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REFLECTIONS ON ANTI-CORRUPTION LEGISLATION ENFORCEMENT IN THE SPORTING EVENTS ARENA:

A LEGAL ANALYSIS ON CONTEMPORARY MATCH-FIXING MATTERS

Contributed by:

Gönenç Gürkaynak, Esq.* , Ç. Olgu Kama* , Derya Durlu* , Ceren Yıldız*

Abstract

This contribution aims to set out an overview of match-fixing as a reflection of white-collar crime while zeroing in on a contemporary example from Turkey in the backdrop of canvassing landmark incidents in specific sports fields, while also outlining various sports regulations that have been embraced by sports federations. This contribution will tread over the legislative context within which countries combat corruption, while highlighting the role, functioning as well as the authoritative stance that the Court of Arbitration for Sport has in resolving disputes pertaining to match-fixing.

Keywords: *White-Collar Crimes, Corruption, Sports Law, Soccer, Match-fixing, Court of Arbitration for Sport, UEFA, Turkey, Turkish Football Federation, Law No. 6222.*

* Partner, **ELIG** Attorneys-at-Law.

* Associate, **ELIG** Attorneys-at-Law.

* Associate, **ELIG** Attorneys-at-Law.

* Associate, **ELIG** Attorneys-at-Law.

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REFLECTIONS ON WHITE-COLLAR IRREGULARITIES IN SPORTING EVENTS: MATCH-FIXING

I. INTRODUCTION

The pernicious effects of corrupt business practices are rampant at almost every level of the national and the international community, with the relationship between sport and white-collar crimes becoming ever more intricate as concepts of fair-play, integrity, morality and ethical standards assume increased importance in this context. While the burgeoning steps taken to fight corruption are noticeable in an era where continual regulatory initiatives are taken by international organizations, national governments and corporations, the need to set trenchant frameworks requires a heightened awareness, especially in a field of law where the “rules of the game” and the principles abided by must carefully be constructed and consequently preserved to maintain a fair balance between what is legitimate and appropriate behavior, and what falls short of enhancing integrity in sport.

In the backdrop of canvassing landmark incidents in specific sports fields, while also outlining various sports regulations that have been embraced by sports federations, this contribution aims to set out an overview of match-fixing as a reflection of white-collar crime while zeroing in on a contemporary example from Turkey. This contribution will tread over the legislative context within which countries combat corruption, while highlighting the role, functioning as well as the authoritative stance that the Court of Arbitration for Sport (“CAS”) has in resolving disputes pertaining to match-fixing.

II. THE OCCUPATIONAL CRIME OF THE “HIGH-SOCIETY”: AN OVERVIEW OF WHITE-COLLAR CRIMES IN GENERAL

The concept of white-collar crime has been a subject of controversy¹ since 1939, when Edwin Sutherland coined the term “white-collar” to demonstrate that actions of the more well-to-do could also be classified as criminal.² The various definitions that have been attributed to the

¹ E R Quinney, ‘The Study of White Collar Crime: Toward A Reorientation in Theory and Research’ [1964] [55 J. Crim. L. Criminology & Police Sci.] 208.

² E H Sutherland, ‘White Collar Criminality’ [1940] [5 Am. Soc. Rev.] 1 (Sutherland defined white-collar crime as “a crime committed by a person of respectability and high social status in the course of his occupation.”).

term “white-collar crime”,³ as well as research studies, critiques and discussions of white-collar crime over the years have made the term obscure and less comprehensible when faced with the challenges of crimes committed in the backdrop of a corporate world. Nevertheless, Sutherland’s definition of white-collar crime, in essence, presents itself as a valuable starting point for understanding to which sphere or sub-category of criminal activity particular kinds of conduct fall when it comes to assessing an occupational crime. Given Sutherland’s definition, then, it would be desirable to credit the element of “high social status” that white-collar crime embraces when interpreting societal, ethical and moral conditions espoused by legal provisions within a wider framework of regulation at the national as well as the international level.

