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FAX

WE CARE ABOUT FOOTBALL

Date: 25/06/2013  
To: Besiktas JK

This message contains 12 pages (including cover page)

Dear Sirs,

Please find attached the decision passed by the Control and Disciplinary Body in its meeting held on 21 June 2013.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

UEFA

A handwritten signature in black ink, appearing to be 'Emilio Garcia', written over a horizontal line.

Emilio Garcia  
Head of Disciplinary and Integrity



**Sent by fax or email**

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## **Control and Disciplinary Body**

**Decision of 21 June 2013**

**Union of European Football Associations (UEFA)**  
**(Claimant)**

**v.**

**Beşiktaş JK**  
**(Respondent)**

**Chairman:** Thomas Partl (AUT)

**Vice-Chairmen:** Jacques Antenen (SUI)  
Sandor Berzi (HUN)

### WHEREAS

Beşiktaş JK (hereinafter "Beşiktaş" or "Respondent") is a Turkish football club affiliated to the Turkish Football Federation. During the season 2011/2012 Beşiktaş achieved the Final of the 49<sup>th</sup> Turkish Cup to be played against İstanbul Büyükşehir Belediye Spor Kulübü (hereinafter "İBB") in Kayseri.

On 11 May 2011, Beşiktaş won the cup and was so directly qualified for the next UEFA Europe League 2012/2013.

On 3 July 2011, the Turkish police detained several persons as part of investigations pursued in matters concerning match fixing. Among these persons the Vice-President of the Club, Serdal Adalı, the coach, Tayfur Havutçu, and the security officer, Ahmet Ates, were suspected of having conducted match fixing actions concerning the above mentioned match.

The transcription of the police investigation reads as follows:

*"From Sports club's point of view, it is very important to play in European leagues for material income and prestige as well as becoming a champion in their country. In the season 2011-2012 5 teams, 2 in Champions League 3 in UEFA League would represent our country in European Cups. The team who won Turkish Ziraat Cup and finished the league as 3rd and 4th would go to UEFA League; considering the season 2010-2011 of Super League, the league consists of 34-week marathon, Fenerbahçe was in the first place in the league with 76 points at the end of the 32nd week matches; Beşiktaş and Kayserispor had 50 points, Beşiktaş was in the 5th place in the league on goal difference. According to this table Beşiktaş did not seem to go European Cups in case it lost points in the last 2-week matches of the league therefore Beşiktaş wanted to win Turkish Ziraat Cup and ensured going UEFA League.*

*On 11.05.2011 there was a Turkish Cup 49th Ziraat final match played between Beşiktaş-İBB football teams. Prior to the match in the beginning of May Tayfur Havutçu, the Football Coach of Beşiktaş, contacted the player representative Yusuf Turanlı with the direction of Serdar Adalı, the Deputy Chairman of Beşiktaş. Tayfur Havutçu asked him to inform İbrahim Akın and İskender Alın, the players of İBB, about transfer offer of Beşiktaş Administration. Yusuf Turanlı hereupon phoned İbrahim Akın and İskender Alın to tell Beşiktaş's transfer offer. Both players accepted this offer and they gave Yusuf Turanlı authorization to follow the transfer operations. Later on Ahmet Ates, the Beşiktaş Stadium Officer, contacted Yusuf Turanlı and invited him to Bursa to communicate officials of Beşiktaş for transfer discussions. After that Yusuf Turanlı phoned İbrahim Akın and İskender Alın and met up both players stating that it was very important.*

*Approximately 2 days after this meeting, Yusuf Turanlı phoned Tayfur Havutçu and asked him to communicate Serdal Adalı. Then Ahmet Ateş phoned Yusuf Turanlı and said to him that Serdal Adalı invited him to his company, but as this meeting would be prior to the cup game, officials of Beşiktaş did not want to be seen with Yusuf Turanlı and they refrained that transfer offer would be heard in the public. Therefore Ahmet Ateş phoned Yusuf Turanlı and asked him to be careful stating that "You call me when you get close but if you be here at 2 and also you will come alone,... I mean in a safe place, they say that they would meet in a place where nobody could see you".*

