CAS 2018/A/5746 Trabzonspor Sportif Yatirim ve Futebol Isletmeciligi A.S., Trabzonspor Sportif Yatirim Futebol Isletmeciligi A.S. & Trabzonspor Kulübü Dernegi v. Turkish Football Federation, Fenerbahçe Futbol A.S., Fenerbahçe Spor Kulübü & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof. Luigi **Fumagalli**, professor and attorney-at-law, Milan, Italy
Arbitrators:	Mr Philippe **Sands**, QC, barrister, London, United Kingdom
	Mr Patrick **Lafranchi**, attorney-at-law, Bern, Switzerland
Ad hoc Clerk:	Ms Nora **Krausz**, attorney-at-law, Geneva, Switzerland

in the arbitration between

TRABZONSPOR SPORTIF YATIRIM VE FUTEBOL ISLETMECILIGI A.S., TRABZONSPOR SPORTIF YATIRIM FUTEBOL ISLETMECILIGI A.S. & TRABZONSPOR KULÜBÜ DERNEGI, Trabzon, Turkey

Represented by Mr Jean Marguerat and Dr Lucien W. Valloni, Froriep Legal SA, attorneys-at-law, Geneva, Switzerland

- Appellants -

and

TURKISH FOOTBALL FEDERATION, Istanbul, Turkey

Represented by Mr Jorge Ibarrola, Libra Law SA, attorney-at-law, Lausanne, Switzerland

FENERBAHÇE FUTBOL A.S. & FENERBAHÇE SPOR KULÜBÜ, Istanbul, Turkey

Represented by Messrs Christian Keidel, David Menz, Dr Heiner Kahlert and Paul Fischer, Martens Rechstanwaltsgesellschaft mbH, attorneys-at-law, Munich, Germany

FEDERATION INTERNATIONALE DE FOOTBALL ASSOCIATION, Zurich, Switzerland

Represented by Mr Mario Gallavotti, Director of Secretariat to the Independent Committees, and Mr Jaime Cambreleng Contreras, Head of Disciplinary

- Respondents -

I. FACTS

A. THE PARTIES

1. Trabzonspor Sportif Yatirim ve Futebol Isletmeciligi A.S. is a company incorporated in Turkey, which runs the professional football club Trabzonspor Kulübü Dernegi. It is a member of the Turkish Football Federation ("TFF").

2. Trabzonspor Sportif Yatirim Futebol Isletmeciligi A.S. is a company incorporated in Turkey and ran the professional football team Trabzonspor Kulübü Dernegi until mid-2011.

3. Trabzonspor Kulübü Dernegi is a Turkish football club, which currently plays in the Turkish Süper Lig (highest tier).

4. In the present award, these three entities shall collectively be referred to as "Trabzonspor" or "the Appellants".

5. The Turkish Football Federation ("TFF") is the national body governing football in Turkey. It is an association under Turkish law, affiliated to the Fédération Internationale de Football Association ("FIFA") and to the Union Européenne de Football Association ("UEFA").

6. Fenerbahçe Futbol A.S. is a company incorporated in Turkey, which runs the professional football team Fenerbahçe Spor Kulübü. It is a member of the TFF.

7. Fenerbahçe Spor Kulübü is a Turkish football club, which currently plays in the Turkish Süper Lig (highest tier).

8. These two entities shall be collectively referred to as "Fenerbahçe" in the present award.

9. The Fédération Internationale de Football Association ("FIFA") is the worldwide governing body of football.

10. TFF, Fenerbahçe and FIFA shall collectively be referred to hereinafter as "the Respondents".

B. FACTS OF THE CASE AND ORIGIN OF THE DISPUTE

11. Below is a summary of the main relevant facts, established on the basis of the written and oral pleadings of the Parties and the evidence submitted to the Panel. Although the Panel carefully considered all the facts submitted to it by the Parties, only those relevant for deciding the present dispute are set out below. Additional facts may be set out, where relevant, in connection with the legal discussion.

a) Domestic proceedings in Turkey

12. In the season 2010/2011 of the Turkish Süper Lig, Fenerbahçe won the first place, while Trabzonspor was ranked second. The two teams had the same number of points,

but Trabzonspor scored fewer goals in the matches against Fenerbahçe. This latter therefore became the Turkish champion and qualified for the group stage of the 2011/2012 UEFA Champions League.

13. On 3 July 2011, several persons were arrested in Turkey, because of their potential involvement in a wide-spread manipulation of the matches of the 2010/2011 Süper Lig. Several football officials of different clubs were among the arrested. Criminal investigation was started by the Turkish public prosecutor.

14. On 11 July 2011, the TFF Executive Committee requested the TFF Ethics Committee to conduct investigations relating to the alleged match-fixing. On 24 August 2011, TFF decided to withdraw Fenerbahçe from the 2011/2012 UEFA Champions League and UEFA replaced it with Trabzonspor. On 20 December 2011, the TFF Executive Committee issued a report, holding that several acts of match-fixing involved officials of Fenerbahçe.

15. On 13 April 2012, Trabzonspor filed a request with TFF, demanding it to handle the match-fixing during the 2010/2011 Süper Lig and to declare Trabzonspor as the Turkish champion for that season.

16. The TFF Ethics Committee issued a report on 26 April 2012, holding that while some officials of Fenerbahçe were involved in match-fixing (or attempted match-fixing), it was not proven that the other members of the Board were aware of these activities and therefore the club could not be held responsible.

17. The TFF Disciplinary Committee issued a decision on 6 May 2012, sanctioning three officials of Fenerbahçe, namely Mr Mosturoglu (Vice-president), Mr Eksioglu (member of the Board) and Mr Turhan (Youth Division Director) for having attempted match-fixing during the 2010/2011 Süper Lig season. The Disciplinary Committee did not impose any sanctions on Fenerbahçe, because the match-fixing activities were held not to be attributable to the club.

18. On 4 June 2012, the TFF Arbitration Body dismissed Trabzonspor's appeal against the decision of 6 May 2012, holding that Trabzonspor did not have the right to file an appeal against a decision refusing to sanction another club.

19. On 2 July 2012, the 16th High Criminal Court of Istanbul found that a criminal organisation had been formed under the leadership of Mr Aziz Yildirim, President of Fenerbahçe, and that match-fixing and incentive bonus activity by officials of this club had taken place with respect to 13 matches of the 2010/2011 Süper Lig. Several officials of Fenerbahçe, including its President and Vice-President, were convicted.

20. This criminal judgment was to be later reversed by a decision issued on 28 October 2015. In this new judgment, the 13th High Criminal Court of Istanbul acquitted all Fenerbahçe's officials, chiefly based on the lack of evidence.

21. During the months of August and November 2012, as well as in October 2013, Trabzonspor repeatedly asked the TFF to annul the results of the fixed matches and to award Trabzonspor the 2010/2011 Süper Lig title. Trabzonspor's requests and appeals were rejected by the TFF's competent bodies.

b) Proceedings before UEFA

22. During the year 2012, Trabzonspor applied to UEFA, asking it to take sanctions regarding the 2010/2011 match-fixing activities in Turkey.

23. UEFA opened disciplinary proceedings against Fenerbahçe, but did not initiate disciplinary proceedings against TFF. Despite Trabzonspor's request, UEFA did not grant it the right to intervene in the proceedings.

24. On 10 July 2013, the UEFA Appeals Body excluded Fenerbahçe from two consecutive UEFA club competitions for which it would qualify, for violation of the principles of loyalty, integrity and sportsmanship (Art. 5 of the UEFA Disciplinary Regulations) through match-fixing activities during the 2010/2011 Süper Lig. This decision was confirmed by the Court of Arbitration for Sports ("CAS"), on 28 August 2013.[1]

25. On 31 January 2014, Trabzonspor wrote to UEFA, requesting it to intervene in the Turkish Süper Lig to sanction teams and individuals who had committed acts of match-fixing, to take measures to ensure that Trabzonspor's losses were compensated and that this club was awarded the 2010/2011 Süper Lig title.

26. Following this request, on 30 May 2014, UEFA wrote to TFF and Fenerbahçe informing them that disciplinary proceedings had been instigated against them. A first decision was issued on 11 December 2014 by the UEFA CEDB, dismissing Trabzonspor's complaint. Upon Trabzonspor's appeal, the UEFA Appeals Body confirmed that decision, based on UEFA's lack of competence to intervene at a domestic level. The CAS also dismissed Trabzonspor's appeal and confirmed UEFA's lack of jurisdiction.[2]

27. In October and November 2015, Trabzonspor filed another complaint with UEFA, asking it to take sanctions against TFF, because this federation had not sanctioned Fenerbahçe at a national level.

c) Proceedings before FIFA

28. In a letter dated 2 June 2011, Trabzonspor informed the then FIFA President, Mr Joseph Blatter, about attempts of match-fixing in Turkey. It asked FIFA to take all necessary steps and to ask TFF to follow the case and hand down decisions in order to protect football in Turkey.

29. On 8 March 2013, Trabzonspor filed a complaint with FIFA, alleging that the TFF had breached and continued to breach the FIFA Statutes.

30. Neither of the above letters received an answer.

31. On 31 January and 9 May 2014, Trabzonspor wrote again to FIFA, requesting it to intervene in the Turkish Süper Lig to sanction teams and individuals who had

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1 Proceedings CAS 2013/A/3256.

2 Proceedings CAS 2015/A/4343.

committed acts of match-fixing, to take measures to ensure that Trabzonspor's losses were compensated and that this club was awarded the 2010/2011 Süper Lig title.

32. On 25 July 2014, FIFA replied to Trabzonspor, explaining that, given the disciplinary proceedings instigated by UEFA (cf. above § 26), the Chairman of the FIFA Disciplinary Committee had deemed that the intervention of the said committee was inopportune, at that stage. Following the decision to be taken by UEFA, FIFA announced that the Chairman would reassess the matter.

33. On 3 November 2015, Trabzonspor informed FIFA about its complaint to UEFA directed against TFF.

34. In May 2016, Trabzonspor requested a meeting with FIFA, in order to discuss its outstanding letters and to better understand FIFA's position in relation to the domestic federations' approach to match-fixing in general. However, on 20 May 2016, FIFA refused to participate in such a meeting, in light of the pending CAS proceedings[3] as well as the fact that several meetings had already taken place in the past.

35. On 3 July 2017, Trabzonspor filed a complaint with the FIFA Ethics Committee and the FIFA Disciplinary Committee ("the FIFA DC") against TFF and Fenerbahçe. In a nutshell, Trabzonspor asked FIFA to investigate the match-fixing which occurred during the 2010/2011 Turkish Süper Lig, to retain that TFF had failed to prosecute the offences committed by clubs and individuals, to take sanctions against TFF for having violated the FIFA Statutes, to order TFF (or to directly decide) to impose sanctions on Fenerbahçe and to award the championship title in the 2010/2011 Turkish Süper Lig (and related advantages) to Trabzonspor.

36. On 1 September 2017, following a request from the Secretariat to the FIFA Disciplinary Committee ("the FIFA DC Secretariat), Trabzonspor sent a correspondence to FIFA, in which they clarified some aspects of the complaint and produced some additional documents.

