4A_486/2019

Judgment of 17 August 2020

1st Civil Law Court

Composition

Mrs and Mr Federal Judges
Kiss, President, Hoh, Niquille, Rüedi and May Canellas.
Clerk: M. Thélin.

Participants in the procedure

Trabzonspor Sportif Yatirim Ve Futbol Isletmeciligi A.S.,
Turkey,
Trabzonspor Sportif Yatirim Futbol Isletmeciligi Ticaret A.S.,
Turkey,
Trabzonspor Kulübü Dernegi,
Turkey,
all three represented by Jean Marguerat and Lucien W. Valloni, lawyers,
rue Charles-Bonnet 4, 1206 Geneva, appellants

against

Turkish Football Federation (TFF),
Turkey,
represented by Jorge Ibarrola, lawyer,
avenue de Rhodanie 54, 1007 Lausanne,

Fenerbahçe Futbol A.S. ,
Turkey,
Fenerbahçe Spor Kulübü ,
Turkey,
both represented by Mr. Kai Ludwig, lawyer,
Weberstrasse 10, 8004 Zurich,

Fédération Internationale de Football Association (FIFA),
FIFA-Strasse 20, 8044 Zurich,
respondents.

Subject

International sports arbitration,

Appeal against the arbitral award rendered on 30 July 2019 by the Court of Arbitration for Sport (CAS 2018/A/5746).

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Facts :

A.

A.a Trabzonspor Sportif Yatirim Ve Futbol Isletmeciligi A.S. is a legal entity with its registered offices in Trabzon (Turkey) and which runs the professional football club Kulübü Dernegi. It is a member of the Turkish Football Federation (hereinafter: TFF), an association under Turkish law affiliated to the Fédération Internationale de Football Association (FIFA) and the Union of European Football Associations (UEFA).

Trabzonspor Sportif Yatirim Futbol Isletmeciligi Ticaret A.S. is a legal entity with its registered offices in Trabzon (Turkey), which managed the football club Trabzonspor Kulübü Dernegi until mid 2011.

Trabzonspor Kulübü Dernegi is a professional football club in the Turkish first division (Süper Lig).

These three organisations will be hereinafter referred to collectively as "Trabzonspor" or "Appellants".

Fenerbahçe Futbol A.S. is a legal entity based in Istanbul (Turkey), which manages the Fenerbahçe Spor Kulübü football club. This club plays in the Süper Lig. It is a member of the TFF.

These two organisations will be hereinafter collectively referred to as 'Fenerbahçe'.

FIFA is an association under Swiss law and it has its registered offices in Zurich. It is the international governing body for football and it exercises disciplinary power over its national associations.

The TFF, Fenerbahçe and FIFA will be hereinafter collectively referred to as the "Respondents".

A.b In the 2010/2011 Süper Lig season, Fenerbahçe and Trabzonspor finished the championship with the same number of points, but Fenerbahçe had more scored goals in the head-to-head matches. As a result, Fenerbahçe became champions and Trabzonspor finished in the second place. Fenerbahçe also qualified for the group stage of the 2011/2012 UEFA Champions League.

On 3 July 2011, several officials of various Turkish football clubs were arrested in the framework of a criminal investigation opened by the Turkish Public Prosecutor's Office in connection with a large-scale manipulation of Süper Lig matches during the 2010/2011 season.

On 11 July 2011, the TFF Executive Committee asked the TFF Ethics Committee to investigate the suspicions of match-fixing.

On 24 August 2011, the TFF decided to prevent Fenerbahçe from participating in the 2011/2012 edition of the Champions League. UEFA awarded the vacant position to Trabzonspor. On 20 December 2011, the Executive Committee of the TFF published a report, establishing that several acts of match-fixing involved Fenerbahçe's officials.

A.c On 13 April 2012, Trabzonspor filed a request with the TFF demanding it to adjudicate the Süper Lig 2010/2011 fixture case and to award it the title of champion in place of Fenerbahçe.

The Ethics Committee of the TFF considered that that while some officials from Fenerbahçe had been involved in 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.

Three Fenerbahçe officials were sanctioned on 6 May 2012 by the Disciplinary Commission of the TFF for attempting to fix a match during the 2010/2011 Süper Lig season. However, the TFF Disciplinary Commission did not impose sanctions on Fenerbahçe as the activities in question were considered as not attributable to the club.

On 4 June 2012, the TFF arbitration body dismissed Trabzonspor's appeal against the decision of 6 May 2012 on the ground that it was not entitled to challenge a decision refusing to sanction another club.

A.d On 2 July 2012, a Turkish criminal court ruled that a criminal organisation had been formed at the instigation of Fenerbahçe's president and that the outcome of 13 *Süper Lig* matches during the 2010/2011 season had been manipulated by Fenerbahçe officials. Several of the club's officials, including the club's president and the vice-president, have been convicted. However, on 28 October 2015, all of Fenerbahçe's officials were acquitted for lack of evidence in a new criminal trial held in Turkey.

Between August 2012 and October 2013, Trabzonspor repeatedly asked the TFF to cancel the results of the rigged matches and award it the title of *Süper Lig* 2010/2011. Trabzonspor's requests and appeals were rejected by the competent bodies of the TFF.

A.e In 2012, Trabzonspor requested UEFA to impose sanctions regarding *match-fixing* acts in Turkey during the 2010/2011 season.

UEFA opened disciplinary proceedings against Fenerbahçe but did not initiate such proceedings against the TFF. Despite a request to do so, UEFA did not grant Trabzonspor the right to intervene in the proceedings.

