



Arbitration CAS 2015/A/4343 Trabzonspor v. Turkish Football Federation (TFF), Union of European Football Association (UEFA) & Fenerbahçe, award of 27 March 2017

Panel: Mr Romano Subiotto QC (United Kingdom), President; Mr Georg von Segesser (Switzerland); Mr Bernhard Welten (Switzerland)

Football

Match-fixing

Res judicata

Ne bis in idem

Standing to appeal of a directly affected third party

Incompetence of UEFA to impose a sanction at domestic level based on match-fixing violation

1. The *res judicata* effect of a matter is determined in relation to the triple identity test according to which the principle applies only if the identity of the parties, the subject of the matter, and the legal grounds are the same. If the subject matter of the appeal submitted to the analysis of a CAS panel differs from another dispute, the triple identity test is not fulfilled and the new proceedings do not breach the legal principle of *res judicata*.
2. The legal principle *ne bis in idem* prevents sports disciplinary bodies from trying a person or an entity for an offence in relation to which that person or entity has already been convicted or acquitted pursuant to a final decision of another body within the same regulatory framework. If (i) the parties involved in the dispute and (ii) the scope of the appellant's prayers for relief are different from the scope of a second arbitration proceedings, and (iii) the independence and the impartiality of the decision-making body having rendered a previous decision in the same matter did not meet Swiss law's requirements, the appeal does not violate the legal principle *ne bis in idem*.
3. According to article 62(2) of the UEFA Statutes, "*only parties that are directly affected by a decision may appeal to the CAS*". Accordingly, standing to appeal UEFA decisions before the CAS is not only granted to the addressee of a measure, but also to third parties that are directly affected by it. Said third party has the burden of proof to demonstrate a legal interest worthy of protection and the notion of direct affectation must be interpreted restrictively. Additionally, the financial or sporting interest it prevails itself of needs to be certain, failing which said third party's standing to sue will not be recognised.
4. According to article 14 of the UEFA Disciplinary Regulations, various sanctions are enforceable against domestic competitions-related match-fixing offenders. Such sanctions are however solely deploying their effects at UEFA level, *i.e.* in connection with an offender's status in relation to UEFA's competitions, as opposed to its status in

relation to domestic competitions. A request that a match-fixing offender be sanctioned on such basis at domestic level can therefore only be rejected.

I. THE PARTIES

1. Trabzonspor Sportif Yatırım ve Futbol İşletmeciliği Tic. A.Ş. (the “First Appellant” or “Trabzonspor”) is a company incorporated in Turkey and runs the professional football club of Trabzonspor. Trabzonspor Futbol İşletmeciliği Tic. A.Ş. (the “Second Appellant”) is also a company incorporated in Turkey and ran the professional team Trabzonspor until the reorganization of the Trabzonspor group in mid-2011. Trabzonspor Kulübü Derneği (the “Third Appellant”) is a football club in Turkey. As explained below in paragraph 38, the Second and Third Appellants do not have standing to appeal the contested decision. Hence, references to the Appellant throughout this award relate only to the First Appellant.
2. The Turkish Football Federation (“TFF” or “First Respondent”) is the national governing body for football in Turkey. It is an association based in Turkey and a member of the Union of European Football Associations (“UEFA”) as well as the Fédération Internationale de Football Association (“FIFA”).
3. The Union of European Football Associations (“UEFA” or “Second Respondent”), is the governing body of European football and one of six confederations recognized by FIFA. It is an association with its headquarters in Nyon, Switzerland.
4. Fenerbahçe Futbol A.Ş. (“Third Respondent”) runs the professional football team of Fenerbahçe club. It is a member of TFF and has a licence from UEFA. Fenerbahçe Spor Kulübü (“Fourth Respondent”) is a football club in Turkey. The third and fourth Respondents are collectively referred to as “Fenerbahçe”.
5. All four respondents are collectively referred to as the “Respondents” throughout this award.

II. APPEALED DECISION

6. Trabzonspor appeals the decision of the UEFA Appeals Body (“UEFA AB”) dated 17 September 2015 in UEFA proceedings 27179 (whose grounds were notified on 8 December 2015), also referred to as the “Appealed Decision”. The Appealed Decision concerns several requests from the Appellant in relation to the match-fixing scandal during the 2010-2011 season of the Turkish Super League, the highest league of Turkish football. The UEFA AB ruled that UEFA had no competence to deal with the match-fixing offences, which occurred at the 2010-2011 Turkish Super League and accordingly dismissed the Appellant’s requests.

III. FACTUAL BACKGROUND

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

A. Proceedings in Turkey

8. On 22 May 2011, Trabzonspor finished the 2010-2011 season in second place after Fenerbahçe, with the same number of points but with fewer scored goals. In 2011, there were allegations of widespread match-fixing in the Turkish Super League. Arrests were made by the Turkish police. A criminal investigation was initiated by the Turkish public prosecutor. On 11 July 2011, the Executive Committee of TFF requested TFF's Ethics Committee to conduct its own investigation into match-fixing.
9. On 24 August 2011, TFF withdrew Fenerbahçe from the 2011-2012 UEFA Champions League competition and a UEFA Emergency Panel decided that Trabzonspor would replace Fenerbahçe in the competition. On 2 December 2011, the Turkish public prosecutor issued a criminal indictment against numerous individuals, including officials of Fenerbahçe. On 20 December 2011, a report drafted by the TFF Executive Committee was issued, identifying several acts of match-fixing involving officials of Fenerbahçe.
10. On 13 April 2012, Trabzonspor filed a request with TFF demanding that TFF declare Trabzonspor the Super League champion for the 2010-2011 season.
11. In response to Trabzonspor's filing, on 26 April 2012, the TFF Executive Committee issued a report asserting that while some officials from Fenerbahçe had attempted match-fixing, there was no proof that other members of the Board were aware of the activities. Thus, the practice was not found to be attributable to Fenerbahçe.
12. On 6 May 2012, the TFF Disciplinary Committee rendered a decision sanctioning three officials of Fenerbahçe. No actions were taken against the club itself (Third and Fourth Respondents). On 4 June 2012, the TFF Arbitration Body upheld the TFF Disciplinary Committee's decision of 6 May 2012 and dismissed Trabzonspor's appeal against such decision.

B. Proceedings before UEFA

13. On 20 March 2013, the Appellant wrote to UEFA to complain about TFF allegedly breaching and continuing to breach the UEFA Statutes. On 18 June 2013, UEFA responded to the Appellant informing it that it had appointed a Disciplinary Inspector. Ultimately, UEFA decided not to initiate disciplinary proceedings against TFF.

14. On 10 June 2013, Fenerbahçe was informed of disciplinary proceedings against it by UEFA. On 12 June 2013, the Appellant filed a request for intervention in the Fenerbahçe proceedings with UEFA. On 18 June 2013, the Appellant's application to intervene was rejected.
15. On 22 June 2013, the UEFA Control and Ethics Disciplinary Body ("UEFA CEDB") issued a decision determining that Fenerbahçe had violated Article 5 of the UEFA Disciplinary Regulations ("UEFA DR") 2008 and disqualified Fenerbahçe from three consecutive UEFA club competitions for which it would qualify, with the disqualification from the third competition suspended for five years.
16. On 10 July 2013, the UEFA AB partially upheld the UEFA CEDB decision of 22 June 2013, sanctioning Fenerbahçe from participating in the next two European competitions for which it would qualify ("2013 UEFA AB Decision"). On 28 August 2013, the CAS dismissed Fenerbahçe's appeal and upheld the UEFA AB Decision of 10 July 2013.
17. Between 30 October 2013 and 12 December 2013, the Appellant initiated another application with the TFF requesting the annulment of match results, deduction of points from Fenerbahçe and the awarding of the 2010-2011 Turkish Super League title to the Appellant. Trabzonspor's application was rejected respectively by the TFF Executive Committee and the TFF Arbitration Board.
18. On 31 January 2014, the Appellant wrote a letter to the UEFA Executive Committee and UEFA Disciplinary Committee requesting them to sanction teams and individuals that had committed acts of match-fixing and take all necessary measures to ensure the Appellant's losses were compensated and that the Appellant was awarded the 2010-2011 Turkish Super League title.
19. On 30 May 2014, UEFA wrote to TFF and Fenerbahçe informing them that disciplinary proceedings had been instigated. On 11 December 2014, the UEFA CEDB issued its decision dismissing the Appellant's requests. On 26 May 2015, the Appellant filed an appeal against this decision of 11 December 2014 to the UEFA AB. The Appellant requested, *inter alia*, that UEFA intervene indirectly by way of ordering TFF to impose the necessary sanctions. For the record, such request was not included in the prayers for relief before the UEFA CEDB.
20. On 17 September 2015, the UEFA AB rendered a decision against the Appellant (proceedings 27179). On 8 December 2015, the UEFA AB notified the grounds for its decision. On whether UEFA has competence to intervene at domestic level as regards match-fixing offences, the UEFA AB considered that "*bearing in mind the applicable legal framework at the time of the facts in combination with the Case Law of CAS in this field, UEFA has not [sic] competence to deal with match-fixing offences which occurred at the 2010/2011 Turkish Super League*".¹