*Yusuf Turanlı went to Serdal Adalı's company on the same day in the evening and they agreed on transfer terms but players would fix the game. Right after this meeting Yusuf Turanlı phoned both players to tell them that they agreed on the transfer and he asked for 2.000.000 Euro for transfer. According to telephone conversation, Serdal Adalı said that he would present İbrahim Akın with his horse called Soder One approx. 200.000 TL worth and in return of the said transfer he asked both players not to perform well in the cup game for Beşiktaş to win the said match. The wiretapping report tells that "remember the match in İnönü how you watched it, you will see a match just as that one, light your cigar and sit back,... err Yusuf what if we get the cup I mean what will happen next,... don't let it have a connection with you I mean it doesn't matter do you understand... buddy it is pass always it is we will do then we will pass or whatever", but later on İbrahim Akın talked with the club chairman. The club chairman offered prim for this match and also he said to him that he would finish his football life, therefore he thought that the club chairman knew about the agreement. Therefore he said to Yusuf Turanlı that he would play well in the match. Within this whole period Yusuf Turanlı phoned Tayfur Havutçu to inform him about developments.*

*In written agreement with İstanbul Büyükşehir Belediye Spor Kulübü (İstanbul Metropolitan Municipality Sports Club); in the football season 2010-2011 there were often news in the media about the transfer of the players called İbrahim Akın and İskender Alın to Beşiktaş Sports Club. In 2011 at the end of May Serdar Adalı, one of the officials of Beşiktaş Sports Club, made some discussions with the term chairman of the club about transfer. There was no written consent required from the club by Beşiktaş Sports Club to meet the said football players and no such written consent was provided by Beşiktaş Sports Club (File:65, Serial:336).*

*Prior to the 49th Ziraat Turkish final cup game played between Beşiktaş – İBB Sport teams on 11.05.2011 in Kayseri, Beşiktaş football team remained unassertive in Super League and was at risk of failing to go to Europe cups, which was unusual for the club. This constituted a great pressure over the entire football world, and the sports fan and the club Administration, Tayfur Havutçu; as he became a coach in Beşiktaş club in the middle of the season and it was mentioned in the soccer world that in the case of his failure, his contract would not be renewed/lengthened. In order to ease the pressure over the team and to go to Europe cups, Turkish cup must be won so the suspects promised İbrahim Akın and İskender Alın, the*

*players of I.B.B, pecuniary advantage and a transfer to Beşiktaş at the end of the season. They asked them to perform badly in the match in return. The coach Tayfur Havutçu contacted with the said players' representative Yusuf Turanlı upon the directives of Beşiktaş Club Board member and Deputy Chairman Serdar Adalı. Then Yusuf Turanlı communicated the proposal to the players. Ahmet Ateş who was Beşiktaş Club field manager mediated to the parties to meet and conclude an agreement, as agreed by the parties prior to the match, the match ended Beşiktaş's winning. By this way, Beşiktaş won the cup within the season and also they were entitled to go to the European cup."*

On 15 August 2011, the Ethics Committee of the Turkish Football Federation decided to acquit both the individuals and Beşiktaş on the above mentioned issue. On 26 April 2012, after having inspected further evidence, the Ethics Committee of the Turkish Football Federation declared Beşiktaş and the individuals as not guilty of committing match fixing.

Parallel to the internal disciplinary proceedings before the Turkish Football Federation and in the light of the above mentioned police investigations, the 16<sup>th</sup> High Criminal Court in Istanbul rendered its decision on 2 July 2012 and submitted the grounds of this decision on 10 August 2012.

Amongst the evidence obtained were a large number of taped telephone conversations and intercepted text messages, exchanged between Tayfur Havutçu (the coach of Beşiktaş) and Yusuf Turanlı (the representative of two players of IBB). There were also taped telephone conversations between Mr. Turanlı and Mr. Serdar Adalı (the Deputy Chairman of Beşiktaş). Then there are taped conversations between Mr. Turanlı and the players Ibrahim Akin and Iskender Alin (i.e. the two players of IBB who were bribed by the officials of Beşiktaş to play badly in the Final of the 49th Turkish Cup).

These various messages were exchanged and recorded in the days immediately prior to the date of the Final of the 49th Turkish Cup (11 May 2011) and even on the day of the match itself. It is clear from the content of these recorded messages that the two players of IBB had been offered financial incentives by officials of Beşiktaş in order to perform badly in the 49th Turkish Cup, so that Beşiktaş could qualify for European club competition. The recorded messages are numerous and tell a clear and consistent story: namely that Beşiktaş officials (through the medium of Mr. Yusuf Turanlı) offered financial inducements to two players of an opposing team (IBB) so that Beşiktaş would win a match against IBB and proceed to qualify for a European club competition.

The 16<sup>th</sup> High Criminal Court after having examined the witnesses, the defence and the taped conversations recorded by the police in its investigations decided as follows:

"Our Court also accepted that match-fixing and incentive crimes may be committed with transfer promises offering double or three times of the money they earn in their own clubs and this is

within "*earnings or other benefits*" stated in the first paragraph of 11<sup>th</sup> article of the Law no. 6222.