37. On 14 November 2017, Trabzonspor wrote to FIFA offering assistance in case additional information was required by the FIFA DC Secretariat.

38. The Deputy Secretary to the FIFA DC wrote to TFF on 15 December 2017, referring to the sanctions taken against three officials of Fenerbahçe on 6 May 2012 and to the 2 July 2012 decision of the High Criminal Court finding these three officials, as well as several others, guilty of committing crimes of match-fixing. In light of the fact that the sanctions taken by TFF did not concern all criminally convicted Fenerbahçe officials and were not directed against the club, FIFA asked TFF to inform it about all the steps and measures which were undertaken by the TFF judicial bodies during the disciplinary proceedings and to inform FIFA about the reasons for which the club had been acquitted.

39. Within the extended time-limit, TFF sent its response to FIFA on 19 January 2018, enclosing several documents. In its letter, TFF put forward that upon Trabzonspor's

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[3] This probably refers to the ordinary arbitration proceedings filed by Trabzonspor on 4 February 2016 (CAS 2016/O/4430), which were pending at the time.

request, UEFA had retained that it was not competent to rule on national disputes, as confirmed by CAS (cf. above § 26). The federation also gave explanations and produced evidence about the disciplinary proceedings which had taken place in 2012 against Fenerbahçe and several of its officials (among several decisions taken on 6 May 2012, TFF produced the decision sanctioning three Fenerbahçe officials, above § 17, and the decision of the Arbitration Body rejecting the appeal, above § 18). TFF also informed FIFA about the UEFA disciplinary proceedings which had taken place against Fenerbahçe and the sanction confirmed by CAS (above § 24), as well as about the 28 October 2015 Turkish criminal judgment (above § 20).

40. On 5 February 2018, the Secretary to the FIFA DC sent the following letter to Trabzonspor ("First FIFA DC Letter"):

"(...) *In this regard, we would like to draw your attention to the contents of art. 70 par. 2 of the FIFA Disciplinary Code, pursuant to which 'The judicial bodies of FIFA reserve the right to sanction serious infringements of the statutory objectives of FIFA (cf. final part of art. 2) if associations, confederations and other sports organisations fail to prosecute serious infringements or fail to prosecute in compliance with the fundamental principles of law'.*

In view of said provision and after having thoroughly analysed the relevant documents, in particular the decisions of the TFF Disciplinary Committee rendered on 6 May 2012 and the decision of the TFF Board of Appeals rendered on 4 June 2012, we hereby inform you, on behalf of the Chairman of the FIFA Disciplinary Committee, that the FIFA Disciplinary Committee is not in a position to intervene in the present matter as it appears that the matter was prosecuted in compliance with the fundamental principles of law.

Finally, we would like to point out that the foregoing is of a purely informative nature and, therefore, without prejudice to any decision whatsoever.

We thank you for taking note of the above. (...)"

41. On 14 February 2018, Trabzonspor replied, expressing its disagreement with the position contained in FIFA's letter, because in its view TFF had indeed violated the fundamental principles of law and, by failing to prosecute match-fixing, had committed a serious infringement within the terms of Art. 70 §2 of the FIFA Disciplinary Code ("the Disciplinary Code"). For these reasons, Trabzonspor maintained its complaint, asked FIFA to continue or open officially the proceedings and to issue a formal decision which could be appealed.

42. On 20 March 2018, Trabzonspor wrote again to FIFA, reiterating the contents of its letter dated 14 February 2018.

43. The Secretary to the FIFA DC answered, on 17 April 2018, in the following terms ("Second FIFA DC Letter"):

"(...) *We acknowledge receipt of your correspondences dated 14 February and 20 March 2018, the contents of which have been duly analysed.*

In this sense, we take due note that the club Trabzonspor Külübü Dernegi requests 'that the proceedings shall go on or shall be opened officially and (...) that a formal decision is taken (...)'.

In this regard, on behalf of the Chairman of the FIFA Disciplinary Committee, we would like to draw your attention to the content of our letter dated 5 February 2018 and reiterate that the FIFA Disciplinary Committee is not in a position to intervene – and therefore render a decision – in the present matter.

Finally, we would also like to remind you that the foregoing is of a purely informative nature and, therefore, without prejudice to any decision whatsoever.

We thank you for taking note of the above. (…)"

44. On 20 April 2018, Trabzonspor filed an appeal with the FIFA Appeal Committee ("FIFA AC"), stating:

"*We have always fully maintained our complaint filed to the FIFA Disciplinary Committee on 3 July 2017 and requested that the proceedings shall go on or shall be opened officially and we have further requested that a formal decision is taken, that can be appealed. Unfortunately none of this has happened so far.*

We herewith inform you, within the deadline according to article 120 of the FIFA Disciplinary Code that we intend to appeal in this matter for denial of justice reasons. We will file our reasoning for this appeal in writing within the next seven days."

45. On 27 April 2018, the Deputy Secretary to the FIFA AC sent the following letter to Trabzonspor ("FIFA AC Letter"):

"(…) *We acknowledge receipt of your correspondences dated 20 April 2018, the contents of which have been duly analysed.*

In this sense, we take due note that the club Trabzonspor Külübü Dernegi wants to lodge an appeal as a result of the letters sent by the secretariat to the FIFA Disciplinary Committee on 5 February and 17 April 2018.

In this regard, we refer you to art. 118 of the FIFA Disciplinary Code (FDC), which is clear in establishing that 'an appeal may be lodged with the Appeal Committee against a decision passed by the Disciplinary Committee (...)'. In this same line, art. 119 FDC requires any appellant to have 'been a party to the proceedings before the first instance (...)'.

In view of the above, on behalf of the Chairman of the FIFA Appeal Committee, please be informed that as you do not appear to fulfil the requirements to lodge an appeal before the FIFA Appeal Committee in accordance with the FDC and the FIFA Appeal Committee is not in a position to intervene in a case in which the FIFA Disciplinary Committee has no jurisdiction, your request cannot be accepted.

We would like to remind you that the foregoing is of a purely informative nature and we thank you for taking note of the above."

46. On the same day, Trabzonspor filed a detailed statement of appeal (together with the relevant exhibits), which was however not taken into consideration by FIFA. Indeed, as shown by the introductory paragraph of FIFA's letter dated 27 April 2018, the two letters crossed.

C. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

47. On 8 May 2018, Trabzonspor filed its Statement of Appeal with the CAS against the "*Letter of FIFA Disciplinary Committee dated 17 April 2018 / Letter of FIFA Appeal Committee dated 27 April 2018*". The Appellants explained that their appeal was directed against the "*Refusal to Issue a Decision by the FIFA Disciplinary Committee*", dated 17 April 2018, as well as against the "*FIFA Appeal Committee Decision*" of 27 April 2018. In this brief, the Appellants nominated Mr Philippe Sands as arbitrator.

48. On 16 May 2018, the CAS Court Office acknowledged receipt of the Statement of Appeal, directed against TFF and Fenerbahçe, and invited Trabzonspor to indicate the name and full address of the Respondents within three days. The Appellants gave the requested information on 18 May 2018 and added that, as far as their appeal was directed against a decision / lack of decision by FIFA, it was also directed against FIFA. On the same day, the Appellants filed their Appeal Brief.

49. The CAS Court Office sent the Statement of Appeal to the Respondents on 24 May 2018 and invited them to appoint an arbitrator and to file their Answers within twenty days.

50. FIFA asked, in a letter dated 30 May 2018, that its time-limit to file the Answer be fixed after the payment by the Appellants of their shares of the advance of costs. This request was granted by the CAS Court Office, on the same day.

51. TFF requested, in a letter dated 4 June 2018, that its time-limit to file the Answer be fixed after the payment by the Appellants of their shares of the advance of costs. This request was granted by the CAS Court Office, on the same day.

52. Upon its request, Fenerbahçe's time-limit to file its Answer was extended until 29 June 2018.

53. On 4 June 2018, the Respondents appointed Mr Patrick Lafranchi as arbitrator.

54. After Mr Lafranchi disclosed information on his "Arbitrator's acceptance and statement of independence form on 6 June 2018, Trabzonspor brought a challenge against him on 13 June 2018, based on the fact that he had been appointed several times by FIFA in other CAS proceedings.

55. On 28 June 2018, Fenerbahçe brought a challenge against Mr Sands based on the fact that he had also been appointed by Trabzonspor in a previous arbitration (CAS/2015/A/4345 & 4347).[4]

56. After several exchanges of correspondence where all the parties were given the opportunity to express their views, both challenges were rejected by the Board of the International Council of Arbitration for Sport, in separate decisions dated 23 August

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4 This arbitration concerned a complaint filed on 18 June 2014 by Fenerbahçe against Trabzonspor before UEFA, for activities of match-fixing. After a decision of 8 December 2015 by the UEFA Appeal Committee, the CAS declared Trabzonspor not guilty of the charges brought against it, in an award dated 13 April 2017.

2018. These decisions, which have duly been notified to the parties and have now become final, held that there were no grounds to doubt the two arbitrators' impartiality. The Panel shall accordingly not examine this issue any further.

57. Upon request from Fenerbahçe and given the lack of objection from Trabzonspor, its time-limit to file the Answer was extended until 18 July 2018.

58. Upon requests from FIFA and TFF and given the lack of objection from Trabzonspor, the time-limit to file their Answers was extended until 30 July 2018.

59. On 31 July 2018, the CAS Court Office acknowledged receipt of the Respondents' respective Answers and given the fact that they challenged the jurisdiction of the CAS to hear this matter and/or the admissibility of the appeal, Trabzonspor was given a 7-days deadline to comment on these issues. This time-limit was then extended until 17 August 2018, upon the Appellants request and given the lack of objection from the Respondents.

60. Trabzonspor filed its Submission on jurisdiction and admissibility on 17 August 2018.

61. On 20 August 2018, the CAS Court Office informed the parties that they would no longer be authorized to supplement or amend their requests nor to produce new exhibits (unless the parties agree or the president of the panel orders otherwise due to exceptional circumstances). The parties were also invited to express their preference for a hearing to be held or for the case to be decided on the basis of the written submissions.

62. On 21 August 2018, FIFA stated that it did not require a hearing to be held.

63. On 23 August 2018, TFF applied for the bifurcation of the proceedings and requested that the Panel issue a "preliminary award" on the "specific preliminary issues" related to the CAS jurisdiction, to the admissibility of the appeal and to the standing to appeal of Trabzonspor. In the event the Panel would deny the application for bifurcation, TFF requested that a hearing be held.

64. On 24 August 2018, Fenerbahçe expressed its support with TFF's request for bifurcation and requested a hearing only in the event that such request would be denied by the Panel.

65. Trabzonspor expressed its disagreement with the requests for bifurcation, in a letter dated 27 August 2018. It argued that such bifurcation would unduly delay the proceedings. The Appellants also expressed their wish to hold a hearing.

66. On 25, 27 and 28 August 2018, the CAS Court Office informed the parties that the requests for bifurcation would be submitted to the Panel, once constituted, for its consideration. The Panel would also decide whether to hold a hearing.

67. The Arbitration Panel constituted by Messrs Luigi Fumagalli (President), Patrick Lafranchi and Philippe Sands (Arbitrators) was duly appointed and the parties were notified of its constitution on 27 September 2018.