On 10 July 2013, the UEFA appeals body confirmed Fenerbahçe's exclusion from the next two UEFA competitions for which the club would qualify. This decision was confirmed by the Court of Arbitration for Sport (CAS) on 28 August 2013 (CAS 2013/A/3256) and the Federal Court rejected the appeal against the CAS award by judgment of 16 October 2014 (judgment 4A_324/2014).

On 31 January 2014, Trabzonspor requested UEFA to intervene with the Süper Lig in order to sanction teams and individuals that had committed acts of match-fixing and to take all necessary measures to ensure that Trabzonspor was awarded the 2010-2011 Turkish Super League title.

By decision of 11 December 2014, UEFA rejected Trabzonspor's request based on UEFA's lack of jurisdiction to intervene at national level. UEFA's appeals body and then CAS subsequently confirmed UEFA's lack of jurisdiction (CAS 2015/A/4343).

A.f As early as 2 June 2011, Trabzonspor informed FIFA of the match-fixing incidents in Turkey, requesting it to take all necessary measures to protect the integrity of football in Turkey. On 8 March 2013, Trabzonspor complained to FIFA, arguing that the TFF was in continuous violation of the FIFA Statutes.

Neither of these two letters has received a reply from FIFA.

On 31 January and 9 May 2014, Trabzonspor contacted FIFA again, requesting it to intervene with the Süper Lig in order to sanction clubs and individuals who had committed match-fixing acts and to take the necessary measures to ensure that the Süper Lig championship title for the 2010/2011 season was awarded to Trabzonspor.

On 25 July 2014, FIFA replied to Trabzonspor that in view of the disciplinary proceedings initiated by UEFA (see above, point A.e), it considered that an intervention by its Disciplinary Committee was not necessary at this stage of the procedure. Depending on the decision to be taken by UEFA, FIFA would re-examine the need of such intervention in due course.

In November 2015 and May 2016, Trabzonspor unsuccessfully requested FIFA to discuss the content of the various letters which remained unanswered.

On 3 July 2017, Trabzonspor filed a complaint with the FIFA Ethics Committee and the FIFA Disciplinary Committee against the TFF and Fenerbahçe. In summary, Trabzonspor requested FIFA to open an investigation about the match-fixing acts that occurred during the 2010/2011 season of the Süper Lig, to declare that the TFF failed in its duty by not prosecuting infringements committed by clubs affiliated to it, to impose sanctions against the TFF for violating the FIFA Statutes, as well as to order the TFF to impose sanctions on Fenerbahçe and to award the 2010/2011 Süper Lig championship title - and the related economic benefits - to Trabzonspor.

As the sanctions imposed by the TFF did not concern all Fenerbahçe officials who had been criminally convicted and were not directed against the club as such, on 15 December 2017 FIFA requested the TFF to inform it of all steps and measures taken by the TFF's judicial bodies in connection with the disciplinary proceedings initiated and to inform it of the reasons why the club had been acquitted.

On 19 January 2018, the TFF gave explanations and produced evidence regarding the disciplinary proceedings initiated in 2012 against Fenerbahçe and several of its executives. The TFF also informed FIFA of the disciplinary proceedings initiated by UEFA against Fenerbahçe, of the sanction confirmed by CAS (cf. supra consid. A.e), as well as of the acquittal decided in the new criminal judgment of 28 October 2015 (cf. supra consid. A.ci).

By letter of 5 February 2018, the FIFA Disciplinary Committee informed Trabzonspor that, in view of the applicable rules, it was not in a position to intervene in the present case and that it appeared from the documents provided that the disciplinary proceedings had been handled in compliance with tge fundamental principles of law.

By letters of 14 February and 20 March 2018, Trabzonspor expressed its disagreement with FIFA's letter of 5 February 2018. It reiterated its request and demanded that a formal decision was rendered.

By letter of 17 April 2018, in reply to the two letters sent by Trabzonspor, the FIFA Disciplinary Committee maintained that it was not in a position to intervene and, as such, that it could not render a decision in the present case.

On 20 April 2018, Trabzonspor lodged an appeal with the FIFA Appeal Committee for denial of justice, following the procedure initiated before the FIFA Disciplinary Committee.

On 27 April 2018, the FIFA Appeal Committee sent a letter to Trabzonspor stating that the applicable procedural rules confer standing to appeal only to a party which has taken part in the first instance proceedings. Consequently, Trabzonspor would not be entitled to appeal to the FIFA Appeal Committee in a case for which the FIFA Disciplinary Committee is not competent.

B.

B.a On 8 May 2018, Trabzonspor appealed to CAS against the letter of the FIFA Disciplinary Committee of 17 April 2018 and the letter of the FIFA Appeal Committee of 27 April 2018. The appeal was directed against the TFF, Fenerbahçe as well as FIFA.

Trabzonspor, among other conclusions, requested the CAS to annul FIFA's decision refusing to rule on its request, to declare that the TFF failed to prosecute, in accordance with the applicable rules, the infringements committed by Fenerbahçe during the 2010/2011 season of Süper Lig, to order the TFF to sanction Fenerbahçe in accordance with the applicable competition regulations and to correct the classification of the 2010/2011 season of the championship so that Trabzonspor is first and that the 2010/2011 championship title and all the benefits - economic and symbolic - relating thereto be awarded to it.

The respondents requested that the appeal be dismissed, to the extent that it was admissible.

B.b In the course of the proceedings, the TFF and Fenerbahçe requested the CAS to split the proceedings (request for bifurcation) and to examine on a preliminary basis the question of admissibility, jurisdiction and standing to appeal of Trabzonspor.

By letter of 27 August 2018, Trabzonspor expressed its disagreement, on the grounds that such a bifurcation would unnecessarily lengthen the proceedings. In addition, the club expressed its preference for a hearing to be held.