Accordingly;

Before the 49<sup>th</sup> Ziraat Turkey Cup final match played between Beşiktaş and IBB in Kayseri on 11.05.2011, it is understood that the accused Serdal Adalı, Tayfur Havutçu and Yusuf Turanlı agreed with İbrahim Akın and İskender Alın, football players of IBB, on match-fixing not to play good against Beşiktaş in the cup match promising that they would be transferred to Beşiktaş with high transfer fees at the end of the season, with the opinion that Beşiktaş football team became unassuming in Super Lig and the club has the risks of not joining European cups; that this situation put pressure on fans, club management and all community; the community talked about the idea that the accused Tayfur Havutçu became the coach of Beşiktaş in the middle of season and his contract would not be extended/renewed at the end of season if he failed; and that they had to win the cup to take part in European Cups and to ease the pressure on the team. With this personal conviction, it was necessary to decide that the mentioned accused people would be punished for match-fixing pursuant to the 11/1<sup>st</sup> article of the Law no. 6222 amended by 6259."

According to the 16<sup>th</sup> High Criminal Court decision, Mr Serdal Adalı and Mr Tayfur Havutçu were considered responsible for serious breaches of Turkish law. In particular, Mr Serdal Adalı was found guilty according to articles 11/1, 4-b of the 6259 numbered law and 6222 numbered law act of match fixing in the Beşiktaş-IBB trophy final match played on the date of 11/05/2011 (sic.). Also applying the 6222 numbered law and different articles 11/11 and 18<sup>th</sup> of the 6259 numbered law. Mr Tafur Havutçu was found guilty of match fixing according to according to articles 11/1, 4-b of the 6259 numbered law and 6222 numbered law act of match fixing in the Beşiktaş-IBB trophy final match played on the date of 11/05/2011 (sic.). Also applying the 6222 numbered law and different articles 11/11 and 18<sup>th</sup> of the 6259 numbered law.

On 7 June 2013, the UEFA General Secretary referred the case of Beşiktaş to the Control and Disciplinary Body in accordance with article 2.13 of the UEFA Europa League 2013/2014 Regulations and commissioned a Disciplinary Inspector to conduct an investigation on this issue in accordance with the Article 25 (4) of the UEFA Disciplinary Regulations (hereinafter "DR").

On 10 June 2013, the UEFA Head of the Disciplinary and Integrity Unit, informed Beşiktaş of the instigations of proceedings in accordance with the DR and attached the UEFA Disciplinary Inspector's report with a copy of the full decision of the 16<sup>th</sup> High Criminal Court. On the same date, the UEFA Head of the Disciplinary and Integrity Unit, informed also Mr Serdal Adalı and Mr Tayfur Havutçu of the instigations of proceedings in accordance with the DR and attached the UEFA Disciplinary Inspector's report with a copy of the full decision of the 16<sup>th</sup> High Criminal Court.

Regarding the case of Beşiktaş, the Club does not dispute the above mentioned facts. Nevertheless, Beşiktaş argues that to exclude the Respondent Beşiktaş would be in violation of the UEFA Europa League Regulations, the DR and other applicable rules, since the Respondent has not been involved in match fixing, as pointed out by the Respondent itself when submitting the Admission criteria form for the UEFA Club Competitions 2013/14 and its Addendum. Furthermore, the Respondent claims that it has not been involved in match fixing issues as stated by two separate committees of the Turkish Football Federation. Both committees are composed of 12 members acquainted with the specificity of sport.

Moreover, Beşiktaş contests the full reliance on state court ruling which shall not be admissible due to the fact that there are conflicting decisions about this case and that an appeal against the 16<sup>th</sup> High Criminal Court decision is still pending. Respondent invited UEFA to conduct a limited investigation of its own which would lead to a conclusion on the "basis of all factual circumstances and information available to UEFA" in accordance with Article 2.08 UEFA Europa League Regulations. In addition, the exclusion of Beşiktaş would amount to a distortion of the 2012/2013 Spor Toto Super League and the UEFA Europa League 2013/2014 causing irreparable prejudice to Beşiktaş. In this sense, UEFA may not afford to resort to the exclusion of Beşiktaş by disregarding relevant circumstances in accordance with the principle of "fair play".

Finally, the Respondent argues that to impose further sanctions on Beşiktaş would be incompatible with the UEFA Europa League Regulations, the DR and other applicable rules since the facts do not support this request to exclude the Club for the next UEFA competitions and are less fit to serve as a basis for additional disciplinary measures.