68. On 5 October 2018, the parties were informed that the Panel had decided to hold a hearing for discussing the preliminary objections raised by the Respondents (admissibility, jurisdiction and standing to appeal). The parties were also advised that the Panel shall announce directions as to the continuation of the arbitration after the hearing. Eventually, the date of 15 March 2019 was agreed upon for a hearing, in consideration of the availability of the parties and the members of the Panel.

69. On 23 October 2018, the parties were informed of the appointment of Ms Nora Krausz as *ad hoc* clerk.

70. On 23 October 2018, Trabzonspor requested a public hearing to be held. The next day, the CAS Court Office invited the parties to indicate the names of all the persons who would attend the hearing and to state whether they would agree to a public hearing.

71. In a letter dated 30 October 2018, FIFA opposed the hearing to be public. In their letters dated 31 October 2018, TFF and Fenerbahçe expressed the same view.

72. The parties were advised on 7 November 2018 by the CAS Court Office that the Panel had decided the hearing not to be public, in the absence of agreement between the parties and because the preliminary hearing would only concern points of law and highly technical questions. The CAS Court Office added that this decision would not prejudge the position of the Panel regarding the hearing on the merits, if any.

73. On 13 November 2018, Trabzonspor asked the Panel to reconsider its decision and order the hearing to be public. The next day, the CAS Court Office indicated that the issue was submitted to the Panel for its consideration.

74. In a letter dated 16 November 2018, Trabzonspor requested to hear as witnesses the FIFA officials scheduled to appear at the hearing, as well Mr Yeboah Anin, Chairman of the FIFA DC. On 19 November 2018, TFF objected to the hearing of such witnesses.

75. The CAS Court Office invited the Appellants on 21 November 2018 to indicate the factual circumstances on which the Appellants wished to hear witnesses and the relevance of such testimonies for the preliminary issues to be examined at the hearing. On 28 November 2018, in a summary, Trabzonspor replied that the scope of these testimonies concerned the involvement of the witnesses in the decision-making process and their knowledge of the factual elements having led to the First and Second FIFA DC Letters as well as the FIFA AC Letter, the existence of internal guidelines regarding the application of Art. 70 §2 of the Disciplinary Code and the involvement of Mr Gianni Infantino, FIFA President, in the decision-making process.

76. Invited to comment on Trabzonspor's letter of 28 November 2018, on 17 December 2018, FIFA objected to the Appellants' request for witness testimonies. It underlined that the request was time-barred by Art. R51 of the Code of Sports-related Arbitration ("the Code") and should be rejected on the basis of Art. R56 of the Code. FIFA added that its representatives attending the hearing would be available to answer the questions which the Panel deemed relevant.

77. On 19 December 2018, the CAS Court Office informed the parties, on behalf of the Panel, that the Panel was not in a position to accept Trabzonspor's request to hear as witnesses the four individuals mentioned in its letter of 28 November 2018, in the absence of sufficient evidence as to the relevance and materiality of their deposition to the decision on the preliminary issues to be discussed at the hearing of 15 March 2019. In the same letter, FIFA was invited to be ready to answer through counsel at the hearing any question asked by Trabzonspor deemed by the Panel to be relevant for the decision on the preliminary disputed matters.

78. On 27 December 2018, Trabzonspor requested the Panel to reconsider its decision regarding the hearing of witnesses.

79. On 9 January 2019, the CAS Court Office confirmed, on behalf of the Panel, the position expressed in the letter dated 19 December 2018. It was also added that the factual circumstances indicated by Trabzonspor did not appear to be relevant for the decision on the matters to be discussed at the hearing. The Appellants' request for reconsideration was therefore rejected. The CAS Court Office specified that the Appellants would have the opportunity to submit other arguments about any evidentiary request at the hearing and that the reasons for the final decision on this point would be set out in the award.

80. On 7 March 2019, the Appellants wrote to Mr Matthieu Reeb, Secretary General of the CAS, reiterating their request to hold a public hearing and referring to the modification of Art. R57 §2 of the Code as of 1 January 2019. In the alternative, the Appellants requested the hearing to be streamed live and video recorded. Finally, the Appellants asked the CAS to publish the date of the hearing on its website.

81. Mr Reeb answered the next day, underlining that the modification of Art. R57 §2 of the Code was only applicable to proceedings started after 1 January 2019 and that, for this reason, the request for a public hearing (including video recording and live streaming) should be rejected. In addition, the modified provision of Art. R57 of the Code referred to proceedings involving physical persons, which was not the case in this matter. Furthermore, that provision allowed exceptions in order to protect public order. The Secretary General stressed the fact that Trabzonspor's fans had demonstrated before the CAS during the last hearing involving this club and that they were currently sending emails to the CAS, affecting the serenity of this procedure. He stressed the importance for the CAS that the hearing should not be disturbed and added that, for this reason also, the CAS did not make any particular publicity about the hearing. Finally, Trabzonspor was advised that the CAS did not have an obligation to publish all the hearings on its website.

82. On 8 March 2019, Trabzonspor replied to Mr Reeb, underlining that the decision to hold or not a public hearing was to be taken by the Panel and not by the Secretary General, according to the Code, and asked for its request of 7 March 2019 to be submitted to the Panel for decision. The Appellants added that they based their request directly on Art. 6 §1 ECHR and that the fact that Art. R57 §2 of the Code was not applicable to the present proceedings was irrelevant. Finally, they requested at least the presence of the press and the video recording and live streaming of the hearing, as well as the date of the hearing to be published on CAS' website.

83. The CAS Court Office answered on 12 March 2019, on behalf of the Panel, and stated that the letter from CAS of 8 March 2019 had been signed by the Secretary General because the letter of the Appellant dated 7 March 2019, which he answered, was addressed to him. The position of the Panel on the holding of the hearing had been announced in a letter from the CAS Court Office on 7 November 2018, mentioning the reasons for its decision that the hearing shall not be public. The Panel added that it did not see any reason to change that decision and confirmed it, in accordance with the applicable rules. Furthermore, the Panel stated that the publication of the announcement of a hearing in the CAS website was purely an administrative matter, entirely outside the jurisdiction of the Panel. The 12 March 2019 letter also reserved any decision the Panel might take in respect of any hearing on the merits.

84. On 13 March 2019, the Appellants objected to the refusal to hold a public hearing and to publish the date of the hearing. The CAS Court Office replied, the next day, that the Panel would deal with the issue at the outset of the hearing.

85. In the legal discussion part of the present award, the Panel shall revert to the arguments of the parties with regard to the publicity of the hearing, as well as the reasons which led it to refuse a public hearing.

86. The hearing took place in Lausanne on 15 March 2019 and was attended by the following persons:

- for Trabzonspor: Messrs Ahmet Agaoglu, Önder Bülbüloglu, Ertugrul Dogan, Engin Kalafatoglu, Sertac Guven, Eda Lermi Zorer and Ahmet Fikret Gölhan, representatives, and Messrs Erdem Egemen, Lucien Valloni, Jean Marguerat and Ms Evin Durmaz, counsel;
- for TFF: Messrs Hazer Akil and Duygu Yasar, representatives, and Mr Jorge Ibarrola and Ms Monica Karman, counsel;
- for Fenerbahçe: Messrs Fethi Pekin and Alper Pirsen and Ms Uzge Tokarli Gündüz, representatives, and Messrs Christian Keidel and David Menz, counsel;
- for FIFA: Messrs Stefan Privee and Jaime Cambreleng Contreras and Ms Marta Ruiz Ayucar, representatives.

87. During the hearing, the Appellants produced a new item of evidence, *i.e.* the English translation of Art. 9 §2 and Art. 26 §4 of the TFF Competition Regulation (the Turkish version of which had already been produced by the Appellants, together with a partial translation). After hearing the parties and receiving from them an agreed version of said translation, the Panel decided to accept the document filed by the Appellants. The reasons for this decision are set out below, in the legal discussion part.

88. During the hearing, the parties had the opportunity to present their case with respect to the issues of jurisdiction admissibility and standing to appeal, and, in that respect, comment on the evidence, submit their arguments and answer the questions posed by the Panel. At the end of the hearing, the parties confirmed having no objection regarding the composition of the Panel or regarding the conduct of the proceedings. The Appellants, however, maintained their objections as to the lack of publicity of the hearing and the denial of the hearing of witnesses as decided by the Panel, which, in

their opinion, amounted to a violation of the Appellants' right to a fair trial.

D. THE PARTIES' REQUEST FOR RELIEF

89. In its Appeal Brief, Trabzonspor requested the following relief:

"Principally

1. Set aside the FIFA Disciplinary Committee Refusal to Issue a Decision of 17 April 2018 as well as the FIFA Appeals Committee Decision of 27 April 2018.

2. Acknowledge that the Turkish Football Federation has failed to prosecute in compliance with the fundamental principles of law and the FIFA provisions on integrity and match-fixing according to the FIFA zero tolerance policy the offences committed by certain officials of Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü during the 2010/2011 season, and sanction the Turkish Football Federation with the appropriate sanctions.

3. Acknowledge that the Turkish Football Federation has violated the FIFA Statutes and regulations by failing to take any sanctions at national level against Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü, and sanction the Turkish Football Federation with the appropriate sanctions.

4. Acknowledge that the Turkish Football Federation has failed to implement the FIFA Statutes by preventing that its decisions may be appealed to the Court of Arbitration for Sport, and sanction the Turkish Football Federation with the appropriate sanctions.

5. Acknowledge that certain Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü officials involved in match-fixing during the 2010/2011 season have not been sanctioned appropriately, and sanction the Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü officials involved in match-fixing during the 2010/2011 season with the appropriate sanctions.

6. Acknowledge that Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü have not been sanctioned at national level for their match-fixing activities during the 2010/2011, and sanction the Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü for match-fixing during the 2010/2011 season with the appropriate sanctions.

7. Order the Turkish Football Federation to:

- relegate Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü to lower division(s) for the season 2010/2011;

- correct the ranking of the Turkish Super League 2010/2011 in order to have Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Kulübü Dernegi ranked first;

- order Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü to return the championship title for the Turkish Super League 2010/2011 and all the benefits received, in particular sums of money and symbolic objects (all medals and trophies) for that title;

- award the championship title for the Turkish Super League 2010/2011 and all the benefits received, as well as all sums of money and symbolic objects (all

medals and trophies) returned by Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü to Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Kulübü Dernegi;

- organise an appropriate public trophy ceremony for the award of the Turkish Super League 2010/2011 to Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Kulübü Dernegi;

- order any other measure or sanction that CAS deem just and fair, in view of the seriousness of the match-fixing activities occurred in the Turkish Super League 2010/2011.

8. In the alternative, directly order:

- the relegation of Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü to lower division(s) for the season 2010/2011;

- the correction of the ranking of the Turkish Super League 2010/2011 in order to have Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Kulübü Dernegi ranked first;

- the return by Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü of the championship title for the Turkish Super League 2010/2011 and all the benefits received, in particular sums of money and symbolic objects (all medals and trophies) for that title;

- the award of the championship title for the Turkish Super League 2010/2011 and all the benefits received, as well as all sums of money and symbolic objects (all medals and trophies) returned by Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü to Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Kulübü Dernegi;

- the organisation of an appropriate public trophy ceremony for the award of the Turkish Super League 2010/2011 to Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Kulübü Dernegi;

- any other measure or sanction that CAS deems just and fair, in view of the seriousness of the match-fixing activities occurred in the Turkish Super League 2010/2011.