¹ Para. 46.

C. Proceedings before the CAS

21. On 17 December 2015, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (“Code”), Trabzonspor filed a Statement of Appeal (CAS 2015/A/4343). On 15 January 2016, in accordance with Article R51 of the Code, Trabzonspor filed an Appeal Brief. On 2 March 2016, in accordance with Article R55 of the Code, the Respondents filed their Answers.
22. On 18 November 2016, in accordance with Article R57 of the Code, an oral hearing was conducted. The following experts were heard at Appellant’s request: Prof. Dr. Sylvain Marchand, Prof. Dr. Hüdai Murat Develioğlu, and Mr Mert Yaşar.

1. Suspension of ordinary proceedings

23. On 4 February 2016, in accordance with Article R38 of the Code, Trabzonspor filed a Request for Arbitration (CAS 2016/O/4430). On 17 May 2016, following the Respondents’ requests, the Panel decided to suspend the ordinary procedure (CAS 2016/O/4430) pending a decision from the Panel in the appeal’s matter (CAS 2015/A/4343).
24. On 20 June 2016, the Panel decided to resume the case CAS 2016/O/4430 in view of the impossibility to find an early hearing date and with the idea to hold the hearing in both proceedings at the same date.
25. On 22 September 2016, having received written submissions from the Parties on the subject of the contested CAS jurisdiction in the ordinary proceedings based on Article R39 of the Code, the Panel decided to suspend the CAS 2016/O/4430 proceedings until further notice.

2. Document production

26. On 25 May 2016, the Panel directed to the parties to complete and return a Redfern Schedule to address the Appellant’s request for disclosure in the case CAS 2015/A/4343. The Appellant and Respondents completed and returned Redfern Schedules on 1 June 2016 and 9 June 2016, respectively. On 20 June 2016, the Panel decided to partially grant Appellant’s request for disclosure. Fenerbahçe requested that the anonymity of third persons be protected and, on 23 June 2016, the Panel informed the parties that they would decide on this request in due course. On 11 July 2016, Fenerbahçe filed the documents requested by the Panel on 20 June 2016. Such documents, some of them redacted by the Panel, were forwarded to the other parties on 19 July 2016. On 28 July 2016, UEFA filed the documents requested by the Panel on 20 June 2016, and they were forwarded to the other parties on 2 August 2016. On 31 August 2016, the Panel requested that UEFA produce additional documents following Appellant’s request. On 28 September 2016, UEFA filed the documents requested by the Panel on 31 August 2016.
27. On 28 September 2016, the Appellant filed a new request for disclosure and commented on the objections of the Respondents to its initial request. Having received the Respondents’

comments on these new requests for disclosure, the Panel partially granted the request on 7 October 2016.

IV. JURISDICTION

28. The Appellant refers to the below-quoted section of the Appealed Decision.

“The present decision may be appealed in writing before the Court of Arbitration for Sport, in accordance with Articles 62 and 63 of the UEFA Statutes”.

29. Article 62 of the UEFA Statutes (2014 Edition) states that:

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

“4) An appeal before the CAS may only be brought after UEFA’s internal procedures and remedies have been exhausted”.

30. TFF does not dispute the jurisdiction of CAS resulting from Article 62 of the UEFA Statutes.

31. UEFA has no objections to the jurisdiction of CAS over the Appellant’s requests with the exception of the seventh request for relief, which asks for UEFA to open disciplinary proceedings and sanction TFF and Fenerbahçe. In this regard, UEFA contends that the Appellant lacks standing as it is not directly affected by the decisions of the UEFA Disciplinary Bodies. UEFA’s submission as to “direct effect” bears on the merits of the case and will be analysed below under the “Merits” section.

32. Fenerbahçe raises no objections to the jurisdiction of the CAS.

33. Article R47 of the Code holds that appeals against the decisions of federations, associations or sports related bodies may be filed before the CAS if the statutes or regulations of the said body so provides and if *“the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*

34. As the Appealed Decision was issued by the UEFA AB, all internal procedures and remedies have been exhausted prior to the appeal.

35. It follows that the CAS has jurisdiction to decide on the dispute in question.

V. ADMISSIBILITY

36. Article 62(3) of the UEFA Statutes provides that appeals against final decisions passed by UEFA’s legal bodies must be lodged with the CAS within ten (10) days of notification of the decision in question.

37. The decision was notified to the Appellant on 8 December 2015 and the Appellant's Statement of Appeal was submitted to the CAS on 17 December 2015 in accordance with Article R49 of the Code as well as Article 62(3) of the UEFA Statutes. The Appeal also complies with the other procedural applications of the Code, including the payment of the CAS Court Office fees.
38. The Panel finds that the Second and the Third Appellants, namely Trabzonspor Futbol İşletmeciliği Tic. A.Ş. and Trabzonspor Kulübü Derneği, were not parties to the proceedings concerning the Appealed Decision. Only the First Appellant, Trabzonspor Sportif Yatırım ve Futbol İşletmeciliği Tic. A.Ş., was party to the proceedings before the UEFA CEDB and the UEFA AB. Accordingly, the Second and the Third Appellant do not have standing to appeal.
39. It follows that the Appeal is admissible to the extent that it corresponds to the First Appellant's requests for relief. For the purposes of the proceedings, Trabzonspor Sportif Yatırım ve Futbol İşletmeciliği Tic. A.Ş. is referred to as the sole "Appellant" or "Trabzonspor".

VI. APPLICABLE LAW

A. UEFA Disciplinary Regulations 2008 and UEFA Statutes 2010

40. The Appellant contends that the relevant rules and regulations in the present proceedings are the UEFA Statutes (edition 2014), the UEFA DR (editions 2008, 2013 and 2014) and FIFA (why FIFA?) Regulations.
41. UEFA, TFF and Fenerbahçe all make a distinction between the procedural and the substantive aspects of the present proceedings. They submit that the 2014 edition of the UEFA DR applies only to the procedural aspects of the case. As regards the substance of the case, the Respondents submit that the 2008 edition of the UEFA DR and the 2010 edition of the UEFA Statutes are the applicable regulations as the violations occurred during the 2010-2011 season, before the 2013 and 2014 editions of the UEFA DR and the 2012 and 2014 editions of the UEFA Statutes entered into force.
42. Therefore, the parties to the dispute disagree on the version of UEFA Statutes and the UEFA DR applicable to the substantive analysis of the case.
43. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".
44. Given that the match-fixing practice took place in the 2010-2011 season, before the 2013 or 2014 editions of the UEFA DR were in force, and in view of the transitional provisions (Article 70 of the UEFA DR 2013 and 2014) stating that "[t]hese regulations apply to disciplinary offences

committed after their entry into force”, the Panel sees no ground for applying the 2013 and/or 2014 editions of the UEFA DR. The same holds true for the 2012 and 2014 editions of the UEFA Statutes, which came into force only after the events of the 2010-2011 season (see Articles 70 of the UEFA Statutes 2012 and 2014). Applying the 2012 and 2014 editions of the Statutes, respectively the 2013 and 2014 editions of the UEFA DR, would amount to an *ex post facto* application of the relevant rules.