A. Deriving the Difference between Occupational Crime and Corporate Crime

Today, the overriding concepts common to white-collar crimes are regarded as fraud, cheating, dishonesty and corruption committed by businessmen, political or public officials, to name a few. The bifurcation of white-collar crime as occupational crime and corporate (or organizational) crime has further drawn a distinction between crimes that are more of an *ad hoc* nature and crimes committed by corporate personnel to benefit their company rather than themselves. The former (occupational crimes) is committed by an offender in his occupation (or taking advantage of his occupation) to promote his private, selfish interests (such as referees in sporting events), where the offender would rarely face his victim because of the acts that would typically cover insider trading, corruption, altering of accounts by accountants, overcharging by professional men, cheating on taxes, committing credit card frauds and abuse of trust by those who have custody over others’ properties.⁴

Corporate and organizational crime, on the other hand, is committed by corporate personnel to benefit their company, rather than themselves, and covers a plethora of illegal acts and wrongdoings such as price fixing, violating antitrust laws, producing inferior goods, endangering the environment through pollution and non-observance of regulatory industry

³ H C Black, *Black’s Law Dictionary* (6th Ed., 2001) 1569; E Stotland ‘White Collar Criminals’ [1977] [33 J. Soc. Issues] 179 (defining white-collar crime as “*theft by the use of concealment, guile, fraud – basically by a misuse of trust. The definition includes all sorts of frauds: consumer stock, land, welfare, Medicare, home repair, auto repair and so on.*”).

⁴ A Singh, ‘White-Collar Crime’ [2002] [14 SAclJ 231] 233.

standards, engaging in false and misleading descriptions and the stating of false weights.⁵ This category of crime has been described as the “most troublesome” of all categories.⁶

B. Retrieving Corruption from the Pool of White-Collar Crimes Embodying Criminal Offences

Corruption’s root, which is derived from the Latin adjective “*corruptus*”, meaning “broken” or “spoiled”, emphasizes the harmful effects of duplicity and reduced levels of morality and trust on society and the fact that its popular meaning encapsulates all those situations where agents and public officers break the confidence entrusted to them.⁷ The definitions commonly found for corruption correctly emphasize the essence of corruption as being the inducement to show favor, rather than showing of the favor itself.

International organizations, such as the United Nations Office on Drugs and Crime, emphasize⁸ that corruption could occur in both public as well as private domains, and thus adopt an inclusive understanding of the term. Transparency International has also chosen a clear and focused definition of the term: “the abuse of entrusted power for private gain”.⁹ The World Bank, similarly, refrains from confining corruption to the public sector, and defines corruption as “the abuse of public office for private gain”.¹⁰

⁵ *Id.* 234.

⁶ H Edelhertz, ‘The Nature, Impact and Prosecution of White-Collar Crime’ [1970] [National Institute of Law Enforcement and Criminal Justice] 3.

⁷ G Moody-Stuart, ‘The Costs of Grand Corruption’ in G Moody –Stuart (ed) *Grand Corruption in Third World Development* [1994 Report, prepared for the UNDP Human Development] [Berlin: Transparency International, 1994]; Oxford English Dictionary [2nd Ed.] (Defines corruption as “*the perversion or destruction of integrity in the discharge of public duties by bribery or favor; the use or existence of corrupt practices, especially in a state, public corporation, etc.*”); Transparency International, ‘Combating Corruption in Judicial Systems – Advocacy Toolkit’ (Defines corruption as “*the misuse of entrusted power for private gain.*”).

⁸ UNODC’s Action Against Corruption and Economic Crime, <<http://www.unodc.org/unodc/en/corruption/index.html?ref=menuaside>> accessed 12 January 2012.

⁹ Transparency International, Frequently Asked Questions About Corruption. <http://www.transparency.org/news_room/faq/corruption_faq> accessed 12 January 2012.

¹⁰ ‘Corruption and Economic Development; Helping Countries Combat Corruption: The Role of the World Bank’ <<http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>> accessed 12 January 2012. See also World Bank General Counsel Ibrahim Shihata on corruption, <<http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm#note1>> accessed 12 January 2012

Consequently, while acts such as bribery, extortion, commission/fee and kickbacks may be used as one of the tools of corruption,¹¹ the above definitions and understandings infer that it is corruption that attempts to gnaw away at political, economic, social and environmental fronts of a society.¹²

III. THE VARYING CONTOURS OF WHITE-COLLAR CRIME IN SPORTS: MOVING AWAY FROM A COCOON OF UNPREDICTABILITY AND TOWARDS PLANNED AND EXECUTED ENTERTAINMENT

While the question of whether or not sports is to be regarded as a “high social status” pastime event remains the discussion question of another paper, the plethora of white-collar irregularities (with match-fixing being the first and foremost in sports) prevalent among the multitudinous sporting events practiced across the world show that sports is an area where the legal landscape of individual jurisdictions intermingles with, and has an impact on, fair play and integrity, two tenets whose protection is paramount in combating white-collar irregularity in sports.

