Arbitration CAS 2013/A/3258 Besiktas Jimnastik Kulübü v. Union des Associations Européennes de Football (UEFA), award of 23 January 2014

Panel: Mr Fabio Iudica (Italy), President; Prof. Martin Schimke (Germany); Mr Efraim Barak (Israel)

Football
Match-fixing
Burden of proof
Standard of proof
Nature of Article 2.08 UELR
Indirect involvement of a club in activities aimed at arranging or influencing the outcome of a match
Evidence which can be relied upon

1. **Article 8 Swiss Civil Code (CC) stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence. Furthermore, the burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court/tribunal. According to the jurisprudence and to scholars, it is the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal. In this regard, the burden of proof to primarily demonstrate that the Appellant was directly and/or indirectly involved in activities aimed at arranging or influencing the outcome of a match lies on the Respondent.**

2. **The standard of proof is expressly provided in Article 2.08 of the Regulations of the UEFA Europa League 2013/2014 (UELR) to be the standard of "comfortable satisfaction". Furthermore, CAS jurisprudence is clear that the applicable standard of proof in match fixing cases is indeed "comfortable satisfaction". Even in cases where the adjudicating body benefits from the investigatory work of State authorities, the standard of proof does not move to "beyond reasonable doubt" as the proceedings before the sporting authorities remain fundamentally of a civil nature.**

3. **Article 2.08 UELR is a provision whose main purpose is to establish the eligibility criteria and the conditions of participation in UEFA competitions and not to punish a club. Even if the application of Article 2.08 UELR may have the effect to exclude a club from a UEFA competition, the relevant provision is not of a sanctionatory nature.**

4. **Article 2.08 UELR provides that clubs must not have been directly or even indirectly involved in activities aimed at arranging or influencing the outcome of a match. Indirect involvement of a club means any activity in which a club was involved, although not intended to, that might influence the outcome of a match in a non-sportive way, in circumstances where the club is assumed to be aware whereof. The interpretation of the**

wording "aimed at" means that it is not necessary to establish that the activity achieved its purpose, or even that it went very far. It is enough that there was an attempt. The reproached activity can be aimed at influencing the outcome of a match even if that is not the only aim, or even the dominant aim of the activity. In view of the above, the scope of application of Art. 2.08 UELR is broad. In this respect, an activity which might look at first sight as licit, might breach Article 2.08 UELR, considering all the circumstances of a case, if this activity might have an influence on the outcome of a particular match.

5. **UEFA has the discretion to rely, or not, on a decision of a national or international sporting body, arbitral tribunal or State court. However, when doing so, UEFA must give reasons for its choices in this regard, and explain the reasons why it relies on certain decisions and not on others, when several decisions are at its disposal. The possibility offered by Article 2.08 for UEFA to rely on decisions from other instances shall be used carefully and does not allow UEFA to blindly rely on a particular decision, without assessing the evidence assessed in the context of these decisions, if this evidence is available to it.**

INTRODUCTION

1. This appeal is brought by Besiktas Jimnastik Kulübü (hereinafter referred to as "the Appellant", "the Club" or "Besiktas"), against a decision of the Appeals Body (hereinafter also referred to as "the UEFA AB") of the Union des Associations Européennes de Football (hereinafter referred to as "UEFA") dated 11 July 2013 (hereinafter also referred to as "the Appealed Decision") excluding Besiktas from the UEFA Europa League 2013-2014, as a result of the alleged implication of the Club's former coach T. and the former board member S. in manipulating the final match of the 49th Turkish Cup played on 11 May 2011 (hereinafter referred to as "the Match" or "the Cup Final") opposing Besiktas to the football club I.B.B. Spor (hereinafter referred to as "IBB Spor").

I. THE PARTIES

A. Besiktas Jimnastik Kulübü

2. Besiktas is a Turkish football club, affiliated with the Turkish Football Federation (hereinafter also referred to as "TFF"), which in turn is affiliated with UEFA.

3. Besiktas took part, at the time of the relevant events, in the Turkish Süper Lig (hereinafter "the Super League"), which is the first division Championship in Turkey.

B. UEFA

4. UEFA is an association incorporated under Swiss law with its headquarters in Nyon, Switzerland. UEFA is the governing body of European football, dealing with all questions relating to European football and exercising regulatory, supervisory and disciplinary functions over its affiliated national associations, as well as their affiliated clubs, officials and players.

5. UEFA is one of the six continental confederations of the Fédération Internationale de Football Association (hereinafter "FIFA"), which is the governing body of Football on worldwide level and has its registered office in Zurich, Switzerland.

6. One of UEFA's attributions is to organise and conduct international football competitions and tournaments at European level. In this context, UEFA organises each year the UEFA Europa League tournament (hereinafter "UEL"), which is a competition gathering professional football teams from all over the continent.

II. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts and allegations based on the parties' written submissions and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submission and evidence it considers necessary to explain its reasoning.

A. The sporting context of Besiktas before the Match

8. In March 2011, the head coach of the Club, Mr Bernd Schuster, resigned and his assistant, T., was named in this position until the end of the on-going season.

9. At that time, the Club was ranked 5th in the Super League and had 21 points less than the leading teams Fenerbahçe SK and Trabzonspor, but was still participating in the Turkish Cup tournament, drawn to play at the semi-final stage against Gaziantepspor to be played in April 2011.

B. The investigation on Y.

10. Y. is a well-known personality in the Turkish football world. In 2011, he was the agent of various players, including K., who was at that time playing for Samsunspor, and I. and A. (these last hereinafter referred to as "the Players"), who were playing for IBB Spor.

11. In March 2011, in the context of an investigation related to match fixing, the Turkish police started recording the phone calls and intercepting the text messages of Y. Based on this operation, it was established that T. and Y., who have known each other for a long time, spoke with each other dozens of times between the end of March 2011 and early May 2011.

C. Semi-finals of the 2011 Turkish Cup

12. The semi-finals of the 2011 Turkish Cup were played between Besiktas and Gaziantepspor and between IBB Spor and Genclerbirligi.

13. After home and away games, Besiktas and IBB Spor qualified for the Cup Final, respectively on 20 and 21 April 2011.

D. The events on the week before the Cup Final

14. In the week preceding the Cup Final, which was due to be played on 11 May 2011, the discussions between the officials of the Club and Y. intensified.

15. In this context, several phone calls took place (and were wiretapped) and meetings were organised on 7 and 9 May 2011. The content of these discussions and meetings will be analysed under Section D of the present Award.

16. Many discussions between Y. and the Players were also wiretapped, and messages between these individuals were intercepted by the Turkish police.

E. The Cup Final

17. The Cup Final was played on 11 May 2011. Besiktas took a 1:0 lead in the first half of the match, but IBB Spor equalled the score in the second half through a penalty goal by I. The game ended 6:5 for Besiktas after a penalty shootout.

F. The reports and decisions of the TFF

18. The on-going criminal investigation prompted the TFF to examine all football matches suspected of having been rigged, including the Cup Final played between Besiktas and IBB Spor.

19. The TFF Ethics Committee (hereinafter referred to as "the EC") and the TFF Disciplinary Committee (hereinafter referred to as "the DC") scrutinized the facts. After investigations, the Committees both cleared the Club and its officials, S. and T. (hereinafter also referred to as "the Officials"), as well as X., from the reproach of match-fixing activities in connection with the Match. The TFF Committees reached their resolution on 26 April and 6 May 2012, unanimously.

20. The EC issued another report on 15 August 2011, after having been granted full access to all evidence collected in the criminal investigation; the EC's position remained unchanged after these further investigations.

G. The criminal convictions of the Club's officials

21. On 2 July 2012, the Istanbul 16th High Criminal Court (hereinafter referred to as "the High Court"), on the basis of the evidence before it and the witnesses that it heard, convicted the Officials of match-fixing activities in respect of the Cup Final played between Besiktas and IBB Spor on 11 May 2011.

22. The High Court sentenced the Officials with imprisonment of one year and three months, a fine and various prohibitions related to football activities.

H. The disciplinary proceedings before UEFA

23. At the end of the season 2012/2013, Besiktas qualified through the win in the Cup Final to take part in the UEFA Europa League 2013/2014.

24. On 7 May 2013, the Appellant completed and signed the Admission Criteria Form, and submitted it to UEFA. The Club did not mention any proceedings brought against it or its officials by the TFF or by Turkish court.

25. However, on 9 May 2013, the Appellant provided UEFA with additional information beyond that in the Admission Criteria Form. The Club notified UEFA of the disciplinary proceedings before the TFF and the criminal proceedings before the High Court in which S. and T. had been convicted.

26. On 7 June 2013, UEFA General Secretary referred the case of the Appellant to UEFA's Control and Disciplinary Body (hereinafter referred to as the "UEFA CDB").

27. On 21 June 2013, the UEFA CDB decided that it was comfortably satisfied that based on the evidence available, Article 2.08 of the Regulations of the UEFA Europa League 2013/2014 (hereinafter referred to as the "UELR") was engaged and that therefore, the Club was not eligible to participate in the UEFA Europa League 2013/2014.

28. The Club appealed the decision of the UEFA CDB by notice dated 28 June 2013.

29. On 15 July 2013, the UEFA Appeals Body (hereinafter referred to as the "UEFA AB") uphold the UEFA CDB's decision.

III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

30. On 17 July 2013, the Appellant filed an urgent request for provisional measures against the Appealed Decision. Furthermore, the Appellant requested that the present proceedings be dealt with by CAS following an accelerated procedure.

31. On 18 July 2013, the Appellant requested CAS to add the following respondents to the proceedings:

- Bursaspor Kulübü Derneği (hereinafter referred to as "Bursaspor");
- Kayserispor Kulübü;
- Kasımpaşa Spor Kulübu.

32. On 18 July 2013, the Respondent informed CAS (i) that it considered that the Appealed Decision was just, fair and appropriate, (ii) that the proceedings shall be dealt with following an accelerated procedure, (iii) that without acknowledging in any way an alleged entitlement of the Appellant to enjoy a stay, it did not object to the grant of a stay of execution of the Appealed Decision, providing and assuming that CAS would issue a final decision on 29 August 2013 (00:00 am, Swiss time) or on 8 August 2013.