45. Trabzonspor argues that the alleged inappropriate sanctioning of Fenerbahçe at national level by UEFA and TFF is a continuous infringement (*délit continu*) and is therefore not subject to the provisions in force at the time of the match-fixing scandal. This reasoning does not hold ground. First, the notion of *délit continu* is a criminal law concept and cannot be automatically applied to civil law proceedings. Second, Article 70 of the UEFA DR 2013 does not leave room for the broad application requested by the Appellant: “*These regulations apply to disciplinary offences committed after their entry into force*”. Finally, the question before the Panel is whether UEFA had competence to impose sanctions at national level with respect to the 2010-11 match-fixing. The disciplinary offence at hand is therefore the match-fixing, which ended in 2011 and cannot be considered a *délit continu*.
46. Hence, the 2008 edition of the UEFA DR and the 2010 edition of the UEFA Statutes are held to be applicable to the merits. The Panel further holds that the 2014 edition of the UEFA Statutes and the 2014 edition of the UEFA DR apply only to the procedural aspects of the case.

B. Swiss law

47. Both Appellant and Respondents agree on the additional applicability of Swiss law to the proceedings in question. The Appellant further submits that as the contractual relationship between the TFF, Trabzonspor, and Fenerbahçe is governed by Turkish law, Turkish Law may be of relevance. Fenerbahçe contends that the application of Turkish law is possible, pursuant to Article 5 of the 2014 edition of the UEFA DR.
48. The Panel further notes that Article 64(1) of the UEFA Statutes (edition 2010) stipulates the following:

“These Statutes shall be governed in all respects by Swiss law”.
49. The Panel accepts the subsidiary application of Swiss law should there be a possible gap in the applicable UEFA Statutes and Disciplinary Regulations.

VII. SUBMISSIONS OF THE PARTIES

A. Appellant's submissions

1. Breaches of sport regulations

50. The Appellant contends that the Respondents have committed various breaches of sport regulations:

- Committed by Fenerbahçe. The Appellant argues that Fenerbahçe's practice of match-fixing during the 2010-2011 season constituted a breach of Article 5 UEFA DR 2008, as affirmed by the CAS².

- Committed by TFF. The Appellant holds that TFF has failed to prosecute and sanction Fenerbahçe's aforementioned breaches. In this regard, the Appellant submits that the mere fact that Fenerbahçe remained the official champion of the 2010-2011 Super League demonstrates TFF's passivity, contrary to its duty to prosecute activities of match-fixing, pursuant to Article 2(1) (e) and 7bis (1)(a) of the UEFA Statutes. Moreover, according to the Appellant, TFF has also failed to prosecute breaches committed by individuals and other Turkish clubs in relation to the match-fixing scandal.

- Committed by UEFA. The Appellant claims that UEFA has a duty to prosecute and sanction match-fixing practices, pursuant to UEFA statutes and regulations. Accordingly, the Appellant contends that the sanctions imposed by UEFA against Fenerbahçe in relation to its participation in the UEFA Champions League are not sufficient in so far as they fail to address sanctions at national level. In this regard, the Appellant alleges in its Appeal Brief that UEFA is "*hid[ing] from its responsibility behind an alleged lack of 'competence to intervene at domestic level'*".

2. Breaches of Turkish and Swiss laws

51. The Appellant also submits that the Respondents have committed various breaches of Turkish and/or Swiss law:

- Contract law. The Appellant argues that, under Swiss and Turkish contract laws, there existed a simple partnership – in the meaning of Article 620 of Turkish Code of Obligations, corresponding to Article 530 of Swiss Code of Obligations – between TFF, Fenerbahçe, and the Appellant in pursuit of the "*common goal to offer a sport show that generates income for the teams and for the TFF*". According to Trabzonspor, Fenerbahçe and TFF have breached their contractual obligations owed to Trabzonspor by committing match-fixing offences and by tolerating such offences without any appropriate measure. The Appellant thus argues that TFF and Fenerbahçe are liable towards the Appellant for damages suffered as a result of the breach of contract by the latter parties based on the existence of this alleged simple partnership.

² CAS 2013/A/3256.

- Liability based on trust. The Appellant makes further reference to Swiss law in relation to the Grossen and Swissair cases, which establish a liability based on trust in circumstances where the expectations of the claimant, in the context of an existing special relationship of trust between the claimant and respondent, is frustrated³. In the present context, the Appellant claims that such a relationship existed between the Appellant and UEFA, the latter breaching this obligation through its failure to take appropriate measures to combat match-fixing. As such, the Appellant contends that the appropriate quantum of liability should be calculated based on the appropriate counterfactual, *i.e.*, the situation that would have existed had the Appellant been awarded the title to the 2010-2011 Super League. Alternatively, the Appellant seeks compensation for the amounts it paid for taking part in the 2010-2011 season of Super League as it would not have participated in the league had it known that match fixing would not be fought against. The Appellant notes that such amounts are significantly higher compared to the counterfactual scenario.
- Personality rights. The Appellant further submits that, pursuant to Article 28 (2) of the Swiss Commercial Code, its rights were breached due to UEFA's inaction in restoring the title for the 2010-2011 Super League and asks for compensation of resulting damages.
- Competition law. The Appellant also claims that the TFF has abused its alleged dominance in the organization of the Turkish Super League and is liable towards the Appellant as a result of the breach of Articles 57 and 58 of the Turkish Competition Law No: 4054.

3. Damages calculation

52. In assessing the damages it has suffered following the match-fixing scandal, the Appellant relies on an expert's assessment submitted as part of its Appeal Brief, which provides a calculation based on the counterfactual⁴. Accordingly, the Appellant submits that a conservative assessment of losses based on losses related to (i) broadcasting revenues, (ii) player transfer and values, and (iii) merchandising results in a total sum of TRY 90,659,000 (including interests until 31 December 2015). The Appellant further submits that, in the event that the proceedings in question do not result in Trabzonspor's obtaining of the title for the 2010-2011 Super League season, the Appellant would incur an additional loss of TRY 15,200,000.

4. UEFA's competence to impose sanctions in cases of national match-fixing

53. The Appellant underscores UEFA's objective to "*prevent all methods or practices which might jeopardise the regularity of matches or competitions or give rise to the abuse of football*"⁵, which gives the organization a legitimate interest in ensuring the integrity of the game, as reflected in UEFA's zero tolerance policy against match fixing.

³ CHAPPUIS C., La responsabilité fondée sur la confiance, in SJ 1997 165 ff, pp. 165-166.

⁴ FTI report.

⁵ UEFA Statutes (edition 2010), Art 2(1)(e).

