. on 8 March 2011 at 12:57 hour:

M.: *"D. was getting smart with me last night… he worked his a…s off I don't care am I the chairman of the team, aren't I, gosh they were struggling this and that, shouldn't they be struggling anyway MM., should they*

be selling the matches. MM. won't there be anyone then playing against Fenerbahçe, why bother taking the field then… they won 4-2 and they were still getting smart".

363. The Panel finds it crucial that a reference is made to "selling matches" in the above conversation. Although the context of the conversation is not entirely clear to the Panel, in light of the above mentioned finding that the persons involved were talking cryptically and that the conversations concerned illegal conduct, the Panel finds that the reference to selling matches explains the type of illegal conduct discussed. The general analysis by UEFA of the context of the wiretaps is entirely plausible to the Panel and the Panel indeed is comfortably satisfied that this is what happened.

364. The following wiretap is a recording of a telephone call between Z., assistant coach of Gençlerbirliği, and AA., manager of Gençlerbirliği, on 15 March 2011 at 15:36 hour:

Z.: *"I've just watched the videos here,… when we sat down a man came and sat down opposite us he had something in his hand he was playing with it he put it in front of him, he was like setting it, it looked like a camera… then we stood up and went to the private room then after half an hour I mean after us the man went out and met two other men".*

AA.: *"Have they got the same err, did you see any vehicles,… it looks like a coincidence".*

Z.: *"I think we shouldn't get him involved, this stupid already got panicked, very scared,… when X. started to drive a Polo started to drive right after X.,… it's the same polo I mean the polo at the club,…there is something strange but we can't think of anything,… let's not make him confused".*

AA.: *"Okay".*

Z.: *"The guys at the club should be alert they should be careful with someone strange entering in or going out of the club,…you tell MM. okay?".*

365. The following wiretap is a recording of a telephone call between Z. and X. on 15 March 2011 at 16:49 hour:

Z.: *"I watched the videos there is nothing to worry about he sat there for a while then he left the place after us, … there is nothing to worry about here".*

X.: *"Did you get to see the others?"*

Z.: *"There are no others there is only that man…then we, you know we went inside then the man sat for another half an hour then he left… nothing to worry about".*

366. From the above wiretaps the Panel concludes that X. was apparently afraid of being followed or that they were being spied upon. In this sense, the Panel thus supports UEFA's theory. However, it remains unclear to the Panel how UEFA came to the conclusion that X. received money in exchange for fixing the match Gençlerbirliği vs. Fenerbahçe.

367. Finally, the following wiretap is a recording of a telephone call between X. and P. on 30 March 2011 at 21:01 hour:

X.: *"We'll working together next year".*

P.: *"Probably…any news anyone coming or going".*

X.: *"Yes".*

P.: *"Good then okay I can't talk to you on the phone for your information,…you understand the thing I said don't you,…you got the thing I told you last week didn't you".*

X.: *"Yeah I did my brother".*

P.: *"But there is something left".*

X.: *"That's not a problem, no problem at all".*

P.: *"We'll send the rest of it err next week before the league finishes… then we'll give our blessing".*

X.: "[X. apparently said that his club asked him to sign and talked about it for a while and then continued] *may 8 weeks pass in the best way because they said no to throw away".*

P.: *"If they say not to throw away then you don't throw away … wait for a while".*

X.: *"You know that D. D.* [he talked about the transfer offer by D.]*".*

368. UEFA purported that X. was allegedly promised a transfer to Fenerbahçe in the next football season. The Panel is not convinced that this was indeed promised to X. on the basis of the evidence at its disposal; there is no evidence in the file supporting such proposition.

369. In view of all the above and although the Panel is not entirely convinced of every single aspect of UEFA's theory, particularly whether X. actually received fees in order to fix the match against Fenerbahçe, the Panel nevertheless has no hesitation in coming to the general conclusion that D., an official of Fenerbahçe, attempted to fix the match between Fenerbahçe and Gençlerbirliği through the services of M.

370. Despite the fact that certain wiretaps were excluded from the evidence submitted by UEFA, the Panel comes to the conclusion that UEFA convinced the Panel to its comfortable satisfaction that at least one of Fenerbahçe's officials attempted to fix this particular match.

371. In coming to this conclusion the Panel finds it important that the explanations adduced by Fenerbahçe are rather unlikely. In particular, the Panel finds that there are several inconsistencies in Fenerbahçe's theory that impair the credibility of Fenerbahçe's theory as a whole. In addition to the above-mentioned inconsistencies, the Panel wishes to point out that Fenerbahçe explained during the hearing that it is common practise in Turkey that contracts

are not concluded in Turkish Lira but in Euro or US Dollar, however, the Panel finds it strange that a personal loan that was allegedly granted by P. in order to *"sustain* [X.] *during these rough times"* was made in a foreign currency. If the loan was made in order to buy food, pay rent or other basic monthly expenses, this loan would most likely have been granted in the currency in which these expenses should be paid. Also, whereas Fenerbahçe submitted in its written submissions that the loan of P. to X. would be paid back in two instalments, P. clarified during his testimony at the hearing that the debt would be paid back in three instalments.

372. Insofar as Fenerbahçe contends that a total amount of USD 500,000 was given to D., consisting of an amount of USD 250,000 for a construction project of Fenerbahçe and an amount of USD 250,000 for player premiums, the Panel finds that this is not a credible explanation in the absence of any documentary evidence having been submitted in this respect. The Panel is also not convinced by the witness statements of D. and G.

373. The Panel noted that this match took place before the entry into force of the Turkish law 6222 on 14 April 2011 and that this was the reason for the 16th High Criminal Court of Istanbul to acquit the Fenerbahçe officials in respect of this match. This Panel does however not apply the Turkish law 6222, but the UEFA DR (2008). As there is no doubt that match-fixing was already incriminated in the UEFA DR on 7 March 2011, the Panel finds that the reasoning of the 16th High Criminal Court actually supports the finding of the Panel that Fenerbahçe officials attempted to fix this match.

374. Consequently, in light of all the above, the Panel finds that UEFA established to the comfortable satisfaction of the Panel that Fenerbahçe, through the actions of at least one of its officials, attempted to fix the match that took place on 7 March 2011 between Fenerbahçe and Gençlerbirliği.

iv. Fenerbahçe v. IBB Spor (1 May 2011)

375. In the Appealed Decision the UEFA Appeals Body ruled that:

"In view of all the elements of the case file and having examined the Police digest and the 16th High criminal court decision, the Appeals Body is satisfied that the President of Fenerbahçe SK, B., concluded match fixing activities in regard to the match Fenerbahçe vs. IBB Spor, played 1 May 2011".

(i) The position of the parties

376. Fenerbahçe submits that the Appealed Decision failed to name to which players the payments were made and the amount of the payments. Fenerbahçe avers that it can only surmise who these players are. The 16th High Criminal Court in Istanbul only determined that H., player of IBB Spor, was guilty. Fenerbahçe assumes that this conclusion is likely based on wiretaps between H. and K., player agent of H., as well as with LL., spiritual leader (Hodja) of H.

377. Fenerbahçe purports that K. testified that the conversation between H. and himself about a payment of USD 100,000 did not concern a match-fixing offer, but was related to a house H. was buying in Cyprus from the mother of K. K. also testified that he and H. had frequently visited casinos when they worked together. H.'s affinity for gambling is not reflected in the wiretaps.

378. During the hearing before CAS, Fenerbahçe argued that this match was not fixed in light of the definition of match-fixing in article 11 of law 6222 in Turkey. If it cannot be determined by which board member of Fenerbahçe the money was sent, to whom it was sent and in which way, no match-fixing offence can be established according to Turkish law, not even an attempt.

379. UEFA relies on the following description in order to explain the different factual circumstances:

"At the end of the 30th week of Super League, the teams Fenerbahçe and Trabzonspor were alone in the championship race. Trabzonspor would be the champion if Fenerbahçe lost points in four competitions left and Trabzonspor won all of the competitions.

The High Criminal Court has established that prior to the competition between Fenerbahçe and [IBB Spor]*, B. called NN. and PP. to his office to give instructions related to match-fixing activities in the said match. NN., PP. and RR. went to Fenerbahçe club's facilities and met B. This action was determined as a result of physical pursuit studies. According to wiretapping records, D. was also present during the meeting.*

Right after the meeting, PP. phoned K. and required an urgent meeting. On the same day K. and RR. met at a café called Suadiye Café. After the persons left the place, K. phoned [IBB Spor] *player QQ. and obtained information about the line-up who would play against Fenerbahçe. Later he contacted* [IBB Spor] *player H. and told him that he wants to meet. The meeting between H. and K. was hold* [sic] *on the same day at night.*

Right after the meeting, H. called a person to whom he has religious respect and asked whether there is any problem for him to take money for match-fixing".

(ii) The findings of the Panel

380. Below, the Panel will provide an overview of the evidence in the file that the Panel considers to be the most relevant and will draw conclusions from the diverse wiretaps surrounding this particular match.

381. The following wiretap is a recording of a telephone call between B. and NN. on 25 April 2011 at 14:08 hour:

B.: *"How are you NN".*

NN.: *"I'm fine B., how are you".*

B.: *"You get our PP. and bring him to me tomorrow afternoon".*

NN.: *"Okay…surname is PP., isn't it".*

B.: *"Yes, yes get him and come to see me".*

382. The following wiretap is a recording of a telephone call between NN. and PP. on 25 April 2011 at 14:09 hour:

NN.: *"We are going to my brother's place, we are going to a Brother's place tomorrow afternoon…".*

PP.: *"Are we going to my brother's place".*

NN.: *"No man, it is B. brother,…don't be silly and don't say anything to anyone".*

383. From the two wiretaps above, the Panel concludes that NN., intermediary, made contact with PP., board member of the Turkish football club Sivasspor during the 2010/2011 football season, on behalf of B., President of Fenerbahçe, and that they were planning a confidential meeting in the afternoon of 26 April 2011.

384. The following wiretap is a recording of a telephone call between MM., intermediary (and according to the individual defence of B. a congress member of Fenerbahçe), and RR., intermediary, on 26 April 2011 at 16:58 hour:

RR.: *"… I'm at the club at the moment".*

MM.: *"What are you doing at the club?".*

RR.: *"I've got things to do at the club, D.'s just got out, I've been with the chairman, I've just got out, NN., PP.,… anyway, we'll talk later on, I am on my way coming there,…".*

MM.: *"I'm sending a car, sending a car".*

385. The Panel observes that the two persons in the above wiretap have no direct role in the alleged fixing of the match between Fenerbahçe and IBB Spor, however the Panel follows UEFA's theory insofar as this wiretap corroborates the view that this indeed illustrates that a meeting took place with B., NN. and PP. in the afternoon of 26 April 2011.

386. The following wiretap is a recording of a telephone call between PP. and K., player agent, on 26 April 2011 at 17:03 hour:

PP.: *"My brother what's up, is everything okay".*

K.: *"I'm in Bebek".*

PP.: *"Will you go to Suadiye Café immediately".*

K.: *"Has something happened brother, is it something important"*.

PP.: *"Yeah, yeah,…come on come quick"*.

387. Because of the time elapsed between the two conversations mentioned above, the Panel finds it very likely that the "important matter" that had to be discussed quickly was something that came up during the meeting between B., NN. and PP.

388. The following wiretap is a recording of a telephone call between K. and H. on 26 April 2011 at 20:14 hour:

K.: *"I'm in Etiler.. come,…come and have a tea with me"*.

K.: *"We are in Big Chefs now, why don't you pop in"*.

H.: *"Okay"*.

389. Insofar UEFA attempts to argue that after the meeting between PP. and K., the latter tried to schedule a meeting with H., player of IBB Spor, the Panel supports this theory. The Panel finds it very likely that the issue that was to be discussed between K. and H. derived from the meeting between B., NN. and PP.

390. The following wiretap is a recording of a telephone call between K. and PP. on 26 April 2011 at 23:01 hour:

K.: *"…Brother we'll do err okay I mean it is what you say brother okay understand?"*.

PP.: *"…Okay fine my brother"*.

K.: *"…I'll do whatever you say,…we'll do err together whenever you say we should…"*.

391. UEFA purports that K. and H. met at Big Chefs restaurant at 22:19 hour on the same evening. During this meeting, K. allegedly offered H. not to play to the best of his abilities in the match against Fenerbahçe. UEFA further asserts that the above wiretap clarifies that K. reported back his success to PP.

392. The Panel observes that there is no direct evidence in the file that such offer was indeed made to H. during this meeting. The Panel also finds that the above conversation cannot be interpreted in the sense that the meeting was successful. However, as will be clarified below, the Panel finds that it is indeed very likely that a match-fixing offer was made during this meeting in light of the events that would follow.

393. The following text message was sent by K. to H. on 26 April 2011 at 23:11 hour:

"It's better this way:) you'd do charity work for the people around you:)".

394. The following text message was sent by H. to K. on 26 April 2011 at 23:12 hour:

":))".

395. The Panel derives from the above text messages that K. tried to convince H. to do something for him. Apparently, some kind of offer was made to H. by K.