    With regard to the add of the above-mentioned football clubs as respondents, the Respondent objected as the procedure concerns a disciplinary matter between the Appellant and the Respondent. In this regard, the Respondent stressed that if these clubs wanted to intervene in the proceedings, they could file a request of intervention in accordance with Article 43.1 of the Code of Sports-related arbitration (hereinafter referred to as "the CAS Code").

33. Still on 18 July 2013, Bursaspor informed CAS that it considered (i) that it was not a party to the present proceedings, (ii) that it had legitimate interests in the present matter, and (iii) considered that the request for provisional measures shall be rejected.

34. Later on 18 July 2013, the Appellant withdrew its application to add the three above-mentioned clubs as respondents in the present proceedings. With regard to the time when a final award shall be rendered by CAS, the Appellant considered that it should be rendered on 30 August 2013 (00:00 am, Swiss time), one day after the second leg of the playoffs round of the UEL.

35. Still on 18 July 2013, CAS informed the Parties and the three above-mentioned clubs that the sole respondent in the present matter would be UEFA.

36. In view of the Parties' agreement on the expedited procedure, the CAS confirmed that the Appealed Decision was stayed.

37. On 19 July 2013, Bursaspor, considering that it had legitimate interests as it could be directly affected by the outcome of the present proceedings, requested to intervene, in accordance with Article 41.3 of the CAS Code.

38. On 24 and 29 July 2013, the Appellant respectively filed its statement of appeal and appeal brief.

39. On 9 August 2013, CAS informed Bursaspor that the Panel decided to reject its request for intervention on the basis that, in the specific circumstances of the case, it did not have a legal interest in the present proceedings, as the case is of a purely disciplinary nature between the Appellant and the Respondent. The Panel further considered that Bursaspor did not and could not have any claim against the parties to the present proceedings.

40. On 14 August 2013, the Respondent filed its answer.

41. On 20 August 2013, a hearing was held at the CAS Headquarters in Lausanne, Switzerland (hereinafter referred to as the "the hearing").

42. On 30 August 2013, the Panel issued the operative part of the Award.

IV. THE CONSTITUTION OF THE PANEL

43. On 31 July 2013, the CAS Court Office informed the Parties that the Panel to hear the appeal had been constituted as follows: Mr Fabio Iudica, President of the Panel, Prof. Dr Martin Schimke, arbitrator nominated by the Appellant and Mr Efraim Barak, arbitrator nominated by UEFA.

V. HEARING

44. On 20 August 2013, a hearing was duly held at the CAS Headquarters in Lausanne. All members of the Panel were present.

45. The following persons attended the hearing:

- For the Appellant: Mr Melih Sami Esen, Board Member and Mr Özlem Sürekli, legal counsel, assisted by Messrs Amr Abdelaziz and Philipp Dickenman, attorneys-at-law in Zurich, Switzerland. Mrs Nazan Kiziltan Suzer and Mr Kudret Suzer were brought by the Appellant to serve as interpreters.
- For the Respondent: Mr Emilio Garcia, Head of Disciplinary and Integrity Services, assisted by Mr Adam Lewis, Q.C. in London, United Kingdom, as well as by Dr Jean-Marc Reymond and Mrs Delphine Rochat, attorneys-at-law in Lausanne, Switzerland.

46. Mr William Sternheimer, Managing Counsel and Head of Arbitration for CAS, and Mr Serge Vittoz, ad hoc clerk, assisted the Panel at the hearing.

47. At the beginning of the hearing, the Parties confirmed that they did not have any objection to neither the formation nor the composition of the Panel, nor the jurisdiction of CAS. The Parties accepted that Messrs Ömer Durak and Mr Nail Gönenli, lawyers of respectively S. and T., would be present during the cross examination of their respective client.

48. The Panel heard evidence from the following witnesses: T., S., X. and B., member of the Ethics Committee of the Turkish Football Federation. The witnesses were cross-examined by the Parties and answered questions from the Panel.

49. The Parties were also afforded the opportunity to present their case, to submit their arguments, and to answer the questions asked by the Panel. The Parties explicitly agreed at the end of the hearing that their right to be heard and to be treated equally in these arbitration proceedings had been fully observed.

VI. OVERVIEW OF THE PARTIES' SUBMISSIONS

50. The following outline of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows. The Parties' written submissions, their verbal submissions at the hearing and the contents of the Appealed Decision were all taken into consideration.

A. The Appellant's position

51. The Appellant made a number of submissions, in its statement of Appeal, in its appeal brief and at the hearing. These can be summarized as follows:

a. The facts show that the Appellant was aiming at transferring players and not at match-fixing.

52. On 15 March 2011, Bernd Schuster resigned as the head coach of the Appellant and his assistant, T., was named in this position until the end of the season. At that time, the club was ranked 5th in the Super League and had 21 points less than the leading teams Fenerbahçe SK and Trabzonspor but was still competing in the Turkish Cup, being qualified to play the semi-final against Gaziantepspor due to be played in April 2011.

53. Throughout his career as a professional football player, T. was never linked to any wrongdoing. Pending the outcome of T.'s appeal against the decision of the High Court, T.'s criminal record is clean.

54. At the end of March 2011, T. completed a list of players to be considered for a transfer to the Appellant for the following season and handed over this list to S., Vice Chairman of the Appellant and President of the club's Transfer Committee. Since there are quotas for foreign players in Turkey and since the Appellant had a lack of Turkish players, most players on the list were Turkish players, amongst them K. and the Players.

55. Y. was (and is still) a well-known personality in the Turkish football arena. In 2011, he was the agent of various players, including the three above-mentioned players.

56. For reasons unrelated to the Appellant, the Turkish police started to recording the phone calls and intercepting the text messages of Y. on 10 March 2011. Based on this operation, it has been established that T. and Y. spoke with each other dozens of times between the end of March and early May 2011. Hence, these discussions started long before it became clear, on 20/21 April 2011 (semi-finals of the 2011 Turkish Cup) which would be the teams participating in the Cup final.

57. In fact, T. and Y. had known each other for a long time and they regularly discussed football issues already long before the wiretapping operation started. Furthermore, T. and Y. continued to exchanges phone calls after the Turkish Cup final on 11 May 2011.

58. After IBB Spor's semi-final victory and I.'s good performance in the second leg, the latter and his agent Y. started spreading information that several major Turkish clubs were interested in transferring I.

59. The Appellant and his coach, T., came under pressure to start signalling to the player that the Club was interested in him. T.'s interest in I. was quoted in several media articles, in particular on 25 April 2011. It was also mentioned in a particular press article dated 25 April 2011, that the Appellant was planning to make an offer for I. after the Cup final.

60. The pressure on the Appellant to initiate preliminary transfer discussion also arose in respect of K.

61. On 4 May 2011, T. made a phone call to Y. to confirm his and the club's interest in K., I. and A. It was not the first time T. and Y. discussed the potential transfer of these players and the transcript of this phone conversation does certainly not evidence an attempt of match fixing by the Appellant. Quite the opposite: the phone call manifests the genuine transfer interest of the Appellant in the players.

62. Subsequently, a meeting was organized between S., Z., a member of the Transfer Committee of Besiktas and Y. At this meeting, the main topic was the transfer of K. Due to difficulties to find a convenient date after this date, the meeting took place on 7 May 2011 in Bursa, as the Appellant was playing a game in Bursa that day. The meeting was held in the lobby of the hotel in which the Appellant's delegation was staying.

63. In the course of this meeting, only transfers of players were discussed, the fixing of the Cup final of 11 May 2011 was not discussed.

64. Two days later, on 9 May 2011, a second short meeting took place, at the request of Y. The latter wanted to discuss in more details a potential transfer of K. The meeting took place in S.'s office and were present S., Z. and Y.

65. The Appellant's representatives made clear during this meeting that the conditions of a potential transfer of I. and A. had to be negotiated directly with IBB Spor, because the players had a contract for one more year with IBB Spor and thus, the latter could request a transfer fee. The Appellant was interested in transferring I. and A., but only in exchange of another player, F., who was on loan from the Appellant to IBB Spor.

66. At the end of the meeting, Y. asked S. if he would be prepared to give I. one of his horses if the transfer was to go through. S. suggested that in case I. would return to the Appellant, he should focus on his job and not on horses. This request was made by Y., as he knew that I. is very keen on horse-racing.

67. In the framework of the investigation by the Turkish police, it turned out that in the days ahead of the Cup final between the Appellant and IBB Spor, Y. tried to influence the outcome of the Cup final by requesting the Players not to play well in that game. He basically told them that the transfer with the Appellant was agreed (which was not true), gave them false information

about the allegedly agreed terms of the transfers and opined that it was in their interest to make sure that the Appellant would win the Cup final, so the club in which they would be playing in the following season would qualify for the UEL.

68. The Appellant can only speculate on Y.'s motives for acting this way. In any event, the available evidence demonstrates that the Appellant was not involved in Y.'s attempt to manipulate the outcome of the Cup final. The Appellant's representatives were not aware of these attempts prior to the investigation by the TFF and the Turkish criminal authorities.

69. The Cup final was played on 11 May 2011. The Appellant took a 1: 0 lead in the first half of the match, but IBB Spor equalled to the score in the second half through a penalty shot by I. The match ended 6:5 for the Appellant after a penalty shootout.

70. The transfer discussions continued after the Cup final. In particular, the Appellant's representative S. and the President of IBB Spor called each other three times, on 23 and 27 May and 1 June 2011, and met personally to negotiate the possible transfer of I. in exchange of F. During this meeting, IBB Spor President made clear that he was not interested in transferring F. and requested a high transfer compensation for the transfer of I. For this reason, the Appellant's Transfer Committee decided not to go further with the transfer of I.

71. It can be concluded from the above that:

    a. the Appellant's interest in transferring the Players started long before the 2011 Turkish Cup final;

    b. the transfer negotiations were conducted after the Cup final in May and early June 2011;

    c. although no transfer was made in the end, the Appellant transfer initiative was real and did not have any other purpose.

b. The compelling decisions of the TFF corroborate that the Appellant was not involved in match fixing.