54. In this regard, the Appellant also holds that TFF is not independent in creating its own rules and practice on match-fixing and should be bound by the decisions and regulations of UEFA.
55. The Appellant contends in its Appeal Brief that, should the CAS find UEFA to not have competence at domestic level, nothing would prevent a member football association from awarding titles “*even if the most serious offences were committed*”. In the Appellant’s view, this would lead to the “*absurd*” situation where a club could fix matches without any sanction at national level if the national association does not remedy the situation (for instance, because it is biased and protects the club).
56. As such, the Appellant argues that Article 2(4) and 23(4) of the UEFA DR 2013, which give UEFA the competence to take measures against all match-fixing activities in European football, should apply to the proceedings in question.
57. The Appellant claims that the introduction of Article 23(4) of the UEFA DR 2013 is merely a confirmation of UEFA’s competence to intervene in the event a football association fails to prosecute or does not prosecute in an appropriate manner a serious violation of the UEFA statutory objectives. In that regard, the Appellant highlights the previous CAS decision, confirming UEFA AB’s decision of 10 July 2013, sanctioning Fenerbahçe with a two-year period of ineligibility for European competitions. In particular, the Appellant refers to the following section of the CAS decision:
- “The majority of the Panel considers the introduction of article 23(4) in the UEFA DR (2013) to be a confirmation of UEFA’s disciplinary competence in matters of particular importance to UEFA, despite the fact that such matters should normally be dealt with by national associations”⁶.*
58. The Appellant adds that, even if the Panel were to find that Article 23(4) of the UEFA DR 2013 introduced a new power not existing previously, the rules contained in the 2013 edition should still apply from a temporal point of view, given that TFF’s lack of appropriate prosecution is still continuing.
59. Finally, the Appellant asserts that the reference in Article 14(1)(I) of the UEFA DR 2008 to the “*withdrawal of title or award*” in relation to the imposition of disciplinary measures against member associations and clubs is not limited to titles awarded by UEFA, which gives UEFA and the CAS, as an appeals body, the necessary competence to withdraw the title of a national championship.

5. Standing

60. The Appellant contends that it is directly affected by the Appealed Decision primarily because the insufficient prosecution of the subject matter of the Appealed Decision has resulted in the 2010-2011 Super League title being incorrectly awarded to Fenerbahçe and caused financial damages to the Appellant.

⁶ CAS 2013/A/3256; para. 210.

61. In this regard, the Appellant draws from the 2002 CAS decision to submit that a competitor placed second has an underlying cause of action in challenging the decision related to the award of the title and to the financial benefits of such title⁷.

6. *Ne bis in idem and res judicata*

62. The Appellant submits that the object of the proceedings that led to the CAS Award 2013/A/3256 was to pronounce sanctions against Fenerbahçe in relation to UEFA competitions. In the Appellant's opinion, the present proceedings are distinct in so far as they aim to pronounce sanctions against Fenerbahçe in relation to the unjustly awarded national benefits and title. In this regard, the Appellant makes reference to the 2013/A/3256 proceedings in which the Panel held that there would be "*no infringement of the principle of ne bis in idem if the two (or more) measures aim at different goals*". Hence, the Appellant submits that the two proceedings complement and do not exclude each other. Accordingly, the Appellant considers the *ne bis in idem* and *res judicata* defences inapplicable.

7. *Requests for relief*

63. On the basis of these submissions, the Appellant requests the CAS Panel to issue an award:

"1) setting aside the Decision under Appeal;

2) removing all points received by the Third and/or Fourth Respondent in relation to matches fixed by the Respondents during the Turkish Super League 2010-2011;

3) withdrawing the Turkish Super League 2010-2011 title from the Third and/or Fourth Respondent, and/or ordering the TFF and/or UEFA to withdraw the Turkish Super League 2010-2011 title from the Third and/or Fourth Respondent;

4) declaring that the First and/or Second and/or Third Appellant is the champion of the Turkish Super League for the 2010-2011 season and ordering the TFF and/or UEFA to take all measures in order to register and recognise the First and/or Second and/or Third Appellant as the champion of the Turkish Super League for the 2010-2011 season;

5) awarding the Turkish Super League 2010-2011 title to the First and/or Second and/or Third Appellant, and/or ordering the TFF and/or UEFA to award the Turkish Super League 2010-2011 title to the First and/or Second and/or Third Appellant;

6) ordering the Respondents, as joint and several debtors, to pay the First Appellant, alternatively the Second Appellant, an amount of TRY 90'659'000 – alternatively TRY 105'859'000 if the title is not awarded to Trabzonspor - , together with interest at the rate of 15% per annum as from 31 December 2015;

⁷ CAS 2002/O/373.

7) *taking all other appropriate measures, including without limitation relegation of the Third and Fourth Respondents, alternatively ordering UEFA to take all such appropriate measures, to sanction the Third and Fourth Respondents and/or the TFF as a result of the match-fixing activities committed during the Turkish Super League 2010-2011 season and as a result of the absence of appropriate prosecution by the TFF of such activities;*

8) *ordering the TFF to organise a trophy ceremony for the award of the Turkish Super League 2010-2011 title to the First and/or Second and/or Third Appellant”.*

B. Respondents’ submissions

1. TFF

a. Standing

64. The First Respondent submits that, pursuant to Article 62 of the UEFA Statutes, only third parties that are directly affected by a decision can appeal that decision. In this regard, TFF contends that, while relying on the precedent of CAS 2008/A/1583 in determining whether competitors are to be considered directly affected, the Appellant has failed to quote the necessary criteria. In CAS 2008/A/1583, the CAS stated:

“Where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association, – unless otherwise provided by the association’s rules and regulations – the third party does not have a right of appeal. Effects that ensue only from competition are only indirect consequences of the association’s decision/measure. If, however, the association disposes in its measure/decision not only of the rights of the addressee, but also of those of the third party, the latter is directly affected with the consequence that the third party then also has a right of appeal”⁸.

65. In this regard, TFF argues that the Appellant is not directly affected by the Appealed Decision. TFF first submits that the case at hand does not affect any rights of the Appellant. Accordingly, TFF distinguishes the current proceedings at hand from the CAS 2008/A/1583 and 1584 by way of arguing that pursuant to CAS 2015/A/4151 standing to appeal should be restricted only to clubs that can show the Panel that they can *“directly replace the excluded club”*. As such, TFF claims that even if Fenerbahçe had been sanctioned, there exists no legal basis for automatically awarding Trabzonspor the title of champion for the 2010-2011 Turkish Super League. In this regard, TFF does not consider Trabzonspor’s status as the runner up to be sufficient in establishing that the title would have reverted to them. There is no legal basis under the TFF’s or UEFA’s statutes and disciplinary regulations providing for the automatic award of the title to the Appellant in the event the title is withdrawn from Fenerbahçe. Further, TFF notes that absent such legal basis, the title may very well be withdrawn without being awarded to any other team. In that respect, TFF refers to an example in the 2004-2005 season of the Italian Serie A where Juventus was stripped of its title without the title being awarded to the runner-up AC Milan or any another team.

⁸ CAS 2008/A/1583 & CAS 2008/A/1584, para. 9.6.1.

⁹ CAS 2015/A/4151, para. 146.

66. Secondly, TFF submits that any possible sanction on Fenerbahçe and/or the TFF would have no effect on the Appellant. In this regard, TFF considers that Trabzonspor could have a standing to sue if it were to benefit from the consequences of the sanctions imposed on Fenerbahçe and/or the TFF. However, TFF argues that UEFA cannot impose sanctions on TFF for the domestic conduct of one of its members. Thus, there exists no way for the Appellant to benefit from the imposition of sanctions on TFF. As regards sanctions imposed on Fenerbahçe, TFF submits once again that the Appellant's status as the runner up would not automatically mean that Trabzonspor would benefit from the sanctions imposed upon Fenerbahçe.
67. Finally, TFF submits that Article 23(4) Disciplinary Regulations (edition 2013) does not give a third party the right to petition UEFA on the basis of its own consideration that a UEFA member association has failed to prosecute, or prosecuted in an inappropriate manner, a serious violation of the UEFA statutory objective.
- b. UEFA's competence to impose sanctions in cases of national match-fixing*
68. TFF submits that pursuant to UEFA Regulations, UEFA jurisdiction only extends to matches and competitions organized by UEFA, and that the determination of participation in various leagues is the responsibility of national associations and not UEFA. Consequently, TFF contends that the scope of UEFA's involvement in match-fixing allegations at domestic level relates to UEFA Champions League ("CL") and UEFA Europa League ("EL") Regulations.
69. Even if UEFA had jurisdiction to revisit the match-fixing allegations against Fenerbahçe, UEFA had no competence to grant the relief requested by the Appellant as the applicable 2008 edition of the UEFA DR does not foresee or cover the requests submitted by the Appellant.
- c. Breaches of sport regulations and Turkish and Swiss laws*
70. As regards the Appellant's substantive arguments against TFF, TFF contends that it has not breached any sports regulations. In particular, TFF stresses that it has duly carried out a two-bodied appeal procedure regarding the allegations. TFF submits that its duties resulting from Article 2(1)(e) and 7bis(1) of the UEFA Statute does not in any case place TFF under any obligation to impose sanctions on Fenerbahçe based on the Appellant's sense of being wronged. TFF further highlights that it instituted proceedings against Fenerbahçe, and it is clear that it duly considered all facts in light of the applicable regulations.
71. In regard to the Appellant's claims that TFF was in breach of its contractual relationship with the Appellant, TFF argues that UEFA has no competence to deal with the application of Turkish contract law, regardless of the Appellant's assessment of similarities between the Turkish and the Swiss Civil Codes.
72. TFF also submits, in relation to the Appellant's claim that it has been abusing its dominant position, that match-fixing activities of football clubs are outside of the scope of Turkish

competition legislation given that neither football clubs nor the TFF would constitute an undertaking for the purposes of competition law.