396. The following wiretap is a recording of a telephone call between H. and LL., spiritual leader or Hodja of H., on 26 April 2011 at 23:15 hour:

H.: *"My dear Hodja, I need to ask you something, you know we have a match against Fenerbahçe at the weekend, they say that if H. did not score we would give him hundred thousand dollars".*

LL.: *"I see, what will you do".*

H.: *"I'm asking you my hodja, you might want to ask your men what should we do".*

LL.: *"What does your team captain your coach say about this?".*

H.: *"They don't say anything my hodja, they can't say anything like I shouldn't play or I shouldn't score as they are from Fenerbahçe, this is said by someone else though… I mean they can't say I shouldn't score though".*

LL.: *"Okay I see, the thing like these happen in football world, don't they, it happens doesn't it?".*

H.: *"Yeah it does my hodja, but I'm asking you whether I should do it or not… we are talking about money here, but in the end they say don't do this, don't do that".*

LL.: *"But there is nothing wrong with that, this is something you do willingly, you are not going to score but you are going to get money instead… there is nothing wrong with that, you don't need to worry, why should there be any problems I mean don't let anyone know about it, it doesn't matter… you know there is a tomb here in our village… there are so many poor people there, you should sacrifice an animal for the god and get those people to eat it".*

H.: *"It's right my hodja, okay".*

397. Fenerbahçe argued at the occasion of the hearing before CAS that all the allegations in respect of this match are actually based on the phone call between H. and his spiritual leader. Fenerbahçe maintained that the amount discussed in the phone calls is not the amount mentioned in the witness statements, but that this amount is related to the acquisition by H. of a house in Cyprus from the mother of K.

398. The Panel considers the above wiretap to be of crucial importance to explain the circumstances surrounding the match between Fenerbahçe and IBB Spor. Apparently, an offer was made to H. that if he would not score against Fenerbahçe he would receive USD 100,000. The Panel finds that such offer must clearly be considered as a match-fixing attempt and is indeed categorical proof of the offer put to H. by K. as asserted by UEFA. The Panel

has no doubt that this conversation concerned the offer made to H. by K., particularly taking into account that only four minutes elapsed after K. reminded H. about an offer via text message.

399. Fenerbahçe argues that it is crucial that in this wiretap *"*[H.] *did not mention any official of or any other person related to* [Fenerbahçe] *in relation to this alleged offer"*. There was no communication between Fenerbahçe and H. with respect to this match, and no money was offered to the player. Fenerbahçe therefore submits that the TFF PFDC correctly found that even if H. had received any money, e.g. for betting reasons, it did not come from Fenerbahçe or any of its officials in contrast with the Appealed Decision which relied upon the determination of the 16th High Criminal Court. This is also confirmed by all official bank and financial records, which were handed to experts by the prosecutor during the investigations before the 16th High Criminal Court, and do not reveal any illegal transactions. Furthermore, H. has indicated that he made this statement to his Hodja because he did not want to disclose how he really earned the money, *i.e.* through gambling on horse races and card games.

400. The Panel observes that Fenerbahçe's argument that no link could be established between the fixing of the match by H. and Fenerbahçe is supported by the findings of the TFF Ethics Committee and the decision of the TFF PFDC.

401. However, the Panel also observes that in the dissenting opinion enclosed to the decision of the TFF PFDC, in the decision of the Istanbul 16th High Criminal Court, in the decision of the UEFA CDB and the Appealed Decision the conclusion is reached that the fixing of the match by H. was initiated by Fenerbahçe officials.

402. The Panel finds Fenerbahçe's theory in respect of the gambling on horse races and card games and the alleged acquisition of a house in Cyprus rather unlikely. It appears to the Panel that it would have been easy for H. to provide evidence that he derived income from such activities. Casino's and betting agencies normally keep track of their customers so the records of such organisations would undoubtedly show the profit made by H. The Panel also finds it very peculiar that H. allegedly had two distinct conversations, within a period of a few days, about purchasing a house of USD 100,000 and about winning USD 100,000 from gambling activities.

403. The Panel further finds that the fact that no irregularities were observed in the bank and financial records by the prosecutor's experts during the proceedings before the 16th High Criminal Court, does not mean that such irregularities did not exist. As recalled *supra "corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing"* (CAS 2010/A/2172, §70). The Panel considers it to be rather unlikely that any transactions made related to match-fixing are made via official and registered bank transactions. It is much more likely that such transactions are made in cash as this would leave no trail.

404. The following text message was sent by H. to K. on 26 April 2011 at 23:19 hour:

"it is approved :)" "it is accepted brother :)".

405. The Panel considers this text message to be another confirmation that the offer made by K. was indeed the same offer that was discussed between H. and his Hodja, because H. accepted the offer shortly after having had a discussion with his Hodja.

406. The following text message was sent by K. to H. on 26 April 2011 at 23:20 hour:

"Okay then great:) I'll see you tomorrow evening".

407. The following text message was sent by H. to K. on 27 April 2011 at 2:48 hour:

"It's not 100 dollars it's 100 euro brother says so ;)".

"I won't accept it otherwise :)".

408. The following wiretap is a recording of a telephone call between K. and H. on 27 April 2011 at 21:49 hour:

H.: *"What's up, have you sorted out our thing".*

K.: *"Err I am meeting the guy tomorrow… but the other one is not bad, is it".*

H.: *"No, I won't accept it".*

409. The following wiretap is a recording of a telephone call between K. and H. on 28 April 2011 at 21:29 hour:

H.: *"I've heard nothing from you".*

K.: *"…don't worry everything is fine, they will call me tomorrow… I told them we needed to sort it out the next day".*

H.: *"…I won't accept it like that,…or I don't know though".*

K.: *"…I told them to sort it out tomorrow or I won't take any responsibilities".*

H.: *"Okay then, I'll go there tomorrow".*

410. Although not of particular relevance to establish the match-fixing attempt, the Panel considers the above wiretaps about the currency of the payment to be a confirmation that H. was indeed promised an amount of EUR 100,000 or USD 100,000 if he would not score in the upcoming match against Fenerbahçe.

411. The following wiretap is a recording of a telephone call between H. and OO., a personal friend of H., on 28 April 2011 at 21:29 hour:

H.: *"You know I have a match this week,… they want me to do well if you know what I mean"*.

OO.: *"Extra hah"*.

H.: *"But they do this for err the other way round"*.

OO.: *"You are Belediye Sport against Fener"*.

H.: *"Yeah there is something like that"*.

OO.: *"I hope you'll score two goals, get yourself ready"*.

H.: *"But it's not that, the other way round"*.

OO.: *"Is it from Fener"*.

H.: *"Yeah"*.

412. In respect of Fenerbahçe's argument that no link can be established between the match-fixing by H. and Fenerbahçe, the Panel finds the above conversation to be important. In this conversation H., again, confirms that the match-fixing offer came from Fenerbahçe. Although there is indeed no evidence in the file that the payment came from Fenerbahçe, the Panel has no hesitation in coming to the conclusion that the offer to fix the match came from Fenerbahçe and that it does not need to be established which person related to Fenerbahçe finally paid the money. Superfluously, the actual transfer of money is not even necessary, as the Panel finds that an attempt to fix a match can be made without any money finally being transferred.

413. The following wiretap is a recording of a telephone call between K. and PP. on 5 May 2011 at 13:11 hour:

K.: *"I'll come and see you tomorrow"*.

PP.: *"See you later then"*.

414. The following wiretap is a recording of a telephone call between PP. and NN. on 6 May 2011 at 13:07 hour:

PP.: *"Are you in your room … managed to talk?"*.

NN.: *"No not yet, I'll call him soon"*.

PP.: *"Yeah please call him"*.

415. The following wiretap is a recording of a telephone call between NN. and A., secretary of B., on 6 May 2011 at 13:08 hour:

NN.: *"Would you tell him that PP. phoned… I'll give you his phone number […]… but he wouldn't call him I mean I know he won't call him".*

A.: *"If he says 'where is he put him through, I want to talk to him', it would be then err I don't know".*

NN.: *"It is not for that kind of thing, he invited us, wanted us to be there on Friday…You tell him that PP. phoned … tell him that he was expecting us and if we could see him".*

416. Although the reason why NN. wanted to talk to B. does not become clear from these wiretaps, the Panel finds that it must at least be concluded that NN. held close contact with B. Furthermore, the Panel observes that NN. attempted to contact B. only one minute after his conversation with PP. It thus appears that these two phone calls are closely connected and this is indeed an indication that a relationship existed between PP. and B.

417. The following wiretap is a recording of a telephone call between NN. and PP. on 6 May 2011 at 18:29 hour:

NN.: *"What did you do".*

PP.: *"Okay it's done I sent it…fine come by then… to the station".*

NN.: *"I'll see okay".*

418. The following wiretap is a recording of a telephone call between K. and H. on 6 May 2011 at 19:51 hour:

K.: *"When will you be coming".*

H.: *"when the traffic is not busy".*

K.: *"you arrange that, you have to come alone okay… just in case let's keep our powder dry you never know".*

H.: *"You put that in the car".*

K.: *"Man we'll play it safe okay… are you talking about […]".*

419. UEFA submits that these conversations show that the money was transferred to H. Allegedly, the meeting took place in Big Chefs restaurant and K. would have entered the restaurant first with a black and striped bag and would have put this bag on the table. Afterwards, H. would have entered and would have left with the bag.

420. The Panel finds that this course of events cannot be derived from the above wiretaps. There is no reference to a bag, nor is there any reference to money in the conversation. However, in

this respect the Panel considers the initial witness statement of H. to the Turkish police to be of particular importance, as he testified, *inter alia*, the following: *"We met with K. again in the same restaurant* [Big Chefs restaurant] *a week later. He brought me money in a bag. Then when I counted, I saw he brought 50.000 dollars though he previously said he would bring 100.000. This was the money promised by K. for me not to score a goal"*. On this basis, the Panel is satisfied to its comfortable satisfaction that indeed money was transferred by K. to H. for not scoring a goal. Additionally, at the occasion of the hearing in front of CAS, K. indicated that he gave a striped bag to H. in Big Chefs restaurant, but that this bag did not contain any money, but formularies. Based on these statements, the Panel is comfortably satisfied that a bag was delivered to H. in Big Chefs restaurant by K. in the evening of 6 May 2011.

421. In its Answer UEFA also presented a quote from the recordings of the police interrogation of H. The content of this quote remained undisputed by Fenerbahçe, although it must be noted that Fenerbahçe maintains that this testimony should not be taken into account because H. later withdrew this witness statement. The following testimony was given by H.:

"Physical follow-up's are true, I met with my manager 3 days before the match upon his request in the restaurant called BIG CHEFS. He told me that Fenerbahçe offered me 100.000 dollars not to score a goal in their match. At first, I didn't want it. I have strong religious emotions. I called the person named LL., whom I met previously in Istanbul and who is an imam in Erzurum now. I told him that there was such an offer, they promised money in return, and asked if it is a sin to accept this money. He told me there was no problem in terms of religion. We met with K. again in the same restaurant a week later. He brought me money in a bag. Then when I counted, I saw he brought 50.000 dollars though he previously said he would bring 100.000. This was the money promised by K. for me not to score a goal. I don't know from what executive of Fener K. got this money. There is no money exchange between us about something else, or he doesn't owe to me. I didn't spend this money. I sent about 10.000 dollars to the hodja in Erzurum to sacrifice an animal and give it to people. I distributed the remaining money to the poor people I know. I didn't need this money anyway. I got this money with the pressure of K".

422. The Panel finds that this testimony cannot be left without any value, particularly because it is very detailed and exactly in line with the theory put forward by UEFA and the chronology and content of the translated wiretaps. The fact that H. withdrew this witness statement at a later stage does not prevent this statement from being evidence that can be taken into account in order to come to a conviction. Insofar as Fenerbahçe argued that H. was put under pressure to give this testimony, the Panel is not convinced that this testimony was illegally obtained, particularly because it became clear that Q., lawyer of H., was present during this interrogation. Although Q. testified at the hearing before CAS that threats were made that H. would not be allowed to return home and spend the night with his child after the interrogation and that his football career would be over if he did not testify, the Panel is not convinced that any unacceptable pressure has been exercised or that H. was deceived by the public prosecutor, which should lead to the exclusion of this witness statement. The Panel reiterates that Q., lawyer of H., was present during H.'s interrogation and that no formal accusations were made in respect of the interrogation and/or the prosecutor, neither by H., nor by Q. As such, in the absence of any concrete evidence to the contrary, the Panel has no reason to doubt about the

truthfulness of the testimony given by H. Moreover, Q. stated at the hearing before CAS that he advised his client only to confess to things that were true.

423. Turning its attention to the general assessment of the alleged fixing of the match between Fenerbahçe and IBB Spor on 1 May 2011, the Panel has no hesitation that H. was offered an amount of EUR 100,000 or USD 100,000 in exchange for not scoring a goal in the match against Fenerbahçe. However, this does not necessarily mean that the match-fixing offer came from Fenerbahçe. The Panel finds that the crucial issue to be resolved in respect of this match is whether the match-fixing offer made by K. to H. originated from officials related to Fenerbahçe. In this respect, the Panel particularly considered the reasoning of the TFF Ethics Committee and TFF PFDC, which both determined that no connection between the money – which was paid to H. in order to influence the match result – and Fenerbahçe could be established.

424. In respect of Fenerbahçe's argument that no offence is established pursuant to article 11 of law 6222 in Turkey, the Panel finds that this is irrelevant. The present case concerned an alleged violation by Fenerbahçe of the rules and regulations enacted by UEFA. Whether Fenerbahçe, or officials of Fenerbahçe, committed criminal offences on the basis of Turkish laws is not for this CAS Panel to decide.

425. For the reasons mentioned above and particularly due to H.'s statements in three distinct conversations that the match-fixing offer came from Fenerbahçe and the fact that H. initially testified that he received the money from K., who had several conversations in the relevant period with PP., who was in regular contact with Fenerbahçe officials, the Panel does not agree with the conclusion of the TFF PFDC and follows the dissenting opinion to the TFF PFDC Decision and the decision of the 16th High Criminal Court in Istanbul in finding that it can indeed be established that at least one of the officials of Fenerbahçe attempted to fix the match between Fenerbahçe and IBB Spor by offering an amount of EUR 100,000 or USD 100,000 to H. if he would not score against Fenerbahçe.