In the alternative

9. Set aside the FIFA Disciplinary Committee Refusal to Issue a Decision of 17 April 2018 as well as the FIFA Appeals Committee decision of 27 April 2018.

10. Order the FIFA Disciplinary Committee to admit its competence and to launch an investigation on the way the match fixing that occurred in the Turkish Super League Season 2010/2011 was handled by the Turkish Football Federation;

11. Order the FIFA Disciplinary Committee to render an appealable decision based upon the Appellants' Complaint lodged on 3 July 2017 within the meaning of Art. 117 of the FIFA Disciplinary Code (2017 edition).

In any event

Order the Turkish Football Federation and Fenerbahçe Futbol A.S. and/or Fenerbahçe Spor Külübü and FIFA to bear the costs of the present proceedings and to pay a compensation to Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Futbol Isletmeciligi Tic. A.S. and/or Trabzonspor Kulübü Dernegi for their legal costs."

90. In its Answer, TFF asked the CAS to rule as follows:

"I. The appeal filed by Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulübü Dernegi is inadmissible.

Alternatively

II. The CAS has no jurisdiction to rule upon the appeal filed by Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulübü Dernegi.

Alternatively

III. The appeal filed by Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulübü Dernegi is dismissed for lack of standing to sue and to appeal.

Alternatively

IV. The appeal filed by Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulübü Dernegi is dismissed on the merits, other than standing to sue and appeal.

At any rate

V. Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulübü Dernegi shall bear all arbitration costs.

VI. Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulübü Dernegi shall be ordered to pay the Turkish Football Federation a contribution towards the legal and other costs incurred by the latter in the framework of these proceedings, in an amount to be determined at a later stage."

91. In its Answer, Fenerbahçe requested the CAS to:

"I. Dismiss all prayers for relief submitted by Trabzonspor;

II. Order Trabzonspor to pay the costs of the present arbitration; and

III. Order the Appellant to pay the legal fees and expenses of the Respondents, to be determined at a later stage of the proceedings."

92. In its Answer, FIFA requested the CAS:

"1. To declare the inadmissibility of the appeal lodged by the Appellants and therefore reject it in its entirety;

2. Alternatively, to dismiss all prayers for relief of the Appellants and reject their appeal in its entirety.

3. In any event, to order the Appellants to bear all costs incurred with the present procedure and to cover all expenses of FIFA related to the present procedure."

II. LEGAL DISCUSSION

A. PRELIMINARY PROCEDURAL ISSUES

a) Decision not to hold a public hearing

93. In the Appellants' view, the hearing scheduled on 15 March 2019 should have been public. Trabzonspor explained that there was a public interest, this case being the "*biggest match-fixing scandal in European football*". They added that every football fan was interested in understanding how FIFA and other governing bodies fought against match-fixing. The Appellants based their position on Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") and the case-law of the European Court of Human Rights ("ECtHR"), more specifically the Judgement of 2 October 2018 in the case *Mutu and Pechstein v. Switzerland*[5] ("Mutu and Pechstein Judgment"). Trabzonspor was of the opinion that no exceptional circumstances existed which could justify an exception to the principle of publicity of hearings, enshrined in Art. 6 §1 ECHR. In Trabzonspor's view, although the legal issues might be technical, but the facts are disputed and the legal questions are complex. In addition, the outcome of the procedure will have an effect on all the parties' professional integrity and credit. Furthermore, the technical issues raised by the Respondents only aim, in the Appellants' view, at hiding the real questions at stake and this should not be allowed by CAS. The Appellants therefore requested the CAS to allow the hearing to be public.

94. The three Respondents disagreed with Trabzonspor's position.

95. FIFA objected to a public hearing and argued that the hearing would only concern technical legal issues, such as the preliminary objections raised by the Respondents.

96. Fenerbahçe explained that the Mutu and Pechstein Judgment only applied to individual athletes and not necessarily to legal entities. Furthermore, in Fenerbahçe's opinion, based on Art. 6 §1 ECHR, the public order commanded that the public should be excluded. In that regard, it produced evidence of several violent incidents involving Fenerbahçe's and Trabzonspor's fans. Finally, Fenerbahçe explained that the hearing being limited to the procedural objections of a legal nature, the case-law of the ECtHR did not command the hearing to be public.

97. TFF was of the view that the hearing should not be public, because the fans of the two teams would potentially cause trouble and this would disturb the hearing. It argued that the safety of the Panel, of the parties and their representatives, as well as of the managers of the venue where the hearing would be held, commanded the date and location to be kept confidential.

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5 Applications No. 40575/10 and 67474/10.

98. The Panel set out its position on 7 November 2018 and 12 March 2019 and will now set out the reasons which led it to refuse a public hearing.

99. The Panel notes at the outset that the applicable provision, given that the Statement of Appeal was filed before 1 January 2019 (cf. Art. R67 of the Code in its 1 January 2019 version),[6] is the non-modified version of Art. R57 §2 of the Code, which provides:

"*After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise.*"

100. In the present matter, having regard to this provision and in the absence of agreement between the parties, the Panel was entitled to decide that the hearing was not public. However, given the recent Mutu and Pechstein Judgment, the Panel also considered the question under the aspect of Art. 6 ECHR.

101. In the Mutu and Pechstein Judgment, the ECtHR held that Art. 6 §1 ECHR applies to CAS proceedings, to the extent the choice to refer the case to CAS was "forced" or "not unequivocal", and that the right to a public hearing is guaranteed by such provision, in order to allow a public control on the administration of justice. At the same time, however, the ECtHR underlined that Art. 6 §1 ECHR allows derogations from this principle, in case, *inter alia*, the guarantee of public order so requires.[7] The ECtHR also underlined that procedures which regard exclusively points of law or highly technical questions could satisfy the requirements of Art. 6 §1 ECHR even in the absence of a public hearing.[8]

102. The earlier case-law of the ECtHR also specified that exceptional circumstances which could justify dispensing with a public hearing existed "*in cases where proceedings concerned exclusively legal or highly technical questions*".[9] The ECtHR also retained that such an exception exists if the court must examine only limited legal issues[10] or if

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6 This provision states: "*These Rules are applicable to all procedures initiated by the CAS as from 1 January 2019. The procedures which are pending on 1 January 2019 remain subject to the Rules in force before 1 January 2019, unless both parties request the application of these Rules*".

7 Judgment of 2 October 2018, §176 (only available in French): "*L'article 6 § 1 ne fait cependant pas obstacle à ce que les juridictions décident, au vu des particularités de la cause soumise à leur examen, de déroger à ce principe: aux termes mêmes de cette disposition, « (...) l'accès de la salle d'audience peut être interdit à la presse et au public pendant la totalité ou une partie du procès dans l'intérêt de la moralité, de l'ordre public ou de la sécurité nationale dans une société démocratique, lorsque les intérêts des mineurs ou la protection de la vie privée des parties au procès l'exigent, ou dans la mesure jugée strictement nécessaire par le tribunal, lorsque dans des circonstances spéciales la publicité serait de nature à porter atteinte aux intérêts de la justice »; le huis clos, qu'il soit total ou partiel, doit alors être strictement commandé par les circonstances de l'affaire*".

8 Judgment of 2 October 2018, § 177: "*La Cour a ainsi déjà considéré que des procédures consacrées exclusivement à des points de droit ou hautement techniques pouvaient remplir les conditions de l'article 6 même en l'absence de débats publics*".

9 ECtHR, judgment of 27 July 2006, in the case of Jurisic and Collegium Mehrerau v. Austria, application No 62539/00, § 65 and cases cited; ECtHR, judgment of 28 February 2012, in the case of Mehmet Emin Şimşek v. Turkey, application No 5488/05, §§ 30-31.

10 ECtHR, judgment of 1 June 2004, in the case of Valová, Slezák And Slezák v. Slovakia, application No 44925/98, §65-68.

the facts are undisputed and the legal issues are not particularly complex.[11]

103. In the present case, the hearing of 15 March 2019 was of a preliminary nature and only concerned points of law and highly technical questions. Indeed, only procedural matters were discussed, such as the jurisdiction of CAS, the admissibility of the appeal and the standing to appeal of Trabzonspor. The Appellant also recognised, in particular in its letter dated 2 November 2018, that the matters to be discussed at the preliminary hearing "*are complex legal questions*" and concluded that the exception set out in the case-law of the ECtHR regarding limited legal issues and undisputed facts could not apply.

104. The Panel was also of the opinion that the issues to be discussed were rather complex, so that the exception in case of "limited legal issues" was not to be applied in the present matter. However, and contrary to what Trabzonspor alleged, the facts allowing the Panel to decide these issues (and which will be discussed below) were not disputed. The parties only argued about the legal consequences of the undisputed facts. As a result, the only questions to be decided by the Panel at the hearing were of a purely legal and technical nature and the right to a public hearing could be restricted, given that the representatives of the press and the general public cannot be expected to be fully conversant with, or interested, in such procedural legal questions. In such cases, other judgments of the ECtHR, cited above, allow an exception to the principle of public hearing.

105. For the above reasons, based on an exception allowed by Art. 6 §1 ECHR and the applicable case-law of the ECtHR, the Panel decided not to hold a public hearing.

106. It is further to be underlined that the Panel's position was already expressed on 7 November 2018 and it remained constant, as shown by the 12 March 2019 letter. Despite the comments of the Appellants on the fact that the 7 March 2019 letter was sent to the parties by the Secretary General, it is therefore clear that the Panel had already taken its decision on 7 November 2018, in a letter stating the reasons. The letter of 7 March 2019 was signed by the Secretary General simply because he answered a letter which was addressed to him. He wrote for himself, as he was entitled to do, and correctly did not purport to express a view on behalf of the Panel. Finally, the Panel could not have intervened in the question of the announcement of a hearing on the CAS website, which is an administrative matter, outside the jurisdiction of the Panel (Art. R52 §3 of the Code provides that it is the CAS Court Office which is competent to take such a measure).

b) Decision not to hear FIFA officials as witnesses

107. As expressed in the letters of the CAS Court Office dated 19 December 2018 and 9 January 2019, Trabzonspor's request to hear the four representatives of FIFA as witnesses was rejected. At the same time, FIFA was invited to be ready to answer through counsel at the hearing any question asked by Trabzonspor deemed by the Panel to be relevant for the decision on the preliminary disputed matters. The reasons for this decision are the following.

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[11] ECtHR, judgment of 25 April 2002, in the case of Varela Assalino v. Portugal, application No 64336/01.

108. According to Art. R51 §2 of the Code, "*In its written submissions, the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, it intends to call and state any other evidentiary measure which it requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise.*". As Art. R56 §1 of the Code specifies, "*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.*"

109. In the present matter, Trabzonspor's written submissions did not contain nor the names of the witnesses, nor any of the specifications set out in Art. R 51 §2 of the Code. It was only in a letter dated 16 November 2018, after the closing of the exchange of submissions and after having been advised of the contents of Art. R56 §1 of the Code, that the Appellants expressed their wish to hear witnesses.