73. Finally, TFF contends that the causal link between TFF's actions and the damages suffered by the Appellant has not been satisfactorily established under Swiss Law.

d. Prayers for relief

74. On the basis of these submissions, TFF requests the CAS Panel to issue an award as follows:

"1) CAS has no jurisdiction to rule upon the appeal filed by Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulubü Dernegi against the Decision rendered buy the UEFA Appeals Body on 17 September 2015.

2) Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulubü Dernegi have no standing to appeal the Decision rendered by the UEFA Appeals Body on 17 September 2015.

Alternatively

3) The appeal filed by Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulubü Dernegi against the decision rendered by the UEFA Appeals Body on 17 September 2015 is inadmissible, respectively dismissed.

4) All prayers for relief of Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulubü Dernegi are denied.

At any rate

5) Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic. A.S., Trabzonspor Futbol Isletmeciligi Tic. A.S. and Trabzonspor Kulubü Dernegi shall bear all arbitration costs.

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

2. UEFA

75. The Second Respondent emphasizes that the Appellant bases its requests primarily on Article 2(3)–(4) and Article 23(4) of the UEFA DR in their 2013 edition, provisions which are not applicable to the merits of the present proceedings. UEFA further submits that even under the 2013 edition of the UEFA DR, UEFA is not competent to intervene in the national match-fixing in Turkey in the manner requested by the Appellant.

76. UEFA notes that in the previous proceedings against Fenerbahçe, the CAS has already clarified that Article 5(1)(a) of the UEFA 2008 DR only applies to competitions organized by UEFA¹⁰. UEFA thus submits that “[d]espite the fact that some provisions, notably UCLR and UELR stipulating admission criteria process for clubs participating in the UEFA competitions, extend the territorial scope also to national leagues and competitions, UEFA does not have a carte blanche in prosecuting clubs for national match fixing violations”. According to the Second Respondent, since the domestic competition in Turkey is not part of an admission procedure in accordance with the UEFA CL or EL Regulations, the requests of the Appellant should be rejected.
77. UEFA further contends that, even in the event that the 2013 edition of the UEFA DR were applied to the merits of the case, the fact that the match-fixing practices were investigated and prosecuted in an appropriate manner by the TFF prevents the extension of UEFA’s competence to matches and competitions not organized by UEFA as Article 2(3)-(4) of the UEFA 2013 DR foresees the abovementioned extension of competence in circumstances where the violation is not otherwise prosecuted in an appropriate manner by one of UEFA’s member associations. The Second Respondent asserts that the Appellant’s “*subjective feeling of being treated unfairly*” does not amount to an inappropriate prosecution.
78. UEFA also lists the immediate actions it has taken in regards to the match-fixing practices in Turkey. UEFA highlights that sanctions against Fenerbahçe’s participation in UEFA European club competitions, as affirmed by the CAS in 2013/A/3256, demonstrate the extent of UEFA’s involvement in investigating the matter in question.
79. In addition, UEFA contends that the sanctions imposed by UEFA on Fenerbahçe, as confirmed by the CAS and the Swiss Federal Tribunal, are *res judicata* and, on that basis, not only Fenerbahçe and UEFA, but also Trabzonspor cannot ask UEFA to alter its decision against Fenerbahçe by imposing new additional sanctions.
80. As regards standing to appeal, UEFA pleads that within the scope of the Appellant’s seventh prayer for relief, the Appellant is not directly affected by the Appealed Decision by the mere fact that it lodged a complaint before UEFA. In UEFA’s view, “*whenever a disciplinary sanction is imposed on any player, club or association in the course of disciplinary proceedings, this solely determines the status and the legal consequences of the stakeholder on which the respective sanction has been imposed*”. Concerning the seventh request for relief, UEFA distinguishes the CAS precedent of CAS 2002/O/373 from the situation at hand by submitting that IOC’s decision not to award a gold medal to a runner up athlete is different from the nature of the Appellant’s seventh request, which requires UEFA to issue disciplinary sanctions on TFF and Fenerbahçe – intervening in domestic competitions and incidents which happened on a national level under the auspices of the national association.
81. On the basis of these submissions, the Second Respondent requests the CAS Panel to issue an award:

¹⁰ CAS 2013/A/3256, para. 198.

“1) Declaring the Appeal of Trabzonspor as regards point VII of its requests inadmissible and reject the Appeal as for all other requests.

2) In any event reject the appeal and dismiss all the prayers for relief of Trabzonspor.

3) In any event, ordering Trabzonspor to bear all the costs of these arbitration proceedings and to award UEFA with a contribution to the legal fees incurred at an amount of minimum EUR 50.000”.

3. Fenerbahçe

a. UEFA’s competence

82. The Third Respondent contends that the CAS cannot impose further non-monetary sanctions on Fenerbahçe as the Panel can only grant requests for relief that fall within the competence of UEFA. In this regard, the Third Respondent makes reference to the “*Competition-related Competence Principle*” enshrined in relevant UEFA decisions and UEFA Statutes and regulations¹¹. The Third Respondent also makes a reference to the CAS/A/2612 decision in which the Panel held that Swiss law requires that a federation may only base a disciplinary measure on provisions that provide a clear and unambiguous authority to do so. The Third Respondent contends that UEFA has no competence at domestic level regarding the requests submitted by the Appellant, due to the lack of an explicit provision in the applicable Disciplinary Regulations.
83. Given UEFA’s lack of competence at domestic level pursuant to the applicable 2008 edition of the UEFA DR, Fenerbahçe submits that the CAS cannot (i) deduct points or withdraw the championship title from Fenerbahçe (as requested by the Appellant’s prayer for relief II) or (ii) declare Trabzonspor the champion or award the title to it (as requested by the Appellant’s prayers for relief IV and VIII). Fenerbahçe also submits that the lack of competence on behalf of UEFA as regards sanctions at domestic level further precludes the CAS from ordering UEFA to impose further non-monetary sanctions on Fenerbahçe including (i) the withdrawal of the championship from Fenerbahçe (as requested by the Appellant prayer for relief III) , (ii) the award of the title to Trabzonspor (as requested by the Appellant’s prayer for relief V) and (iii) the registration and recognition of Trabzonspor as the champion (as requested by the Appellant’s prayers for relief IV and VIII.)
84. Contrary to the Appellant’s view that the decision in CAS 2013/A/3256 calls into question UEFA’s lack of competence regarding domestic sanctions, Fenerbahçe argues that the requests at hand are decisively different from the sanction that was the subject matter of CAS 2013/A/3256 as the previous case concerned UEFA’s interest to protect its own competitions.
85. In parallel with their submission that the CAS cannot, by itself or through UEFA, impose non-monetary sanctions on Fenerbahçe, the Third Respondent further contends that the CAS cannot order TFF to impose non-monetary sanctions on Fenerbahçe either. In this regard, Fenerbahçe submits that in order for the CAS to do so, Trabzonspor’s prayer for relief III

¹¹ UEFA Statutes (edition 2010), Articles 2(1), 60 and 74. *See also AC Milan*, UEFA Emergency Panel decision of August 2, 2006.

should be based on UEFA Regulations. As already submitted by the Third Respondent, the applicable edition of the Disciplinary Regulations do not foresee involvement at domestic level. In any case, TFF is not competent to enforce the Regulations which fall within UEFA's sole jurisdiction. Even in the event that TFF was found to be in breach under the applicable Disciplinary Regulation, Fenerbahçe submits that it cannot be found liable for an offence committed by TFF.