On 5 October 2018, the Panel informed the parties that it would hold a hearing on 15 March 2019 to discuss the preliminary objections raised by the TFF and Fenerbahçe, namely the issues of admissibility, jurisdiction and standing to appeal.

B.c On 23 October 2018, Trabzonspor requested that the hearing of 15 March 2019 be public.

By letter of 30 October 2018, FIFA objected to the publicity of the hearing. By letters of 31 October 2018, the TFF and Fenerbahçe also objected.

In its letter of 2 November 2018, Trabzonspor stated that the matters to be dealt with during the preliminary hearing were complex legal questions which was the reason why the hearing should be public.

On 7 November 2018, the Panel decided that in the absence of an agreement between the parties and insofar as the preliminary hearing would concern only legal and highly technical issues, it would not be public. However, the CAS clarified that this decision was without prejudice to a possible subsequent hearing on the merits of the case.

On 13 November 2018, Trabzonspor requested the CAS to reconsider its decision of 7 November 2018 and to order that the preliminary hearing would be public.

On 7 March 2019, Trabzonspor reiterated its request that a hearing be held publicly. Alternatively, the club requested that the hearing be broadcasted audio-visually and live. Finally, it asked CAS to publish the date of the hearing on its website.

The next day, the CAS rejected Trabzonspor's request, including the request for alternative measures. The CAS pointed out that Trabzonspor fans had - at the occasion of a previous proceeding - protested in front of the CAS premises and sent e-mails impacting the serenity of the proceedings. For this reason, the CAS did not make any announcement regarding the holding of this hearing, stressing that it was not obliged to publish the dates of all hearings on its website.

On 8 March 2019, Trabzonspor replied that it was basing its request directly on article 6 para 1 1 ECHR. The club requested that at least the press be allowed to attend the hearing.

By letters of 12 and 14 March 2019, the CAS stated that it saw no reason to reverse its decision. It indicated that the Panel would rule on the arguments of the parties as well as on the reasons that led to its refusal to make the hearing public in the award that it would render.

B.d A preliminary hearing was held on 15 March 2019 in Lausanne, behind closed doors and without any retransmission.

At the end of the hearing, the parties confirmed that they had no objection as to the way the proceedings had been conducted, with the exception of Trabzonspor, which maintained its initial objection to the absence of publicity of the hearing, which - according to the club - represented a violation of its right to a fair trial.

B.e By award of 30 July 2019 (reasoned version notified on 28 August 2019), the CAS declared the appeal admissible, dismissed it for lack of standing to appeal and did not further examine the merits of the dispute.

C.
On 27 September 2019, Trabzonspor lodged an appeal with the Federal Tribunal seeking the annulment of the CAS award on the grounds that it violated public policy (art. 190 para. 2 let. e LDIP), the right to be heard (art. 190 para. 2 let. d LDIP) and the right to a public hearing (art. 6 ch. 1 ECHR).

On 29 November and 2 December 2019, the TFF, Fenerbahçe and FIFA filed answers and requested that the appeal be dismissed, insofar as it was admissible.

The CAS - referring to the recitals of the disputed award - refrained from filing further observations and suggested that the Federal Tribunal dismissed the appeal.

On 20 December 2019 and 16 January 2020, the appellants and each of the respondents filed respectively a reply and a rejoinder. They confirmed their previous prayers for relief.

Reasons :

1.

According to art. 54 para. 1 of the Law on the Federal Tribunal, the Federal Tribunal renders its judgment in an official language, in principle in the language of the decision under appeal. When this decision is written in another language (in this case English), the Federal Tribunal uses the official language chosen by the parties. Before the CAS, the parties used English. In their submissions to the Federal Tribunal, they have used French and German. In accordance with its practice, the Federal Tribunal will adopt the language of the appeal and will therefore deliver its judgment in French (cf. ATF 142 III 521 para. 1).

2.

2.1 In the field of international arbitration, an appeal in civil matters against the decisions of arbitral tribunals is admissible under the conditions provided by art. 190 and 192 of the Swiss Private International Law Act (PILA) (Art. 77 para. 1 let. a Law on the Federal Tribunal (LTF)).

2.2 The Appellants, who formally took part in the CAS proceedings, are directly affected by the disputed award, insofar as it denied their standing to appeal. They thus have a personal, current and worthy of protection interest in ensuring that the award was not made in violation of the guarantees arising from Art. 190 para. 2 PILA, which confers on them the right to appeal (Art. 76 para. 1 LTF).

2.3 Filed in due time (Art. 100 (1) in conjunction with Art. 45 (1) LTF) and in compliance with the formal requirements (Art. 42 (1) LTF), the appeal is admissible. The admissibility of the various grounds formulated in the appeal is subject to review.

2.4

2.4.1 An appeal may only be lodged on one of the grounds exhaustively listed in Art. 190 para. 2 PILA (ATF 134 III 186 para. 5; 128 III 50 para. 1a; 127 III 279 para. 1a). Pursuant to article 77 para. 2 LTF, articles 90 to 98 LTF are inapplicable to this appeal.

In order for a grievance raised in the appeal brief to be admissible, it must be duly invoked and substantiated, as stipulated at article 77 para. 3 LTF. This provision corresponds to what art. 106 para 2 LTF stipulates regarding grievances based on the violation of constitutional rights and of cantonal and intercantonal law (ATF 134 III 186 para. 5; 128 III 50 para. 1c). Like this article, it establishes a duty to provide reasons *(Rügeprinzip)* and thus excludes the admissibility of criticisms of appellate nature (ATF 140 III 278, para. 3.4; 134 III 565, para. 3.1).

