



# TRABZONSPOR AT CAS: ARE SPORT ORGANISATIONS SERIOUS ABOUT MATCH-FIXING? #PTG2019



By  
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# The Actors

- Turkish Football Club **Trabzonspor Kulubu Derneği** = Trabzonspor or Trab.
- Turkish Football Club **Fenerbahçe** = Fenerbahçe or F.
- **Turkish Football Federation** = TFF
- FIFA and UEFA (and their com.)
- **Court of Arbitration For Sport** = CAS (in French TAS)



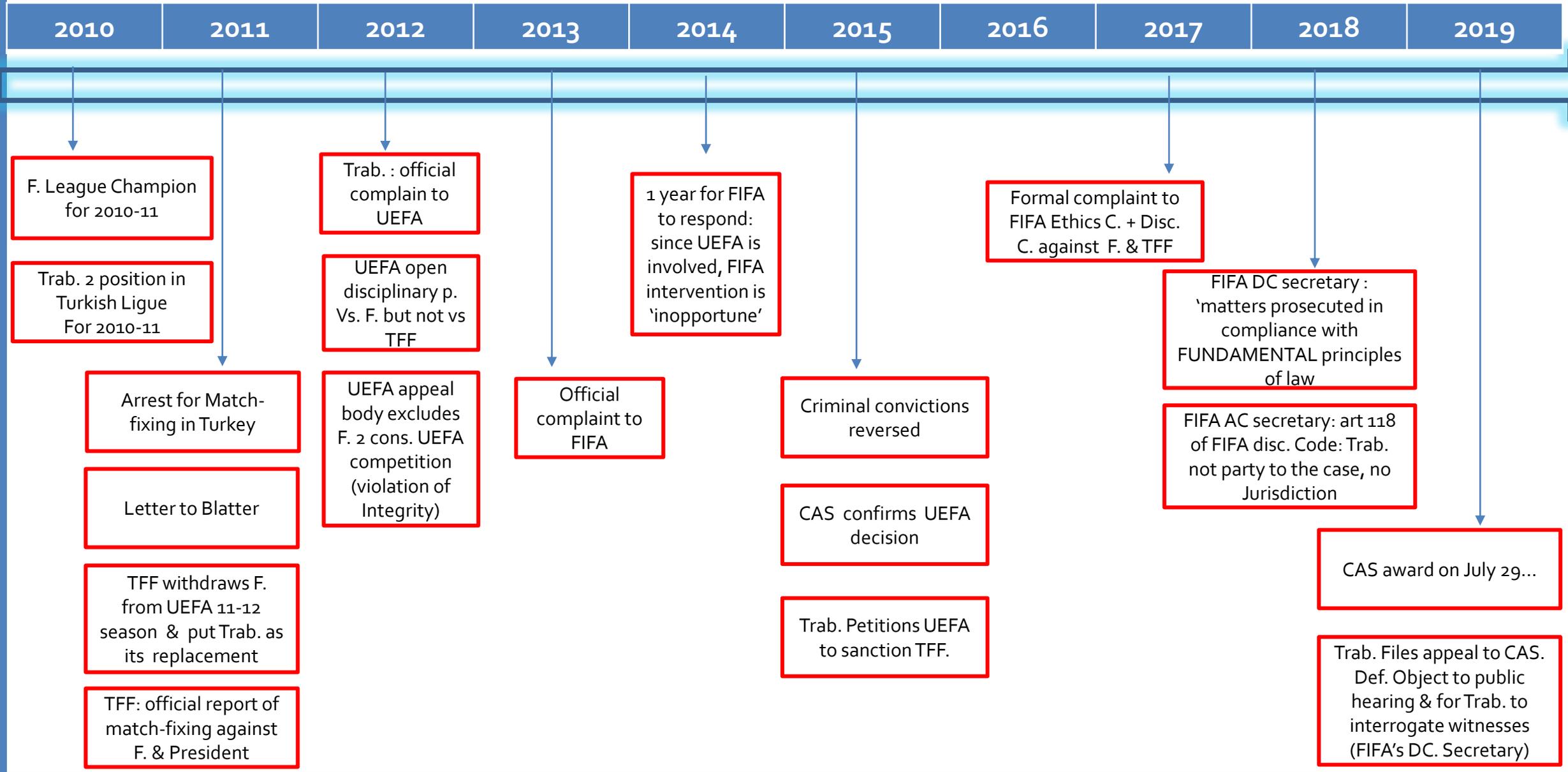
# Introduction



- CAS panel: 3 arbitrators headed by **Luigi Fumagalli**, from Milan. The 2 other arbitrators are Phillippe Sands from London and Patrick Lafranchi from Bern;
- The award has **NOT** been published to date.