426. At the hearing before CAS, Fenerbahçe argued that UEFA mixed up certain matches because PP. is a board member of Sivasspor. As such, UEFA must have been talking about the match between Fenerbahçe against Sivasspor instead of Fenerbahçe against IBB Spor.

427. The Panel disagrees with this argument of Fenerbahçe. From the wiretaps it can clearly be concluded that UEFA did not mix up the matches and that PP. also played a role in Fenerbahçe's attempt to fix the match against IBB Spor. In this respect, the Panel deems it important that the match between Fenerbahçe and Sivasspor only took place on 22 May 2011, while the match between Fenerbahçe and IBB Spor took place on 1 May 2011. Therefore, the Panel considers it more likely that the wiretaps mentioned above, that were recorded between 25 April and 7 May 2011, relate to the latter match. The fact that PP. is a board member of Sivasspor does not prevent him from being engaged in match-fixing activities on behalf of Fenerbahçe.

428. Regarding the alleged buying of a house by H. from the mother of K., the Panel deems this theory rather unlikely. No evidence in this respect has been provided to the Panel. If such documents were indeed existent, the Panel would have expected such documents to be presented by Fenerbahçe.

429. Finally, insofar as Fenerbahçe argued during the hearing that in order for match fixing to be established there must be an interest in order to change the outcome of a competition, the Panel disagrees. It is not necessary to effectively change the outcome of a competition in order for a match fixing violation to occur. In respect of the present match, the Panel finds that it is established that Fenerbahçe, through at least one of its officials and intermediaries not directly related to Fenerbahçe, offered EUR 100,000 or USD 100,000 to H. in order not to score in the match against Fenerbahçe. It cannot be determined that this directly influenced the outcome of the match, *i.e.* it is not certain if H. would have scored if he would not have been offered the money by Fenerbahçe. Nevertheless, by offering a certain amount to H., Fenerbahçe at least attempted to influence the result of the match, which is already sufficient to establish a match-fixing offence.

430. Consequently, the Panel has no doubt and is comfortably satisfied that at least one of Fenerbahçe's officials attempted to fix the match between Fenerbahçe and IBB Spor on 1 May 2011.

v. Fenerbahçe v. MKE Ankaragücü (15 May 2011)

431. In the Appealed Decision the UEFA Appeals Body ruled that:

> *"After examination* [sic] *all the elements of the case file, the Appeals Body is satisfied that there was an attempt to fix the match between Fenerbahçe and Ankaragügü* [sic] *played on 15 May 2011 of the 2010/2011 Turkish Super Lig. Consequently, the Appeals Body believes that the President of Fenerbahçe SK, B., a Fenerbahçe SK Executive Committee member D., Fenerbahçe SK Vice President C. and Youth Division Director F., took an active part in these match-fixing activities. The evidences submitted provided support to this conclusion of the Appeals Body, notably the Police Digest, the Ethics committee report, the decision of the TFF disciplinary bodies and the decision of the 16th High criminal court in Istanbul".*

(i) The position of the parties

432. Fenerbahçe indicates that also in respect of this particular match, the Appealed Decision failed to name which players were contacted by Fenerbahçe and that it can therefore only surmise who these players were. During the criminal investigations in Turkey, players of MKE Ankaragücü testified that *"no one from* [Fenerbahçe] *contacted any of the players of MKE Ankaragücü before the match"*. Furthermore, according to Fenerbahçe, the decision of the 16th High Criminal Court did not reveal any such contacts. There is not a single communication record in the criminal file that implicates any contact between Fenerbahçe and any of the players of MKE Ankaragücü. This lack of connection is probably why the Appeals Body found that only an attempt was made.

433. Fenerbahçe further submits that the match-fixing allegations also do not make sense for footballing reasons. MKE Ankaragücü was in eight place in the Turkish Süper Lig when the match started and had no chance of securing a European competition spot or being relegated. The TFF observer agreed with the referee's decisions in respect of the three penalties awarded in this match. The TFF observer only did not agree with the red card that was shown to a player of MKE Ankaragücü and identified this judgment of the referee as a *"black and white fault"*, however, Fenerbahçe purports that this criticism was expressed only for football reasons.

434. Fenerbahçe avers that *"many of the wiretaps contain "cryptic" construction or agricultural statements"*. The Disciplinary Inspector of UEFA claims that the officials are speaking in code to prevent being caught. The person making those statements, D., in fact testified that he works in the construction industry and manages several construction projects for Fenerbahçe. The fact of the matter is, according to Fenerbahçe, that he was referring to one of these construction projects, not speaking in some kind of code.

435. Finally, during the hearing Fenerbahçe expressed the opinion that if the police was so sure that the bag was full of money, the police should have intercepted the bag instead of only making pictures of the bag. Fenerbahçe also referred to a report of a tax expert which would indicate that an amount of USD 250,000 (equivalent to TRY 401,750) was transferred to D. and that this transfer is reflected in the financial records of Fenerbahçe, which would indicate that this money was not used for illegal purposes.

436. UEFA contends that match-fixing in relation to this match proceeded on three fronts. First, through D., Executive Committee member of Fenerbahçe, F., Youth Division Director of Fenerbahçe, SS. and TT., intermediaries not directly related to Fenerbahçe. Second, through D., VV., K. and RR. Third, through C., Vice President of Fenerbahçe, and UU.

437. UEFA relies on the following description in order to explain the different factual circumstances:

> *"B. instructed D. to fix the match through some players of Ankaragücü. D. conducted the match-fixing operation together with F., SS. and TT.*
>
> *As part of the match fixing activities D., F., SS. and TT. contacted the person named WW. to reach some players of Ankaragücü. On 13.05.2011 SS. with the directive of D. took 400'000 USD to give it to the players after the competition. The players were contacted by WW. On 13.05.2011 300'000 USD were delivered to TT. who went to Fenerbahçe Dereağzı facilities with WW. However, F. and SS. decide to keep 100'000 USD.*
>
> *In addition, the organisation gets in touch with former Fenerbahçe goalkeeper XX. (who was the goalkeeper of Kasımpaşa Spor at that time) to get help to reach a player of Ankaragücü but received a negative reply.*

An additional match-fixing offer is rejected and communicated by K. to RR.*: "Brother it is negative, they are afraid they are saying no, we worked a lot but it is negative…There is no problem about the other at the weekend all right…"*

Besides, UU. was also involved in the match-fixing operation with the instructions of C. The High Criminal Court established that organization member UU. proposed Ankaragücü's Slovakian goalkeeper […]'s manager […] to play in favour of Fenerbahçe in the mentioned match but the manager rejected the offer".

(ii) The findings of the Panel

438. Taking into account all the above, the Panel will now provide an overview of the evidence in the file it considers to be the most relevant and will draw conclusions from the diverse wiretaps surrounding this particular match.

439. First of all, and as already indicated *supra*, the Panel finds that the performance on the pitch is not an indication that a match was fixed. In order for match-fixing to be established it is sufficient that an *attempt* to fix a match has been made. The Panel will therefore analyse whether on the basis of the submissions made and the evidence before it, it is comfortably satisfied, that officials of Fenerbahçe attempted to fix the match between Fenerbahçe and Ankaragücü on 15 May 2011.

440. UEFA purports that B., President of Fenerbahçe, instructed D., Executive Committee member of Fenerbahçe, to fix the match by bribing players of Ankaragücü. D. allegedly conducted the match-fixing operation together with the intermediaries F., SS. and TT.

441. The following wiretap is a recording of a telephone call between D. and TT. on 23 April 2011 at 10:46 hour:

D.: *"You know the thing we talked, you do what is necessary for the next weeks… you should come to the facility one day next week to inform us about the developments".*

TT.: *"… you know the other one is playing in err".*

D.: *"… you forget about that one, take care of the others,… do what is necessary then we'll talk".*

TT.: *"Brother we are in NTV right now… okay don't worry… I will let you know".*

442. The following wiretap is a recording of a telephone call between B. and D. on 23 April 2011 at 17:54 hour:

B.: *"We have arrived, what's up with you".*

D.: *"Fine, you talked to F., didn't you".*

B.: *"I did not talk to F., F. is with me now".*

D.: *"There are somthings* [sic]*, he will tell you"*.

Allegedly, the conversation between B. and D. was then shortly interrupted and B. says to F.: *"You would tell me something"*. F. then answers: *"Yeah I will tell you err"*. Following which B. and D. continue their conversation:

B.: *"So TT. arrived yet or what* [allegedly referring to TT.]

D.: *"My chairman well there is nothing from this TT., I mean nothing from him though, but F. will tell you something… that is very important"*.

443. In respect of the two above conversations, UEFA submits that D. and F. instructed SS. and TT. to perform the initial contacts with suitable players for match-fixing.

444. The Panel finds that this cannot be derived from these conversations as such. There is no reference to establishing contacts with any players; there is only contact between B., D., TT. and F. However, the Panel finds that it can be interpreted from these conversations that B. is leading a certain operation. D. appears to be the man that conducts the operation on behalf of B. and D. wants F. to tell something to B.

445. The following wiretap is a recording of a telephone call between SS. and TT. on 29 April 2011 at 11:17 hour:

TT.: *"(says to SS. to go to Stad hotel): "He will pay for it, won't he, we would get receipt or whatever… the ones start the operations mine is err from the other side"*.

SS.: *"Tell me if you have started on the other side"*.

TT.: *"You mean by the other side, mine is err you know XX.* [which is a reference to XX., goalkeeper of Kasımpaşa Spor and former goalkeeper of Fenerbahçe]*, I'll talk about XX. when I'm there"*.

446. The Panel observes that it appears from this conversation that SS. and TT. are indeed intermediaries, individually conducting their operations on behalf of someone. The operation of TT. is apparently related to XX., goalkeeper of Kasımpaşa Spor. According to UEFA, he was the person that was supposed to establish contacts with players of Ankaragücü.

447. The following wiretap is a recording of a telephone call between SS./TT. and D. on 29 April 2011 at 16:19 hour:

D.: *"What did you do"*.

TT./SS.: *"we are on it"*.

D.: *"okay I see but go over it with a fine comb"*.

TT./SS.: *"I will don't worry about it, I will probably get something tomorrow"*.

D.: *"Okay you lay the foundations"*.

TT./SS.: *"I'll take the table"*.

D.: *"Yeah, we should lay the foundations and pour concrete… the workers"*.

TT./SS.: *"Don't worry about it,..I'll let you know"*.

448. As argued by UEFA, the Panel observes that in the above conversation the same kind of code language is used as in respect of other matches. Although it is not clear whether TT. or SS. was speaking, the Panel observes that it is not disputed by Fenerbahçe that one of these two persons called with D. It therefore appears that the intermediaries acted for D. and therefore indirectly for B. As such, the Panel deems it to be established that the intermediaries acted on behalf of Fenerbahçe officials and tried to establish contact with players of Ankaragücü through XX.

449. Insofar Fenerbahçe argues that the statements in the above wiretaps were not cryptic but indeed related to the construction industry, the Panel deems this explanation rather unlikely, particularly because no relevant evidence of any construction projects of D. are provided to the Panel by Fenerbahçe.

450. The following wiretap is a recording of a telephone call between TT. and XX. on 1 May 2011 at 14:34 hour:

TT.: *"You haven't been around for two days, where have you been, you didn't answer on purpose, did you"*.

XX.: *"No, I'm telling you but you are dwelling on it"*.

TT.: *"I thought something bad happened to you, if there was something wrong"*.

XX.: *"Were you worried?"*.

TT.: *"that is all…"*.

XX.: *"I said but he doesn't seem to understand… brother the house I mean it is kind of tricky you know… I would do err if it was the other way round"*.

TT.: *"Yeah I told you err what I was supposed to tell you…I'll come over and talk if you like"*.

XX.: *"nope, don't, you don't need to do that"*.

TT.: *"Okay then… this is closed then"*.

451. The Panel observes that someone made an offer to XX. on behalf of TT., but that XX. did not want to be involved because *"it is kind of tricky"*.

452. The following wiretap is a recording of a telephone call between D. and SS. on 2 May 2011 at 9:50 hour:

D.: *"… Okay make your way to the club, the chairman will be there, he said he wanted to talk there, you come to the stadium too".*

UEFA purports that SS. then answered that he was inside the stadium and continued the conversation by stating the following:

D.: *"…I'm on my way to the stadium, why don't you come to the room and we'll talk there".*

453. The following wiretap is a recording of a telephone call between SS. and TT. on 2 May 2011 at 10:03 hour:

SS.: *"Look listen to me now, I said to them the thing was 100 thousand lira, they will give it to me right away… but we need to talk to err… to that XX.".*

TT.: *"I do understand I mean don't say err, he already phoned me… will you talk to him".*

SS.: *"I will talk to him then I will do err with him, shall I give him the money".*

TT.: *"No, not yet, where are you".*

SS.: *"I'm at the club now, the chairman wanted to see me, I'm going to see him now, I'll be waiting for your phone, you give XX. my number and tell him to call me".*

TT.: *"He wouldn't call you though, he is afraid, his wife is crossed with him, do you understand".*

SS.: *"Well, what will we do then".*

TT.: *"I don't know, we need to talk about it, hold on a second I'll call you".*

SS.: *"Okay then".*

454. The Panel observes that TT. informed SS. about XX.'s doubts about accepting the offer. It also becomes clear that XX. would receive money from TT. and SS. if he would accept the offer.