Moreover, the appellants may not use the reply brief to raise grounds of fact or law that they did not submit within the prescribed time i.e. before the expiry of the non-extendable time limit for appeal (Art. 100 para. 1 LTF in conjunction *with Art.* 47 para. 1 LTF) nor to supplement an incomplete reasoning after the deadline to appeal has expired. (ATF 132 I 42 para 3.3.4; judgment 4A_50/2017 of 11 July 2017 para 2.2). Indeed, the purpose of the second submission is essentially to respond to possible new arguments formulated by another participant in the proceedings in its reply (ATF 135 I 19, para 2.2; see BERNARD Corboz, Commentaire de la LTF, 2nd ed. 2014, no. 45 to art. 102 LTF). Insofar as the appellants present - in their reply brief - new arguments which fall outside the above-mentioned framework, these will not be taken into consideration (judgment 4A_324/2014 of 16 October 2014, para 2.5).

2.4.2 The Federal Tribunal rules based on the facts established in the disputed sentence (art. 105 para. 1 LTF). It may not rectify or supplement the factual findings of the arbitral tribunal even where the factual findings are manifestly incorrect or were made in violation of the law (cf. Art. 77 para. 2 LTF, which excludes the application of Art. 97 para. 1 and 105 para. 2 LTF). Thus, its task, when it is seized of an appeal of civil nature against an international arbitral award, is not to rule with full power to review, as an appellate court does, but only to examine whether the admissible ground raised against the award are well-founded or not. Allowing the parties to state facts other than those established by the arbitral tribunal, apart from the exceptional cases reserved by the case law, would no longer be compatible with such a task, even if these facts were established by the evidence produced in the arbitration file (judgments 4A_424/2018 of 29 January 2019, para. 4; 4A_260/2017 of 20 February 2018, para. 2.2, not published in ATF 144 III 120). However, the Federal Tribunal retains the power to review the facts underlying the contested award if one of the grounds mentioned at Article 190 para. 2 of the PILA is raised against the factual context or if new facts or evidence discovered are exceptionally taken into consideration in the appeal procedure (ATF 138 III 29, para. 2.2.1 and the reference cited)

It should be noted that the Federal Tribunal is also bound by the arbitral tribunal's findings as to the facts of the proceedings, subject to the same exceptions, whether they relate to the parties' submissions, alleged facts, requests for evidence, statements made in the course of the proceedings, legal explanations given by the parties, or even the content of a witness statement or expert opinion (ATF 140 III 16, para. 1.3.1 and the references cited; judgment 4A_54/2019 of 11 April 2019, para. 2.4).

2.5 In their appeal brief, the appellants' legal analysis is preceded by a detailed account of the facts, in which they describe the context of the dispute and the conduct of the proceedings from their own point of view, partially departing from or supplementing the factual findings of the arbitral tribunal, without relying on any exception to the principle set out above (see *above,* point 2.4.2). The corresponding statements will thus not be taken into consideration (judgment 4A_424/2008 of 22 January 2009, recital 2.3).

Furthermore, the merits of the appeal will be examined without taking into account the content of the various press releases produced by the appellants with their appeal as this is new evidence and, is as such inadmissible in the present proceedings (cf. art. 99 para. 1 in conjunction with art. 77 para. 2 LTF a *contrario;* judgment 4A_157/2017 of 14 December 2017, para. 3.3.1).

3.

In a first plea, divided into several branches, the appellants argue that the disputed sentence violates public policy, within the meaning of Article 190 para. 2 let. e PILA. Before examining this ground in more detail, it is worth recalling what is encompassed by the concept of public policy referred to in this provision.

3.1 An award is incompatible with public policy if it disregards the essential and widely recognised values which, according to the prevailing Swiss conception, should form the basis of any legal system (ATF 144 III 120, para. 5.1; 132 III 389, para. 2.2.3). A distinction is made between procedural and substantive public policy.

3.2 An award is contrary to substantive public policy if it violates fundamental principles of substantive law to such an extent that it can no longer be reconciled with the legal order and the system of values that underline it; these principles include, in particular, contractual fidelity, observance of the rules of good faith, prohibition of abuse of rights, prohibition of discriminatory or despoiling measures and protection of the civilly incompetent (ATF 144 III 120 para. 5.1; 132 III 389 para. 2.2.1).

As demonstrated by the use of the adverb "in particular", the list of examples established by the Federal Tribunal to describe the content of substantive public policy is not exhaustive, despite its recurrence in the case law relating to Article 190 para. 2 let. e PILA. Moreover, it would be delicate, and even dangerous, to try to list all the fundamental principles that would undoubtedly have their place there, at the risk of forgetting one or another of them. It is therefore preferable to leave it open. While it is not easy to define material public policy positively and to define its contours precisely, it is easier to exclude some elements from it. This exclusion affects, in particular, the entire process of interpreting a contract and the consequences that are logically drawn from it in law, as well as the interpretation made by an arbitral tribunal of the statutory provisions of a private law body. Similarly, for there to be incompatibility with public policy, which is a more restrictive notion than that of arbitrariness, it is not enough that the evidence was misjudged, that a finding of fact is manifestly false or that a rule of law has clearly been violated (ATF 144 III 120 consid. 5.1; 121 III 331 para. 3a; judgments 4A_318/2018 of 4 March 2019 para. 4.3.1; 4A_304/2013 of 3 March 2014 para. 5.1.1).

Moreover, it is not sufficient that a ground upheld by the arbitral tribunal conflicts with substantive public policy; it is the result of the award that must be incompatible with public policy (ATF 144 III 120, para. 5.1; 138 III 322, para. 4.1; 120 III 155, para. 6a), it being specified that this rule does not apply if there is incompatibility with procedural public policy (ATF 121 III 331, para. 3c).