72. Both the Ethics Committee and the Disciplinary Committee of the TFF scrutinized the facts. After very serious and deep investigations, the Disciplinary Committee and the Ethics Committee cleared the Appellant and its representatives, S., T. and X., from the accusation of match fixing in connection with the Cup final.

73. The Committees of the TFF took into account further evidence, such as additional tappings, not assessed in the decision of the High Court.

74. The resolution of the Ethics Committee of the TFF dated 15 August 2012 was the second decision of this Committee. After having been granted full access to all evidence collected in the criminal investigation (police report and attachments, the indictment and attachments), the Ethics Committee reopened the matter.

75. Only after having inspected all further evidence and examined the involved persons, the Ethics Committee issued its resolution dated 15 August 2012, in which it unanimously re-confirmed that the Appellant and its representatives had not been involved in match fixing.

c. A review reveals that the High Court's decision is based on unconvincing arguments and evidence

76. The UEFA decisions to exclude the Appellant from the UEL 2013-2014 rely on the fact that a first instance Turkish Criminal Court convicted two former officials of the club of match fixing in relation to the Cup final and that the High Court came to this conclusion by applying a high standard of proof.

77. However, UEFA has intentionally disregarded the resolutions of the TFF judicial bodies which cleared the Appellant and its representatives from all wrongdoings. It has also utterly failed to subject the court decision and the evidence cited therein to an examination of its own.

78. The Turkish criminal authorities started tapping the telephone of Y. on 10 March 2011, and the telephones of the Players at the end of April 2011.

79. From more than 60 recorded phone calls between T. and Y. covering the period from 29 March 2011 until 2 July 2011, the High Court only found five phone calls to be worth being listed as evidence in its decision. Not even one of these phone calls indicates any involvement on the part of a representative of the Appellant in activity aimed at manipulating the Cup final. Quite the contrary: in the phone conversation dated 4 May 2011, T. explicitly and repeatedly clarifies that the transfer initiative was not related to the Cup final. Likewise, none of the recorded communications between X. or S. with Y. indicates any involvement on their part in Y.'s attempts to manipulate the outcome of the match.

80. In sum, the High Court's decision fails to present any convincing evidence concerning the alleged involvement of representatives of the Appellant in match fixing activities. On the contrary, the evidence presented by the High Court confirms that it was only Y. who tried to manipulate the Cup final, without knowledge or involvement of the Appellant.

d. Violation of Article 2.08 UEL Regulations 2013-2014

81. Article 2.08 has to be understood as meaning that:

a. A club will be excluded based on this provision only if it has been involved in actual match fixing activities, i.e. in illicit activities aimed at manipulating the outcome of a match. In contrast, activities not aimed at this cannot be a basis for excluding a club from the competition.

b. A club will only be affected by this provision if the club itself has been involved in activity aimed at arranging or influencing the outcome of a match. In contrast, a club that has played in a (potentially) rigged match but which was not involved in the match fixing has nothing to fear since its exclusion from a competition would not serve to protect the integrity and image of the competition. In other words, the individuals whose actions qualify as match fixing must be attributable to the club to be excluded.

c. According to article 2.08 UEL Regulations 2013/2014, UEFA is not required to prove the club's involvement in the match fixing activities "beyond reasonable doubt" but only to its "comfortable satisfaction". As the reasons for this reduced standard of proof,

UEFA usually cites its limited investigatory powers (as compared with the national formal interrogation authorities) and the paramount importance of fighting match fixing. However, the correct standard of proof is "beyond reasonable doubt".

d. Article 2.08 UEL Regulations 2013/2014 provides that UEFA may be comfortably satisfied that a club has been involved in match fixing activities only *"on the basis of all factual circumstances and information available to UEFA"*. Accordingly, UEFA must ensure that its decision whether or not to exclude is based on all relevant information available to UEFA.

82. The UEFA judicial bodies, in their decisions declaring, and respectively confirming, that the Appellant was not eligible for the 2013/2014 UEL, have blatantly violated article 2.08 UEL Regulations 2013/2014 in that they have taken their decisions without thoroughly considering and evaluating a large number of relevant factual circumstances, information and evidence available to UEFA.

83. In 2012, the UN Special Rapporteur Gabriela Knaul made a report on the independence of judges and lawyers in Turkey. The conclusions and recommendations of the report are clear, in particular regarding the restrictions allowed by Turkish law in organized crime cases dealt with by the so-called Special Heavy Penal Court. The 16th High Criminal Court of Istanbul, the first instance criminal court which has rendered the decision against S. and T., is such a Special Heavy Penal Court.

84. Given that the court decision on which UEFA relied for its decision to ban the Appellant from the 2013/2014 UEL is the result of an investigation which according to the UN Special Rapporteur is yet to be brought *"into compliance with human rights standards on fair trial and procedural guarantees"*, and considering the grave deficiencies of this court decision demonstrated in the Appellant's appeal brief and in the dissenting resolution of the TFF, it was utterly unacceptable for UEFA to simply rely on the operative part of a clearly faulty decision and to exclude the Appellant from participating in the 2013/2014 UEL on this basis.

85. UEFA's decisions to exclude the Appellant from the 2013/2014 UEL was made in clear violation of essential safeguards such as the Appellant's right to be heard and the procedural guarantees expressly provided by article 2.08 UEL Regulations 2013/2014. These safeguards and guarantees would have required UEFA to effectively take into account, consider and thoroughly evaluate all facts, information, evidence and arguments available to it, in particular those specifically presented by the Appellant.

e. Standard of proof

86. UEFA has a dominant position in European football. Accordingly, its decisions must be predictable, reasonable, proportionate and complying with the principles of due process. Therefore, it is impermissible for UEFA to apply a "standard" of "comfortable satisfaction" which is entirely vague, imprecise and ambiguous. Rather, in order to exclude a football club from the football competitions on European level – which *de facto* excludes the club from

international business – the standard of proof must be both high and entirely clear. Accordingly, the standard "beyond a reasonable doubt" must be applied in the present matter.

87. In the case at hand, UEFA and CAS have at their full disposal all the evidence considered by the High Court in its decisions against S. and T., including the full transcripts of recorded phone calls, intercepted text messages as well as various protocols of formal interrogations and witness statements. The bulk of this evidence was obtained secretly. The individuals whose phone calls were recorded and whose text messages were intercepted were not aware that the police was listening. Also available to UEFA and to the CAS are the well-reasoned resolutions of the Ethics Committee of the TFF and the additional evidence obtained there, especially the recorded statements of all involved persons.

88. There is no reason for UEFA or CAS not to apply the proper standard of "beyond a reasonable doubt" in this case.

89. For these reasons, it is necessary *in casu* to determine "beyond a reasonable doubt" that the Appellant was directly and/or indirectly involved in any activity aiming at arranging or influencing the outcome of a match. This standard is clearly not met in the present case.

90. In any event, the evidence on file establishes that the Appellant and its representatives were not involved in any match fixing activities. And even if some doubts would remain, such doubts would certainly not allow UEFA or the CAS to conclude with "comfortable satisfaction" that representatives of the Appellant were involved in match fixing.

B. The Respondent's position

91. The Respondent made a number of submissions, in its answer and at the hearing. Its position is summarized in its answer, and is the following:

    1. This case is about a European club that in order to win a national Cup title and to be so admitted to a European club competition has been engaged through its highest officials in very serious, and very far-reaching, match-fixing activities. So players of another club were approached and bribed or otherwise induced to not play well against the Club. Criminal investigations have revealed and confirmed the extent of the match-fixing. The evidence before CAS, including the evidence collected by the Turkish state authorities, reveals in a shocking way the illicit methods, the aim, and the unlawful actions of the representatives of the Club involved.

    2. Turkish national courts have issued substantial jail convictions, because they recognized that not only sporting rules, but also criminal rules have been seriously violated.

    3. The decisions of UEFA at stake before CAS have recognized that the match-fixing activities of the Club and its Officials have violated UEFA rules and must be dealt with accordingly. In application of the applicable competition rules, explicitly accepted and agreed by the Club, the two independent disciplinary bodies of UEFA have issued the administrative measure foreseen in the rules and have declared the Club ineligible to

participate in one season. Also in accordance with the rules, additional disciplinary measures have been reserved.

4. The illegal, illicit, unfair and unlawful behaviour of the Club and its Officials is unacceptable and deserves to be dealt with accordingly. All the procedural defences raised by the Club are not only irrelevant and wrong, but show also that the Club has de facto no other way to defend itself.

5. UEFA is clear of the view that the Appealed Decision must be confirmed in its entirety. In fact, CAS can be comfortably satisfied that the Club has indeed been *"directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes … in … activity aimed at arranging or influencing the outcome of a match at national … level"* for the purposes of Art. 2.08 UELR 2013/2014, as both the UEFA CDB and UEFA AB have held. The appeal shall therefore be rejected.

6. Club Vice President S. and the Club's former coach T. have criminal convictions imposed by the Turkish High Criminal Court for match fixing activity in relation to the 49th Ziraat Turkish Cup Final that took place on 11 May 2011 between the Club and the club IBB Spor. The agent they acted through and the players were also convicted.