455. The following text message was sent by XX. to TT. on 3 May 2011 at 00:39 hour:

"I'm not interested in".

456. The following wiretap is a recording of a telephone call between F. and TT. on 3 May 2011 at 00:43 hour:

TT.: *"I have sent an SMS now; the answer says that he is not interested".*

F.: *"Really?"*.

TT.: *"Really, I mean it is recorded on my phone, I will show you the SMS I sent to him, and his answer when I come there"*.

F.: *"Okay"*.

TT.: *"Because, his wife was very angry with him on the other side, he shut down all machines, his wife told him that she would leave him if he gets involved in this again, and he shut down all of the businesses, and sold old machinery"*.

457. The Panel observes that because of the text message of XX., TT. told F. that XX. did not accept the offer. Because of the code language used, and in the absence of a credible explanation from Fenerbahçe in respect of the references to selling machinery, the Panel assumes that the offer made to XX. concerned illegal conduct.

458. The following wiretap is a recording of a telephone call between SS. and TT. on 3 May 2011 at 13:58 hour:

TT.: *"I talked to F. and told him err,.. you know the one we couldn't reach… told him about his situation"*.

SS.: *"And what"*.

TT.: *"No way brother,.. I informed them where are you,.. Didn't you talk to F., tell him what I told you… F. keeps calling me, you keep calling me, and the others keep calling me I mean I can't tell all of you everything, I only tell someone to tell you,… I did on the other phone err I told err him that at midnight… didn't he tell you that, the other side's business"*.

SS.: *"No,… I can't tell him to make an appointment and tell him to be that place at this time"*.

TT.: *"They said if there was anything else they would let us know"*.

SS.: *"there is not anything else, that one is not okay, and the other one is not okay either"*.

TT.: *"(says it was not okay): He had a fight with his wife,... F. would tell you that at err he knows about it,… they had a fight, his wife said to him that 'if you did such thing we had this before we had many troubles because of this, if you did such a thing I would take the children and go away,... call him though, remember the first time we called him, his wife answered the phone,... he went and came back from err if you know what I mean I can't talk on the phone now… do you get it he went… you know he has another line I said that one was switched off,... he talked to the other side"*.

459. The following wiretap is a recording of a telephone call between SS. and D. on 9 May 2011 at 11:49 hour:

SS.: *"Shall I go to err to lay the foundations"*.

D.: *"Well if they err if they want you then you should".*

SS.: *"They said I needed to be there the next day, I'll go and have a look… I wanna be sure… I'm asking you if I should go".*

D.: *"You go then… okay fine".*

460. The Panel understands that because of XX.'s refusal, SS. started looking for other persons that could be interested in the proposal. When he found such potentially interested persons, SS. informed D. about the new connections and asked him if he should go to "lay the foundations".

461. The following wiretap is a recording of a telephone call between D. and TT. on 9 May 2011 at 12:23 hour:

D.: *"He'll also be there to see you tomorrow, he said so".*

TT.: *"I talked to him in the morning… I'm going to the other side now, they will give some uniforms it is signature day, I'm going there… he said I should be there".*

462. The following wiretap is a recording of a telephone call between SS. and TT. on 9 May 2011 at 17:34 hour:

SS.: *"Shall I come tomorrow or will you".*

TT.: *"Sure you should".*

SS.: *"Have you finished it, have you made an appointment".*

TT.: *"You come tomorrow…make it in the afternoon… I have, I went to err today, didn't D. tell you that… he called me… then I forwarded his message to him… I went to err you know, he would tell you where".*

SS.: *"Did […] tell you".*

TT.: *"I told him…he phoned me and said that my friend was going there…I said yes… then I phoned him again and said, in the meanwhile I got the message… I said I was going to see […]… I said him to give the medicine to err… well to my friend I said… I said if he could phone by 5 or 6… do you understand".*

SS.: *"Yes I do, okay".*

463. The Panel understands the above conversations in the sense that SS. and TT. would apparently meet in the afternoon of 10 May 2011.

464. The following wiretap is a recording of a telephone call between SS. (on TT.'s phone number) and D. on 10 May 2011 at 12:45 hour:

D.: *"How is it going"*.

SS.: *"It's going well, I'm going now…will be back in the evening"*.

D.: *"Okay we'll meet when you are back"*.

SS.: *"Okay brother I'm letting you know"*.

465. The following wiretap is a recording of a telephone call between SS. and TT. on 11 May 2011 at 11:20 hour:

SS.: *"I've just talked to another guy… okay"*.

TT.: *"Okay, where are you"*.

SS.: *"I'm now waiting for D.… I'm at the club"*.

466. The following wiretap is a recording of a telephone call between SS. and F. on 11 May 2011 at 12:41 hour:

SS.: *"Where are you"*.

F.: *"At the club"*.

SS.: *"Is everything fine"*.

F.: *"should we talk on the phone"*.

SS.: *"No"*.

F.: *"We'll talk later then"*.

467. The Panel understands from the above conversations that SS. was going to speak with the persons interested in the deal and that he would later have a meeting with D. at the club to discuss the matter. Apparently, SS. and D. had also scheduled a meeting around noon on 11 May 2011. The Panel considers these conversations to be another indication that the offers made by the intermediaries derived from Fenerbahçe officials. The only missing element to be able to establish that a match-fixing violation was committed by Fenerbahçe officials is that it is not entirely clear whether the illegal offers of the intermediaries indeed concerned match-fixing offers.

468. The Panel also finds that it becomes clear from this wiretap that F. and SS. did not want to discuss the subject of their conversation by telephone. The Panel finds this to be another indication that the subject of their conversation was of an illicit nature.

469. The following wiretap is a recording of a telephone call between TT. and SS. on 11 May 2011 at 23:06 hour:

TT.: *"Anything yet, nothing, is there"*.

SS.: *"Yes there is, I'm getting the wheat on Friday… I will have it… as I said before we will send 4 men… I mean he will give on Friday… I'm giving you the ball, you've got the rest now"*.

TT.: *"Okay, I'll sort that out later on"*.

SS.: *"Tell you men to do something okay…or we will be f…d…"*.

470. The Panel is comfortably satisfied that the conversation above refers to four players of Ankaragücü that were interested in accepting the offer made on behalf of D. The conclusion that these "men" are football players from Ankaragücü is partially based on the wiretap of the conversation between TT. and SS. of 16 May 2011 at 11:49 hour where it is specifically mentioned that *"footballers can have 200"*. The Panel finds that the reference to *"sending wheat"* is yet another attempt to conceal the true subject of the conversation.

471. Fenerbahçe finally won the match against Ankaragücü with 6-0.

472. As indicated *supra*, the Panel does not deem it necessary to assess whether any extraordinary events occurred during the match, in order to establish the offence of match-fixing.

473. The following wiretap is a recording of a telephone call between D. and TT. on 16 May 2011 at 09:54 hour:

D.: *"Come and see me, where are you"*.

TT.: *"I'm not there, I'm in Ankara now"*.

D.: *"I'm telling we need to talk about that,…the half of it is not okay,…it is not okay TT., it's not, the half of it"*.

TT.: *"How on earth is it not okay, we do everything D. then"*.

D.: *"TT. what am I telling you, I'm telling you the half of it is not okay, what did I tell you before we won't do anything until get the news from our number 1"*.

TT.: *"I have not though, they've phoned me 3-4 times so for and I've been waiting… they phoned me from there, I will give you a call when I am with them"*.

D.: *"I also talked to F. yesterday, the half of it is okay but the other half is not, tell them this,…what were you told when you were given that"*.

TT.: *"Well I can't talk about this on err now,… I'm going to see the uncle"*.

D.: *"Don't go there yet, just wait,…wait don't go".*

474. The following wiretap is a recording of a telephone call between F. and TT. on 16 May 2011 at 10:39 hour:

F.: *"He phoned you".*

TT.: *"He says not to give, I get involved in kind of things then see what kind of situation I am in it now… don't you tell them man".*

F.: *"I did tell them and they anyway we are not to talk on the phone, not kind of thing to talk on the phone".*

TT.: *"What am I supposed to do now, I'm waiting for err… he phoned me and said that and that, I am know* [sic] *about three hundred four hundred meters away from there".*

F.: *"I see you are there".*

TT.: *"I'm with him now, I wanted to phone you when I am with him you might want to talk to him… to D.…he told me to give the half do you understand, I'll give the three and take my err and we will share it, okey…what am I supposed to tell him, should I tell him it is not this and that".*

F.: *"Sure you should tell that, what else would you tell him".*

TT.: *"My brother we can't talk on the phone though but some… I can't tell you, I can't express myself though, do you understand".*

475. The Panel understands the above conversations to concern a statement of D. that he would not pay the agreed amount to the intermediaries, but only fifty percent of the amount originally offered.

476. The following wiretap is a recording of a telephone call between SS. and TT. on 16 May 2011 at 11:08 hour:

TT.: *"I've been getting around, they keep calling me".*

SS.: *"Yes, he says not to give the money".*

TT.: *"What are we supposed to do".*

SS.: *"You will come and get your share and we will give the rest to them".*

TT.: *"All of it".*

SS.: *"I'm telling you something man… I've just had a fight… look man you won't give anything, you just take it and come here, we'll just give 200 of it keep the rest of it".*

TT.: *"We'll give the half of it then".*

SS.: *"Don't, how do you think you would give the half of it… you've got 300 haven't you, keep 100 of it, and we'll give 200 of it back to them then it will be over… we'll give it to him then it is over".*

TT.: *"I'll get my err at least".*

SS.: *"We will give nothing to them, do not give anything to them".*

TT.: *"Brother won't we give anything to them there… wouldn't I give 200 to them, you just said so".*

SS.: *"I said you gave 200 and we will give 200 back to them… we will divide in three what we have then, do we have any other options".*

TT.: *"You are saying I should give 1 instead 3, aren't you".*

SS.: *"Yeah… wait F. is here now, wait a second F. is with me now".*

At 11:13 the conversation between SS. and TT. continues:

SS.: *"F. is with me now, you will give 100 to that guy".*

TT.: *"I can't do that, you come and give it to him then… I at 3… how am I supposed to give 100, I can't do that".*

SS.: *"Don't give anything then".*

TT.: *"How on earth how could you say that… I'll give 200 of it then, I will give you a call when I'm with them, I'll tell them it is what I can give and then I would leave there okay… I'm going there to give 200 and I'll keep 100 and come back… I can't get involved in kind of thing".*

SS. then passes the telephone to F.:

F.: *"Look my man, you will give nothing okay, what is this man you will it to one and you will not give it to the other… you should wait for SS".*

TT.: *"I can't keep them wait though… it is easy to say that, isn't it".*

Then, the conversation between SS. and TT. continues:

SS.: *"Shall I come there".*

TT.: *"Yeah please brother come over and sort this out, how am I supposed to give 100 though".*

SS.: *"you bring 150 here, we will add fifty on it you know we have, we will tell them we have given the rest to them… the man has threatened me what are you telling man…if I get there I won't give any okay".*

TT.: *"Then pull your gun and shoot us…you won't give any if you come here".*

SS.: *"If I get there I won't".*

TT.: *"What about me then".*

SS.: *"I will come and tell them that they did not err do err… what I'm telling you is you bring 150 over here and you should give 150 to them, that's what I'm telling… listen to me now D. is waiting for me now, you go and get a plane ticket for yourself, I will tell him TT. will get and bring the money over here, I am telling you man you must do what I say, understand…".*

TT.: *"I will let you know".*

477. The Panel observes that most of the wiretaps do not determine the currency of the amounts. Although UEFA submits that these amounts relate to dollars, the Panel observes that only SS. referred to currencies in the wiretaps. First, in the wiretap of 2 May 2011 at 10:03 he referred to *"lira"*, but later, on 16 May at 12:11 hour, he referred to *"bugs* [sic]*"*. Furthermore, the Panel observes that Fenerbahçe transferred an amount of TRY 400,000 to D.'s account. In the absence of any clear references to dollars, the Panel is comfortably satisfied that UEFA's proposition in this respect is wrong and concludes that all amounts in this respect relate to Turkish lira.

478. The Panel understands from the above conversations that D. had already paid TRY 400,000 to the intermediaries, but that he now requested them to return half of this amount, *i.e.* TRY 200,000. It appears that the intermediaries already forwarded an amount of TRY 100,000 to the players of Ankaragücü as they had only TRY 300,000 left. It appears to the Panel that certain disagreements originated between the intermediaries about the money that had to be returned to D. Whereas TT. wanted to return the full amount of TRY 200,000 requested by D., SS. and F. were of the opinion that only TRY 100,000 or TRY 150,000 was to be returned.