3.3. There is a violation of procedural public policy when fundamental and generally recognised principles have been violated, leading to an unbearable contradiction with the sense of justice, so that the decision appears incompatible with the values recognised in a state governed by the rule of law (ATF 141 III 229, para. 3.2.1; 140 III 278, para. 3.1; 136 III 345, para. 2.1). An erroneous or even an arbitrary application of the applicable procedural provisions does not constitute in itself a violation of procedural public policy (ATF 126 111 249, para 3b; judgment 4A_548/2019 of 29 April 2020, para 7.3).

4.

In the first branch of their plea, the appellants claim that the arbitral tribunal violated the principle of public hearings as guaranteed by Art. 6 para. 1 ECHR, in violation of procedural public policy within the meaning of Art. 190 para. 2 let. e LDIP.

4.1

As a preliminary point, it should be recalled that a party to an arbitration agreement cannot complain directly to the Federal Tribunal in an appeal directed against an international arbitral sentence that the arbitrators have violated Article 6 para. 1 ECHR, even though the principles deriving from this provision can serve to concretise the guarantees invoked under Art. 190 para. 2 PILA (ATF 142 III 360, para. 4.1.2; judgment 4A_268/2019 of 17 October 2019, para. 3.4.3). The grounds for appeal are set out exhaustively in art. 190 para. 2 PILA (see above, point 2.4.1). The appellants are therefore wrong in invoking directly the violation of Article 6 para. 1 ECHR, which, in their view, constitutes a *sui generis* grievance that is implicitly added to the grounds for appeal provided for in Article 190 para. 2 PILA in conjunction with Article 77 para. 1 PILA.

Alternatively, they claim that a violation of Art. 6 para. 1 ECHR implies - *eo ipso* - a violation of procedural public policy within the meaning of Art. 190 para. 2 let. e PILA, insofar as this provision must be interpreted in the light of the case law of the ECHR. However, since a violation of international conventional law does not *per se* coincide with a violation of public policy within the meaning of Article 190 para. 2 (e) PILA, it is for the appellants to show how the alleged violation of Article 6 para. 1 ECHR would constitute a violation of procedural public policy, which they have failed to do in violation of Article 77 para. 3 LTF.

4.2 In the present case, the applicability of the procedural guarantees of Art. 6 para. 1 ECHR is excluded from the outset, as the appellants are not affected in their "rights and obligations in a civil matter", nor are they the subject of a criminal charge. They cannot be equated with sportsmen and women who are parties to a dispute concerning their rights and obligations or against whom disciplinary proceedings are pending.

Rather, they are mere whistleblowers, which are not affected in their rights. There is no right to initiate disciplinary proceedings against another club. Moreover, the appellants cannot be considered as third parties directly affected by a possible disqualification of their competitor, as it is established that they would not automatically benefit from it (see *below*, point 5). Consequently, the present dispute falls outside the scope *ratione materiae of* art. 6 ch. 1 ECHR.

4.3 Even if we were to assume that Art. 6 para. 1 ECHR is applicable and that a public hearing should in principle have been held, the CAS gave sufficient reasons as to why an exception to this principle was justified in this case. The award in dispute shows that the arbitral tribunal, after a careful and detailed examination, gave sufficiently detailed reasons for its refusal to hold a public hearing in accordance with the principles of case law set out in Article 6 para. 1 ECHR, expressly citing the *Mutu and Pechstein* judgment. The panel of arbitrators stressed that the hearing on 15 March 2019 was preliminary in nature and concerned only purely legal and highly technical issues, the underlying facts of which were not in dispute. Indeed, the opposing views of the parties concerned only the legal consequences of non-controversial facts. Moreover, these legal issues were rather complex, which the appellants admitted - half-worded - by describing them, in their letter of 2 November 2018, as "*complex legal questions"* (cf. *supra* consid. B.c). The arbitrators thus considered that the conditions for an exception to the principle of public hearings within the meaning of the ECHR's case law were met in this case, it being specified that this decision was without prejudice to the holding of a possible subsequent hearing - dealing with the merits of the dispute - in the event that their appeal was not to be declared inadmissible or dismissed at the end of the preliminary examination. Consequently, it was by examining the content of the arguments put forward by the parties and taking into account the jurisprudential principles relating to Art. 6 para. 1 ECHR that the CAS intelligibly and convincingly rejected the request to hold the hearing on 15 March 2019 publicly.

Thus, in view of the foregoing explanations, the appellants' grievance could not prosper.

5.

In order to examine the other grievances invoked by the appellants, it is necessary to sketch a summary of the disputed sentence.

The arbitral tribunal considered that the question of Trabzonspor's standing to appeal had to be resolved in accordance with FIFA rules and Swiss law, applicable on a subsidiary basis.

Relying on CAS case law, the arbitrators considered that a party to whom a decision is addressed is not the only one who has standing to appeal ; third parties can also have it when they are directly affected by the decision. As a general rule, a third party who is only indirectly affected by a decision does not have standing to appeal. In order to distinguish between "directly" and "indirectly" third parties affected by a decision of a sports federation, the arbitral tribunal holds that where a third party is affected by the decision in its capacity of competitor of the addressee of the decision, it is only indirectly affected, so that its standing to appeal must be denied, unless the applicable sports rules provide otherwise. The effects resulting from the competition are only indirect consequences of the decision. However, if the decision does not only rule on the rights of the addressee, but also on those of a third party, then the third party is directly affected and should be granted standing. The arbitral tribunal specifies that the approach to be taken when the question of standing arises is to presume the mere competitors as indirectly affected - and thus to deny them standing - to the extent that the decision has no tangible and immediate consequences for them that would go beyond the generic influence of a relationship of competitors within a competition. The tribunal then sketched - by way of example - various constellations where this question had already been raised before the CAS. Specifying that it is up to the party claiming standing to appeal to prove that it is directly affected by the decision (art. 8 CC), it recalled that this notion, when it applies to a third party not being the addressee of the decision, must be interpreted restrictively.