86. As regards the Appellant's prayer for relief VI concerning the imposition of monetary sanctions on Fenerbahçe, the Third Respondent contends that such sanctions cannot be ordered as (i) there is no legal basis in the UEFA framework which would allow UEFA or the CAS on appeal to award such damages and (ii) Fenerbahçe has no civil liability towards Trabzonspor on the basis of contractual relations.

b. Res judicata and ne bis in idem

87. The Third Respondent holds all claims of the Appellant to be inadmissible on grounds of *res judicata* and *ne bis in idem*. In the alternative, Fenerbahçe holds the requests to be contradictory and vague and contends that the claims are inadmissible.

88. Fenerbahçe argues that “[*r*]es judicata not only refers to reliefs granted or orders made on the basis of certain facts but also on reliefs not granted or orders not made based on those facts. Accordingly, UEFA's decision in 2013 not to impose any sanctions based on allegations looked into by UEFA has likewise obtained *res judicata* effect once it became final and binding”. The Third Respondent further submits that, should the present appeal be deemed admissible, the final and binding nature of the decisions taken by the UEFA against Fenerbahçe in 2013, which were eventually proclaimed by the CAS, would be altered.

89. Moreover, Fenerbahçe submits that the imposition of any of the sanctions sought by the Appellant against the Third Respondent would constitute a second sanction for the same offence and breach the legal concept of *ne bis in idem*, given the UEFA decision to ban the Third Respondent from two UEFA Champions League seasons, as confirmed by CAS 2013/A/3256.

c. Prayers for relief

90. On the basis of these submissions, the Third Respondent requests the CAS Panel to:

“a) Uphold in full the Decision under Appeal;

b) Dismiss all prayers for relief submitted by Trabzonspor;

c) Order the Appellant to pay the costs of the present arbitration;

d) Order the Appellant to pay the legal fees and expenses of Fenerbahçe, to be determined at a later stage of the proceedings”.

VIII. MERITS

91. In light of the parties' submissions, the Panel will now consider:

A/ whether the 2013 UEFA AB Decision and the subsequent CAS award (CAS 2013/A/3256) have a *res judicata* and/or *ne bis in idem* effect on the present proceedings;

B/ whether Trabzonspor has standing to appeal (*i.e.*, whether it is directly affected by the Appealed Decision); and

C/ whether UEFA had competence to impose sanctions on Fenerbahçe going beyond exclusion from UEFA's own competitions.

A. *Res judicata*/Ne bis in idem

1. *Res judicata*

92. Pursuant to the CAS jurisprudence and the legal literature, the Panel observes that the legal principle of *res judicata*, as defined under Swiss law, has the following two limbs:

- the prohibition to deal with the matter ("*Sperrwirkung*"); and
- the binding effect of the decision ("*Bindungswirkung*")¹².

93. The first limb of the principle relates to the admissibility of claims as it emphasizes that, should a matter with *res judicata* effect be brought before the Courts, the Courts have to dismiss the claim as inadmissible.

94. The second limb of the principle, on the other hand, relates to the outcome of the matter. As such, the so-called *Bindungswirkung* stipulates that if a judge has to decide on a matter with a *res judicata* effect in a subsequent procedure, he is under an obligation to follow the initial outcome of the matter.

95. In accordance with the two limbs of the principle, Fenerbahçe submits that the Appellant's prayers for relief breach the legal principle of *res judicata*, given the 2013 UEFA AB Decision, as affirmed by CAS 2013/A/3256. Accordingly, Fenerbahçe asks the Panel to find Trabzonspor's prayers for relief inadmissible, or in the alternative, base its decision on the outcome of the 2013 UEFA AB Decision.

¹² SCHULZE G. (ed.) *Europäisches Privatrecht in Vielfalt geeint - Droit privé européen: l'unité dans la diversité*, Munich 2013, p. 158.

96. The CAS jurisprudence and the legal literature indicate that the *res judicata* effect of a matter is determined in relation to the triple identity test according to which the principle applies only if the identity of the parties, the subject of the matter, and the legal grounds are the same¹³.
97. As to the subject matter (or object) of the proceedings, the Panel observes that the Appellant's seven prayers for relief concern the imposition of administrative and disciplinary sanctions at national level against Fenerbahçe. As the Appellant correctly points out, the 2013 UEFA AB Decision, and the subsequent CAS award, concerned the sanctioning of Fenerbahçe only in relation to UEFA tournaments based on UEFA CL Regulations. As such, the object of the 2013 proceedings revolved around whether Fenerbahçe's match-fixing malpractices in national football games could lead to a UEFA ban from UEFA competitions, in line with UEFA's competition-based-competence principle.
98. However, the current proceedings differ from the 2013 proceeding, which led to the 2013 UEFA AB Decision, in so far as they refer to UEFA's and TFF's involvement in the sanctions administered in relation to the Turkish Super League. Indeed, the Panel finds that the central theme to the Appellant's prayers for relief and the Respondents' counterarguments revolved around whether UEFA has the competence to take action and intervene *at national level* against the TFF and/or Fenerbahçe regarding the former's alleged lack of action and the latter's involvement in match-fixing. Accordingly, the Appellant's prayers for relief relate to the deduction of national league points, the declassification and reissuing of the national title, and the payment of damages in relation to losses the Appellant suffered as a result of Fenerbahçe being awarded the national title.
99. Consequently, the Panel holds that the current proceedings have a different objective compared to the CAS 2013/A/3256 case¹⁴. Accordingly, the Panel concludes that as the common subject matter element of the triple identity test is not fulfilled, the current proceedings do not breach the legal principle of *res judicata*.

2. *Ne bis in idem*

100. The Panel observes that the legal principle of *ne bis in idem* acts as a logical corollary to the legal principle of *res judicata*. In fact, in legal theory, the line between the principles of *res judicata* and *ne bis in idem* are so blurred that in some instances *ne bis in idem* is held equal to the *Sperrwirkung* limb of *res judicata*.
101. In this regard, the Panel emphasizes that the legal principle of *ne bis in idem* prevents sports disciplinary bodies from trying a person or an entity for an offence in relation to which that person or entity has already been convicted or acquitted pursuant to a final decision of another body within the same regulatory framework¹⁵.

¹³ DE LY/SHEPPARD, "TLA Final Report on Res Judicata and Arbitration", Arbitration International 25.1 (2009), 67-82; see also CAS 2013/A/3256, para. 134.

¹⁴ CAS 2013/A/3256.

¹⁵ CAS 2013/A/3256, para. 156.