7. The Appeal Brief does not offer a convincing and evidenced explanation of why the actions of the Club Officials, on the basis of which they have been criminally convicted, did not amount to involvement in match-fixing for the purposes of UEFA's rules. On the contrary:

   a. The Club accepts that the Officials did contact the agent Y. and the players I. and A. to offer them a transfer to the Club, and that the discussions took place in the week leading up to the Turkish Cup Final, including in clandestine meetings. The Club also accepts that this was not during the transfer window, that the Club's Chairman did not know about the offers, that the player's club IBB Spor was not approached, and that after the Cup Final the offer was not pursued when IBB Spor asked for a transfer fee. The Club also accepts that following these discussions, the agent Y. did indeed ask the players not to play to the best of their abilities in the Cup Final, did indeed inform them repeatedly that he was doing so at the instance of S. and T., and did indeed tell them that deals were done with the Officials on which they could rely including as to their future salaries.

   b. The Club however says that Y. did not, as appears the most likely explanation, do these things because it was indeed the case that this is what the Officials wanted, but rather for reasons of his own and entirely unconnected with what the Officials had said to him, and that he was lying to his players when he said the opposite.

   c. The evidence available shows that the defensive theory of the Club is totally implausible and unproven. The circumstances of the offers and the content of the conversations recorded show that the offers made by the agent on behalf of the Club were not simply genuine offers without any ulterior motive other than affecting how they played. Those circumstances include the timing of the transfer offer, that the Chairman was not told about it, that there is inconsistency as to how A. came to be selected, that the two players were fortuitously both represented by

the same agent, who has convictions for fixing several matches, that few years earlier, in 2008, I. had been forced to leave the Club for poor discipline and A. was not rated as a good player by the Club, that no approach was made to IBB Spor, that the offer was abandoned after the Cup Final was won, that A. did not himself believe that it was a genuine offer, and that a gift, a horse, was also offered to one of the players. The discussions took place in clandestine meetings, and there was direct reassurance of T. by the agent shortly before the match only consistent with it being any part of the deal that the players should not play the Cup Final match against the Club to the best of their abilities.

d. In other words, on the basis of the information and the evidence available it is more than evident that activities aiming at fixing the match of the Turkish Cup Final were made.

e. The Club's unsustainable theory requires the agent not only to have lied to his players about the Officials' suggestion that they should not play to the best of their abilities, but also to have lied to them about the offer and the agreement as to future salary and the offer of a horse. It requires a complex artifice sustained over many conversations. It requires the players never to have become suspicious. An examination of the conversations reveals that the agent was acting on behalf of the Officials of the Club, to fix the Final Cup match. This is also why the competent criminal courts in Turkey have recognized match-fixing activities by the Club's Officials, and have admitted this even applying the higher standard of proof of beyond reasonable doubt.

f. Y. knew very well that the players had to be induced to play badly against the Club. This was all "part of the deal". There was no reason for Y. to suppose that a genuine interest of the Club in acquiring the players, without any ulterior motivation, would be affected by their having played well and caused their club IBB Spor to win the Cup Final. If he did not believe that it was part of the deal that they should play poorly, he would have thought that the genuine interest would continue and the transfers would be achieved. He would not have thought that a genuine interest would have been abandoned in a fit of pique over losing the match. And even if that did happen, it would not mean that he could not secure a commission: he would in any event have been able to secure a commission on the sale of the players to another club (which the Club accepts were also interested), which would have been more likely if they did play well in, and won, the Cup Final.

8. In any event for the purposes of "involvement" under Art. 2.08 UELR 2013/2014, it is enough that the Officials made the transfer offers when they did in part motivated by the intention that the offers should "take the edge off" the players in imminent Cup Final match, because they would benefit from moving to a club that would be in Europe if it won that match. That amounts to an improper action. In fact, as set out above, they went further and caused the agent to tell the players not to play to their full abilities.

9. The Club raises a number of procedural points in the Appeal Brief, each of which is misconceived and unsustainable for in summary the following reasons. What is more, the

very fact that these points is (are) taken demonstrates the Club's lack of confidence in its case on the substance.

a. The TFF's decision does not preclude the CDB's or AB's decision. It is not the case that the decision of TFF to decline to find the Club's Officials guilty breach of the TFF's rules, means that a different party, UEFA, protecting different interests, is precluded from applying its different rules to the Officials' and Club's conduct. This was previously put, but no longer is, on the basis that res judicata operates as a bar to a contrary finding by UEFA. This argument has now apparently been abandoned, rightly, because of the lack of identity of the parties, interests, and rules. CAS has confirmed in CAS 2005/C/841 that International federations can act separately to national federations and the Decisions of the Swiss Federal Tribunal 4A_386/2010 dated 30 January 2011 confirms that there is no identity of object here, and so no res judicata.

b. The UEFA's disciplinary bodies have applied Art. 2.08 UELR properly and the right to be heard of the Club has not been violated. First, it is worth pointing out that Art. 2.08 UELR is a particularly clear rule. Indeed, it cannot be contested that this provision, among others, aims to prevent clubs from match-fixing and makes it clear that involvement in such behaviour would lead to an administrative measure of declaration of ineligibility for one season and, if the circumstances so require, to additional disciplinary sanctions. Second, and more significantly, the Club's right to be heard has not been violated. Indeed, the Club has had the possibility to properly present its case before two independent bodies, by producing any kind of evidence it wanted, in a case where the allegations against the Club were very well known to the Club itself. Additionally, it is long and well-established in CAS jurisprudence that the de novo nature of CAS proceedings cures all alleged procedural defects in lower instance.

c. Standard of proof is not beyond reasonable doubt. The Club contends that the applicable standard of proof should be "beyond all reasonable doubt" instead of "comfortable satisfaction". This is simply wrong and that argument is inconsistent with the explicit wording of the rules (see Art. 2.08 UELR) as well as with the CAS jurisprudence in match-fixing cases. Indeed, in CAS 2010/A/2267, the CAS recently held that even in the absence of a specific identification and agreement to the standard of proof, the standard of proof to be applied in match-fixing cases is the standard of comfortable satisfaction, or even of only balance of probabilities, but in no way shall the criminal law standard of "beyond all reasonable doubt" be applied.

10. In relation to the supposed witnesses identified by the Club:

a. None of T., S., X. or Z. can stand as witness under Swiss law because they are all from one of the parties to the arbitration, i.e. they are party's representatives. Anything they say is not more than a submission in interest, i.e. a submission of the Club itself.

b. In the light of the criminal convictions and the fact that the Club advances a different motivation for the agent than the apparent one, it is for the Club and not UEFA to call Y. as a witness.

c. The supposed "expert" witnesses, C., B. and D. are no such thing, and have no admissible or relevant evidence to give, for the reasons given above.

11. It is widely recognised that match-fixing is, with doping, a very serious threat for the whole sport movement. CAS has been very clear in this and has called it *"one of the worst possible infringements of the integrity of sports"*. Accordingly, CAS has repeatedly confirmed important sanctions against both individuals and clubs. UEFA is determined to sanction so-called "big" clubs in the same way as "small" clubs. For this reason, the administrative measure issued by the AB as per Art. 2.08 UELR is appropriate, just and well motivated, and this totally independently on whether or not UEFA will take additional disciplinary measures as per Art. 2.09 UELR, in accordance with the applicable competition and disciplinary rules. The appealed decision of the AB must be confirmed in its entirety: not to do so would send a tragic wrong message to the world of European football, and of sport in general.

VII. THE PARTIES' REQUESTS FOR RELIEF

92. The Appellant's requests for relief are the following:

1. To lift the decisions of the UEFA Control and Disciplinary Body dated 21 June 2013 and of the UEFA Appeals Body dated 11 July 2013, issued against Beşiktaş JK, and to declare Beşiktaş JK eligible to participate in the UEFA Europe League 2013/2014 (respectively the UEFA Champions League 2013/2014).

Alternatively, to lift the decisions of the UEFA Control and Disciplinary Body dated 21 June 2013 and of the UEFA Appeals Body dated 11 July 2013, issued against Beşiktaş JK; to declare Beşiktaş JK provisionally eligible to participate in the UEFA Europa League 2013/2014 (respectively the UEFA Champions League 2013/2014); and to refer the case back to UEFA for a proper procedure complying with the regulations of UEFA and the procedural guarantees provided by Swiss law.

2a. To declare that these proceedings are free of costs and

- *to order UEFA to compensate Beşiktaş JK for all its costs incurred in connection with these proceedings and the foregoing UEFA proceedings (including the attorney's fees incurred by Beşiktaş JK, translator's fees, and such other costs as Beşiktaş JK will specify in due course);*

- *alternatively to order UEFA to pay Beşiktaş JK a contribution of at least CHF 100'000 towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters.*

2b. Alternatively, to order UEFA to pay all costs of these proceedings and the foregoing UEFA proceedings and to compensate Beşiktaş JK for all its costs incurred in connection with these proceedings and the foregoing UEFA proceedings (including the attorneys' fees incurred by Beşiktaş JK, the cost of hearings

for witnesses and representatives of Besiktas JK, translator's fees, and such other costs as Beşiktaş JK will specify in due course).

93. The Respondent's requests for relief are the following:

a. To dismiss the Appeal and confirm the decision of the Appeal Body of UEFA.

b. To order that Beşiktaş is excluded from participating in the next UEFA club competition for which it would be qualified, namely the 2013/2014 Europa League.

c. To order that that is without prejudice to the possibility of disciplinary proceedings.

d. To award UEFA its costs of the proceedings.

e. To charge any arbitration costs to Beşiktaş.

VIII. CAS JURISDICTION

94. The admissibility of an appeal before CAS shall be examined in light of Article R47 of the Code, which reads as follows:

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

95. The jurisdiction of CAS, which is not disputed, in the present matter is based on articles 60 to 62 of the 2012 Edition of the UEFA Statutes and article 30 UELR. Furthermore, the Club expressly agreed to recognize the jurisdiction of CAS when signing the admission criteria form for the UEFA Club Competitions 2013/2014.

96. Under Article R57 of the Code, the Panel has the full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the appealed one.

IX. APPLICABLE LAW

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

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

98. The *"applicable regulations"* in the case at hand are the UEFA rules and regulations.

99. Further, Article 63 para. 3 of the UEFA Statutes provides as follows:

"Moreover, proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS".

100. The parties have not expressly or impliedly agreed on a choice of law applicable to these proceedings before CAS. Therefore, the rules and regulations of UEFA shall apply primarily, and Swiss law, as UEFA is domiciled in Switzerland, shall apply subsidiarily.

X. ADMISSIBILITY OF THE APPEAL

101. The Appealed Decision was notified to the Appellant on 15 July 2013.

102. The appeal was filed within the deadline provided by Article 62 para. 2 of the UEFA Statutes, namely within 10 days after notification of the Appealed Decision. It further complies with the requirements of Article R48 of the CAS Code.

103. It follows that the appeal is admissible, which is also undisputed.

XI. MERITS

A. Regulatory framework applicable to the present dispute

104. Article 50 UEFA-Statutes provides:

"1 The Executive Committee shall draw up regulations governing the conditions of participation in and the staging of UEFA competitions".
2 It shall be a condition of entry into competition that each Member Association and/or club affiliated to a Member Association agrees to comply with the Statutes, and regulations and decisions of competent Organs made under them.
3 The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures".