Considering that Trabzonspor would not have been a participant in the disciplinary proceedings that FIFA would - as the appellants wished it had - have initiated against the TFF and Fenerbahçe, the arbitral tribunal therefore had to examine whether Trabzonspor could - in the present case - be qualified as a third party "directly" affected by the potential sanction. The arbitrators came to the conclusion that this was not the case, for various reasons.

Firstly, in interpreting art. 70 par. 2 of the FIFA Disciplinary Code (2017 edition; hereinafter: FDC), the arbitral tribunal considered that FIFA had discretionary power as to whether or not to open disciplinary proceedings following the filing of a complaint by a whistle-blower. As there was no obligation to initiate disciplinary proceedings, Trabzonspor could not compel FIFA to perform an obligation that did not exist.

Secondly, by interpreting Art. 70 para. 3 FDC, the arbitrators held that Trabzonspor did not have any right to have disciplinary proceedings initiated by FIFA following its denunciation, stating that under Swiss law, whoever denounces an irregularity does not become a party to the proceedings that would result from such denunciation. Furthermore, art. 108 para. 2 FDC does not oblige FIFA to initiate disciplinary proceedings. Even though Trabzonspor - in addition to reporting certain serious irregularities to FIFA - had formulated claims of its own, these only affected it indirectly.

Thirdly, in order to justify its standing, Trabzonspor had to show that disciplinary proceedings would have resulted in sanctions against Fenerbahçe and that those sanctions would have resulted in the automatic replacement of Fenerbahçe by Trabzonspor as *Süper Lig* champion. In this respect, the arbitral tribunal considered that the rules of the TFF did not provide for a system whereby the runner-up in the championship would automatically replace the ousted champion. The TFF could very well have decided not to proclaim a champion for the 2010/2011 season. Therefore, the Panel concluded that if Fenerbahçe was sanctioned with a loss of points, Trabzonspor had no right to automatically become champion, which is why it is not "directly" affected by the absence of a sanction. Thus, even though every decision affecting one competitor generates - *de facto* - effects on the other competitors, these indirect effects do not give them a subjective right to obtain an advantage.

For these reasons, the arbitral tribunal ruled that Trabzonspor was not entitled to act before the FIFA Appeal Committee or CAS and dismissed the appeal. Due to the lack of standing of the appellants, the arbitral tribunal did not have to examine whether FIFA had properly considered that the disciplinary proceedings conducted in Turkey by the TFF had been conducted in compliance with fundamental principles of law.

6.

6.1 In the second part of the plea, the appellants allege that the TFF and FIFA acted contrary to good faith (Art. 2 CC) which, if confirmed by CAS, would render the disputed sentence incompatible with material public policy (Art. 190 para. 2 let. e PILA).

They argue that given the vertical nature of the relationship between a sports club and the sports federations, the behaviour of the latter must be measured in the light of the legitimate expectations they create for the sports clubs affiliated to them, which have no choice but to conform to their will. In the present case, Trabzonspor was itself in such a vertical relationship with the TFF and FIFA. These two structures have put in place a number of rules, aimed in particular at fighting against the manipulation of sports competitions, and thus allegedly gave rise to legitimate expectations within Trabzonspor.

According to the appellants, the competition regulations of the Süper Lig - issued by the TFF - provided for sanctions in the form of loss of points in the championship in the event of proven match-fixing acts. Thus, Trabzonspor is of the opinion that it could in good faith expect the TFF to impose such measures, at the latest following the conviction of Fenerbahçe by the CAS (cf. supra, para. A.e), on account of its proven involvement in match-fixing in the said championship. Furthermore, the appellants complain that FIFA failed to intervene with the TFF in order to verify whether the TFF had prosecuted the proven offences in accordance with the fundamental principles of law, as permitted by Art. 70 para. 2 FDC, the English version of which is worded as follows:

"The judicial bodies of FIFA reserve the right to sanction serious infringements of the statutory objectives of FIFA (cf. final part of art. 2) if associations, confederations and other sports organisations fail to prosecute serious infringements or fail to prosecute in compliance with the fundamental principles of law. "

The TFF having failed to apply the "clear rules" of competition and FIFA having wrongly denied its jurisdiction, these two structures allegedly acted in disregard of a certain number of rules that they themselves have enacted, thus betraying the legitimate expectations of Trabzonspor.

6.2 Applying the different rules applicable in the present case, CAS concluded that, on the one hand, a possible sanction against Fenerbahçe in relation to the 2010/2011 *Süper Lig* would not automatically imply that Trabzonspor would obtain the title of champion in its place and that, on the other hand, the FIFA Statutes do provide for a discretionary right for FIFA to intervene with the national federations, but not an obligation. The process of interpreting a sports federation's statutory provisions is not encompassed by the notion of material public policy (cf. *supra* consid. 3.2). Furthermore, the Federal Tribunal has held that it is not for it to review whether the arbitral tribunal correctly applied the law on the basis of which the standing to appeal was denied (judgment 4A_424/2008 cited above para. 3.3). Consequently, the appellants' expectation that FIFA would necessarily intervene at the national level with the TFF - for a competition that is not under the authority of FIFA - does not benefit from the protection of Art. 2 CC. The question of whether the appellants could in good faith expect FIFA to use its discretionary power to intervene at the *Süper Lig level* can be left open. Indeed, although the appellants rightly point out that the principle of good faith must be examined in the light of the case law regarding art. 2 CC (judgements 4A_220/2007 of 21 September 2007, para. 12.2.2; 4P.167/2002 of 11 November 2002 para. 3.2) and that its violation can be incompatible with the notion of substantive public policy (cf. supra para 3.2) a violation of article 2 CC does not render the sentence incompatible with substantive public policy *per se.* However, the appellants' explanations do not indicate anywhere in which way this alleged violation of article 2 CC would also violate substantive public policy (cf. *above,* points 2.4.1 and 3.2).