479. The following wiretap is a recording of a telephone call between TT. and SS./F. on 16 May 2011 at 11:49 hour:

TT.: *"I talked to the director, he said to give 2 when I was with them… I've given 2, I'm taking the road soon".*

SS.: *"You are not listening to us, are you… how would you talk after giving the money though".*

TT.: *"He said so when I was with them. (SS. passes the phone to F.)".*

TT.: *"get 2 and bring it here, that's it".*

F.: *"Man are you mad, are you sick".*

TT.: *"Man what was I supposed to do, he talked to me when I was with them".*

F.: *"Why on earth you would talk to him man".*

TT.: *"he said he wanted to, he said he would not do anything bad and I said my dear Hasan look it is this and that, don't do err then".*

F.: *"What did I tell you, I told you not to answer not to give any to anyone".*

TT.: *'I've got 100 and err has got 100 and we will give 200 to him. (F. passes the phone to SS.)"*

SS.: *"Don't give anything man".*

TT.: *"But I have already, it is over…he said to me so when I was with them he said to give 2 of it… the guys insisted on talking to him, they wanted to talk okay… and I had to phone him".*

SS.: *"TT. please don't complain now… who brought you the money, who gave you the money, it was me, wasn't I".*

TT.: *"Do you have to talk I mean on the phone".*

SS.: *"I'm telling you man you will bring 200 over here…it can't be the otherwise…D. told me to take 200 to there… don't do wrong to us, you haven't given the money yet, I know you haven't".*

TT.: *"I talked to the man, he said to give 200 when I was with them, what I am telling is to go and see the man together tomorrow".*

SS.: *"He said […] (referring to D. who has an office in […]) he said to me the same thing, what did I tell you when you were leaving… I told you not to give, that was it, bring the rest of the money over here".*

TT.: *"I did not give his name because he is one of the directors".*

SS.: *"He told me to tell you to bring 200 and you can keep 200 okay… I mean footballers can have 200, why are you making me talk man. (SS. passes the phone to F.)".*

TT.: *"We would go there with SS. to […] you told them it was this it was that, didn't you… he said he wanted to see the chairman… I said chairman was not there, I said he was at err I said there was one err, well man why don't we talk when I get there, God please you will make me go to jail man".*

F.: *"why didn't you call us before you called there".*

480. The Panel finds the above wiretap to be of crucial importance in respect of this match. Because of the statement of SS. that *"footballers can have 200"* in combination with all the above, the Panel is comfortably satisfied that the offer made to the football players of Ankaragücü by Fenerbahçe officials was related to match-fixing. In this respect, the Panel takes into account the multiple statements in code language, from which it can be derived that the conversations concerned illegal conduct. The offer derived from Fenerbahçe officials, more particularly from

B., President of Fenerbahçe, and D. The money intended for football players derived from an illegal offer indirectly made by Fenerbahçe officials to Ankaragücü players.

481. The Panel does not deem it necessary for it to be proven by UEFA which players of Ankaragücü accepted the offer to fix the match; the Panel finds that there is sufficient evidence against the officials of Fenerbahçe that a match-fixing offer was made.

482. The following wiretap is a recording of a telephone call between SS. and TT. on 16 May 2011 at 12:11 hour:

SS.: *"We will give these man 200, won't we…we've given 100 which we had…okay you will say to D. that you gave 300 bugs* [sic] *to them because they did not accept otherwise… to these men, you will 50 again, you will tell 50 of it, you will bring 50 and we will add 50 on it, F. and I will take 25… you will bring 150 okay…you will take 50 back from them… you will tell you were in a bad situation and gave 50 bugs to someone else, you will take it from the men".*

TT.: *"Do you know what I should tell when I get there…I will tell him I could barely talk them into that, although you said so but they did not accept it, I'll tell him I gave 50 more, okay we'll talk to him together, to the other one…man please don't get me in jail, I will be there tomorrow, why don't we sit and talk then".*

SS.: *"You have to go there with me because I've got the money… if we take 50 back from them and we will add 50 on it, we will have 25 each at least".*

483. The following wiretap is a recording of a telephone call between D. and JJ. on 17 May 2011 at 16:37 hour:

D.: *"I feel depressed,…you know our work site in Ankara,… we sent the thing for the workers in that work site".*

JJ.: *"Yes you did ma…(match) before the err".*

D.: *"We did but on one condition, we told them we told them* [sic] *the condition, the moulds needed to be good the concrete was to be good".*

JJ.: *"And you don't know if it's done or what".*

D.: *"One of our guys made also an agreement with the foremen whom I had an agreement with… therefore he clearly said that he couldn't do the job, I said to our guy to […],… I said he has to bring the half of the advance back,… and he came today but guess what there isn't even half of the half".*

JJ.: *"There is no half of the half at all".*

D.: *"There is one of four but there is no three at all,… hundred of it is gone,…I told him to bring the half of it".*

JJ.: *"Well what happened then".*

D.: *"one of the workers came home in the middle of the night …give me at least 100 more so I called err I called […],…[…] said okay and I gave".*

JJ.: *"the three of four is gone and you have one left".*

D.: *"You… I said to him nobody could save him… I said to him who do you think you are man to eat my money,…I said why on earth you would phone […], why did you phone […],… are you doing business with […] or with me I said,…I said to SS. that… you will go with him and take 100 and bring it to me I said… you cannot overcome this I can't overcome this and F. can't overcome this either,…because I said I said to our number 1 that I had 200 he err to me,… I am waiting for it, I had a look and saw it was 100, what am I supposed to tell him now, wee it was 200 but they gave 100 of it without my knowledge… would you say that if you were me,… he said to me yesterday he just came, he phoned me when he was with the workers and asked me if he should give 200 to them and I said to give 200 and bring the other 200 over here… I did wrong… I tried him once and I saw that he was such a fa… …t, I tried him last year why would I try him again,… I'm in trouble man… I am shaken man feel really bad though,…it doesn't matter anymore if he brings or what, he must bring it though I mean it is kind of err I mean it is three… SS. is okay he says that their hands were shaking when they gave it to him… he told him to speak and he told the other one to speak this and that then he said he phoned F., I phoned F. and pretending talking to F., I did not show my color, he was asking me if F. was denying what he said before".*

484. From the above wiretap, the Panel concludes that finally TRY 100,000 was returned to D. by the intermediaries and that D. was upset about this and insisted on the return of the missing TRY 100,000. Although additional wiretaps were provided, the Panel does not find it necessary to enter into more detail, although it wishes to state that allegedly finally an amount of TRY 90,000 was returned by the intermediaries to D.

485. The Panel also concludes from the above wiretap that it was apparently D.'s intention that TRY 200,000 were to be given to the football players of Ankaragücü and that the remaining TRY 200,000 was to be returned. It is at least in this sense that the Panel understands the statement of D. that *"he phoned me when he was with the workers and asked me if he should give 200 to them and I said to give 200 and bring the other 200 over here".* The Panel is convinced to its comfortable satisfaction that D., through the intermediaries, wanted an amount of TRY 200,000 to be given to football players of Ankaragücü. From this course of events, the Panel concludes that these payments were undoubtedly related to an attempt to fix the match between Fenerbahçe and Ankaragücü.

486. In respect of Fenerbahçe's argument that the references in the conversations related to the construction business was not code language, but was caused by D.'s involvement in the construction business, the Panel has no doubt in dismissing this argument. Fenerbahçe did not provide the Panel with relevant evidence in respect of D.'s involvement in the construction business. The Panel finds that the conversations clearly concern the same matter, but that not only vague references are made regarding the construction business, but also to "selling machinery" and agricultural business. Because of these inconsistent references, the Panel has no doubt in determining that the conversations were made in code language in order to avoid talking about the real matter at stake.

487. In respect of the tax expert's report submitted by Fenerbahçe, indicating that the transfer of TRY 400,000 from Fenerbahçe's accounts to D. is in Fenerbahçe's official financial records, the Panel finds that it indeed appears as if an amount of TRY 400,000 was transferred to D. *"for amateur branch"*. Nevertheless, the Panel finds the reference to *"amateur branch"* to be insufficient to convince the Panel that this amount was indeed spent on the amateur branch. In the absence of any evidence being provided which would indicate that the *amateur branch* indeed received such amount and in light of the above wiretaps the Panel is comfortably satisfied that the amount of TRY 400,000 was used for match-fixing purposes.

488. Consequently, the Panel comes to the conclusion that Fenerbahçe officials attempted to fix the match between Fenerbahçe and Ankaragücü that took place on 15 May 2011.

vi. Sivasspor v. Fenerbahçe (22 May 2011)

489. The UEFA Appeals Body ruled in its Appealed Decision that:

> *"After taking into account a variety of evidence resulting firstly from the Police Digest and secondly from the 16th High criminal court decision, the Appeals Body considers that it is established that the President of Fenerbahçe SK, B., and a Fenerbahçe SK Executive Committee member, D., conducted match-fixing in the match between Sivasspor and Fenerbahçe played on 22 May 2011".*

(i) The position of the parties

490. Fenerbahçe submits that the Appealed Decision does not mention which players or officials of Sivasspor were involved or what kind of payments were made. Fenerbahçe can only surmise that the UEFA Appeals Body is referring to payments made to Sivasspor for extra tickets, the money transfer from the Appellant's clothing store, other transactions regarding transfers and the purchase of a car.

491. Fenerbahçe maintains that both clubs saw an opportunity to meet Fenerbahçe's fan demand for tickets of this last match of the season and generate revenue for Sivasspor; so Fenerbahçe requested an increase in their allocation of tickets and negotiated with Sivasspor. Subsequently, Sivasspor agreed to sell extra tickets to Fenerbahçe for a higher price. Any money exchanged between the clubs was merely for ticket purchases, including the "black bag incident". The 16th High Criminal Court in Istanbul was convinced that this bag contained money and was given to the Sivasspor officials allegedly for match-fixing purposes, whereas Fenerbahçe purports that the bag in fact contained tickets that Sivasspor was unable to sell due to a price increase for the game. Fenerbahçe agreed to buy 1,000 tickets and wired the money to Sivasspor. The alleged bank receipts for this ticket transaction were submitted with the Appeal Brief.

492. Fenerbahçe further submits that several witnesses testified about the content of the black bag, among which highly ranked officials of the Turkish government and a well-respected journalist in Turkey. During the hearing before CAS, S., President of Sivasspor, explained that tickets

were reserved for government officials and that the tickets were taken from this bag, which was allegedly confirmed by several testimonies before the criminal court in Turkey.

493. In respect of the allegation that Fenerbahçe used TRY 400,000 from its clothing store Fenerium to fund match-fixing, *i.e.* specifically paid to U. through G., Finance Director of Fenerbahçe, Fenerbahçe asserts that these allegations are baseless. Fenerbahçe has provided bank receipts which reflect the transfer and its subsequent use. The alleged bank receipts related to this Fenerium transaction were also submitted with the Appeal Brief. Fenerbahçe is of the opinion that these records clearly demonstrate that the money was used for club purposes and not paid to U. At the hearing (the Panel assumes that reference is made to the hearing before the 16th High Criminal Court in Istanbul), B. also testified that transfers of this kind from Fenerium are common because Fenerium was created to generate revenue for the club.

494. In respect of the allegations regarding transfer activity, Fenerbahçe maintains that transfer activity after the end of the season is perfectly normal. Fenerbahçe's officials were merely trying to secure new talent through multiple avenues for the upcoming season. The 16th High Criminal Court in Istanbul also highlighted a conversation between R., goalkeeper of Sivasspor, and his agent as evidence of match-fixing. The UEFA Disciplinary Inspector claimed that this conversation was linked to a car purchased by D., *i.e.* a "gift" for match-fixing. The prosecution claimed that the car was bought in the name of R.'s sister, and the car was actually purchased for RR., intermediary. D. considered RR. to be a good luck charm for the club and told him he would buy him something if the club won the title. He then bought the car on his own initiative for RR.

495. At the occasion of the hearing before CAS, Fenerbahçe put forward additional arguments in respect of the "black bag theory". Fenerbahçe considers it to be important that the bag was transferred in public and that the bag was left for a certain time in the trunk of a car without any protection, which it believes to be indications of the legitimacy of the transaction. In addition, if the police was convinced that the bag was full of money, why did they not open the trunk of the car and take the money in order to prove the match-fixing.

496. UEFA contends that Fenerbahçe officials opened three fronts of match-fixing in order to influence the outcome of this final match of the season in their favour. First, B., President of Fenerbahçe, met with S., President of Sivasspor, and entered into a match-fixing deal. On this basis, S. attempted, through PP., executive of Sivasspor, and NN., intermediary, to convince ZZ., player of Sivasspor, not to play to the best of his abilities. Second, B. instructed D., Executive Committee member of Fenerbahçe, to seek to influence the outcome of the match and did this through RR. and K., intermediaries, who made a deal with R., goalkeeper of Sivasspor, that he would not play to the best of his abilities. Third, MM., intermediary, made a deal with other Sivasspor players through T., intermediary.

497. UEFA relies on the following description in order to explain the different factual circumstances:

"In the 34th week of the 2010-2011 Super League season, Fenerbahçe was the league leader on goal difference with 79 points and Trabzonspor was in the second place with 79 points; both teams had a chance to become the champion.

B. instructed D. to conduct match fixing through some Sivasspor players. He personally made a deal with Sivasspor's chairman S. that they would play badly.

D. who was the most important actor of the match-fixing activities of the organization stated on [sic] *of his phone conversations that "It is good, 3 stitches. I mean we'll make sports in three different ways, it's for sure" and his answer to B.'s question "Are you making it with […] or […]?" in another conversation: "I did it with three of them my president". As seen in the conversations the match-fixing activities were carried out over three different persons.*

1. *On 17.05.2011 B. and S. had a private meeting. After the meeting, while S. was leaving Fenerbahçe Club, they became suspicious that they were photographed by a car. S. told that the meeting was about the tickets to sell the supporters of Fenerbahçe for Fenerbahçe and Sivasspor competition in case of a potential wiretapping or physical pursuit. But B. did not understand what he meant and said that "Sure sure. If it happens, we talked about the tickets".*

   Based on this agreement with B., Sivasspor president S. attempted to convince player ZZ. to play in favour of Fenerbahçe via Sivasspor executive PP.