102. The Panel finds that for the Appealed Decision and the current proceedings to be regarded as a violation of the principle of *ne bis in idem*, the scope of the Appellant's prayers for relief should correspond to the previous prayers for relief examined by UEFA and the CAS in the 2013 proceedings. However, as discussed in the *res judicata* section of this decision, the scope of the Appellant's prayers for relief relates to sanctioning at national level, and not to exclusion from the UEFA Champions League.
103. As regards the current proceedings, a violation of the principle of *ne bis in idem* would only take place if there exist previous UEFA or TFF decisions regarding the sanctioning of Fenerbahçe at national level. The Panel fails to identify any UEFA decisions concerning the application of national sanctions against Fenerbahçe – the subject matter of the current proceedings.
104. In this regard, the Panel then moves on to analyse the scope of the TFF decision banning Fenerbahçe for one year from participating in UEFA Leagues. The Panel considers that the principle of *ne bis in idem* could indeed be violated if TFF's decision were a national sanction related to the Turkish Super League.
105. As established by the CAS in CAS 2013/A/3256, TFF's decision to ban Fenerbahçe from participating in UEFA Leagues for one year, taken prior to the 2013 UEFA AB Decision involving a two year ban, formed part of UEFA's "two-stage process" as regards the application of UEFA CL Regulations¹⁶. The TFF decision was aimed at sanctioning Fenerbahçe at UEFA level; it had no consequences for Fenerbahçe at national level.
106. Consequently, the Panel concludes that UEFA has not taken previous decisions concerning the possible sanctioning of Fenerbahçe at national level based on its involvement in the 2010-2011 match-fixing scandal.
107. Finally, TFF argues that the May 6 2012 TFF Disciplinary Committee decision¹⁷, examining the match-fixing activities and ultimately sanctioning three officials of Fenerbahçe and undertaking no actions against the club itself, has a *res judicata* effect on the present proceedings.
108. Article 63(1)(c) of UEFA Statutes 2014 states that "*the CAS is not competent to deal with awards issued by an independent and impartial court of arbitration in a dispute of national dimension arising from the application of the statutes of regulations of an association*".
109. Leaving aside the question whether the May 6 2012 TFF Disciplinary Committee decision has adequately examined and sanctioned the match-fixing activities, the Panel holds that the *ne bis in idem* principle does not apply because there are serious doubts as to whether the TFF Disciplinary Committee or the TFF Arbitration Body constitute an independent and impartial arbitral tribunal according to the applicable Swiss law. Moreover, the parties to the 2012 TFF

¹⁶ UEFA Statutes 2010, Article 50(3), in conjunction with UEFA CL Regulations, Articles 2.05 and 2.06. See also, footnote 27.

¹⁷ On 4 June 2012, the TFF Arbitration Body upheld the TFF Disciplinary Committee's decision of 6 May 2012 and dismissed Trabzonspor's appeal against such decision.

proceedings and the current proceedings are not the same: UEFA was not a party to the 2012 TFF proceedings.

110. Based on the above considerations, the Panel finds that the current proceedings do not violate the legal principle of *ne bis in idem*.

B. Standing to appeal

111. Article 62(2) of the UEFA Statutes (edition 2014) provides that “*only parties that are directly affected by a decision may appeal to the CAS*”.

112. The Panel recalls that standing to appeal UEFA decisions is granted not only to (i) the addressee of a measure, but also to (ii) third parties that are directly affected. This is consistent with the general principle that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake may bring a claim, even if they are not addressees of the measure being challenged.

113. It is evident that Trabzonspor was not the addressee of any disciplinary measures brought in proceedings before UEFA. The question before the Panel is whether a competitor who was placed second in a national football league could be considered as being directly affected by decisions concerning the winner. The Panel now turns to examine whether Trabzonspor could be considered a directly affected third party in the present proceedings, and thus have standing to appeal.

114. The Panel notes that the burden of proof to demonstrate a legal interest worthy of protection falls on Trabzonspor – the party asserting standing. In addition, the notion *directly affected* as applied to third parties who are not the addressees of a measure must be interpreted in a restrictive manner¹⁸.

115. As regards the differentiation of directly affected parties from indirectly affected parties, the CAS jurisprudence displays a “common thread”, which has been succinctly put as follows:

“Where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association, - unless otherwise provided by the association’s rules and regulations - the third party does not have a right of appeal. Effects that ensue only from competition are only indirect consequences of the association’s decision/measure. If, however, the association disposes in its measure/decision not only of the rights of the addressee, but also of those of the third party, the latter is directly affected with the consequence that the third party then also has a right of appeal”¹⁹.

116. In a nutshell, the correct approach when dealing with standing is to deem competitors indirectly affected – and thus exclude them from standing – when the measure does not have tangible

¹⁸ CAS 2015/A/3874 CAS 2015/A/3874, paras. 176 *et seq.*

¹⁹ CAS 2008/A/1583 & CAS 2008/A/1584, para. 9.6.1. *See also* DE LA ROCHEFOUCAULD E., *Standing to sue, a procedural issue before the CAS*, CAS Bulletin 1/11, p. 17.

and immediate direct consequences for them. Three previous CAS decisions shed some light on how the notion “directly affected” is interpreted.

117. Firstly, in CAS 2002/O/373, the CAS granted an athlete placed second the right to appeal against a decision by the IOC to leave the gold medal with the first placed athlete, regardless of his involvement in a doping scandal. By contrast, athletes who lack any chance of obtaining a medal have no right to appeal²⁰.
118. Secondly, in CAS 2008/A/1583 & CAS 2008/A/1584²¹, the CAS found that a decision by UEFA’s disciplinary body granting FC Porto (the winner of the 2007/2008 Portuguese football league) admission into the UEFA Champions League pending an investigation into alleged bribery of referees, had the effect of excluding Benfica Lisbon (third in the 2007/2008 Portuguese football league) from direct admission to, and Vitória Guimarães (4th in the 2007/2008 Portuguese football league) from a qualification place in, the Champions League. The Panel held that both clubs were “*directly affected; for if UEFA grants a club a starting place in a championship which has a closed field of starters, it has at the same time made a negative decision about including other candidates for said starting place*”²².
119. Thirdly, in CAS 2015/A/4151, the Panel examined whether Panathinaikos, being the runner-up, could prove under the relevant provisions that it would automatically replace Olympiakos in the UEFA Champions League:
- “In order to convince the Panel of its standing to sue in this matter, Panathinaikos has some further hurdles to overcome. Would it now automatically replace Olympiakos in the 2015/16 UEFA Champions League, pursuant to Article 4.08 of the UCLR? If not, can it prove that the Emergency Panel would consider it as the replacement?”*²³.
120. Ultimately, the Panel in CAS 2015/A/4151 found that Panathinaikos lacked standing and ruled that:
- “standing to sue should be restricted to a club that could show to the Panel that it would directly replace an excluded club and not by the means of possibly being entered into a draw along with a number of other clubs or by a possible one-off decision that the Emergency Panel could take”*²⁴.
121. Importantly, the factual circumstances in CAS 2015/A/4151 were different than those in the present proceedings. The question in the case was whether Panathinaikos, as the runner-up in the Greek competition could replace Olympiakos in the UEFA Champions League. As regards admission to UEFA competitions, UEFA’s past practice demonstrates that UEFA retains the powers to replace a team by way of ordering a draw instead of automatically admitting the sanctioned team’s closest competitor in the given national league. The Panel in

²⁰ CAS 2002/O/373, paras. 62 *et seq.*

²¹ CAS 2008/A/1583 & CAS 2008/A/1584.

²² *Ibid.*, para. 32.

²³ CAS 2015/A/4151, para. 135.

²⁴ CAS 2015/A/4151, para. 146.

CAS/2015/A/4151 therefore considered that, in those circumstances, the most likely outcome was not that Panathinaikos would replace Olympiakos in the Champions League, and therefore refused to grant standing:

“The Panel cannot second guess exactly what the Emergency Panel would do, and it does not have to, but there is some logic in UEFA’s position that the most likely outcome would be to order a draw from the various clubs eliminated from the play-off round (so this would not include Panathinaikos in any event) as these were the last to be eliminated, so the closest on sporting merit; and that it would not advance Panathinaikos ahead of the club (Club Brugge KV) that had already eliminated it on the pitch”.