110. The parties did not agree to hear the four FIFA officials as witnesses. Therefore, it would only have been under exceptional circumstances, within the meaning of Art. R56 §1 of the Code, that the Panel could have allowed this evidentiary measure.

111. However, Trabzonspor did not put forward sufficient evidence as to the relevance and materiality of the depositions with regard to the decision on the preliminary issues to be discussed at the hearing of 15 March 2019. Indeed, the factual circumstances indicated by Trabzonspor, which concerned in summary the reasons behind the First and Second FIFA DC Letters and the FIFA AC Letter, did not appear to be relevant for the matters to be discussed at the hearing, which concerned the jurisdiction of CAS, the admissibility of the appeal and Trabzonspor's standing to appeal.

112. The Panel has indeed the full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance (Art. R57 §1 of the Code). It is therefore irrelevant to know why FIFA adopted the positions expressed in the contested letters and what was the internal process having led to those letters.

113. In addition, Trabzonspor did not indicate any reason why it could not already have included its request to hear witnesses in its Appeal brief or in its Submission on jurisdiction and admissibility. It did not prove any new element which would have appeared since then and which would have justified the late request for witness testimonies.

114. Finally, FIFA's representatives at the hearing volunteered to answer questions from Trabzonspor and they did so, under the control of the Panel. The issue could therefore be considered as moot.

115. For the above reasons, the Panel rejected the Appellants' request to hear witnesses at the hearing.

c) Admission of a new document

116. As mentioned above, the Panel shall now give the reasons for which it accepted the exhibit filed at the hearing by the Appellants (the English translation of Art. 9 §2 and Art. 26 §4 of the TFF Competition Regulation).

117. Although the parties agreed on a translation of the two provisions filed by the Appellants, the Respondents contested the admissibility of this document, because it was filed too late with regard to Art. R56 §1 of the Code. They explained that a partial translation of the Turkish Competition Regulation was not sufficient.

118. The Appellants explained that the document was admissible, because it was merely a translation of two additional provisions of an internal regulation of the TFF, which had already been filed in their Appeal Brief and referred to in several other exhibits attached thereto. Trabzonspor relied on these provisions in order to rebut the Respondents' arguments related to the lack of standing to appeal, which will be set out below.

119. As Art. R56 §1 of the Code specifies, "*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.*"

120. After considering the parties' arguments, the Panel decided to accept this document, because the Respondents exercised their right to be heard and commented upon it at the hearing before CAS. The relevant provisions were not entirely new, because their Turkish version had already been filed by the Appellants and the other parties, in particular TFF, which is the author of said regulations, were fully aware of their contents. Finally, the Panel considers that based on the principle of *jura novit curia* and on Art. R58 of the Code, as analysed below (§ 166), the TFF regulations are applicable insofar as the proceedings before this federation are concerned. Given that the Appellants' standing to sue is also related to the TFF's internal regulations, the Panel considers that the English translation of these two provisions is a useful document to have on file.

B. JURISDICTION AND ADMISSIBILITY

121. According to Art. 186 PILA, the arbitral tribunal shall rule on its own jurisdiction ("*Kompetenz Kompetenz*" principle). Therefore, the Panel is competent to rule on its own jurisdiction.

122. Art. R47 §1 of the Code provides the following: "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

123. According to Art. 58 §1 of the FIFA Statutes, "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question*" and Art. 128 of the Disciplinary Code simply refers to the Statutes with regard to appeals to CAS.

a) The parties' arguments

124. The Appellants filed their appeal against the Second FIFA DC Letter, as well as against the FIFA AC Letter and explained that either these documents are considered to be decisions or they contain the refusal of FIFA to decide the issue on the merits of the 3 July 2017 Complaint and thus represent a denial of justice.

125. The Respondents consider that the appeal is inadmissible and that CAS does not have jurisdiction to rule on the appeal.

126. FIFA's position is that the appeal is inadmissible, because it is unclear insofar as it attacks both the Second FIFA DC Letter and the FIFA AC Letter. Furthermore, in FIFA's opinion, the FIFA AC Letter is not a decision, but an administrative correspondence, as it does not contain any ruling (lack of "*animus decidendi*") and does not affect the legal situation of Trabzonspor. It only recalls the obvious fact that FIFA is not competent and does not modify Trabzonspor's legal situation, as do all of FIFA's letters in this case. FIFA raises an argument regarding the contradiction between the challenge brought by Trabzonspor against the FIFA AC Letter as a decision and the argument it puts forward regarding a denial of justice. FIFA also explains that the First FIFA DC Letter had the same contents, in substance, as the subsequent correspondence and that if the CAS considered that there is a ruling, then the time-limit to appeal against the First FIFA DC Letter would have elapsed without being used and the following letters cannot be considered as new decisions. The appeal to CAS would be inadmissible for this reason too.

127. Regarding this question, TFF considers that the appeal is to be considered inadmissible, because these letters are not decisions and cannot be appealed to CAS. These documents do not contain a ruling materially affecting the legal situation of the Appellants. In addition, the FIFA judicial bodies did not have the jurisdiction to rule on Trabzonspor's only prayer for relief concerning themselves, i.e. the award of the championship title 2010/2011 to Trabzonspor. Finally, TFF is of the view that the consequence of FIFA's lack of jurisdiction is that CAS does not have jurisdiction to rule on the appeal either.

128. Fenerbahçe concurs with FIFA on the lack of jurisdiction of CAS and adds that the Appellants are not members of TFF (and Fenerbahçe Spor Kulübü is not a member of TFF either) and accordingly cannot rely indirectly on the FIFA Statutes insofar as these latter give jurisdiction to CAS. Regarding the admissibility of the appeal, Fenerbahçe raises the exception of *res judicata*, because the award rendered in the case CAS 2015/A/4343 already decided the issues presently submitted to the CAS, between the parties Fenerbahçe, TFF and Trabzonspor, on the basis of the same legal grounds. Finally, Fenerbahçe explains that the appeal is inadmissible because the requests for relief n°2 to 8 are too vague and unclear for CAS to decide upon.

129. In the Appellants' view, CAS has jurisdiction to decide on their appeal, because Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. (which currently runs the professional football club Trabzonspor Kulübü Dernegi) is a member of TFF, as it holds a licence from that federation, which is in turn a member of FIFA.

130. Regarding the admissibility of the appeal, the Appellants explain that the Second FIFA DC Letter rejected Trabzonspor's complaint of 3 July 2017, respectively declared its inadmissibility. This ruling resolved the matter and the outcome was that Fenerbahçe still retained the season title, at the expense of Trabzonspor. Trabzonspor's legal situation was therefore affected. An *animus decidendi* exists in this letter, because the FIFA DC ruled on the admissibility of the Complaint without addressing its merits. In turn, the FIFA AC Letter is also a decision, in the Appellant's opinion, because it declares the appeal inadmissible without addressing the merits and denies jurisdiction of the FIFA AC. This subsequent correspondence is also based on an *animus decidendi* and affects Trabzonspor's legal situation. Alternatively, in the Appellants' view, the two FIFA letters constitute a denial of justice, insofar as the FIFA judicial bodies thus refused to issue a decision. These two letters are also a breach of fair trial rights enshrined in Art. 6 ECHR, by preventing Trabzonspor from having its case heard and receiving a formal decision. In addition, if the CAS would deny Trabzonspor's right to appeal, it would violate its personality rights protected under Art. 28 and 53 of the Swiss Civil Code ("SCC"). Finally, the Appellants explain that they respected the time-limit to appeal. Indeed, the First FIFA DC Letter was of a purely informative nature and it was only upon Trabzonspor's request on 20 March 2018 that finally FIFA issued the Second FIFA DC Letter clarifying that it was not in a position to intervene and therefore render a decision. Therefore, the Second and not the First FIFA DC Letter was the decision subject to appeal and if the Panel would follow the Respondents' arguments, it would violate the principle of good faith (Art. 2 SCC).

b) The Panel's determination

131. Given the above arguments, in order to determine whether the CAS has jurisdiction and whether the appeal is admissible, the Panel first has to define the object of the appeal. The Panel must then decide whether the appeal was filed against a decision within the meaning of Art. R47 §1 of the Code and Art. 58 §1 of the FIFA Statutes, *i.e.* a final decision passed by FIFA against which the internal legal remedies have been exhausted. Finally, the Panel must analyse whether the time-limit to appeal to CAS and the other formal requirements of Art. R48 of the Code were respected.

132. In the Appellants' opinion, the FIFA AC Letter is a decision which denied justice, in other words, the denial of justice would be given by the failure to decide on the merits. However, the Panel is of the view that Trabzonspor cannot claim at the same time that it suffered from a denial of justice and qualify the Second FIFA DC Letter as a decision. Such a position is contrary to the principle of good faith embodied in Art. 2 §1 SCC, which provides: "*Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations*" and against the general principle of the prohibition of inconsistent behaviour ("*venire contra factum proprium*"). Accordingly, either FIFA rendered one or more decisions or it committed a denial of justice and the Panel will now determine which of these two hypotheses is correct.

133. In analysing the different communications which occurred in this case, the Panel shall be particularly attentive to the principle of good faith, which is also expressed in Art. 9 of the Swiss Federal Constitution ("*Every person has the right to be treated by state authorities in good faith and in a non-arbitrary manner*"). According to this principle, citizens are protected in the legitimate trust they have in the declarations or the behaviour of authorities. These latter must not act in a contradictory or abusive manner.[12] This principle, although stemming from public law, can in the Panel's view be applied by analogy.

134. The applicable FIFA regulations, in particular the FIFA Statutes (see below Section II.C), do not provide for a definition of the term "decision". The Panel thus, turns to relevant case law which interpreted this term in previous cases on the basis of the applicable principles of Swiss law and jurisprudence (Section II.C below). The possible characterisation of a letter as a decision was considered in several previous CAS cases.[13]

135. The Panel endorses the definition of "decision" and the characteristic features of a "decision" stated in those CAS precedents:

- "*the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal*";[14]
- "*in principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties*";[15]
- "a *decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects*";[16]
- "*an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an 'animus decidendi', i.e. an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any 'ruling', cannot be considered a decision*";[17]
- "*there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request*".[18]

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12 Decisions of the Swiss Federal Tribunal ATF 141 V 530, § 6.2, and ATF 136 I 254, §5.2.

13 Among which CAS 2015/A/4213; CAS 2008/A/1633; CAS 2007/A/1251; CAS 2005/A/899; CAS 2004/A/748; CAS 2004/A/659; and CAS 2017/A/5187.

14 CAS 2015/A/4213; §49; CAS 2008/A/1633 §31; CAS 2007/A/1251 §30; CAS 2005/A/899 §63; CAS 2004/A/748 §90.

15 CAS 2008/A/1633 §31; CAS 2007/A/1251 §30; CAS 2005/A/899 §61; CAS 2004/A/748 §89.

16 CAS 2008/A/1633 §31; CAS 2004/A/748 §89; CAS 2004/A/659 §36.

17 CAS 2015/A/4213 §49; CAS 2008/A/1633 §32.

18 CAS 2005/A/899, §12.

136. In the present case, through the First and Second FIFA Letters, as well as the FIFA AC Letter, FIFA declared itself incompetent to decide the claims put before it in the Complaint filed by Trabzonspor on 3 July 2017. As such, this consequence is a ruling capable of affecting the addressees' legal position.