2. *B. gave orders to D. and RR. to contact some persons for the competitions. RR. told K., the player representative, to contact Sivasspor goalkeeper R. D. met up B. face to face on 13.05.2011 then telephoned RR. saying "I've just met number 1, I told him about the things and that the key persons in this were you and your man". RR. and D. had a conversation face to face in the morning on 16.05.2011 and RR. called K. and said: "I'm out now. D. says that you should give 300 to that brother and take 200 for yourself, he said that you should make sure of this" and following this conversation K. met up with R. in Etiler. In that meeting 300.000 Dollars was offered to R. so that he would play in favour of Fenerbahçe in the match and, R. accepted this offer. D. now knew that that goalkeeper of Sivasspor R. would play in favour of Fenerbahçe according to deal, so he telephoned E. just before the competition and said to him that "Shots as many as possible Ok?".*

3. *In addition, MM. made a deal with some Sivasspor players through T. so that he would play in favour of Fenerbahçe".*

(ii) The findings of the Panel

498. Before turning its attention to the individual wiretaps provided in respect of this match, the Panel acknowledges that the bank receipts provided by Fenerbahçe were considered genuine by the TFF Ethics Committee. Although the documents were not translated to English, the Panel is satisfied to accept that these documents indeed show that Fenerbahçe transferred money to Sivasspor in exchange for 1,000 additional tickets for the match between Sivasspor and Fenerbahçe and that Fenerium transferred a sum of TRY 400,000 to the club on 12 May 2011 with the refence *"PAYABLES TO SUBSIDIARIES"*.

499. The following wiretap is a recording of a telephone call between D., Executive Committee member of Fenerbahçe, and JJ., intermediary, on 17 May 2011 at 16:37 hour:

JJ.: *"We have 2, 3 days left, we'll be the champion,… Is there anything?"*.

D.: *"ok 3 stitches,…I mean we'll make sports from every branch"*.

JJ.: *"90 percent"*.

D.: *"100, 100"*.

JJ.: *"Sources are solid, then?"*.

D.: *"Very solid"*.

JJ.: *"They are not like the others aren't they?"*.

D.: *"No no"*.

500. The Panel observes that this conversation appears to be part of the same wiretap that was set out above, as the date, the time and the persons are all the same. At first view, it is not clear why the wiretap is related to the match between Fenerbahçe and MKE Ankaragücü and this wiretap to the match between Sivasspor and Fenerbahçe, as the present part of the conversation does not refer to any specific statements that would indicate that D. and JJ. changed the subject of their conversation to the match between Sivasspor and Fenerbahçe. Nevertheless, in light of the following wiretaps the Panel is convinced that this part of the conversation indeed concerned the match between Sivasspor and Fenerbahçe. The main reason for this conclusion is that it can be derived from the conversation that D. and JJ. were talking about a future match, whereas the match between Fenerbahçe and MKE Ankaragücü was already played. Another reason is that it can be observed from the following wiretaps that D. and JJ. had other conversations specifically about the upcoming match against Sivasspor.

501. The following wiretap is a recording of a telephone call between JJ. and D. on 22 May 2011 at 15:00 hour:

JJ.: *"Can we watch the game relaxed now? What are we going to do?"*.

D.: *"We are in Kadıköy now, damn it"*.

JJ. then allegedly mentioned that 75% of the stands would be filled with Fenerbahçe fans and continued the conversation:

JJ.: *"Okay, I understand. We already knew that it would be like this. Will we be relaxed in terms of the other thing"*.

D.: *"Yes Yes"*.

JJ.: *"So, you made sure of your connections in the building site, right?"*

D.: *"I'm telling you to watch the game relaxed"*.

502. The Panel finds that this conversation clearly makes a link between the references to buildings sites and football matches of Fenerbahçe. Indeed, it appears that JJ. in fact asked D. whether the match between Sivasspor and Fenerbahçe was fixed.

503. The following wiretap is a recording of a telephone call between D. and B. on 17 May 2011 at 17:53 hour:

B.: *"Are you on the land line?"*.

D.: *"Yes"*.

B.: *"We will send 550, right? …Did you give all of the other one?"*.

D.: *"We gave"*.

B.: *"There is a problem there. I need to talk to you about it"*.

D.: *"Where is the problem?"*.

B.: *"Whatever, we'll talk about it tomorrow, it is not a big issue. Let me warn you. There is a problem there… let's talk about it when we come together …Are you going to do it with […] or […]?"*.

D.: *"I did it with 3 of them my president"*.

B.: *"You did it with three…Ok then. I'll talk to you tomorrow"*.

504. The following wiretap is a recording of a telephone call between B. and G. on 11 May 2011 at 17:24 hour:

B.: *"U. is transferring 400.000 from Fenerium now"*.

G.: *"I just received the call, I was amazed"*.

B.: *"I called him…If there is money send it to G. They said that they were sending 400…you see I work from every angle"*.

G.: *"If the players set this on fire, It will all be over"*.

505. The Panel observes that the wiretaps provided by UEFA are not organised in a chronological order as the above wiretap was recorded about one week before the conversation between D. and B.

506. In respect of the above wiretaps, the Panel concludes that these conversations could concern a legitimate acquisition of additional tickets from Sivasspor for the final match of the Turkish Süper Lig seasons and that the transfer of TRY 400,000 from Fenerium to G. is not necessarily suspect. The Panel concurs with Fenerbahçe insofar it submits that UEFA's argument that an amount of TRY 400,000 was paid to U., is incorrect. The Panel finds that it appears from this wiretap that U., on behalf of Fenerium, paid this amount to G.

507. The following wiretap is a recording of a telephone call between RR. and K. on 13 May 2011 at 19:02 hour. Before the wiretap starts, RR. allegedly asked K. whether NN. called or not, K. told RR. that he did not.

RR.: *"I have big news for you,…he went and talked to S.,…D. said said* [sic] *that "do not to talk to him, talk to me" I told him that "K. won't be involved in that business anymore".*

K.: *"…it shouldn't be this way, things get complicated this way…".*

508. The following wiretap is a recording of a telephone call between RR. and D. on 13 May 2011 at 19:35 hour:

RR.: *"Yes brother".*

D.: *"Are you going to get up early tomorrow as well?".*

RR.: *"Probably, brother".*

D.: *"Good, I need to talk to you about a very important issue in the morning".*

RR.: *"Brother, let me tell you something".*

D.: *"Huh!"*

RR.: *"I am very demoralized".*

D.: *"Why?".*

RR.: *"You know my brother NN.?".*

D.: *"Yes".*

RR.: *"He is up to something again, brother".*

D.: *"He always does! F.ck him!".*

RR.: *"Your man told him, but you don't know this".*

D.: *"No, no! I have just come from there now. I met with our number 1".*

RR.: *"Number 1 is here with me. He called him"*.

D.: *"Okay my man. I told him everything"*.

RR.: *"Huh"*.

D.: *"Okay?"*.

RR.: *"Huh (means yes)"*.

D.: *"I told him that the bastard is no good for even a f.ck… It is wrong… I told him what I had shown you"*.

RR.: *"Hıh* [sic]*"*.

D.: *"I told him that you and your man are the keys for the operation"*.

RR.: *"Hıh* [sic]*"*.

D.: *"But, I told him that you did not want to them to know him* [sic]*"*.

RR.: *"Yes"*.

D.: *"I told him "don't even know them, they don't want this in this way, they want me"*.

RR.: *"Yes"*.

D.: *"This is a summary of the conversation"*.

RR.: *"Ditto, ditto"*.

D.: *"Then I told him "you are calling NN. and you tell him about these things, and then everything gets complicated"*.

RR.: *"Brother, if you excuse me, I want to tell you something. Do you know what I told him today? I told him "you said something to brother D. for something which does not even exist, and he resented me". Okay? I asked him "when did I do something behind your back? What happens if I do this? Who am I? Who am I?"*.

D.: *"Now, look* RR. *We have only one week left. We must settle down and think logical"*.

RR.: *"Yes, yes brother"*.

D.: *"I told him everything, okay?"*.

RR.: *"Look brother, I was with my other friend – brother – just now. He told me that he will not talk to anybody else other than you and me"*.

D.: *"Ditto, okay, I told the same thing, listen to me for once, listen to me"*.

RR.: *"Okay brother, ditto"*.

D.: *"This is the actual bomb (flash news). You know, your man was saying that an answer was supposed to come from somewhere"*.

RR.: *"Yes"*.

D.: *"He talked about that issue, I will tell you tomorrow. That issue is okay. I will take mu* [sic] *kid to Dereağzı for football school at 10 o'clock tomorrow in the morning"*.

RR.: *"Okay brother"*.

D.: *"Let's meet at 10 in Dereağzı, the news are very good"*.

RR.: *"Shall I also bring my other brother to there, brother?"*.

D.: *"It will be super"*.

RR.: *"Okay brother okay"*.

D.: *"Okay?"*.

RR.: *"Okay brother"*.

D.: *"At 10, in Dereağzı"*.

RR.: *"Okay brother. Do you want anything else from me?"*.

D.: *"Only your well-being"*.

RR.: *"I kiss you brother, my regards to you"*.

D.: *"Okay, okay, me too"*.

509. According to UEFA, it must be understood from the above two wiretaps that there was a certain reluctance of some intermediaries and D. about fixing matches with the involvement of the president of Sivasspor.

510. The Panel finds that this assumption of UEFA does not become sufficiently clear by these wiretaps.

511. The following wiretap is a recording of a telephone call between B. and NN. on 13 May 2011 at 21:54 hour:

NN.: *"I talked to that friend. They are set. He'll go and talk about the price, he asked about what was required, he said that he would talk about it in person… don't worry about the… but he says that hamsi side (referring to Trabzonspor) is putting pressure as well. I told him that we will prevent it from happening, I told him: "You will meet in person, You'll call, This is not a joke, There no need to involve too many persons, Make it a concise conversation, tomorrow is another day, everything should be known, but too much talking does not lead to any good, make it a concise conversation and everyone will know their duties".*

B.: *"I think you should send PP., too (referring to PP.)".*

NN.: *"Of course, he is going, too…he will after our match on Monday or Tuesday and he'll stay in the camp for 5 days … the friend – the one you told his name – … we told him that if he did not do this, we would never look at his face again, that he shouldn't even bother saying hi again".*

B.: *"Come tomorrow, let's talk then, okay".*

NN.: *"I told him that "you'll leave everything and go and stay there for 5 days and… prevent everything".*

512. The Panel understands from the above wiretap that NN. was worried that Trabzonspor was *"putting pressure as well"*. In combination with all the other elements, the Panel finds this to be an important indication for match-fixing. It can be understood from this wording that Fenerbahçe was putting pressure on Sivasspor and that they were afraid that Trabzonspor would attempt to fix this match as well.

513. The following wiretap is a recording of a telephone call between NN. and PP. on 13 May 2011 at 21:57 hour:

NN.: *"Look. He called me and asked about it PP.… He asked whether I went and talked to you. I told him that we talked. I told him not to worry. I told him that you will go to there 3 days before our match and you'll stay in the camp. I told him that you will be successful. I told him not to worry and not to listen anybody else other than you. I told him that you'll prevent everything, I told him all of these words on behalf of you PP".*

PP.: *"Anyway, we'll talk later, okay?".*

514. The following wiretap is a recording of a telephone call between PP. and NN. on 16 May 2011 at 13:53 hour:

PP.: *"… I mean, do we agree on the things we talked about?".*

NN.: *"Yes".*

PP.: *"Okay I initiated the operation be informed".*

NN.: *"Good okay, let me know".*

In this conversation, NN. also says the following to PP.:

NN.: *"Now, I will go to B. and tell him on, I will tell him that this one loves money too much, that he can't even keep his mouth shut"*.

515. The following wiretap is a recording of a telephone call between B. and S. on 17 May 2011 at 22:09 hour:

S.: *"…something came to the door and I say that we are in such a state, we brought the remaining VIP tickets to you and look at the trouble it caused us"*.

B.: *"Of course, of course If something like that happens,..we talked about the tickets"*.

S.: *"Be informed. I went there and left them to […],… the VIP tickets,… I already gave the goal-line tickets to NN., …he took them and when you wanted extra tickets, O* [sic] *brought those VIP tickets and left them to Ebru"*.

516. UEFA maintains that there are conversations about a parallel and separate acquisition of tickets from Sivasspor. In this context, it is suggested that a bag containing tickets was involved. In light of the inconsistencies in the accounts exposed by the 16th High Criminal Court, UEFA finds that any sale of tickets appears to have been used as cover for simultaneous other discussions in relation to match-fixing.

517. The Panel finds that the above wiretaps show that there were legitimate conversations between B. and S. about the purchase of tickets for the match between Sivasspor and Fenerbahçe. Although the possibility cannot be excluded that there were simultaneous discussions about match-fixing, the Panel finds that it is not sufficiently clear which conversations are related to the purchase of tickets and which conversations concern alleged match-fixing. As the explanation adduced by Fenerbahçe in respect of the purchase of tickets is considered credible by the Panel, the Panel is not comfortably satisfied that there were simultaneous discussions about match-fixing.

518. The following wiretap is a recording of a telephone call between RR. and a certain person called *"YY"*. on 21 May 2011 at 18:56 hour:

YY.: *"Yes sir?"*.

RR.: *"If you forget that bag, forget me for the rest of your life, It is both my and your future, It's D.'s"*.

YY.: *"…you say that; but, wait, I'm trying to park the car. Why don't you close the door? Wait, I'm coming there Brother RR"*.

519. The following wiretap is a recording of a telephone call between PP. and the person called *"YY"*. on 21 May 2011 at 23:35 hour:

PP.: *"Where is my bag?"*.

YY.: *"It's in the car"*.

PP.: *"Bring it upstairs"*.

520. The Panel understands from the above wiretaps that the content of the bag was important. However, this conclusion does neither support the theory that the bag contained money, nor the theory that the bag contained tickets.