122. The Panel now turns to applying the principles identified in the CAS jurisprudence to the present proceedings.
123. As a runner-up, Trabzonspor *could* be affected by sanctions imposed on Fenerbahçe, such as withdrawal of the title. In the counterfactual where Fenerbahçe is sanctioned with withdrawal of the title or point deduction, the Appellant may become the champion of the 2010-2011 Turkish League, as it ended the season second with the same number of points as the winner²⁵.
124. Yet, this outcome is far from being a *certainty*. It ultimately depends on Turkish domestic regulations and procedure. There is no legal provision providing that, in the event the title is withdrawn from Fenerbahçe, it would revert to Trabzonspor. The applicable TFF Regulations do not provide for an automatic award of the title to the runner-up. In the absence of such a provision, it is not certain that Trabzonspor would benefit from sanctions imposed on Fenerbahçe. In fact, there are previous instances, for example in the Italian League²⁶, in which the title was withdrawn without it being awarded to the runner-up. In a similar fashion, even in the event of a withdrawal of the title from Fenerbahçe, the TFF could decide not to proclaim a champion for the 2010-2011 season. Therefore, in the absence of a clear benefit, Trabzonspor’s standing is questionable.
125. In light of the above considerations, and with particular regard to the Appellant bearing the burden of demonstrating that that the *most likely* counterfactual scenario in the event of a withdrawal of the title from Fenerbahçe, is that Trabzonspor would become the new champion of the 2010-2011 Super League, the majority of the Panel raises serious question marks over Trabzonspor’s standing to appeal. Therefore, the Panel examines first the question of UEFA competence, as in the absence thereof the standing to appeal question becomes irrelevant for the outcome of the present case.

²⁵ TFF Regulations 2012 which are applicable to the case at hand, only foresee the deduction of points, and relegation as appropriate sanctions for match fixing. In this regard, it is important to note that the withdrawal of the title is not included as an appropriate sanction in the TFF Regulations. Although the national regulations do not provide for the withdrawal of the title as a sanction, the Panel is of the opinion that had TFF deducted points from Fenerbahçe as a sanction following the 2010-2011 match-fixing scandal, this would likely have resulted in withdrawing the title from Fenerbahçe, as they ended the season with the same points as Trabzonspor.

²⁶ In the 2004-2005 season of the Italian Serie A where Juventus was stripped of its title without the title being awarded to the runner-up AC Milan or any another team. See decision of the Federal Appeal Commission of the Italian Football Federation (“Commissione d'appello federale FIGC”) of 14 July 2006 in the so-called ‘Calciopoli’ scandal.

C. UEFA's competence to impose sanctions in cases of national match-fixing

126. As an initial matter, the current appeal in its entirety is built on the assumption that for the purposes of the current proceedings, the CAS has the power to sanction teams at domestic level, either directly or through UEFA and/or the TFF, for violations of relevant disciplinary regulations.

127. Article R57 of the Code stipulates the following regarding the Panel's scope of review:

"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".

128. Article R57 of the Code provides for the Panel's power to review the facts and the law, as well as its power to issue new decisions. Accordingly, the CAS enjoys full powers to the extent that they relate to the reviewing of the facts and the law of the case. However, the CAS, and *ergo* the Panel, does not hold a *carte blanche* as regards the issuing of new decisions replacing the challenged decisions. In this regard, the scope of awards issued by the CAS corresponds to the scope of competences enjoyed by the authority who had issued the challenged decision. Any other interpretation would be *ultra vires*. In that regard, for the purposes of the proceedings at hand, any award by the Panel should correspond to the competences enjoyed by the UEFA AB who had issued the Appealed Decision.

129. Given that the Appellant's prayers for relief call for the sanctioning of Fenerbahçe at domestic level, the central question thus becomes whether UEFA had competence to intervene and impose sanctions at domestic level.

130. Article 27(1) of the UEFA DR 2008 grants UEFA the following powers:

"The Control and Disciplinary Body handles disciplinary cases arising from breaches of the statutes, regulations, directives and decisions of UEFA. It decides on cases relating to player and club eligibility for UEFA competitions".

131. Article 14 of UEFA DR 2008 applicable to the present case grants UEFA the power to adopt the following measures against member associations and clubs:

"[...]"

f) deduction of points,

[...]"

j) playing of a match in a third country,

k) disqualification from competitions in progress and/or exclusion from future competitions,

l) withdrawal of a title or award,

m) withdrawal of a licence”.

132. As the Panel ruled in CAS 2013/A/3256, UEFA has the power to intervene and impose the abovementioned sanctions at UEFA level (*i.e.*, in connection with UEFA’s own competitions) in domestic match-fixing. Indeed, the Panel in CAS 2013/A/3256 examined whether UEFA could impose as a disciplinary sanction a one year ban from the UEFA Champions League on Fenerbahçe, in addition to the one year ban imposed as an administrative measure by the TFF²⁷. The ruling was limited to the question at stake in the case – whether, in the context of a domestic match-fixing case, UEFA can impose an additional sanction (at UEFA level) related to the exclusion of Fenerbahçe from the Champions League²⁸. The Panel held that UEFA does have such competence under both the 2008 DR and the 2013 DR.
133. However, the Panel in CAS 2013/A/3256 explicitly clarified that this competence is limited to competitions organized under the auspices of UEFA (also referred to as UEFA’s competition-based competence principle):

“The Panel observes that it remains undisputed between the parties that article 2.05 of the UCLR (2011/2012) provides competence to UEFA in national match-fixing cases. Where article 5(1)(a) of the UEFA DR (2008) would normally only apply to competitions organised by UEFA, by means of article 2.05 of the UCLR (2011/2012) the territorial scope of this provision is extended to domestic cases. This does not mean that UEFA has a carte blanche in prosecuting clubs for national match-fixing violations. Competence in respect of national match-fixing is provided by the UCLR (and the UEFA Europa League Regulations - hereinafter: the “UELR”). Thus, UEFA’s competence is restricted to clubs that are subjected to these UCLR (and the UELR)” (emphasis added)²⁹.

134. The question the Panel has to examine in the present case is different, namely whether UEFA could impose sanctions unrelated to its own competitions against clubs involved in domestic match-fixing. As evidenced from the above – and as confirmed in CAS 2013/A/3256 – this was clearly not the case under the applicable UEFA DR 2008: UEFA’s sanctioning competence was limited to its own competitions³⁰.

²⁷ This is referred to as the two-stage process described in Articles 2.05 and 2.06 of the UEFA CL Regulations 2011/2012 (see also CAS 2013/A/3256, para 160). A similar disciplinary sanction was imposed in the case CAS 2011/A/2528, in which the Panel upheld the imposition of a one-year period of ineligibility from European competitions pursuant to the administrative measures foreseen in Article 2.08 of the UELR (the equivalent to Article 2.05 of the UCLR) and, a three year ban pursuant to the disciplinary measures foreseen in Article 2.09 of the UELR (equivalent to Article 2.06 of the UCLR).

²⁸ The application of the administrative and disciplinary measures mentioned in Articles 2.05 and 2.06 pertains specifically to the admissibility for UEFA competitions as Article 2 of the UEFA CL Regulations concerns the eligibility criteria for UEFA organized events.

²⁹ CAS 2013/A/3256, para. 198.

³⁰ It is debatable whether Article 23(4) UEFA DR 2013 has introduced an exception to UEFA’s general competition-based competence principle by allowing the application of UEFA DR to matches and competitions which are not organized by UEFA – and thus not subject to UEFA EL and CL Regulations – if any serious violations of the UEFA statutory objectives is committed outside of UEFA competitions, unless such violations are otherwise prosecuted in an appropriate manner by one of UEFA’s member associations. However, this discussion is irrelevant for the purposes of the present proceedings as the UEFA DR 2013 cannot be retroactively applied.

135. Given that UEFA lacked the competence to carry out the Appellant's prayers for relief at national level, the majority of the Panel finds that it cannot go beyond the scope of UEFA AB's competence to grant the Appellant's prayers for relief. To do so would be *ultra vires*. In conclusion, the Panel upholds the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Trabzonspor Sportif Yatirim ve Futbol İşletmeciliği Tic. A.Ş., Trabzonspor Futbol İşletmeciliği Tic. A.Ş., and Trabzonspor Kulübü Derneği is dismissed.
2. The decision dated 17 September 2015 in UEFA proceedings 27179 rendered by the UEFA Appeals Body, ruling that UEFA had no competence to impose domestic sanctions resulting from the match-fixing offences which occurred in the 2010-2011 Turkish Super League, is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.