Since the appellants have not demonstrated any serious violation of article 2 CC nor any violation of substantive public policy - they did not even formulate any argument in that regard - their plea is doomed to failure.

7.

7.1 The appellants base the third part of their plea on the Federal Tribunal's case-law, according to which, promises of bribes contravene international public policy if they are proven to be true (ATF 119 II 380, para. 4b; judgment 4P.208/2004 of 14 December 2004, para. 6.1). By citing various rules enacted at international level with the aim of fighting against the manipulation of sports competitions and by stressing the real socio-economic scourge of corruption in the world of sport, the appellants consider that such corruption must be considered to violate substantive public policy when it is established. They claim that the arbitral award at issue here allows corruption in sport to go unpunished and that the perpetrators of such acts unduly retain the title of *Süper Lig* 2010/2011.

They argue that the bribes paid by Fenerbahçe had the direct consequence of establishing points in the standings and thus allowed the club, through the application of the *Süper Lig* regulations, to become the winner of its 2010/2011 edition. Consequently, it is the acts of bribery that directly support the claims of the claimants. In their view, the disputed sentence endorses and gives effect to proven acts of corruption and thus contravenes material public policy within the meaning of Article 190 para. 2 let. e of the Swiss Federal Law on Private International Law.

7.2 The way this reasoning has been constructed by the appellants is not convincing. On the one hand, the appellants seem to lose sight of the fact that the subject matter of the present dispute is not whether acts of corruption were committed, and which disciplinary sanctions would have been the most appropriate to impose. It relates exclusively to the question of whether Trabzonspor is entitled to challenge FIFA's decision and, indirectly, to claim that Fenerbahçe restore its *Süper Lig* title for the 2010/2011 season. The appellants are no taking a legal action on the basis of their own interest but only on the basis of the general interest of the fight against corruption (cf. judgment 4A_560/2018 of 16 November 2018, para. 2.1; Corboz, *op. cit.,* no. 22 to art. 76 LTF). On the other hand, the arbitral tribunal came to the conclusion that the legal situation of the case at hand did not allow it to impose the (additional) sanctions - suggested by Trabzonspor - on Fenerbahçe. In addition, since the arbitral tribunal had established that the appellants lacked standing, it is logical and correct that the arbitral tribunal did not address the appellants' various complaints in which they challenged the merits of FIFA's decision (cf. judgment 4A_548/2019, cited above, para 6.2.2). In doing so, the CAS did not - in any way - endorse the acts of corruption that shook Turkish football during the 2010/2011 season .

It follows that that the plea based on a violation of Article 190 para. 2 (e) PILA is unfounded.

8.
In a second plea, divided into two parts, the appellants complain of a violation of their right to be heard within the meaning of Art. 190 para. 2 let. d PILA.

8.1 The content of the right to be heard, as guaranteed by art. 182 para. 3 and 190 para. 2 letter d PILA, does not - in principle - differ from the one enshrined in constitutional law (Art. 29 para. 2 Cst.). Thus, in the field of arbitration, it has been acknowledged that each party has the right to express its views on the facts essential to the case, to present its legal arguments, to propose evidence on relevant facts, provided it does so in due time and in the prescribed manner, to take part in the hearings and to have access to the file (ATF 142 III 360 para 4.1.1; 130 III 35 para 5; 127 Ill 576 para 2c).

According to the well-established case-law, the right to be heard in adversarial proceedings, enshrined in art. 182 para. 3 and 190 para. 2 (d) PILA, does not require that reasons be given for an international arbitral award (ATF 142 III 360, para. 4.1.2; 134 III 186, para. 6.1 and the references cited). However, the case law does infer from the foregoing a minimum duty for the arbitral tribunal to examine and deal with the relevant issues. This duty is breached if the arbitral tribunal inadvertently or by misunderstanding fails to take into consideration allegations, arguments, evidence and proposals of evidence submitted by one of the parties which are relevant for the award to be rendered (ATF 142 III 360, para. 4.1.1; 133 III 235, para. 5.2 and references cited). However, the arbitral tribunal does not have to deal with every argument of the parties, which is why it cannot be criticised, under cover of the right to be heard, for not having examined aspects not essential to the outcome of the dispute (ATF 133 III 235, para. 5.2; 107, para. 246, para. 4; judgment 4A_308/2018 of 23 November 2018, para. 3.2).

The plea of a violation of the right to be heard cannot serve a party who complains about defects in the reasoning of the award, with the aim to provoke by this means an examination by the Federal Tribunal of the application of the substantive law (ATF 142 III 360, para. 4.1.2; judgment 4A_612/2009 of 10 February 2010 para. 6.3.2).