105. Under Article 52 UEFA-Statutes:

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

106. Under Article 53 UEFA-Statutes:

"The following disciplinary measures may be imposed against Members Associations and clubs:
a) a warning,
b) a reprimand,
c) a fine,
d) the annulment of the result of a match,
e) an order that a match be replayed,

f) the deduction of points,
g) awarding a match by default,
h) staging of matches behind closed doors,
i) ordering a ban on the use of a stadium,
j) ordering the playing of a match in a third country,
k) the withholding of revenues from a UEFA competition,
l) the prohibition on registering new players in UEFA competition,
m) a restriction on the number of players that a club may register for participation in UEFA competition,
n) disqualification from competitions in progress and/or exclusion from future competitions".,
o) the withdrawal of a title or award,
p) the withdrawal of a licence".

107. Under Article 1.01 "Scope of Application" of the UEL 2013/2014 Regulations:

"The present regulations govern the rights, duties and responsibilities of all parties participating and involved in the preparation and organisation of the 2013/2014 UEFA Europa League including its qualifying phase and the play-offs (hereinafter the competition)".

108. Under Article 2.07 UELR, inter alia:

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

f) it must confirm in writing that the club itself, as well as its players and officials, agree to recognise the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne as defined in the relevant provisions of the UEFA Statutes and agree that any proceedings before the CAS concerning admission to, participation in or exclusion from the competition will be held in an expedited manner in accordance with the Code of Sports-related Arbitration of the CAS and with the directions issued by the CAS, including for provisional or super-provisional measures, to the explicit exclusion of any State court;

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

109. Under Article 2.08 UELR:

"If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition".

110. Under Article 2.09 UELR:

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

111. The present dispute must be examined in the light of the above regulatory provisions and principles. The scope of the current proceedings is limited to the question of whether the Appellant was directly and/or indirectly involved in activities aimed at arranging or influencing the outcome of a match at national or international level, in particular, the Turkish Cup Final played on 11 May 2011.

B. Burden and standard of proof

a. Burden of proof

112. The various UEFA regulations do not include any provisions concerning the burden of proof. The Panel will therefore examine this issue in application of Swiss law, the latter being subsidiarily applicable to the case at hand, as seen above.

113. Under Swiss law, the "burden of proof" is regulated by Article 8 of the Swiss Civil Code (hereinafter referred to as "CC"), which, by stipulating which party carries such burden, determines the consequences of the lack of evidence, i.e. the consequences of a relevant fact remaining unproven (*non liquet*, cf. BSK-ZGB/SCHMID/LARDELLI, 4th ed., 2010, Art. 8 no 4; KUKO-ZGB/MARRO, 2012, Art. 8 no 1).

114. Indeed, Article 8 CC stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence. Furthermore, the burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court/tribunal. It is the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal (CAS 2011/A/2384 & 2386; ATF 97 II 216, 218 E. 1; BSK-ZGB/SCHMID/LARDELLI, 4th ed., 2010, Art 8 no 31; DIKE-ZPO/GLASL, 2011, Art 55 no 15).

115. The burden of proof to primarily demonstrate that the Appellant was directly and/or indirectly involved in activities aimed at arranging or influencing the outcome of a match lies on the Respondent in the case at hand.

b. Standard of proof

116. As seen above, the Appellant contends that the standard of proof to be applied in the present dispute is "beyond reasonable doubt". In this regard, the Appellant considers that UEFA has a dominant position in European football. Accordingly, its decisions must be predictable, reasonable, proportionate and complying with the principles of due process. Therefore, it is impermissible for UEFA to apply a "standard" of "comfortable satisfaction" which is entirely vague, imprecise and ambiguous. The Appellant further asserts that in the case at hand, UEFA and CAS have at their full disposal all the evidence considered by the first instance Turkish

Criminal Court in its decisions against S. and T., including the full transcripts of recorded phone calls, intercepted text messages as well as various protocols of formal interrogations and witness statements.

117. The standard of proof is expressly provided in Article 2.08 UELR to be the standard of "comfortable satisfaction".

118. The Panel first notes that by its submissions to the UELR, the Appellant implicitly agreed to the application of this particular standard. In this regard, the UEFA AB, in the Appealed Decision, held that the applicable competition rules, recognised and accepted by the Appellant, foresee comfortable satisfaction as relevant standard of proof: *"[…] if, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such ineligible to participate in the competition […]".*

119. Furthermore, CAS jurisprudence is clear that the applicable standard of proof in match fixing cases is indeed "comfortable satisfaction", if not even the lower one of balance of probabilities as CAS 2009/A/1920: *"Taking into account the nature of the conduct in question the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary case. Therefore, the UEFA must establish the relevant facts "to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made"* (CAS 2005/A/908).

120. In CAS 2010/A/2267, the Panel held that even absent a specific identification and agreement of the standard of proof (as in Art. 2.05 UCLR and Art. 2.08 UELR), the standard of proof to be applied in match-fixing cases is the standard of "comfortable satisfaction". CAS first rejected the proposition that the standard of proof was the criminal standard of "beyond reasonable doubt", stating that in the normal course the standard would be the civil standard of the "balance of probabilities", and then went on to find that in the context the standard should be "comfortable satisfaction", taking into account that match-fixing is by its nature concealed:

> *"730. With respect to the standard of proof, the Panel finds that the party bearing the burden of evidence, in order to satisfy it, does not need to establish "beyond any reasonable doubt" the facts that it alleges to have occurred. The Panel stresses, that under Swiss law sanctions or disciplinary measures are not the exercise of power delegated by the state, but rather an expression of the freedom of associations and federations based on civil law and not on criminal law (cf. CAS 2008/A/1583 & CAS 2008/A/1584, para 41). According to the jurisprudence of the Swiss Federal Tribunal:*
>
> *"the duty of proof and assessment of evidence […] cannot be regulated, in private law cases, on the basis of concepts specific to criminal law such as presumption of innocence and the principle of "in dubio pro reo" and the corresponding safeguards contained in the European Convention on Human Rights" (cf. Judgement of the Swiss Federal Tribunal dated 31 March 1999, 5P.83/1999, consid. E 3.d).*
>
> *731. Accordingly, the Panel is not, in principle, bound by the criminal law standard requiring that the facts of the case have to be established "beyond any reasonable doubt". As confirmed by the Swiss Federal*

Tribunal, "the duty of proof and assessment of evidence are problems which cannot be regulated, in private law cases, on the basis of concepts specific to criminal law" (cf. Judgement of the Swiss Federal Tribunal dated 31 March 1999, 5P.83/1999, consid. E 3.d).d).

732. In general, the Panel needs to be convinced that an allegation is true by a "balance of probability", i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence (see CAS 2008/A/1370 & 1376, para 127; CAS 2004/A/602, para 5.15; TAS 2007/A/1411, para 59). However, in the CAS case FK Pobeda v UEFA, the Panel dealing with the match-fixing allegations accepted the standard of proof "to comfortable satisfaction" which was suggested by UEFA in the absence of any standard of proof specified in the respective regulations:

"Taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts "to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made" (CAS 2005/A/908, nr. 6.2)" (cf. CAS 2010/A/2172, para 20, citing CAS 2009/A/1920).

733. The application of this standard of proof was further confirmed by the CAS Panel dealing with issues of corruption and match-fixing in particular in the case Mr Oleg Oriekhov v UEFA (cf. CAS 2010/A/2172, para 53).

734. Due to the lack of the specific regulations stipulating the standard of proof in the FFU DR and in view of the established CAS jurisprudence in the match-fixing cases in football, the Panel will consider whether Respondent has established to its comfortable satisfaction that Appellants committed the alleged violations bearing in mind the seriousness of Respondent's contentions. Thereby, the Panel notes that the existence of serious allegations as such does not automatically raise the standard to the level of the criminal law standard "beyond any reasonable doubt". In addition, while assessing the evidence, the Panel will have well in mind that "corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing" (CAS 2010/A/2172, para 54)".

121. The same has been confirmed in CAS 2010/A/2172 and in CAS 2011/A/2528.

122. As the UEFA AB also pointed out, the test of comfortable satisfaction must take into account the circumstances of the case. That includes:

- The *"corruption is, by its nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing"* (CAS 2010/A/2172).

- *"The paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities"* (CAS 2009/A/1920).

123. With regard to this last element, the restricted powers of investigation of sports governing bodies, the Appellant considers that in the case at hand, UEFA and CAS can actually benefit

from the broad investigatory powers of the Turkish authorities as in particular *"the full transcripts of recorded phone calls, intercepted text messages as well as various protocols of formal interrogations and witness statements"* are available as evidence. This, according to the Appellant, implies that this case is different from the usual disciplinary case where the standard of "comfortable satisfaction" is applied and that therefore the standard of "beyond any reasonable doubt" shall apply in the present proceedings.

124. The Panel is of the opinion that this position cannot be followed. Even if it is true that in the case at hand the Panel enjoys the important investigatory work of the Turkish authorities, it does not change the nature of the present proceedings, which are fundamentally of a civil nature. The Panel notes that it was provided with the elements from the investigations conducted by the Turkish authorities not because of its particular investigatory powers, but as a result of the cooperation of the parties, the latter being allowed to file whatever evidence they feel would be beneficial to their case. This confirms the private nature of the present proceedings and excludes, in principle, the application of the standard of proof applicable in criminal proceedings.

125. In view of the above, the Panel considers that the standard of proof to be applied in the present dispute is "comfortable satisfaction".

C. Was the Respondent involved in any activity aimed at arranging or influencing the outcome of the 2011 Turkish Cup Final?

a. Interpretation of Art. 2.08 UELR

126. Art. 2.08 UELR provides, *inter alia,* that*: "If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition".*

127. First of all the Panel considers that Art. 2.08 UELR above is a regulatory provision whose main purpose is to establish the eligibility criteria and the conditions of participation in UEFA competitions and not to punish a club. In the Panel's view even if the application of Art. 2.08 UELR may have the effect to exclude a club from a UEFA competition, the relevant provision is not of a sanctionatory nature. This is also confirmed by the wording of Art. 50 (3) UEFA-Statutes which reads as follows: *"3 The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect,* ***without prejudice to any possible disciplinary measures****",* implicitly excluding its sanctionatory nature.