137. Indeed, Trabzonspor made claims before FIFA on the basis of Art. 70 §2 of the Disciplinary Code, alleging the lack of prosecution of serious infringements and asked FIFA to take sanctions against TFF and Fenerbahçe and to award the 2010/2011 Turkish Süper Lig title to Trabzonspor. As a result of FIFA's letters, Trabzonspor's claims put forward before FIFA were not taken into consideration and the parties agree on this consequence (without agreeing on whether those claims were justified or not). This result could be considered as a negative decision, *i.e.* one that rules on the inadmissibility of the Complaint filed by Trabzonspor.

138. In fact, when FIFA decided that it was "*not in a position to intervene*", as mentioned in the First and Second FIFA DC Letters, as well as in the FIFA AC Letter, it rendered a negative decision (or rather several decisions, *cf. infra*), which refused to modify the legal position of the decision's addressees: TFF and Fenerbahçe. In that regard, the Panel underlines that the First FIFA DC Letter was sent in copy to TFF. This shows that FIFA considered that TFF was a party to those proceedings (rightly so, as TFF had been requested to give explanations about the proceedings in Turkey). Therefore, the First FIFA DC Letter also affected TFF's legal situation, by not ordering it to do what Trabzonspor requested in its Complaint. The Panel stresses that the issue at the core of this analysis is the *in abstracto* suitability of a decision to affect the position of an addressee. The Panel also underlines that the conclusion reached does not imply that also Trazbonspor's legal position was affected and/or that Trazbonspor had an enforceable right to obtain that FIFA opens proceedings under Art. 70 §2 of the Disciplinary Code, takes sanctions against TFF and Fenerbahçe and awards the 2010/2011 Turkish Süper Lig title to Trabzonspor.

139. The case at hand is not comparable to the communications analysed in the award CAS 2005/A/899. Indeed, in that case, FIFA's letter only contained information as to which association/body is competent to handle the Appellant's request. In this respect, the Appellant's options to seek relief from the competent bodies remained unaffected This is not the case in the present proceedings, because contrary to that case, the letters FIFA sent to Trabzonspor contain its position on its lack of jurisdiction and do not indicate any other competent judicial body. As such, these documents constitute rulings and their form as simple letters has no relevance.

140. Contrary to FIFA's position, the facts of the present case are not comparable to those analysed in the award CAS 2017/A/5058 (where FIFA had first issued a formal decision and the parties then wrote to the FIFA DC, which refused to change its decision: its letter was not considered a decision) or to those examined in the award CAS 2017/A/5187 (in that case, the club against which a football player made a claim before FIFA was no longer affiliated to the national football federation and therefore was not subject to FIFA's jurisdiction anymore, so that there was no decision when FIFA refused to act in a simple letter).

141. The analysis of the present matter is comparable to the one conducted in the award CAS 2015/A/4266, in which a letter to a football player was issued by FIFA on behalf of the FIFA Dispute Resolution Chamber (DRC) and made clear that it would not consider the player's various applications for investigatory measures into the alleged late receipt of his request for the grounds of a DRC decision. In that case, given its wording, the letter was considered to be a ruling materially affecting the legal situation of the player in a final manner.

142. A similar conclusion can be drawn in the present matter. Indeed, in the First FIFA DC Letter, FIFA clearly signified to Trabzonspor that it would not entertain its Complaint in the following terms: "*after having thoroughly analysed the relevant documents* (...) *the FIFA Disciplinary Committee is not in a position to intervene in the present matter as it appears that the matter was prosecuted in compliance with the fundamental principles of law*". This wording shows that FIFA took the time to conduct investigatory measures and, after analysing the documents which had been produced by Trabzonspor and TFF, FIFA determined that the proceedings conducted in Turkey did not make it necessary to apply Art. 70 §2 of the Disciplinary Code. It therefore took the decision not to intervene and signified this in the First FIFA DC Letter (as well as the Second FIFA DC Letter, *cf. infra*).

143. The present matter is also comparable to the facts analysed in the case CAS 2007/A/1251, in which FIFA sent a letter enumerating several reasons for which it considered that its judicial bodies lack competence to entertain the Appellant's request and invited the latter to seek relief in front of the competent national authorities. In that case, the Panel considered that in the letter, FIFA clearly manifested that it would not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting the Appellant's situation. Thus, despite being formulated in a letter, such a refusal was, in substance, held to be a decision. In that award, the issue of the signatory of the letters was also analysed: the Panel held that a first letter signed by the secretariat on behalf of the Dispute Resolution Chamber and a second letter signed by the head of FIFA Legal Division and the President of the Player's Status Committee were both to be considered as issued by those judicial bodies themselves. Also, the fact that FIFA signified to the Appellant that it refused to entertain its request on behalf of both potentially competent bodies, signified that the decision was final.

144. In the present matter, FIFA also gave the reasons for which it refused to apply Art. 70 §2 of the Disciplinary Code. Therefore, in the First and Second FIFA DC Letters, FIFA clearly manifested that it would not entertain Trabzonspor's Complaint. Despite being formulated as letters, these documents rule on the legal situation and affect the right of Trabzonspor to have its Complaint analysed on the merits. In the FIFA AC Letter, FIFA explained that the Appeal Committee was not competent to rule on an appeal in a case in which the FIFA DC had no jurisdiction and referred to Art. 118 and 119 of the Disciplinary Code. The FIFA AC thus considered the appeal as inadmissible, because no decision had been passed by the FIFA DC and because Trabzonspor had not been a party to first instance proceedings. This conclusion is the result of a legal analysis and rejects Trabzonspor's appeal for procedural reasons.

145. The sentence regarding the "*purely informative nature*" of the documents, which is contained in all three letters issued by FIFA in the present case, does not have any

legal consequences: FIFA and Trabzonspor both recognised at the hearing before the CAS that this sentence was always included in the secretariat's letters. It is a purely rhetoric formula, which cannot in itself undo the legal effects contained in the said letters.

146. It has to be underlined that the signatory of the First and Second FIFA DC Letters was the Secretary to the FIFA DC, who indicated that he was acting on behalf of the Chairman of the FIFA DC. As to the FIFA AC Letter, it was signed by the Deputy Secretary to the FIFA AC, on behalf of the Chairman of that committee. Accordingly, the letters can be considered as having been issued by the FIFA DC and the FIFA AC, because according to Art. 115 §2 of the Disciplinary Code, "*the decisions are signed by the committee secretary*".

147. Based on the above, the Panel considers that the First and Second FIFA DC Letters, as well as the FIFA AC Letter, are decisions.

148. Accordingly, FIFA did not commit a denial of justice. On the contrary, it issued three decisions. The first two (the First and Second FIFA DC Letters) determine that the conditions of Art. 70 §2 of the Disciplinary Code are not fulfilled. In that regard, the Panel underlines that both FIFA DC Letters contain the same main elements, because they both indicate that the FIFA DC refuses to intervene. Although the First FIFA DC Letter sets out the reasons for the non-application of art. 70 §2 of the Disciplinary Code, while the Second FIFA DC Letter specifies that no decision can be rendered, they both make it clear for Trabzonspor and the TFF that FIFA will not act following the Complaint. Therefore, the Panel is not persuaded by Trabzonspor's position that only the Second FIFA DC Letter would be a decision.

149. As a result, when Trabzonspor received the First FIFA DC Letter, it should have immediately filed an appeal within the 3-days' time-limit set out by Art. 120 §1 of the Disciplinary Code. Art. 118 of the Disciplinary Code does not exclude the decisions rendered by the FIFA DC on the basis of Art. 70 §2 from the possibility to appeal to the FIFA AC.

150. In that regard, the Panel underlines that Trabzonspor was expecting a decision. In its Complaint, as well as its September and November 2017 letters, Trabzonspor had already asked FIFA to render a decision. When it received the First FIFA DC Letter, Trabzonspor knew that FIFA refused to apply art. 70 §2 of the Disciplinary Code and considered itself incompetent, because the matter had been prosecuted in Turkey. Contrary to what Trabzonspor explains, the letter of 14 February 2018, sent to the FIFA DC and requesting a formal decision to be rendered, was not necessary and the Appellants' good faith cannot be protected in that regard. All the less so as Trabzonspor was aware of the fact that the FIFA secretariat always included in its letters the sentence regarding their purely informative nature.

151. The First FIFA DC Letter is therefore a final and binding decision. As Trabzonspor did not file an appeal against this decision, it did not exhaust the legal remedies offered by FIFA, within the meaning of Art. R47§1 of the Code. This leads the Panel to the conclusion that CAS does not have jurisdiction to rule on the First FIFA DC Letter.

152. However, after Trabzonspor's letter of 14 February 2018, FIFA rendered a second decision (the Second FIFA DC Letter) and Trabzonspor appealed against it within the applicable time-limit. In view of the principle of good faith, Trabzonspor was entitled not to be misled by FIFA's contradictory behaviour. Indeed, the FIFA DC issued a second decision, instead of simply refusing to answer the letter and referring to the First FIFA DC Letter. In addition, after Trabzonspor's appeal, the FIFA AC issued a decision on appeal.

153. If CAS denies jurisdiction on the basis of the lack of exhaustion of internal legal remedies, it would deprive Trabzonspor of the right to have the Second FIFA DC Letter and the FIFA AC Letter reviewed. However, the principle of good faith also allows the Second FIFA DC Letter to be brought before CAS.

154. Therefore, the Panel holds that the appeal filed by Trabzonspor against the FIFA AC Letter was directed against a decision, issued by FIFA, *i.e.* an international federation, within the meaning of Art. R47 §1 of the Code.

155. In that regard, Fenerbahçe's argument regarding the fact that CAS would not be competent because Trabzonspor would not be a member of TFF is without merit. Evidence was produced by the Appellants to the effect that one the Appellants is a member of TFF. Indeed, Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. (which currently runs the professional football club Trabzonspor Kulübü Dernegi) holds a TFF licence. TFF in turn is a member of FIFA, so that FIFA had the competence to rule upon the Complaint filed by its indirect member. Accordingly, CAS also has the competence to rule on the appeal filed against FIFA's decision.

156. Despite the Respondents' arguments, the FIFA DC had the competence to decide whether to apply Art. 70 §2 of the Disciplinary Code or not,[19] so that CAS also has jurisdiction to rule on the appeal against FIFA's refusal to apply that provision (without examining at this stage whether that refusal was correct or not).

157. Finally, contrary to Fenerbahçe's argument, the principle of *res judicata* is not applicable, because this matter has not yet been decided. Indeed, FIFA was not a party to the case CAS 2015/A/4343, which concerned UEFA. In the present matter, the object of the appeal is a decision by FIFA and the refusal to apply Art. 70 §2 of the Disciplinary Code.