A party who considers that its right to be heard has been violated must invoke it from the outset in the arbitration proceedings, failing which it will be time-barred (ATF 130 III 66 para 4.3; 119 II 386 para 1a; judgment 4A_324/2014, cited above, para 3.3.1). The behaviour consisting in invoking a procedural defect only in the context of an appeal against an award - because the award is ultimately unfavourable to the appellant - when the defect could already have been raised in the course of the proceedings, constitutes a breach of the principle of good faith (ATF 136 III 605, para 3.2.2; 129 III 445, para. 3.1; judgment 4A_150/2012 of 12 July 2012, para. 4.1).

8.2 The appellants complain first about an abuse by FIFA of its discretionary power. FIFA had allegedly used its discretionary power pursuant to Art. 70 para. 2 FDC in a manner contrary to the law. In their view, even if FIFA enjoys a discretionary power, it must be exercised in accordance with the FIFA Statutes and in a proportionate manner. Indeed, if - in the present case - FIFA were not obliged to intervene at national level, then art. 70 para. 2 FDC would remain unapplied, even if serious violations of the FIFA Statutes had been committed. CAS, by not examining the grievance raised by the appellants before FIFA - notwithstanding its power of review *de novo* - would be supporting FIFA's refusal to initiate a disciplinary procedure and would itself be violating the appellants' right to be heard.

8.3 On 5 October 2018, the CAS decided to initially limit the procedure to the issues of admissibility, jurisdiction and standing to appeal (cf. *supra* consid. B.b). It appears from the award that the arbitrators examined extensively the question of Trabzonspor's standing to appeal, which they ultimately denied (cf. *supra* para. 5). Such a division of the proceedings is a matter of procedural economy, the advantages of which are well established. It is not, moreover, an exclusive prerogative of the CAS, since this is also expressly provided for in Art. 125 (a) of the CPC for the ordinary civil courts. In doing so, the CAS did not violate in any way the parties' right to be heard. Moreover, even though the CAS did not have to preliminarily limit the proceedings to certain specific legal issues, it could still have validly waived the examination of the merits of the dispute, finding that the appellants lacked standing. Indeed, the arbitral tribunal is not obliged to address all the arguments presented by the parties. It may ignore those arguments which are rendered moot by the reasons adopted in the award (see above, point 8.1). The right to be

heard does not confer a right to an *obiter dictum.*

The question whether, as Fenerbahçe argues, the right of the appellants to invoke the plea based a violation of the right to be heard lapsed because it was not exercised immediately (cf. *supra* consid. 8.1) will be left open here. In any event, the arguments put forward by the appellants in support of their complaint appear to be uncapable of substantiating their plea. It follows from this that the plea alleging a violation of the right to be heard - of dubious admissibility

8.4 Secondly, the appellants contest the content of the arbitral award, i.e. the arbitrators' interpretation of the various applicable rules.

As an indirect member of FIFA, Trabzonspor allegedly benefits from the protection of art. 75 CC, allowing it to challenge decisions taken by the mentioned federation. By having considered - allegedly wrongly - that a possible sanction imposed on Fenerbahçe would not automatically lead to Trabzonspor being awarded the title of champion, with the consequence that its standing to act was denied (cf. *supra* para 5), CAS allegedly prevented the appellants from having the legal and statutory validity of the decision taken by FIFA reviewed by an independent judicial body. As a result of this allegedly too restrictive interpretation, CAS deprived the club of the legal protection to which it is entitled under Article 75 CC, in disregard of its right to be heard (Article 190 para. 2 (d) of the PILA).

The appellants, whose arguments are clearly of appellate nature in the Federal Tribunal‘s view, do not criticize the way in which the panel heard their position, but the fact that it did not share it. However, the complaint of the right to be heard cannot be invoked in order to obtain indirectly from the Federal Tribunal an examination of the merits of the disputed award (cf. *above,* para. 8.1). The appellants' plea is therefore inadmissible.

9.

In a final grievance, the appellants consider that the allegedly too restrictive interpretation of their standing to appeal by CAS renders FIFA's decision immune from judicial review. In their view, the contested sentence thus violates procedural public policy (art. 190 para. 2 let. e LDIP), in that their rights to an effective remedy and to a fair trial are denied.

In other words, the appellants make the same criticisms as those made above with regard to the claim of violation of the right to be heard (cf. *supra* consid. 8.2). Here too, the Court finds that the appellants are in fact seeking an indirect re-evaluation of their standing by the Federal Tribunal. This would results in transforming the Federal Tribunal into a mere court of appeal (judgment 4A_606/2013 of 2 September 2014, para 5.3). This final plea, which is just as unfounded as those examined previously, is inadmissible.

10.

Based on the foregoing, the appeal must therefore be rejected to the extent it is admissible.

In view of the outcome of the dispute, the unsuccessful appellants will have to pay the judicial costs (Art. 66 para. 1 BGG) and compensate the TFF on the one hand and Fenerbahçe on the other (Art. 68 para. 1 and 2 BGG). As FIFA has proceeded without the assistance of a lawyer, it cannot claim compensation for its costs (art. 68 para. 1 BGG).

On these grounds, the Federal Tribunal pronounces :

1.
The appeal is dismissed to the extent that it is admissible.

2.
The judicial costs, set at 15'000 fr., are to be borne by the Appellants jointly and severally.

3.
The appellants are ordered jointly and severally to pay the Turkish Football Federation (TFF) 17,000 Fr. as costs.

4.
The appellants are ordered jointly and severally to pay Fenerbahçe Futbol A.S. and Fenerbahçe Spor Kulübü, as several creditors, 17,000 Fr. as costs.

5.
This decision is communicated to the parties and to the Court of Arbitration for Sport (CAS).

Lausanne, 17 August 2020

On behalf of the First Civil Law Court of the Swiss Federal Tribunal

The President :	The Clerk :
Kiss	Thélin