128. The Panel further considers that Art. 2.08 UELR does not tell precisely which activities are required for a club to be considered directly or indirectly involved in match fixing. Therefore, at this stage of its reasoning, the Panel must consider the legal requirements of said provision. Pursuant to CAS case law, the different elements of the rules of a federation shall be clear and

precise, in the event they are legally binding for athletes and/or clubs (see CAS 2006/A/1164; CAS 2007/A/1377; CAS 2007/A/1437). Inconsistencies might be on the charge of the legislator (the federation). However, the internal control upon the rules of the federation is manifestly relativized by the fact that the different case law, CAS and national, does not require a strict certitude of the elements provided for disciplinary sanctions of the sports federation, as required by criminal law. The different case law rather recognizes general elements, which constitute the basis for disciplinary sanctions (CAS 2007/A/1437). In this spirit, Art. 2.08 UELR is subject to interpretation and needs to be interpreted.

129. According to CAS jurisprudence (CAS 2013/A/3047) and Swiss law, there are four coequal methods of interpretation. They are the grammatical (seeks after the semantically meaning of the word or phrase), the systematical (seeks after the systematic position of an article in the legal texture of the greater whole), the historical (seeks after the original intention of the rule) and the teleological method (seeks after the spirit and purpose of the statue) of interpretation (KRAMER E., Juristische Methodenlehre, p. 57 ff., p. 85 ff.; 116 ff.; BGE 135 III 112 E. 3.3.2). While interpreting a statute, the judge has to seek for an objectively right and satisfying decision, taking account of the normative context and the *ratio legis* (BGE 135 III 112 E. 3.3.2). Thereby no interpretation method prevails over another. Rather, the judge has to choose those methodical arguments that allow approximating the *ratio legis* as close as possible (KRAMER E., Juristische Methodenlehre, p. 122).

130. With regard to the interpretation of Art. 2.08 UELR, the position of the parties is the following.

131. The Appellant, in the appeal brief, states the following:

"358. […] article 2.08 UEL Regulations 2013-2014 has to be understood as meaning that:

- *A club will be excluded based on this provision only if it has been involved in actual match fixing activities, i.e.* ***illicit activities*** *aimed at manipulating the outcome of a match. In contrast, activities that theoretically could influence the outcome of a match but which are not aimed at this cannot be a basis for excluding a club from the competition.*

- *A club will only be affected by this provision if the club itself has been involved in activity* ***aimed at*** *arranging or influencing the outcome of a match. In contrast, a club that has played in a (potentially) rigged match but which was not involved in the match fixing has nothing to fear since its exclusion from a competition would not serve to protect the integrity and image of the competition. In other words, the individuals whose actions qualify as match fixing must be attributable to the club to be excluded.*

- *According to article 2.08 UEL Regulations 2013-2014, UEFA is not required to prove the club's involvement in the match fixing activities beyond reasonable doubt but only to its "****comfortable satisfaction****". As the reasons for this reduced standard of proof, UEFA usually cites its limited investigatory powers (as compared with the national formal interrogation authorities) and the paramount importance of fighting match fixing. (However, as will be explained below in Section VII.C, the correct standard of proof is "beyond reasonable doubt".)*

- *Article 2.08 UEL Regulations 2013-2014 provides that UEFA may be comfortably satisfied that a club has been involved in match fixing activities only "**on the basis of all factual circumstances and information available to UEFA**". Accordingly, UEFA must ensure that its decision whether or not to exclude a club is based on all relevant information available to UEFA".*

132. As to the Respondent, its position in this regard is the following:

"Clubs' direct, or indirect, involvement

146 Art. 2.08 UELR (and Art 50(3) Statutes) provides, inter alia, that clubs must not have been directly, or indirectly, involved in the prohibited activity.

147 Direct involvement means where a club through its officials has actually engaged in the prohibited activity. Under Art 6 DR 2008, applicable at the time, the Club was and is responsible for the actions of its Officials.

148 Indirect involvement can only be where the link of the club to the activity is more attenuated: in other words where there has been such activity in relation to matches played by a club.

149 Such breadth is required to cater for the situations where the actors may not technically be officials of the club (or where third parties are used in an attempt to avoid club responsibility): cf. the responsibility of the club for its supporters under Art 6 DR 2008. The relevance of this in this case is that Art 2.08 UELR may be engaged even absent evidence of wrongdoing by a club official.

150 In CAS 2010/A/2267 at paragraphs 1023 et seq […], CAS emphasised that the critical nature of maintaining a zero tolerance stance against match-fixing meant that Art 5 UEFA DR 2008 was readily engaged (including in that case by no more a failure to report). A fortiori, therefore, any involvement, direct or indirect, in activity aimed at influencing the outcome of a match, is caught:

> *"1023 Article 5(1) of the UEFA DR stipulates that "[m]ember associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship". According to the CAS case Oriekhov vs UEFA, a failure to notify attempted match-fixing may constitute a violation of the principles of conduct stipulated in Article 5 of the UEFA DR (cf. CAS 2010/A/2172, para 72).*
>
> *1024 The Panel finds that in view of the obligation "to uncompromisingly fight corruption" stipulated in the Code of Ethics and in view of the practice of CAS in applying Article 5 of the UEFA DR, the persons involved in football shall immediately report any potential breach of rules of the respective authorities. Especially, since the principle of "zero tolerance to match-fixing" presents one of the most important values and principles of behaviour in football. The observance of these values and principles is indispensable for the protection and improvement of the integrity of the game. The Panel further notes that the above-mentioned rules do not provide any guidance as to when a party is supposed to notify the FFU about match-fixing".*

*"**Aimed at […] influencing the outcome of a match at national […] level**"*

151 The prohibited activity covers any activity "aimed at" arranging or influencing the outcome of a match. It is not therefore necessary to establish that the activity achieved its purpose, or even that it went very far. It is enough that there was an attempt. It need not be established in this case, therefore, that the players in fact played to less than their full abilities.

152 Activity can be aimed at influencing the outcome of a match even if that is not the only aim, or even the dominant aim of the activity. Where part of the aim is to affect the outcome, the activity remains "aimed at" that. Were that not the case it would often be possible to conceal such an aim by pointing to other simultaneous aims.

153 The fact that it is sufficient that the activity can be aimed at merely "influencing" the outcome of match further establishes the breadth of the activity caught. It is enough that some small advantage in a match was sought as opposed to a result arranged".

133. First of all, the Panel notes that in accordance with Article 6 of the 2008 Edition of the UEFA Disciplinary Regulations ("2008 DR"), applicable at the time of the events, member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the association or club. This strict liability principle – confirmed in CAS 2002/A/423 as well as in CAS 2007/A/1217 and by a recent decision of the Permanent Court of Arbitration for Clubs and Corporations of the German Professional Leagues in Football (*Ständiges Schiedsgericht für Vereine und Kapitalgesellschaften der Lizenzligen*) published in Zeitschrift für Sport und Recht, 5/2013, p. 200 seq. – put in parallel with Article 2.08 UELR means that the actions of these people are attributable to the clubs in the context of the eligibility of such club to take part in the 2013/2014 UEL.

134. According to Art. 5 2008 DR, the principles of conduct are breached by anyone who acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of behaviour in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party.

135. The Panel considers that, in this context, a direct involvement of a club, through its officials, or other persons linked to the club in accordance with Art. 6 DR 2008, means that the club has actually engaged in the prohibited activity, by having, or trying to have, a direct influence on the persons involved in a match, i.e. the players or the referees, with the aim to arrange or to influence the outcome of a match.

136. As to the indirect involvement of a club, the Panel considers that this means any activity in which a club was involved, although not intended to, that might influence the outcome of a match in a non-sportive way, in circumstances where the Club is assumed to be aware whereof.

137. The Panel further believes that the Respondent is right when it states that the interpretation of the wording "aimed at" means that it is not necessary to establish that the activity achieved its purpose, or even that it went very far. It is enough that there was an attempt.

138. The Panel also agrees with the Respondent, when it states that the reproached activity can be aimed at influencing the outcome of a match even if that is not the only aim, or even the dominant aim of the activity.

139. In view of the above, the scope of application of Art. 2.08 UELR is broad. In this sense, the Panel does not agree with the Appellant when it states that this provision only encompasses illicit activities aimed at manipulating the outcome of a match. An activity which might look at first sight as licit, might breach Article 2.08 UELR, considering all the circumstances of a case, if this activity might have an influence on the outcome of a particular match.

140. The Panel deems that this interpretation is also in line with the *"zero tolerance to match-fixing"* which, according to CAS jurisprudence (CAS 2010/A/2267) presents one of the most important values and principles of behaviour in football. The observance of these values and principles is indispensable for the protection and improvement of the integrity of the game.

b. The evidence which can be relied upon for the purpose of Art. 2.08 UELR

141. The evidence which is provided in Art. 2.08 UELR to be relevant is "*all the factual circumstances and information available to UEFA*". Also specifically provided in this provision is that "*UEFA can rely upon, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court*".

142. In the Appealed Decision, the UEFA AB considered the following:

> *"[…] the fact of a criminal conviction does not necessarily and automatically prove a certain fact. However, at the same time and on the basis of the evidence available in the present case, the Appeals Body shares the view of the UEFA Disciplinary Inspector that the fact that representatives of the club have been sanctioned by a competent criminal court for match fixing activities, is strong evidence for the existence of such activities – taking also in consideration the fact that a criminal court applies a stronger standard of proof than a disciplinary body".*

143. The UEFA AB does not make any reference to the investigations conducted by and the decisions taken by the TFF EC and DC.

144. In this regard, the Appellant considers the following:

> *"Given that the court decision on which UEFA relied for its decision to ban Besiktas JK from the upcoming Europa League 2013-2014 competition is the result of an investigation which according to the UN Special Rapporteur is yet to be brought "into compliance with human rights standards on fair trial and procedural guarantees", and considering the grave deficiencies of this court decision demonstrated in this appeal brief and in the dissenting resolutions of the Turkish Football Federation, it was utterly inacceptable for UEFA to simply rely on the operative part of a clearly faulty decision and to exclude Besiktas JK from participating in the UEFA Europa League 2013-2014 on this basis".*

145. The Appellant further states that *"UEFA failed to thoroughly consider and assess the Reports and reasoned Resolutions of the Turkish Football Federation and its Committees. UEFA and its Appeals Body do not explain at all why they do not agree with these decisions and/or why these decisions are not compelling".*

146. As decided in CAS 2010/A/2172, UEFA is legitimate to rely on the findings of a state court in match fixing. In the context of sport, it is essential that sport´s governing body should be able to rely on such decisions, as it does not have the same resources and undertake investigations, as CAS held in CAS 2009/A/1920.