158. As quoted above, Art. 58 §1 of the FIFA Statutes provides that appeals to CAS shall be filed within a time-limit of 21 days from the date of notification. This time-limit was respected by the appeal filed on 8 May 2018 by Trabzonspor. The Statement of Appeal further respects the formal conditions set out by Art. R48 of the Code.

159. Accordingly, the Panel concludes that it has jurisdiction to rule upon the present dispute and that the appeal is admissible.

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19 It is the Disciplinary Committee which is competent to rule upon requests made under Art. 70 §2 of the Disciplinary Code, because no other judicial body is designated to that effect (cf. Art. 76 of the Disciplinary Code: "*The FIFA Disciplinary Committee is authorised to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body*").

C. APPLICABLE LAW

160. As the CAS is an arbitral tribunal with seat in Switzerland, and as the Appellants and two of the Respondents have their domicile or habitual residence outside of Switzerland, pursuant to Art. 176 of the Swiss Private International Law Act ("PILA"), Chapter 12 of this act (Art. 176 to 194 PILA) is applicable to the present arbitration.[20]

161. Art. 187 para. 1 PILA provides: "*The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection.*"

162. According to Art. R58 of the Code, "*the Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

163. In the present case, the parties agree that the rules and regulations of FIFA are applicable (in particular the FIFA Statutes, edition 2007, and the Disciplinary Code, edition 2009). Given the date at which the Appellants lodged their complaint before FIFA and when the proceedings before FIFA took place, the procedural matters of the case are regulated by the FIFA Statutes, edition 2016, and the Disciplinary Code, edition 2017.

164. Art. 57.2 of the FIFA Statutes (edition 2016) provides: "*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

165. Accordingly, the Panel shall apply the rules of FIFA, which is the federation whose decision (or lack of decision) has been challenged, as well as, and on subsidiary basis, Swiss law, to which the relevant FIFA Statutes make explicit reference.

166. The parties did not make their position clear on the application of Turkish law and/or of the TFF regulations. However, they referred to these texts several times in their written and oral pleadings, in relation with the proceedings conducted in Turkey. The Panel shall refer to the TFF regulations only insofar as the proceedings before this federation are concerned.

D. STANDING TO APPEAL

167. Having reached the above conclusion, the Panel shall now turn to the issue of standing to appeal. Indeed, the Respondents raised a preliminary issue on the merits of the case, explaining that the Appellants did not have standing to appeal to the FIFA AC and consequently to the CAS.

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20 CAS 2005/A/983 & 984 §61; CAS 2006/A/1180 §7.1.

a) The parties' arguments

168. According to TFF, Trabzonspor does not have standing to appeal to the CAS, because it is to be considered as a third party, only indirectly touched, in the disciplinary proceedings which FIFA could have opened against TFF or Fenerbahçe. It had a right to report incorrect conduct, but Art. 108 §2 of the Disciplinary Code does not confer third parties any right of party in the disciplinary proceedings. In the same manner, Art. 119 of the Disciplinary Code, does not give third parties any right of appeal (and the exception of Art. 118 §2, concerning associations, is not applicable to a football club). In addition, TFF considers that the Appellants do not have a legally protected interest in the disciplinary proceedings which FIFA could potentially impose on TFF and/or Fenerbahçe. Trabzonspor is a competitor, which could only be indirectly touched, because there is no rule imposing that if the club winning the title of the Turkish Süper Lig is deprived of its title, the runner-up club would be awarded the title and TFF should organise a new trophy ceremony. Disciplinary matters are personal matters and the Appellants thus had no individual interest and no standing to be present before the FIFA DC. The Appellants do not have any legally protected interest which is affected by the decision or non-decision of the FIFA disciplinary bodies and therefore, they do not have standing to appeal to CAS.

169. Fenerbahçe also puts forward that Trabzonspor lacks standing to appeal against the FIFA AC Letter, because it is a third party only indirectly affected by the possible disciplinary proceedings FIFA could have conducted. The fact that FIFA rejected Trabzonspor's Complaint with regard to the requested sanctions against Fenerbahçe, its officials and TFF did not have any tangible and immediate direct consequences for the Appellants. The fact that FIFA refused Trabzonspor's request to order Fenerbahçe to return the championship title did not have any direct and immediate consequences for Trabzonspor either, because the applicable TFF regulations do not provide an automatic award of the championship title to Trabzonspor in such a scenario (and even if it was the case, it is not certain that TFF would have awarded the title to Trabzonspor, because it could also have decided not to award any title for that season).

170. Regarding this question, FIFA argues that Trabzonspor does not have a legitimate interest to appeal to CAS, because it is not invoking a substantive right of its own or a legally protected interest. The Appellants are not aggrieved in their rights by the letters issued by FIFA or did not prove any such consequence (Art. 8 SCC). Therefore, Trabzonspor is not a party within the meaning of Art. 108 of the Disciplinary Code. The possible opening of disciplinary proceedings would only have directly affected TFF, Fenerbahçe and its officials. Trabzonspor would not have been an addressee of the disciplinary measures or a party to those proceedings, but only an indirectly affected third party. If sanctions were taken against Fenerbahçe, it would not be certain that Trabzonspor would benefit from these and, accordingly, the Appellants did not prove their standing to appeal.

171. According to the Appellants, they cannot be considered as mere third parties, because they participated in the previous instance and are entitled to invoke substantive rights of their own. Although Trabzonspor would indeed not be a party to the disciplinary measures enacted by FIFA against TFF and Fenerbahçe, it has a standing to dispute FIFA's decisions because it has a legal interest to do so. Indeed, the Appellants are directly affected because they finished the season with the same number of points as

Fenerbahçe (while Fenerbahçe had more goals). If FIFA had sanctioned Fenerbahçe, Trabzonspor would have been the 2010/2011 Turkish Süper Lig champion. This constitutes an interest worthy of protection and a direct effect on Trabzonspor's rights. The purpose of the appeal before CAS is to remedy FIFA's inactivity which prevents Trabzonspor from enjoying an advantage (the 2010/2011 Süper Lig title). For these reasons, in the Appellants view, they have standing to appeal under Art. 108 of the Disciplinary Code. At the hearing, Trabzonspor added that Art. 9 §2 and Art. 26 §4 of the TFF Competition Regulation lead to the conclusion that it would have received the championship title instead of Fenerbahçe, if this latter would have been sanctioned by a points deduction.

b) The Panel's determination

172. Standing to sue (or to appeal) is attributed to a party which can validly invoke the rights which it puts forward, on the basis that it has a legally protectible and tangible interest at stake in litigation. This corresponds to the Swiss legal notions of "*légitimation active*" or "*qualité pour agir*", as confirmed by the case-law of the Swiss Federal Tribunal.[21]

173. According to CAS jurisprudence, parties which have a direct, personal and actual interest are considered to have legal standing to appeal to the CAS. Such an interest can exist not only when a party is the addressee of a measure, but also when it is a directly affected third party. The case-law provides that "*this is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake, may bring a claim, even if they are not addressees of the measure being challenged*".[22]

174. There is a category of third party applicants who, in principle, do not have standing, namely those deemed "indirectly affected" by a measure. As regards the differentiation of directly affected parties from indirectly affected parties, CAS jurisprudence displays a "*common thread*", as restated in numerous CAS awards: "*Where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association, – unless otherwise provided by the association's rules and regulations – the third party does not have a right of appeal. Effects that ensue only from competition are only indirect consequences of the association's decision/measure. If, however, the association disposes in its measure/decision not only of the rights of the addressee, but also of those of the third party, the latter is directly affected with the consequence that the third party then also has a right of appeal*".[23] The correct approach when dealing with standing is to deem mere competitors indirectly affected –and thus exclude them from standing – when the measure does not have tangible and immediate direct consequences for them beyond its generic influence on the competitive relationship as such.[24] Previous CAS decisions shed some light on how the notion "*directly affected*" is interpreted.

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21 Decision of the Swiss Federal Tribunal of 3 April 2002, in the case 4P.282/2001, §4b.

22 CAS 2016/A/4924 & 4943, §85.

23 Among many other cases: CAS 2008/A/1583 & 1584, §31; CAS 2016/A/4924 & 4923, §86.

24 CAS 2016/A/4924 & 4923, §87.

175. For instance, in the case CAS 2002/O/373, the CAS granted an athlete placed third the right to appeal against a decision by the IOC not to award her the gold medal after the first and second placed athletes were involved in a doping scandal. It was held that a disciplinary decision in respect of an athlete placed first had inevitably affected the rights of an athlete placed second. The Panel explained: "*gaining an Olympic medal is one of the ultimate goals in a star athlete's career, which can bring with it many fruits, thereby giving her/him a very particular interest in challenging a decision if, as in the present case, the modification of the decision could allow her/him to obtain a gold medal or a medal she/he did not get.*" By contrast, athletes who lack any chance of obtaining a medal have no right to appeal.[25]

176. In the CAS 2008/A/1583 & 1584 cases, the CAS found that a decision by UEFA's disciplinary body granting the winner of the 2007/2008 Portuguese football league admission into the UEFA Champions League, pending an investigation into alleged bribery of referees, had the effect of excluding the third club in the 2007/2008 Portuguese football league from direct admission to, and the club ranked fourth in the 2007/2008 Portuguese football league from a qualification place in, the Champions League. The Panel held that both clubs were "*directly affected; for if UEFA grants a club a starting place in a championship which has a closed field of starters, it has at the same time made a negative decision about including other candidates for said starting place*". The Panel added: "*UEFA's allocation or denial of a starting place in the CL is not the realisation of any vague hope or fateful bad luck for the club concerned. Rather, it is a decision about a legal right of the clubs (more particularly specified in the UCL-Regulations).*" Then the Panel went on to analyse the applicable UEFA Champions League Regulations and held that said rules gave the appellant clubs a direct right to replace the excluded winner.[26]

177. In the case CAS 2015/A/4151, the runner-up football club was denied standing to appeal, because it could not prove that it would automatically replace the first club which was excluded. The Panel indeed held that the practice of UEFA showed that it could order a draw instead of automatically admitting the sanctioned team's closest competitor to the Champions League. It was specified that: "*standing to sue should be restricted to a club that could show to the Panel that it would directly replace an excluded club and not by the means of possibly being entered into a draw along with a number of other clubs or by a possible one-off decision that the Emergency Panel could take*".[27]

178. In the case CAS 2015/A/3874, the Panel denied legal standing for the request to impose higher sanctions on a national football association. The Panel found that the other national football association was not directly affected as the "victim" of the racist and discriminatory chants. The Panel in that case also held: "*the mere fact that an individual is a victim does not as such establish a standing to appeal a sanction imposed on the offender. Such an interpretation would have far-reaching consequences and could lead to the possibility of appeals from a potentially very large group of persons. Under such an interpretation, for instance, any player who is*

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25 CAS 2002/O/373, §23 ss.