The more detailed arguments made by Respondent in support of its written submission are set out below in as far as they are relevant.

### In law

#### As to the disciplinary liability of Beşiktaş JK

##### The integrity of competitions

As highlighted by a recent CAS decision (CAS 2011/A/2528 at paragraph 141), "it is firmly in the interests of UEFA, as the organiser of sports competitions, that the integrity of its competitions is upheld and perceived by the public. The panel considers it undeniably in UEFA's interest to show the public that it takes all measures necessary to safeguard the integrity of its competitions. The panel recognises that the UEFA Control and Disciplinary Body's decision helps to protect that

interest, given the serious damage that Olympiacos Volou FC's participation in the 2011/12 UEFA Europa League could cause to UEFA's image and that of its competitions".

On the basis of these considerations, it is evident that there exists an absolute legal right that UEFA, as organiser of the highest level European football competitions, must protect the image of its competition, which must not only be carried out as an integral competition in every sense, but also be perceived as such by the different stakeholders of football (among others, the participating clubs, member associations, sponsors and, of course, supporters).

In consequence, the Control and Disciplinary Body shall now proceed to analyse the possible disciplinary liability of Beşiktaş on the basis of the documents, evidence and requests submitted to it, as well as taking into consideration all of the pleadings made in both the written phase and at the hearing.

#### The applicable legal framework

It is a generally accepted principle that a disciplinary body shall, in general, "apply the laws, regulations or rules that were in force at the time the facts occurred. This general principle is, however, subject to several exceptions, including an exception for laws or rules that are procedural in nature (see CAS 2000/A/274, headings and para. 78). This has been confirmed in several CAS cases (cf. CAS 2004/A/635: " This reading of the above FIFA provisions would be in full compliance with the *tempus regit actum* principle (...), according to which – as a general rule – the substantive aspects of a contract keep being governed by the law in force at the time when the contract was signed, while any claim should be brought and any dispute should be settled in accordance with the rules in force at the time of the claim."). This jurisprudence has been confirmed in other CAS cases (cf. CAS 2009/A/1912-1913 at para. 109 and seq., with further references).

Therefore the Control and Disciplinary Body is satisfied that on the actions of the Respondent the UEFA Disciplinary Regulations Edition 2008 must be applied, while the current DR (Edition 2013) are relevant for any procedural and organisational issue.

Art. 5(1) DR –Edition 2008– lays down that clubs, as well as their players, officials and members, must conduct themselves according to the principles of loyalty, integrity and sportsmanship.

Furthermore, according to Article 6(1) DR –Edition 2008–, which stipulates the principle of "strict liability", a club is to be held responsible for the improper conduct of its officials, members, supporters and any other persons exercising a function at a match on behalf of the association or a club, even if it might not be at fault itself.



Mention should also be made to the fact that in order to participate in UEFA club competitions, clubs must fulfil the requirements laid down in article 2.07(g) of the UEFA Europa League Regulations 2013/14. This requirement states that a club must not have been "directly and/or indirectly involved since (...) 27 April 2007 in any activity aimed at arranging or influencing the outcome of a match at national or international level and must confirm this to the UEFA administration in writing" (Article 2.08 of the Regulations of the UEFA Europa League 2013/14). The ultimate goal of Article 2.08 of the Regulations of the UEFA Europa League 2013/14 is to achieve absolute protection of the integrity of UEFA competitions. Moreover, if, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since 27 April 2007 in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition (see Art. 2.08 Regulations of the UEFA Europa League 2013/14).

In conclusion, the scope of the current proceedings may be limited to the question if Beşiktaş aimed at arranging or influencing the outcome of a match at national or international level. On this basis, the Control and Disciplinary Body may declare the Respondent ineligible to participate in the UEFA Europa League 2013/2014.

*The facts of the case, applied to the legal framework*

In view of the documents and evidence provided by the parties to this proceedings, the following is considered proven:

- On 11 May 2011 there was a Turkish Cup 49th Ziraat final match played between Beşiktaş-İBB football teams. The winner of this match would automatically qualify to the UEFA Europa League 2011/2012.
- In view of the police investigation of the different football matches played in Turkey, the Turkish Football Federation opened disciplinary proceedings based on the match-fixing allegations against three Beşiktaş officials in relation to the aforementioned match. At the end of these disciplinary proceedings, the three Beşiktaş officials were pronounced not guilty.
- The same police investigation and the actions of the Turkish public authorities have led to a criminal investigation in that regard, which was resolved by the Decision with grounds of 10 August 2012 of the 16<sup>th</sup> High Criminal Court of Istanbul. In this decision, Mr Sedar Adali, Vice-President of Beşiktaş, and the coach of Beşiktaş, Mr Tayfur Havutçu, were declared guilty of match fixing in the aforementioned match.