147. The Panel confirms that UEFA has the discretion to rely, or not, on a decision of a national or international sporting body, arbitral tribunal or state court. However, when doing so, UEFA must give reasons for its choices in this regard, and explain the reasons why it relies on certain decisions and not on others, when several decisions are at its disposal.

148. Furthermore, the Panel agrees with the findings in CAS 2011/A/2528 that an effective fight to protect the integrity of sport depends on prompt action. In this context, CAS, or UEFA, cannot wait until states proceedings are over, i.e. after all internal remedies have been exhausted, to take its decision. However, CAS, or UEFA, must be particularly careful when decisions it relies on are not final, as it is the case of the decision of the High Court.

149. In the case at hand, UEFA AB briefly referred to the decision of the High Court, which is not in force in Turkey as being the subject of different appeals, to conclude that the Respondent's representatives were involved in match fixing in relation with the Cup Final. The UEFA AB did not explain why it considered that the resolutions and decisions of the TFF Committees were wrong, in particular when assessing the evidence put before them.

150. The Panel considers that the possibility offered by Article 2.08 for UELR to rely on decisions from other instances shall be used carefully and does not allow UEFA to blindly rely on a particular decision, without assessing the evidence assessed in the context of these decisions, if this evidence is available to it.

151. The Panel will therefore, in the present Award, take into consideration all evidence available to it, and pay a particular attention to all decisions rendered by previous authorities, state and sportive, in the case at hand.

c. The evidence available shows that Art. 2.08 UELR is engaged

i. The Appellant would benefit from a match fixed

152. According to CAS jurisprudence (CAS 2010/A/2267), a relevant consideration in assessing whether match or matches have been fixed by the officials of a club, is the extent and nature of the benefit to the club of winning the particular match or matches. In this regard, the Panel in the above-mentioned case held that:

"The finding of the Panel is further supported by the ranking of FC [X.] in the table before the Match and potential benefits which could have been available in case of moving up in the table. Accordingly, FC [X.] could have had an interest in fixing the Match".

153. From football's clubs point of view, it is very important to take part in European competitions. In the season 2011/2012, five Turkish teams would represent their country in these

competitions, two in Champions League and three in Europa League. The team which would win the Turkish Cup and the ones which would finish on the third and fourth place of the Super League would take part in the Europa League, whereas the two top teams of the Super League would participate in the Champions League. Before the last two rounds of the Super League, Fenerbahçe was in the first place with 76 points. The Appellant and Kayserispor had 50 points, the Appellant occupying the fifth position on goal difference. The Appellant was therefore, before the Turkish Cup Final, not assertive to take part in European competitions in the 2011/2012.

154. It cannot be contested that at that point in time, the Appellant had a great sporting, and financial, interest in winning the Cup Final, especially considering that it would allow it to take part in the 2011/2012 Europa League.

155. In accordance with the above-mentioned CAS jurisprudence, the Appellant could therefore certainly have had an interest in fixing the Cup Final. This of course is not sufficient to conclude that the Appellant attempted to influence the outcome of that Match, but it is a relevant element to be taken into consideration.

ii. There was an attempt to influence the outcome of the Match

156. It is not disputed by the parties that Y., in the framework of the discussions he had with the Officials, contacted the Players to inform them about alleged transfer offers, as well as to try to convince them not to play to the best of their abilities in the Match.

157. The Panel thoroughly analysed the evidence at its disposal with regard to the communication between Y. and the Players in the days ahead of the Match. It was established that Y. tried to influence the outcome of the Match by telling the Players not to play well in that game. He basically told them that the transfer with the Appellant was agreed, gave them information about the allegedly agreed terms of the transfers and opined that it was in their interest to make sure that the Appellant would win the Match, so the Club would qualify for the 2011/2012 Europa League.

158. Y. also informed the Players that he was not acting on his own initiative, but in collaboration with some of the Club's representatives.

159. The Appellant's position in this regard is that Y. acted on his own initiative, whereas the Respondent alleges that he acted so at the Official's requests.

iii. The communication and meetings between the Appellant's representatives and Y.

160. The first discussion between T. and Y. which is available to the Panel, was the one held on 4 May 2011 at 2:20pm. The content of this phone call can be summarized as follows:

T. and Y. talked about, without being specific, the potential transfer of K.

Y. informed T. that many clubs were interested in K.

With regard to the Players, the discussion went on as follows:

T.: "…now, we these, I mean I. and A".

Y.: "Yes"

T.: "I told just now"

Y.: "Okay"

T.: "They definitely want to well, these two"

Y.: "They want to take"

T.: "Yes, definitely, well"

Y.: "Okay"

[…]

T.: "Does A.'s thing finish"

Y.: "No there is one year left but…"

T.: "I.'s?"

Y.: "I. also has one year left master"

T.: "Okay"

Y.: "But they would Grease the wheels for them"

T.: "Then brother, you talk to him [S.], let me give your number"

Y. "Okay"

[…]

T.: "You talk to the boys"

Y.: "Ok, the boys want to come immediately master, there is no problem"

T.: "So, there is no problem right? Afterwards"

Y.: "No, no, A. is with you now, I mean no problems"

T.: "I understand"

Y.: "So there is not a single problem"

T.: "…As I said, we have difficulties nowadays, we have no men, these foreigners did not… to them… I said then you use them I mean according to the thing because there is no alternative, who will we make play?"

Y. "Yes"

T.: "Definitely of I".

Y.: "Definitely master, as a result the men will play and they are quite willing to"

T.: "I understand"

Y.: "Then master, let me call you"

T.: "You talk to them right so that we do not remain…you understand? For him let's not remain pending"

Y. "Yes master, let me tell the boys, they will be very happy, too …"

[…]

T.: "Now, this has nothing to do with this match, therefore"

Y.: "Okay, okay"

T.: "Do not think anything wrong"

Y.: "Okay, okay"

T.: "But anyway you explain that, let the boy not think anything wrong"

Y. "No, no, no

T.: "This…"

Y.: "No, no, no"

T.: "In a way like that. I do not involve I mean"

Y. "No, no master no, I know, right now I call and return to you master".

[…].

161. On 6 May 2011, X. called Y. in order to organise a meeting the following day with the Appellant's representatives. X. specified that Y. should come alone, which was agreed by Y.

162. On 7 May 2011, a meeting took place between S., Z. and Y. The meeting was held in Bursa, at the occasion of a match of the Appellant.

163. According to the written testimony of Z., this meeting was urgently organized as Y. told T. that Galatasaray was putting a lot of pressure to get the Players. The participants in this meeting allegedly discussed the transfer of the Players, in particular the potential exchange between F., who was on loan to IBB Spor, and I.

164. On 9 May 2011 another meeting was held between S., Z. and Y. This meeting was also organised by X., whose conversation with Y. prior to the meeting was the following:

"X.: "Brother where are you"

Y.: "I am in thing at the moment I am coming close to the first Bosporus Bridge o!"

X.: "So what which way is suitable?"

Y.: "Everywhere for me…I am coming anyway where is OK for me o!

X.: "They are in the newspaper in Milliyet newspaper at the moment"

Y.: "Okey"

X.: "In other words they say "let us meet in a safe place where nobody sees""

Y.: "There is nobody, namely, I am alone anyway"

X.: "Just a minute (stop) let me call first"

Y.: "I am alone I am alone, namely it is okay for that, come on bye bye"

X.: "Okay okay".

165. Still according to Z.'s written testimony before the TFF Ethics Committee, the second meeting took place at the request of Y., who wanted to learn about the transfer fee, which the Appellant would be ready to pay for the transfer of I. The Appellant's representatives allegedly answered that they wanted to exchange I. against F.

166. After the meeting held on 9 May 2011, at 7:22pm, T. called Y. The content of the conversation was in particular the following:

167. […]

"T.: "Yes, did you meet"

Y.: "… yes I met again, yes"

T.: "All right all right okay"

Y. "I mean it is all right"

T. "Is there any problem"

Y. "Everything is all right, relax"

T.: "(laughing)"

Y.: "(laughing) I mean my coach be relaxed"

T.: "Hope the best young brother"

[…].

168. On the match day on 11 May 2011, at 11:41am, T. called Y. The content of the conversation was in particular the following:

[…]

"T.: "Well I understand A".

Y.: "He is playing"

T.: "Playing ok"

Y. "Yes playing, I mean only playing"

T.: "Ok"

Y.: "Ok man"

T.: "Let him play""

Y.: "Yes, come on man, see you (laughing)".

169. The Appellant considers that to properly understand that these communications and meetings concerned the transfer of players and not match-fixing, these above-mentioned events, which occurred in the week before the Match, shall be put in perspective with the global context, in particular:

- T. transmitted a list of players to be transferred to S. at the end of March 2011;
- T. and Y. discussed the Appellant's transfer plan in more than fifty phone calls in the period between 29 March and 4 May 2011;
- These discussions started before the semi-finals of the Turkish Cup, at a time when the Appellant did not know if they would qualify for the final and who they would be playing against if they qualified.

170. The report of the TFF Ethics Committee and the decision of the TFF Disciplinary Committee took the same position in their reasoning, leading the TFF Committee to free the Officials from any wrongdoings.

171. After the analysis of the content of the phone conversations between T. and Y., the Panel considers that the language used is suspicious. The Panel finds particularly unusual that T. and Y. did not use a single time the word "transfer" in the above-mentioned phone conversations.

172. The Panel also finds odd that T., who was at that time only coaching the Club *ad interim,* seems to be very tense about the issue of the potential transfer of the Players for the next season, whereas a crucial match for his future as a coach is taking place shortly.

173. Furthermore, the meetings which were held between the Club's representatives and Y. were surrounded by an atmosphere of secrecy. The Panel fails to understand why so much precaution was taken with regard to those meetings, if the parties involved did not have anything to hide.