# CASE FACTS TIMELINE



# Where is the Transparency?



- FIFA, TFF & Fenerbahçe strongly opposed for a public hearing at the CAS;
- Trabzonspor reached out to the Secretary General of the CAS **Matthieu Reeb**, by alternatively asking for video recording and/or live streaming of the proceedings or simply the date of the hearing to be published on its website, all of which were denied by the CAS (Reeb himself);



- Indeed, Matthieu Reeb that **'CAS did not have an obligation to publish all the hearings on its website.'**



# Where is the Transparency FIFA?



- FIFA's (surprising) & technical defense :

*“the hearing would only*



*...jes...” .*



# Where is the Transparency?



- In the end, the **CAS** refused a public hearing despite the recent **Mutu and Pechstein** judgments. Paragraph 103 of the CAS decision reads as follow:

*'In the present case, the hearing of 15 march 2019 was of a preliminary nature and only concerned points of law and highly technical questions. Indeed, only procedural matters were discussed, such as the jurisdiction of CAS, the admissibility of the appeal and the standing to appeal of Trabzonspor...'*



# Objection to witnesses



- FIFA objected to Trabzonspor's request to hear FIFA witnesses, such as FIFA officials scheduled to appear at the hearing, as well as Mr. Yeboah Anin, Chairman of FIFA DC;
- Trabzonspor's lawyers wanted to ask Mr Anin a few questions after his general statement 'as it appears that the matter was prosecuted in compliance with the fundamental principles of law' .



# Fundamental principles of law



- No transparency + No Witnesses = Fundamental principles?
- In the end, the **CAS** rejected such request, by stating that Trabzonspor would 'have opportunity to submit other arguments about any evidentiary request at the hearing'.



# Witnesses



- The **CAS** also invoked article R51(2) of the **Code: Trabzonspor** did not put in writing the names of the witnesses in due time;
- **Arbitration** facility procedures (informal) vs court of law?
- **FIFA's** arguments :these arguments based on article 70(2) that *in fine* were accepted by the CAS to dismiss the case).



# Art 70(2) Disciplinary Code



- **Trabzonspor** made its claim before **FIFA** on the basis of art 70(2) of the **Disciplinary Code**, alleging the lack of prosecution of serious infringements by FIFA directly.
- Art 70(2) = the judicial bodies of FIFA **reserved** the right to sanction (directly) serious infringements of statutory objectives of FIFA if associations, confederations or other sport organizations fail to prosecute serious infringements of fail in compliance to **the fundamental principles of the Law**.



# CAS' discretion



- CAS dismissed that argument by stating

***“The wording of such a provision makes it clear that FIFA has discretion to open disciplinary proceedings. Art 70(2) does not create an obligation on it to open those proceedings and adopt a sanction.”***



# FIFA's duties?



- If **FIFA** cannot guarantee that its **own disciplinary code**, especially crucial principles (such as match-fixing and corruption) what is the purpose of FIFA?
- FIFA and its intended purpose.
- No-Match-fixing = the principle Rules of the Game of Football?



# Anti-corruption= Principle Rule of the Game, no?



- Sanctioning match-Fixing and corruption is a principle Rule of the Game of Football;



- Ethics + law;
- FIFA role?

= **chief policeman** of the Rule of the game of Football.



# Unfair Treatment



If art70(2) Is a FIFA's discretion



All are not equals



Unfair treatment = discrimination

**≠ *Fundamental principle of sport law: Fairness***



# CAS arguments to reject case



- The **CAS** then dismisses the case by stating: *'therefore there is no right of any party to bring a claim against **FIFA** to enforce an obligation that does not exist'*;
- Trabzonspor to **bear all the cost of** arbitration.



# Conclusion



- From a **legal perspective**, this award does **NOT** stand on solid ground (Discretion powers of FIFA & Trabzonspor not being a direct party and not everybody knew about the Match-fixing at the cheating club);
- Why such a difficult & **lengthy** process? (almost 10 years);
- Why such an **opacity**? (denial to put the date of the hearing on **CAS'** website; refusal of public hearing or even to record the hearings; **CAS** not publishing the Award; etc.
- CAS & Sport organisations: are **NOT efficient** vs Match-Fixings thus corruption (understatement);
- Contradicts the Industry position of **ZERO Tolerance policy** towards **CORRUPTION**
- Why? Incompetent, threatened or corrupted? Incapacity or unwillingness of Sport Organisations to address corruption in sport?



# Role of the Media



- Importance of **Media** role in such cases: so many unanswered questions;
- To find conflicts of interests? Political issues?
- Deep enquiries & investigations are needed (ie: FIFAgate and the role of Media).



# Solutions?



- Should sanctioning Match-Fixing be taken **out** of CAS **Jurisdiction** & be transferred to '**real**' **judicial courts**?;



- Make the offense of match-fixing a **strict liability** in FIFA (and all other federations) Disciplinary Code idem to Doping sanctions?



# Trabzonspor



- I do sincerely hope that **Trabzonspor** will get the justice.

It will also be a victory for the whole sport community & all the athletes who play clean and are denied justice by the organizations that were supposed to protect them and the integrity of the Game.

Merci beaucoup!