26 CAS 2008/A/1583 & 1584, §32.

27 CAS 2015/A/4151, §135-146.

injured by a dangerous tackle or is bitten by another player would be able to appeal if he were unhappy with the sanction imposed on the offender".[28]

179. The burden of proof to demonstrate a personal, direct and tangible legal interest lies with the party asserting standing, on the basis of Art. 8 SCC, which provides: "*Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact*". The case-law of the CAS reaffirms this principle, underlining at the same time that the notion of "directly affected" when applied to third parties who are not the addressees of a measure must be interpreted in a restrictive manner.[29]

180. In the case under scrutiny, as all parties, including the Appellants, agree, Trabzonspor would not have been a party to the disciplinary proceedings that FIFA would have started against TFF and/or Fenerbahçe. The Panel must therefore examine whether Trabzonspor can be considered as a directly affected third party. The Panel underlines that, contrary to the analysis in which it concluded that FIFA's letters must be considered as decisions, the Panel must presently consider the legal effects of those letters *in concreto*.

181. In the Panel's view, Trabzonspor does not have standing to appeal.

182. There are several reasons for such conclusion.

183. First, Trabzonspor did not (and does not) have an enforceable right to obtain under Art. 70 §2 of the Disciplinary Code that FIFA opens proceedings and takes sanctions against TFF and Fenerbahçe and that the 2010/2011 Turkish Süper Lig title be awarded to Trabzonspor.

184. Art. 70 §2 of the Disciplinary Code provides in fact that "*The judicial bodies of FIFA reserve the right to sanction serious infringements of the statutory objectives of FIFA (cf. final part of art. 2) if associations, confederations and other sports organisations fail to prosecute serious infringements or fail to prosecute in compliance with the fundamental principles of law*". The wording of such provision makes it clear that FIFA has discretion to open disciplinary proceedings: by "reserving the right" of FIFA, Art. 70 §2 of the Disciplinary Code does not create an obligation on it to open those proceedings and adopt sanctions. Therefore, there is no right of any party to bring a claim against FIFA to enforce an obligation that does not exist.

185. Second, FIFA and TFF consider that Trabzonspor does not have any procedural rights and rely on Art. 108 §2 of the Disciplinary Code, which has the following contents: "*Any person or body may report conduct that he or it considers incompatible with the regulations of FIFA to the judicial bodies. Such complaints shall be made in writing.*".

186. According to Art. 70 §3 of the Disciplinary Code, "*Associations, confederations and other sports organisations shall notify the judicial bodies of FIFA of any serious infringements of the statutory objectives of FIFA*". Given the use of the term "*shall*" in this provision, it seems that Trabzonspor had an obligation to notify FIFA of serious

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28 CAS 2015/A/3874, §182.

29 CAS 2015/A/4343, §114 and cases cited.

infringements of the statutory objectives. This provision does not specify that FIFA would not issue a decision or that the entity which brings such a case to FIFA's attention would not be entitled to receive a decision. This provision however does not state either whether the informant has a right to obtain a decision or whether it can appeal against a refusal to act upon the denunciation.

187. It is a general principle under Swiss law that a person or entity denouncing an irregular conduct does not become a party to the proceedings which could result from the denunciation. Although the text of Art. 108 §2 of the Disciplinary Code is not clear in this regard, CAS jurisprudence confirmed that it must be interpreted in this manner. The CAS also added that FIFA is not obliged, on the basis of Art. 108 §2 of the Disciplinary Code, to start disciplinary proceedings.[30] Although in its Complaint, Trabzonspor does not only bring a violation to the attention of FIFA judicial bodies, but makes several requests for itself, the consequences touching Trabzonspor would only be indirect, as set out above. In addition, FIFA could not be obliged by Trabzonspor to take open disciplinary proceedings against TFF and/or Fenerbahçe. Under these circumstances, the Panel holds that the application of Art. 108 §2 of the Disciplinary Code to the present matter also leads to the conclusion that Trabzonspor could not bring forward a personal and direct legal interest before FIFA and did not have standing to sue. Finally, the Panel also holds that nothing in the wording of Art. 70 §3 of the Disciplinary Code could modify this conclusion. None of these two provisions give Trabzonspor a direct right to appeal against a decision (or lack of decision) of FIFA following the Complaint filed by Trabzonspor.

188. Third, in order to justify their standing to appeal, the Appellants should prove that the FIFA proceedings once opened would lead to the imposition on sanctions on TFF and that such sanctions would consist in the award (or order to award) to Trabzonspor of the title of Turkish champion for 2010/2011, *i.e.* that Trabzonspor would directly and automatically replace Fenerbahçe, as Turkish champion, were this club be deprived of that title.[31] However, it is of particular significance that the TFF regulations do not include a rule allowing the second-ranked team to be automatically declared champion instead of the first, if this latter is excluded.

189. Even the provisions of the TFF Competition Regulation filed at the hearing do not clearly entail such a consequence. These provisions do not create a system where the Süper Lig championship title of the first team would be given to the second team if there is a points deduction. Art. 9 §2 of the TFF Competition Regulation provides that the team having the highest number of points is ranked first, the following team shall be second, etc. As to Art. 26 §4 of the TFF Competition Regulation, it provides that if the result of a match is found to have been fixed after its result was registered, the registration is cancelled; this does not provide compensation or any other rights to clubs. The text of these two provisions does not demonstrate Trabzonspor's right to automatically replace Fenerbahçe, should this latter be sanctioned for match-fixing. The last part of Art. 26 § 4 even seems to indicate the contrary, because it has the consequence that the competitors of the excluded club cannot benefit from the cancellation of the registration of match results.

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30 CAS 2017/A/5001&5002, §§89-92.

31 Cf. the reasoning in CAS 2015/A/4151, §135.

190. The present matter must therefore be distinguished, for example, from the case CAS 2002/O/373, where the modification of the challenged decision could directly lead to the gold medal being award to the athlete who seized the CAS. It must also be distinguished from the cases CAS 2008/A/1583 & 1584, where the applicable rules could also directly lead to a club replacing the other.

191. The present matter can rather be compared to the case CAS 2015/A/4151, because the effect, for Trabzonspor, of a possible disqualification of Fenerbahçe, is not certain. The Panel also finds comfort in the case CAS 2015/A/3874, where although a national football association suffered negative consequences because of the behaviour of another association, it did not have a direct legal interest and therefore no standing to appeal.

192. The Panel finally also agrees with the reasoning developed in the award rendered in the proceedings CAS 2015/A/4343, regarding the complaint filed by Trabzonspor before UEFA regarding a similar claim related to the 2010/2011 Turkish Süper Lig championship title. As held in that case, Trabzonspor could be affected by the sanctions imposed on Fenerbahçe such as withdrawal of the title or point deduction. However, this outcome is far from being a certainty, because the applicable TFF regulations do not provide for an automatic award of the title to the runner-up and the TFF could decide not to proclaim a champion for the 2010/2011 season.[32]

193. As deducted from the previously cited CAS case-law, although every decision affecting a competitor has *de facto* effects on the other competitors, these indirect effects do not entitle the other competitors to claim an advantage in legal terms.

194. In the Panel's view, in the case at hand, Trabzonspor's legal situation could not directly be affected if FIFA had decided to open a case on the merits and had decided ultimately to order TFF to sanction Fenerbahçe or if FIFA had decided to sanction directly Fenerbahçe. Indeed, there is no legal provision which would have allowed TFF (in the first case) or FIFA (in the second case) to award the championship title to Trabzonspor. Trabzonspor did not bring any proof of the existence of legal provisions of FIFA or TFF which could serve as a basis for such a decision.

195. By way of comparison, the automatic replacement of a sanctioned athlete exists in other sports regulations, for instance in the General Rules of the Fédération Internationale de Natation (FINA General Rules, valid as of 22.09.2017). Indeed, under the title "*Substitution, disqualification and withdrawal*", GR 7.4 has the following contents: "*In Swimming, Diving, and Artistic Swimming, where a competitor who competed in the semi-finals or final is disqualified for any reason, including medical control, the position he would have held shall be awarded to the competitor who finished next and all the lower placing competitors in the semi-finals or final shall be advanced one place. If the disqualification occurs after the presentation of awards, the awards shall be returned and given to the appropriate competitors applying the foregoing provisions*". However, a similar rule does not exist in the matter at hand.

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32 CAS 2015/A/4343, §123-124.

196. Therefore, the Panel holds that Trabzonspor did not have standing to sue in front of the FIFA DC and, consequently, it did not have standing to appeal in front of the FIFA AC. The FIFA AC rejected the appeal, but the grounds given in its letter of 27 April 2018 are incomplete. In fact, it should have held that Trabzonspor did not have standing to appeal in front of the FIFA AC. Given its power to review the case *de novo*, under Art. R57 §1 of the Code, the Panel considers that the FIFA AC Letter must be upheld, with the grounds that Trabzonspor did not have standing to appeal, as its legal interests were not directly affected. The lack of standing to appeal made it impossible for FIFA's judicial bodies to examine the merits of the case brought by Trabzonspor. This does not amount to a denial of justice, given that the necessity for a party to have standing to sue (or to appeal) is an important principle, which avoids third parties which lack legal interest to act in front of judicial bodies.

197. By way of consequence, if Trabzonspor did not have standing to appeal to the FIFA AC, it does not have standing to appeal to CAS either. Indeed, the standing to act before FIFA and before CAS is the same. The relief which the CAS could award in this matter could not have any direct effect for Trabzonspor. Just like FIFA, this Panel cannot take decisions which are not foreseen in any legal provision. In reaching this conclusion, the Panel wishes to stress that it expresses no view on the approach taken by the TFF, or the manner in which the TFF proceeded to act or not act. The Panel recognises the sense of grievance on the part of the Appellant, but is limited, in its exercise of jurisdiction, to apply the rules as they have been adopted.

E. CONCLUSION

198. The above makes it unnecessary to examine the parties' other arguments. The lack of standing to appeal also makes it impossible for the Panel to examine whether the Second FIFA DC Letter and the FIFA AC Letter were correct when holding that the proceedings conducted in Turkey had complied with the fundamental principles of law.

199. In conclusion, the Panel finds that the appeal should be dismissed and the FIFA AC Letter upheld.

III. COSTS

200. Pursuant to Art. R64.4 of the Code, the CAS Court Office shall determine the final amount of the costs of arbitration.

201. Art. R64.5 of the Code provides: "[t]*he Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties*".

202. Having given due consideration to the circumstances of the present case and to the fact that the appeal was rejected, the Panel determines that Trabzonspor shall bear all arbitration costs. As to the contribution towards legal costs and other expenses, the Panel, in light of the complexity of the dispute, deems it fair that each party bears its own costs and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Trabzonspor Sportif Yatirim ve Futebol Isletmeciligi A.S., Trabzonspor Sportif Yatirim Futebol Isletmeciligi A.S. and Trabzonspor Kulübü Dernegi on 8 May 2018 against the letter of the FIFA Disciplinary Committee of 17 April 2018 and the letter of the FIFA Appeal Committee dated 27 April 2018, is dismissed.

2. The costs of the present arbitration and of the two challenge procedures, which shall be determined and separately communicated to the parties by the CAS Court Office, shall be borne by Trabzonspor Sportif Yatirim ve Futebol Isletmeciligi A.S., Trabzonspor Sportif Yatirim Futebol Isletmeciligi A.S. and Trabzonspor Kulübü Dernegi.

3. Each party shall bear its own legal fees and other expenses incurred in connection with this arbitration.

4. All other or further claims are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 30 July 2019

THE COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
President of the Panel