174. In this context, the Panel recalls that corruption is, by its nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoings (CAS 2010/A/2172). In the case of phone conversations related to match-fixing, the Panel considers that this position is also applicable and people involved in match fixing will avoid using direct words in this regard, in case they might be heard, or wiretapped. As to meetings related to match fixing activities, the Panel has no doubt that they will occur in private, with as less as possible people involved.

175. The Panel would be ready to follow the Appellant's theory that there were genuine transfer offers made to Y., if it was provided with evidence demonstrating that (i) a list of the transferable players, including the Players, was actually transmitted by T. to S. and (ii) the multiple phone conversation held between T. and Y. prior to 4 May 2011 were about the genuine transfer of the Players. However, the Panel deems that the Appellant failed to discharge its burden of proof in this regard.

176. As to the list of players allegedly transmitted by T. to S. at the end of March 2011, the Panel, as well as in particular the TFF Ethics Committee in its resolutions, notes that it is was not included by the Appellant in the file. In this regard, the only evidence provided is the testimonies of former or current representatives of the club.

177. The oral, and written, testimonies of T., S., Z. and X. shall be taken with particular care, not only because these individuals are, or were, closely related to the Appellant, but especially because they were, or are still, suspected of being the ones who actually took part in the match-fixing activities. In this context, the Panel doubts that these individuals would incriminate themselves, especially those who are facing years of prison for corruption in Turkey.

178. In this context, and in the absence of any material evidence of the existence of this list of transferable players, the Panel cannot take this evidence into consideration.

179. The Panel accepts that it was evidence that T. and Y. discussed more than 50 times on the phone between 29 March and 4 May 2011.

180. However, the Panel was not provided with the content of these phone conversations.

181. In this regard, the Appellant, which has the onus of proving the content of these conversations, should have provided the Panel with such content.

182. B., member of the EC, stated in his oral testimony at the hearing that the content of the phone conversation between T. and Y. before 4 May 2011 was in the file of the EC. When asked at the end of the hearing why it did not provide the Panel with this particular evidence, the Appellant could not explain why it was not the case and stated that they referred to the resolutions of the EC, which referred to those phone calls.

183. Furthermore, still with regard to the content of the phone conversations with T. before 4 May 2011, the Panel would have liked to ask questions to Y., who is the centrepiece of the present proceedings.

184. In this regard, the Appellant voluntarily not called Y. as a witness as it has *"serious doubts as to the credibility of Y"*. The Appellant considers that Y.'s oral statement before the Ethics Committee is sufficient evidence to support its position that its Officials were not involved in any attempts to influence the performance of the Players in the Match.

185. The Panel cannot follow this position by the Appellant. First, in its oral statement before the Ethics Committee, Y. denied any wrongdoings, including him telling the Players not to play to the best of their abilities in the Match, which is accepted by the Appellant to be a lie. Second, the Panel considers that it is to the Panel to assess the credibility of witnesses, and not to the parties.

186. The Panel therefore considers that the Appellant did not establish in evidence that the offers made to Y. with regard to the transfer of the Players started in March 2011, and therefore that the intensive discussions and meetings held the week before the Match were related to genuine transfer offers for the Players.

iv. Other relevant elements

187. The Panel considers that the following elements also support the Respondent's position that the Official's activities in the week preceding the Match were aiming at influencing the outcome of the Match.

a) The timing

The Panel deems that it is implausible that genuine steps to transfer the Players, without any ulterior motive, should have been taken immediately before the critical Turkish Cup Final match to be played against the Player's existing club.

- It is apparent that the discussions went beyond the simple investigation of possibilities. There were repeated phone calls and meetings for reassurance.

- It is apparent that the bulk of the discussions occurred after the participants in the Cup Final were known on 22 April 2011. Even if there was the investigation of possibilities at an earlier point in April, it is clear that matters escalated significantly in the week immediately leading up to the Cup Final, after the participants were known. The Appellant accepts that discussions intensified then.

- No coherent reason is offered why the steps were not taken later. It is suggested that other clubs were interested, and there was mounting pressure, but no convincing evidence is offered; further, it is clear that it would not have prevented the steps being taken a few days later instead. No deal could be done before June, the beginning of the transfer window, and the Players' club had not even been approached. There was no urgency that warranted acting before the Cup Final rather than after it.

- A club genuinely motivated to acquire the Players would have deliberately waited until after the Match, because it was obviously improper to be having any kind of discussions with two players from the opposing team in this context.

b) The Club's President testimony before the EC

188. The President of the Club, Mr Yildirim Demirörem, gave oral testimony before the EC in the course of its investigations. Although he was not called as a witness before CAS, the Panel considers that it can rely on his testimony before the EC, especially because such testimony was not contested by the parties.

189. The President explained that after the resignation of Mr Schuster, they decided to give a chance to his assistant T. They did not sign a contract at that time. However, when the Club won the Cup Final, a contract was signed between the Appellant and T.

190. The President confirmed that S. was the Chairman of the Football Committee and in charge of transfers. He also confessed that he was not involved in all the steps with regard to transfers, but that he was informed when the transfer negotiations came to a certain level.

191. With regard to I., Mr Demirörem confirmed that he was a former player of the Club, and that each year some persons considered him to come back to the Club. However, his position to I. was the following:

"*Even if our transfer committee talks and agrees with him, I certainly would not take him. There is no sense in my taking a football player that I sent out […] I would never let the transfer of I".*

192. With regard to A., the President confessed that he was not a football player who he met, knew or followed.

193. The Panel considers that the position of the President is a strong support to the theory that the transfer of I., and to a certain extent of A., could not enter into question for the Club.

194. Furthermore, this testimony also demonstrates that T. had a vital interest in winning the Cup Final, as the Club waited this win to sign a contract with him.

c) IBB Spor was not approached before the Match and the transfers were abandoned

195. The parties agree that the Appellant did not contact IBB Spor before the Match. T. explained, in his oral testimony before CAS, that the negotiations with a club would never take place before the transfer window opens.

196. However, the Appellant accepts that S. called the President of IBB Spor three times between 23 May and 1 June 2011, the latter date being the opening of the summer transfer window in Turkey. The Appellant states that then S. and the President of IBB Spor met personally, on 1 June 2011 to negotiate the transfer of I. The Appellant also stated that at this point, A. had *"fallen off Besiktas JK's transfer shortlist […] and therefore was not the subject of the negotiations […]"*.

197. The transfer of I. was also abandoned, allegedly because IBB Spor requested a high transfer sum in cash, which was not an option for the Club.

d) Absence of evidence called by the Club from the Players or Y.

198. The Panel finds that it was particular from the Appellant not to call any witnesses not related to the Club, the latter being, as seen above, subject to a special caution by the Panel when considering their testimonies.

199. In particular, no evidence was brought by the Appellant from either the Players, or from Y., or from any third parties. Against the background of the criminal conviction and the assertion that S. and T. had nothing to do with their actions, it was for the Appellant to call those witnesses to give evidence. The Panel would have liked to be able to ask questions to these individuals, in particular Y., and assess their credibility.

200. The Panel agrees that it was not for UEFA, as mentioned by the Appellant at the hearing, to call Y. to give evidence, when the case was already established before the criminal court. If the Appellant wanted to raise an alternative theory, unsupported by other evidence, it was necessary for it to call the witnesses that would, according to them, have to give that evidence on oath.

e) The absence of any credible or evidenced motive for Y. to lie

201. The Panel considers that no plausible contrary motive is coherently advanced, still less evidenced, as to why Y. would have acted as he did unless it was at the instance of the Club's officials.

202. In this regard, the Club makes the frank admission (right from the start of the Appeal brief) that all it can do is to *"speculate"* as to Y. supposed motivation for, as they would have it, lying to his players that the Club's Officials had asked for them not to play to their full abilities, and lying that a deal was done that they would be taken if they did so, and lying that the salaries were agreed, and lying about all the various other things that Y. is revealed by the evidence to have told the players. As the clubs puts it, Y. *"engineered"* everything in a complex artifice.

203. The Panel notes that if Y. did not act at the request of the Officials, he would have been lying to everybody, being alone in his scheme. In particular, he would have lied to his long time acquaintances T., and two of the players he was managing. This means that if his lies were discovered, he would have lost on both sides.

204. Finally, Y. could have secured commissions with regard to the transfer of the Players, as it is alleged that other important clubs, such as Galatasaray, were also interested in transferring the Players.

f) The decision of the High Court

205. Finally, there is the decision of the High Court. As explained above (see paragraphs 147-151), UEFA cannot rely exclusively on the findings of a state court without making its own assessment of these findings and without explaining which other elements should form the basis of its decision. However, this does not mean that Art.2.08 sentence 3 UELR has no function at all. A conviction by a state court for fixing a match can justify the initiating of disciplinary proceedings. The Appellant, according to its By-laws/Statutes, is responsible for the match and the game operations. But because – as was submitted – it only has, in comparison to the state, limited practical and legal means at its disposal to prevent unlawful disturbances to the match and the game operations, Art. 2.08 sentence 3 UELR – as a product of club autonomy – also provides a legitimate legal way to help combat and prevent such disturbances. Thus, a criminal conviction from a state court can corroborate, confirm, and/or supplement the impressions acquired and conclusions reached by the federation itself. It is in this way that the decision of the High Court can be used in the present case as an evidentiary indicator of the correctness of the challenged decision of the UEFA Appeals Body.

XII. CONCLUSION

206. In view of all the above, the Panel concludes that it is comfortably satisfied that the Appellant, through the activities of two of its officials, has been directly/or indirectly involved, in influencing the outcome of the Match and that therefore, UEFA was entitled to declare the Appellant ineligible to take part in the UEFA Europa League 2013/2014, in accordance with article 2.08 UELR.

207. As a result of the above, the appeal filed by the Club against the Appealed Decision is rejected, and the latter decision upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The appeal filed on 24 July 2013 by Besiktas Jimnastik Kulübü against the decision rendered by the UEFA Appeals Body on 11 July 2013 is dismissed.

2. The decision of the UEFA Appeals Body dated 11 July 2013 is confirmed.

3. (…).

4. (…).

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