521. In respect of the content of the bag, the Panel is not convinced that the bag contained money intended for match-fixing. Although the conversations in respect of the bag are suspicious, the Panel is not convinced to its comfortable satisfaction that the bag is connected to an attempt to fix the match between Sivasspor and Fenerbahçe. In this respect, the Panel took into account that the TFF Ethics Committee came to the conclusion that no link could be established and that the TFF PFDC and the TFF Board of Appeals did not investigate the circumstances surrounding this particular match. The Panel also took into account the arguments presented by Fenerbahçe

522. Nevertheless, and similar to the conclusion of the TFF Ethics Committee, the Panel finds that although this element of the alleged match-fixing could not be proven, still the fact remains that B. and D. attempted to influence the outcome of this match by approaching players of Sivasspor through certain intermediaries.

523. The following wiretap is a recording of a telephone call between ZZ., Sivasspor player and an anonymous person. The exact date and time of this wiretap is not mentioned, it is however indicated that this phone call took place in the evening after the match, which remained undisputed by Fenerbahçe. The Panel therefore accepts that the following conversation took place in the evening of 22 May 2011:

ZZ.: *"What can I do? We made Fenerbahçe champion. I'm going"*.

Anonymous person: *"Why didn't you hit the ball with your head and score? Why did you hit with your foot? You cannot hit the ball with your foot"*.

ZZ.: *"Why should I score? I didn't go there to score. I went there just to move around. Look at the coincidence… […]'s* [sic] *movement was in vain, I told the president that I'm leaving. Be informed"*.

Anonymous person: *"Well, get along well with our new sportive director there… […]"*.

ZZ.: *"I'll talk to […]"*.

Anonymous person: *"He left the football…he'll be there and deal with everything"*.

ZZ.: *"With the transfer?"*.

Anonymous person: *"I told that […] made a deal with Fener, he might as well be champion, so he'll not be demoralized"*.

524. Although the Panel observes that ZZ. apparently did not play to the best of his abilities, the Panel deems that this is not sufficient proof of match-fixing. The Panel finds that no link could be established between the bad performance of ZZ. and a match-fixing attempt by Fenerbahçe officials.

525. The following wiretap is a recording of a telephone call between K. and R., goalkeeper of Sivasspor, on 15 May 2011 at 18:12 hour:

R.: *"I'm in İstanbul, I arrived yesterday"*.

K.: *"Why didn't he let you play, R.?"*.

R.: *"He let the others play who normally cannot get a chance"*.

K.: *"Will he do the same in the Fener match?"*.

R.: *"No, We'll be as our full line-up in Fener match"*.

K.: *"Are you playing in the Fener match?"*.

R.: *"Yes, inşallah…I mean there is no problem"*.

K.: *"When will you return back? Tomorrow?"*.

R.: *"Well, on Tuesday"*.

K.: *"Okay, see you tomorrow then"*.

526. The following wiretap is a recording of a telephone call between RR. and K. on 16 May 2011 at 11:22 hour:

RR.: *"Ok, I left now,…D. says that,…20.000 Dollars to me,…he says that he will f. their life.. f.. k both of them,…I said to him whatever he liked, we would do,…He says that he didn't do anything …he said that you should give 300 to that brother and take 200 to yourself,…he wants you to handle this without fail…"*.

527. The Panel finds this wiretap to be highly suspicious. No clarification is given by Fenerbahçe regarding the purpose of these amounts. The Panel finds that it appears from this wiretap that D. apparently instructed RR. to tell K. that he *"should give 300 to that brother and take 200 to yourself"*. Because of the phone calls between K. and R. before and after this conversation the Panel is comfortably satisfied that R. is *"that brother"* referred to in this conversation. As such there is a link between D. and R. and the transfer of a certain amount to the latter.

528. The following wiretap is a recording of a telephone call between R. and K. on 17 May 2011 at 10:57 hour:

R.: *"I didn't notice that you wrote me last night"*.

K.: *"I asked coach what he was thinking about it. He said that they bring …after this […] business is more clear. …just like I said (he laughs) be relaxed think about the operation…let's finish the operation first without any loss, then you can have your vacation".*

R.: *"Not so easy, I want raise".*

K.: *"Raise? It is great there. you be relaxed.. leave out the rest …money…who should I talk to here? (referring to W.) your brother?".*

R.: *"You don't need to talk to anyone, why should you talk?...See you on the way back".*

K.: *"Because I'll receive the present on Sunday afternoon, okay".*

R.: *"It doesn't matter, It is not important whether it stays on you or on me".*

529. The following wiretap is a recording of a telephone call between RR. and D. on 21 May 2011 at 12:01 hour:

RR.: *"They made the line-up public now,…goalkeeper […],…no I said wrong goalkeeper R".*

D.: *"HUH?".*

RR.: *"(he laughs) But he is using two attackers […] and […],… […] and […] in the defence again… There is […],…. He said the others too, I called my Uncle now,… we'll beat them,…. I'm very relaxed, I don't know why but I'm really relaxed, I'm thinking about whether I should buy Mini Cooper or Peugeot 508 (he laughs)".*

D.: *"Let's just win this game, the rest is …".*

RR.: *"I swear to God, D., I'm saying this with all of my heart, I mean all the stress we had, only a few people including the president lived that stress,… we won honourably".*

530. The following wiretap is a recording of a telephone call between E., Fenerbahçe official and brother of the Fenerbahçe president, and D. on 22 May 2011 at 18:55 hour:

D.: *"Brother…You are at the downstairs, right?".*

E.: *"What is up?".*

D.: *"I don't want to disturb game plan: but shots as many as possible".*

E.: *"Okay, we'll talk later okay".*

531. The Panel finds that the above wiretap supports the proposition that D. was aware of the fact that the goalkeeper of Sivasspor was involved in the match-fixing scheme.

532. The following wiretap is a recording of a telephone call between K. and RR. on 22 May 2011 at 20:53 hour:

K.: *"Did you see how that kid gave away the goal?"*.

RR.: *"Let's hope that it ends well"*.

K.: *"What else is going to happen?. Fener will win. There is nothing else about it. Fener does not go to the goal… But after all…we gave away the goal really badly, I'm sorry about that kid"*.

533. The following wiretap is a recording of a telephone call between W. and K. on 22 May 2011 at 23:39 hour:

W.: *"We have been talking from 10 minutes…It's good. Nothing to worry about"*.

K.: *"Good okay well! I'm relaxed I couldn't reach him, I sent a message to him and then I called him but his phone is turned off…everyone gave away such goals since the beginning of the league. As if every goal scored is a normal goal"*.

W.: *"Of course, it can be like that…I wish he would not save […]'s shot at least"*.

K.: *"There, he saves the goal, but he gives away the goal in another position, this is just unfortunate…everything, every goal keeper"*.

W.: *"For example, he made a move to save the goal in […]'s goal … yet, he couldn't save it"*.

K.: *"Even if he give away normal, flawless goal, he would say it"*.

534. The Panel finds that the alleged bad performance of R. in itself is no proof of his involvement in the match-fixing scheme of Fenerbahçe. However, the Panel considers that the conversations between K. and RR. and between W. and K. strengthen the proposition that R. did not play to the best of his abilities in exchange for a certain sum of money that derived indirectly from Fenerbahçe officials. The Panel finds that this is supported by the conversation between RR. and K. mentioned *supra*. On this basis, the Panel is comfortably satisfied that R.'s was involved in a match-fixing attempt of Fenerbahçe.

535. Although the 16th High Criminal Court in Istanbul considered the "black bag theory" to be proven and convicted S. (*"due to the fact that it is established that he aided the crime organization founded by B. in order to affect the results of the sports competitions by committing the crimes of match-fixing and incentive bonus in Turkish Professional Super League"*), the Panel, on the basis of the submissions of the parties, the testimonies given at the hearing, and in light of the considerations of the TFF Ethics Committee, is not satisfied to its comfortable satisfaction that this theory provides evidence for Fenerbahçe's attempt to fix the present match. As such, the Panel finds that UEFA's allegation in respect of the first front of match-fixing could not be proven to the comfortable satisfaction of the Panel.

536. The Panel also finds that the theory related to the acquisition of a car for RR. by D. is insufficiently proven. The Panel is not convinced that this car was bought for RR. in exchange for his services to Fenerbahçe related to the fixing of the match between Sivasspor and Fenerbahçe.

537. Considering all the above, and despite the conclusions in respect of the "black bag theory" and the purchase of a car, the Panel is nevertheless comfortably satisfied that B., through D., RR. and K., approached R. and attempted to prevent him from playing to the best of his abilities in the upcoming match against Fenerbahçe.

538. Therefore, the Panel is comfortably satisfied that UEFA's allegations in respect of the second front of match-fixing indeed occurred and as such the Panel does not deem it necessary to address the alleged third front of match-fixing.

539. Consequently, in view of all the above, the Panel comes to the conclusion that it is comfortably satisfied that Fenerbahçe officials attempted to fix the match between Sivasspor and Fenerbahçe played on 22 May 2011.

Conclusion

540. In its conclusions regarding the individual matches the Panel solely relied on the evidence presented to it by the parties in these appeal arbitration proceedings. The Panel drew its own conclusions and did not give particular importance to the conclusions drawn by the bodies that have examined the present matter in the past. In this sence, the Panel is convinced that it fully utilised its discretion to decide the case *de novo* and examined the facts and the law afresh.

541. Nevertheless, the Panel feels comforted in its conclusion that Fenerbahçe officials attempted to fix all four of the individual matches that have been investigated by this Panel, by the fact that almost all the bodies that have examined the match-fixing allegations of Fenerbahçe (the TFF Ethics Committee, the TFF PFDC, the TFF Board of Appeals, the 16th High Criminal Court of Istanbul, the UEFA CDB and the UEFA Appeals Body) came to the conclusion that at least one of Fenerbahçe's officials was guilty of having attempted to fix the matches investigated in the present appeal arbitration proceedings.

542. The Panel took into account that the decision of the 16th High Criminal Court in Istanbul did not yet become final and binding since several individuals appealed this decision. Although the Panel restrained itself from drawing clear conclusions from this decision and made its own evaluation of the facts, the Panel observes that the Supreme Court Prosecutor confirmed the convictions of all the Fenerbahçe officials. The Panel finds that a criminal conviction, although not yet final and binding, can be taken into account to corroborate the conclusions reached in the decision challenged.

543. In this sense, the Panel makes reference to a recent CAS Award in a matter pertaining to match-fixing allegations against the Ukrainian club FC Metalist. In this case a Ukrainian

criminal court acquitted FC Metalist. Nevertheless, the CAS panel came to a conviction. In explaining these different outcomes, the CAS panel, when assessing the underlying facts, *inter alia*, determined that the panel is not guided by the standard of proof beyond any reasonable doubt in the present case, but has to be convinced to its comfortable satisfaction (CAS 2010/A/2267, §746).

544. In this respect, the Panel adheres with UEFA's statement that the fact that CAS does not have to follow a criminal acquittal does not mean that CAS will not have to take into account a criminal conviction. While a criminal conviction on the higher standard is not automatically conclusive, it is very unlikely that proceedings before CAS, on the lower standard of comfortable satisfaction, will result in a contrary conclusion.

545. Insofar the above-mentioned adjudicatory bodies did not come to a conviction of Fenerbahçe officials (the 16th High Criminal Court in respect of the match between Gençlerbirligi and Fenerbahçe of 7 March 2011 and the TFF Ethics Committee and the TFF PFDC in respect of the match between Fenerbahçe and IBB Spor of 1 May 2011), the Panel explained why it deviates from such findings. Insofar certain adjudicatory bodies did not investigate a certain match (the TFF Board of Appeals in respect of the match between Fenerbahçe and IBB Spor of 1 May 2011 and the TFF PFDC and the TFF Board of Appeals in respect of the match between Sivasspor and Fenerbahçe of 22 May 2011), the Panel, next to its own findings, feels comforted by the findings of the remaining adjudicatory bodies that did come to a conviction in respect of these matches.

546. Consequently, the Panel finds that Fenerbahçe is guilty of attempting to fix, through its officials, four matches in the Turkish Süper Lig in the 2010/2011 season. The Panel concludes that the merits of the case warrant disciplinary sanctions to be imposed on Fenerbahçe.

b) If so, was the sanction imposed on Fenerbahçe proportionate?

547. Since the Panel came to the conclusion that Fenerbahçe officials attempted to fix four matches in the Turkish Süper Lig, the final issue to be decided is the sanction to be imposed on Fenerbahçe.

548. The Panel observes that the UEFA Appeals Body decided in its Appealed Decision that:

"Fenerbahçe SK is excluded from participating in the next two (2) UEFA club competitions for which it would qualify".

i. Position of the parties

549. In respect of the sanction, Fenerbahçe appears to rely on three arguments in coming to the conclusion that the sanction is illegal or disproportionate; that the Appealed Decision violated the equality principle, that the sanction imposed in the Appealed Decision is illegal because it

violated article 17 of the UEFA DR and that the sanctions in the Appealed Decision were *"illegally disproportionate"*.

550. Regarding the alleged violation of the equality principle, Fenerbahçe submits that UEFA did not impose any sanction under article 5 UEFA DR in multiple other – and recent – cases involving very similar allegations of match-fixing related to domestic matches and refers specifically to the cases of *FC Porto*, *FC Karpaty Lviv*, *FC Metalist Kharkiv* and all five Italian clubs that were sanctioned in 2006 for match-fixing by the FIGC, but not by UEFA.