- From a factual point of view, bearing in mind the totality and content of the evidence available and put before the 16<sup>th</sup> High Criminal Court of Istanbul (the existence of which is not disputed), it has been established that the Respondent, aiming at securing a win in the Final of the Turkish Cup and thus qualifying for a European football competition, contacted through its officials (and coach) players of the opposing team (IBB) offering special financial compensation in terms of transfer conditions and other benefits in exchange for fixing the outcome of the Turkish Cup final.

In order to determine the legal consequences of these facts, it is necessary to initially examine the standard of proof applicable to the present proceedings.

CAS has already decided about the standard of proof which shall be applicable in cases concerning match fixing (see, among others, CAS 2009/A/1920, CAS 2010/A/2172, CAS 2010/A/2266, CAS 2011/A/2528).

In this regard and taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities (CAS 2009/A/1920 at paragraph 85), the Control and Disciplinary Body is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence. Therefore, the relevant facts of this case must be established to the comfortable satisfaction of the Control and Disciplinary Body having in mind the seriousness of allegation which is made.

On the basis of this applicable standard of proof, and taking into account the facts, evidence and documents submitted to it, the Control and Disciplinary Body concludes the following: the Turkish club Beşiktaş has been directly and/or indirectly involved since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in activities aimed at arranging or influencing the outcome of a match at national level.

The Control and Disciplinary Body reaches this conclusion in view of the facts and evidence previously summarized which are, to a large extent, admitted by the Respondent:

- As Beşiktaş has itself recognized in its additional information submitted to UEFA on 9 May 2013, three of its most direct officials (its Vice-President, its coach and its Security Officer) have been indicted in disciplinary proceedings initiated by the Turkish Football Federation, even though they were finally not sanctioned.
- As established in the UEFA Disciplinary Inspector's report, which has also been confirmed by Beşiktaş in its additional information sent to UEFA on 9 May 2013, two of the highest officials of the club (its Vice-President and its coach) have been convicted of match fixing

on the basis of the facts and evidence described above by the decision of the Istanbul 16<sup>th</sup> High Criminal Court.

- The Control and Disciplinary Body is satisfied, based on the same facts and evidence, that the Respondent aimed at fixing the result of the Turkish Cup final played on 11 May 2011, to ensure the win of the Cup and thus secure qualification to European football competition: in particular, players of the other finalist team (İBB) were approached by representatives of Respondent, and financial compensation in terms of advantageous transfers and other benefits were offered to obtain the consent of such players to the arrangement of the match.

Based on these considerations and on the law applicable to these proceedings, the Control and Disciplinary Body concludes that Beşiktaş, through the actions of at least two senior level representatives, has been directly and/or indirectly involved since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in activities aimed at arranging or influencing the outcome of a match at national level.

Determination of the appropriate measure

In this case, the Control and Disciplinary Body considers on one hand that the offences committed are particularly serious, that they caused considerable harm to Turkish and European football, and that appropriate sanctions must be taken in such cases. On the other hand, the Control and Disciplinary Body acknowledges that Beşiktaş did inform UEFA about the match fixing activities of its representatives, within the framework of the filing of the Admission criteria form.

As a consequence, the Control and Disciplinary Body decides that Beşiktaş is not eligible to participate in the UEFA Europa League 2013/2014. The CDB may impose further disciplinary measures on Beşiktaş in due course.

On these grounds, the UEFA Control and Disciplinary Body

decides

1. Beşiktaş JK is not eligible to participate in the UEFA Europa League 2013/2014.
2. This decision is without prejudice to any further disciplinary measure that may be imposed on Beşiktaş JK in due course.


Advice as to rights of appeal

This decision is open to appeal (Article 54 DR).


A declaration of the intention to appeal against a decision by the Control and Disciplinary Body must be lodged with the UEFA administration, in writing, for the attention of the Appeals Body, within three days of notification of the relevant decision with grounds (Article 53 (2) DR).

Within five days of the expiry of the time limit for the declaration of the intention to appeal, the appellant must file, in writing, the grounds for appeal, which must contain a legal request, an account of the facts, evidence, a list of the witnesses proposed (with a brief summary of their expected testimony) and the appellant's conclusions (in particular on whether to conduct the appeal proceedings orally or in writing) (Article 53 (3) DR).

The appeal fee is €1,000, payable on submission of the grounds for appeal at the latest (Art. 53 (4) DR).



Thomas Partl  
Chairman

 Turkish Football Federation

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