551. Fenerbahçe further submits that the sanction imposed by the UEFA Appeals Body is illegal because it violated article 17 of the UEFA DR on two accounts. Fenerbahçe submits that the UEFA Appeals Body did not take into account all the *"subjective elements of the offence"* because there was insufficient information to make a determination regarding the extent of the liability of the individual officials and also because it ignored several mitigating circumstances.

552. More particularly, Fenerbahçe maintains that the only mitigating circumstance taken into account by the UEFA Appeals Body was the fact that Fenerbahçe was withdrawn from the 2011/2012 season of the UEFA Champions League by the TFF. While this is indeed a mitigating circumstance, Fenerbahçe submits that the fact of the matter is that UEFA did not actually mitigate the sanction when taking into account the UEFA Disciplinary Inspector's originally requested sanction.

553. Fenerbahçe also purports that it must be taken into account that there were no damages for UEFA as Fenerbahçe did not participate in the UEFA Champions League. This should be taken into account given that other cases of match-fixing directly impacted UEFA competitions. Furthermore, Fenerbahçe avers that it could reasonably expect that no further sanctions would be imposed on it by UEFA on the basis of the Letter of UEFA's Secretary General. Finally, Fenerbahçe finds that it should be taken into account as a mitigating circumstance that since criminal investigations were initiated against it, Fenerbahçe informed UEFA accordingly in its application forms, which was taken into account as a mitigating circumstance by the UEFA CDB in its decision dated 21 June 2013 concerning *Beşiktaş*.

554. In the alternative, Fenerbahçe purports that the sanction is disproportionate, particularly in comparison with sanctions imposed on other clubs found guilty of match-fixing.

555. Contrarily, UEFA argues that the principle of equality was not violated. UEFA finds that Fenerbahçe failed to acknowledge that UEFA has amended its rules, to implement the suggestions contained, among other, in the *FC Porto* case. Furthermore, it is contrary to common sense to consider that how different cases on different facts at different times under different rules have been dealt with, can preclude a sports governing body applying its own clear rules as contemplated. UEFA also purports that Fenerbahçe apparently overlooked that in certain recent cases (*i.e.* CAS 2009/A/1920*,* CAS 2011/A/2528) article 5 of the UEFA DR was applied.

556. In addition, UEFA maintains that it did not violate article 17 of the UEFA DR. Only because the TFF acted swiftly, Fenerbahçe did not succeed in illegitimately making its way into the competition by reason of its cheating. This in no way mitigates the seriousness of the cheating involved, or warrants a reduction in the appropriate sanction. In respect of Fenerbahçe's reliance on the Letter of the UEFA Secretary General, UEFA submits that this cannot operate as mitigation because it is untrue. In respect of informing UEFA about the match-fixing investigations, UEFA contends that Fenerbahçe when filing the UEFA Admission Form for the 2011/2012 Champions League season, it deliberately misled UEFA and continued to do so by not informing UEFA at any later moment.

557. Finally, in respect of the proportionality of the sanction, UEFA submits that under CAS jurisprudence, a certain reservation or restraint is shown when it has to evaluate whether or not a sanction is appropriate. UEFA also refers to several CAS awards that reflect the importance of eradicating match-fixing from sport.

ii. Findings of the Panel

(i) UEFA's alleged violation of the equality principle

558. In respect of Fenerbahçe's argument concerning the principle of equal treatment, the majority of the Panel finds that no violation occurred and refers to its conclusions regarding UEFA's competence *supra*. With reference to the cases concerning CAS 2009/A/1920 and CAS 2011/A/2528, the majority of the Panel finds that this is not the first time that UEFA applied article 5 of the UEFA DR in match-fixing cases.

ii. UEFA's alleged violation of article 17 of the UEFA DR

559. Concerning Fenerbahçe's arguments regarding article 17 of the UEFA DR (2012) the Panel observes that this article provides as follows:

"The competent disciplinary body shall determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements to be imposed according to the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. Subject to Article 6(1) of the present regulations, no disciplinary measures may be imposed in cases where the party charged bears no fault or negligence".

560. Insofar as Fenerbahçe argues that there was insufficient information available for the UEFA Appeals Body to take into account the subjective elements of the offence, the Panel disagrees and refers to its reasoning in respect of Fenerbahçe's liability for the actions of its officials *supra*.

561. In respect of the alleged violation of article 17 of the UEFA DR by failing to take into account any mitigating circumstances, the Panel observes that the UEFA Disciplinary Inspector argued in his Report that *"[t]he Claimant acknowledges that in light of the TFF's withdrawal of Fenerbahçe from*

the 2011-2012 Champions League, Fenerbahçe suffered similar consequences as if it had been declared ineligible to compete in the 2011-2012 Champions League by UEFA. The Claimant submits that this factor should be taken into consideration by the CDB for the purposes of determining an appropriate sanction" and submitted the following request for relief:

"Rule that Fehnerbaçe [sic] *has already served the sanction provided for by Article 2.05 (a one-year period of ineligibility) but pursuant to Article 2.06 of the Regulations of the UEFA Champions League, Fenerbahçe Spor Kulübü Fenerbahçe* [sic] *is excluded from participating in the next two (2) UEFA club competitions for which it would otherwise qualify".*

562. The Panel observes that the reasoning of the UEFA CDB in respect of the proportionality of the sanction was rather limited and only reasoned that *"the Control and Disciplinary Body considers that the offences committed are particularly serious, that they caused considerable harm to Turkish and European football, and that severe sanctions are necessary in such cases"* and decided as follows:

"To exclude Fenerbahçe SK from participating in the next three (3) UEFA club competitions for which they would qualify. Nevertheless, the third season is deferred for a probationary period of five years".

563. The UEFA Appeals Body, *inter alia*, argued that:

"the Appeals Body is of the view that an imposition of a probationary period in the present case is inappropriate. In the hypothetical case that the Appellant is liable, directly or indirectly, for a further act of match fixing, the penalty would be much more severe than the one imposed by the Control and Disciplinary Body which, given the fact and evidence provided by the parties to the Appeals Body, could be considered lenient. The fact that the Disciplinary Inspector did not file a cross appeal in his reply, prevents however this second instance to impose a more severe sanction.

On the basis of the above, and taking in consideration the factual impact of the decision of the TFF not to enter the Appellant in the Champions League 2011/2012, the appeal is partially admitted and the first-instance decision partially upheld. (…)".

564. On this basis, the UEFA Appeals Body reached the following conclusion:

"Fenerbahçe SK is excluded from participating in the next two (2) UEFA club competitions for which it would qualify".

565. The Panel disagrees with Fenerbahçe's argument that the period of ineligibility already served must be taken into account in reducing the sanction initially requested by the UEFA Disciplinary Inspector, as this mitigating circumstance was already discounted in his request for relief. The UEFA Disciplinary Inspector requested UEFA to exclude Fenerbahçe from participating in European competitions for two seasons, thereby taking into account that Fenerbahçe already served a one-year period of ineligibility. This was exactly the sanction imposed by the UEFA Appeals Body, which thereby specifically took into account the period of ineligibility already served.

566. Since the Panel determined that the Appellant could not have *"reasonable expectations (…) that no further sanctions would be imposed"* on it, the UEFA Letter cannot be taken into account as a mitigating circumstance either.

567. Consequently, the Panel finds that UEFA did not violate article 17 of the UEFA DR.

(iii) The proportionality of the sanction

568. Turning its attention to the proportionality of the sanction, the Panel observes that the UEFA CDB imposed a three-year period of ineligibility from participating in UEFA club competitions on Fenerbahçe (in addition to the period of ineligibility already served), of which one year was deferred for a probationary period of five years, for fixing five matches and fraudulently and intentionally filing the UEFA Admission Criteria Form.

569. The Panel notes that the UEFA Appeals Body imposed a two year period of ineligibility (in addition to the period of ineligibility already served) from participating in UEFA club competitions on Fenerbahçe, for fixing eight matches and fraudulently and intentionally filing the UEFA Admission Criteria Form.

570. The Panel came to the conclusion that Fenerbahçe is guilty of attempting to fix, through its officials, four matches in the Turkish Süper Lig in the 2010/2011 season and that Fenerbahçe is not liable for the way it filled out the UEFA Admission Criteria Form.

571. Although the Panel came to a smaller number of convictions in comparison with the decisions of the UEFA CDB and the UEFA Appeals Body, which would normally justify a more lenient sanction to be imposed, the Panel has no doubt that the imposition of a two-year period of ineligibility from UEFA club competitions is warranted.

572. In the absence of any guidance in the UEFA DR as to particular objective and subjective circumstances to be taken into account in pronouncing an appropriate sanction from the wide range of sanctions provided for in article 14(1) of the UEFA DR (2008), the Panel, in determining an adequate sanction to be imposed on Fenerbahçe relies on 1) its *de novo* competence to review the facts and the law afresh; 2) the range of sanctions pronounced in earlier match-fixing cases before the CAS.

573. In respect of the first element, the Panel notes the constant jurisprudence of CAS regarding a limited discretion for CAS panels to review sanctions imposed by disciplinary bodies of federations when such panels make similar findings as in the decision appealed against and that such discretion should only be exercised *"when the sanction is evidently and grossly disproportionate to the offence"* (CAS 2009/A/1817 & CAS 2009/A/1844, §174). The Panel finds that in exercising its *de novo* competence in respect of alleged procedural flaws in the proceedings before the UEFA CDB and the UEFA Appeals Body and in coming to a different conclusion on the merits of the case as in the Appealed Decision, it shall, in principle, also not

restrict itself in ruling *de novo* in respect of the sanction to be imposed. As such, the Panel finds that it has to make its own independent evaluation regarding the sanction to be imposed.

574. Regarding the second element, the Panel observes that the range of sanctions imposed in earlier match-fixing cases before CAS vary between a one-year period of ineligibility (CAS 2011/A/2528), and an eight-year period of ineligibility (CAS 2009/A/1920). The Panel observes that this spectrum of sanctions (period of ineligibility between zero and eight year) is comparable to a certain extent to the spectrum of sanctions in doping cases. In view of the earlier-mentioned analogy between match-fixing cases and doping cases in respect of the standard of proof to be applied, this Panel is prepared to find some guidance in the elaborate regime on doping sanctions.

575. In practise, this spectrum would mean that a "standard" match-fixing offence would, in principle, have to be sanctioned with a two-year period of ineligibility. In case of particularly serious match-fixing offences a higher sanction would have to be imposed and in case of mitigating circumstances the standard two-year period of ineligibility would have to be reduced.

576. In light of this spectrum of sanctions and considering that the match-fixing attempts initiated by Fenerbahçe's officials were particularly serious in comparison with previous match-fixing cases, the Panel has no doubt to determine that a sanction from the higher region of this spectrum is warranted. The Panel thereby specifically considers the fact that Fenerbahçe officials attempted to fix four matches, that multiple high-ranked Fenerbahçe officials were involved in the match-fixing scheme and that the match-fixing operations were conducted and orchestrated from the top administrative level of the club.

577. However, as UEFA did not file an independent appeal against the Appealed Decision, the Panel finds that it is limited in its discretion to sanction Fenerbahçe as it deems fit because it cannot go beyond the sanction imposed by the UEFA Appeals Body. This would constitute a ruling *ultra petita*. As such, the Panel cannot impose a higher sanction than a two-year period of ineligibility (in addition to the period of ineligibility already served through the equivalent of the "administrative measure") in the present appeals arbitration proceedings.

578. Hence, despite the fact that the Panel finds Fenerbahçe guilty of having attempted to fix "only" four matches, whereas the UEFA CDB and the UEFA Appeals Body found Fenerbahçe guilty of attempting to fix respectively five and eight matches, the Panel finds that a total period of ineligibility of three seasons (including the period of ineligibility already served) from UEFA club competitions is not disproportionate in light of the violations committed.

579. Considering all the above, the Panel concludes that an exclusion of Fenerbahçe from participating in the next two UEFA club competitions for which it would qualify is warranted.

B. Conclusion

580. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments submitted, the following is determined:

a) The Panel concludes that UEFA violated the legal principle of *res iudicata* and the scope of the present proceedings is therefore limited to the findings of the UEFA CDB on the five matches.

b) The Panel concludes that UEFA did not violate the principle of *ne bis in idem*.

c) The (majority of the) Panel concludes that UEFA was competent to instigate disciplinary proceedings in respect of match-fixing against Fenerbahçe and the sanctions pronounced in this respect were in accordance with the legality principle. There is however no clear legal basis to sanction Fenerbahçe for improperly completing an Admission Form and no distinct sanctions should be imposed in this respect.

d) The Panel concludes that UEFA was not estopped from instigating disciplinary proceedings against Fenerbahçe because of the UEFA General Secretary's letter dated 23 August 2011.

e) The Panel concludes that UEFA could impose a sanction on Fenerbahçe even if it deemed that the level of information obtained in relation to the individuals was not sufficient to issue a sanction against them yet.

f) The Panel concludes that the disciplinary proceedings shall not be remitted back to UEFA due to a violation of several procedural rights.

g) The Panel concludes that the merits of the case warrant disciplinary sanctions to be imposed on Fenerbahçe.

h) The Panel concludes that a two-year period of ineligibility of Fenerbahçe from UEFA club competions is warranted.

581. Consequently, the appeal filed by the Appellant is dismissed and the decision of the UEFA Appeals Body is confirmed.

582. Any other prayers and requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 16 July 2013 by Fenerbahçe Spor Kulübü against the decision rendered by the UEFA Appeals Body on 10 July 2013 is dismissed.

2. The decision rendered by the UEFA Appeals Body on 10 July 2013 is confirmed.

(…)

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