In an era that is marked by a wide spectrum of national regulations and international standards that are applicable to white-collar irregularities, ethical dilemmas embrace employees working at corporations and public offices, as much as they embrace sports players. Codes

(“Corruption occurs when a function, whether official or private, requires the allocation of benefits or the provision of a good or service. In all cases, a position of trust is being exploited to realize private gains beyond what the position holder is entitled to. Attempts to influence the position holder, through the payment of bribes or an exchange of benefits or favors, in order to receive a special gain or treatment not available to others is also a form of corruption, even if the gain involved is not illicit under applicable law. The absence of rules facilitates the process as much as the presence of cumbersome or excessive rules does. Corruption in this sense is not confined to the public sector and, in that sector, to administrative bureaucracies. It is not limited to the payment and receipt of bribes. It takes various forms and is practiced under all forms of government, including well-established democracies. It can be found in the legislative, judicial, and executive branches of government, as well as in all forms of private sector activities. It is not exclusively associated with any ethnic, racial, or religious group. However, its level, scope, and impact vary greatly from one country to another and may also vary, at least for a while, within the same country from one place to another. While corruption of some form or another may inhere in every human community, the system of governance has a great impact on its level and scope of practice. Systems can corrupt people as much as, if not more than, people are capable of corrupting systems.”).

¹¹ *Id.*

¹² Transparency International, Frequently Asked Questions About Corruption (at Question 4) <http://www.transparency.org/news_room/faq/corruption_faq> accessed 12 January 2012.

and regulations governing ethics increasingly encapsulate the scope of the application of laws and by-laws as a primary tenet for regulating corrupt behavior, not just in sports, but in the corporate and business fora as well. While it is common for companies and sports teams alike to take precautionary measures to avoid facing criminal and civil liability for the actions of their employees and players, it is also not uncommon for such employees and players to seek personal and individual benefits in return for money and to the detriment of the company or the sports team in question.

A. A Look at the General Problem in Sport

Corrupt betting practices may arise from cheating individuals who have been associated with attempts to fix matches and alter the results of sporting competitions. At the heart of the institution or social behavior that is classified as “sport” lies a competition that is based on skill and strategy.¹³ The “fixing” of a match involves an attempt to alter the equation between the unpredictability of sporting outcomes and the planned and executed entertainment events, making sport “more of an entertainment event with a greater certainty of outcome”.¹⁴ With the goal of protecting this essential feature of unpredictability, the law strives for a higher standard of sport.¹⁵

With those engaged with match-fixing benefit a form of gambling on the outcome, no other aspect of sports corruption works so quickly to destroy the integrity of a sport,¹⁶ than match-fixing does. As a form of corruption, match-fixing is “a blatant violation of the principle of fairness of sporting competitions and is a major threat to the basic values of ethics and integrity on which sport is built”.¹⁷ Betting on sport, which has been on the rise particularly in professional basketball, professional soccer and cricket, is now considered as an established leisure activity in many parts of the world, with corrupt betting practices ultimately leading to cheating by athletes, referees, and others involved in the playing field to fix matches and alter the results of competitions, consequently robbing sport of its integrity.

¹³ N Gokhale, ‘Fixing the Fixers: The Justification of Criminal Liability for Match-Fixing’ [2009] [2 NUJS L. Rev. 319] 319.

¹⁴ R H McLaren, ‘Corruption: Its Impact on Fair Play’ [2008-2009] [19 Marq. Sports L. Rev.] 15.

¹⁵ S Gardiner et al, *Sports Law* (3rd Ed., Cavendish Publishing, 2006) 103.

¹⁶ McLaren 16.

¹⁷ B García, (Loughborough University) On Match-Fixing during the EU Sport Forum 2010 (organized by the European Commission in Madrid, 19-20 April 2010).

B. A Tripartite Focus on Match-Fixing Cases: Professional Basketball, Professional Soccer and Cricket

Match-fixing is a wide-spread phenomenon, regardless of the country or the nature of sport.¹⁸ With incidents ranging from throwing the 1919 Baseball World Series in exchange for money, to fixing the 1965 heavyweight championship fight between Sonny Liston and Mohammed Ali, from the rigging of sumo-wrestling matches, to the involvement of Russian gangster in the 2002 Olympic Games, match-fixing has been under the limelight for nearly a century, permeating innumerable jurisdictions and transcending national, international and supranational bodies.

While match-fixing is prevalent in sport involving less than four (and even three) players, the focus of this contribution under this section will confine the discussions only with regard to three of the primary fields of sport that heavily entangle the work of teamwork when propagating match-fixing: professional basketball, professional soccer and cricket.

1. The Demise (or Salvage) of a Basketball Referee: The Tim Donaghy Case

American basketball, be it professional or at college-level, has been under the limelight for corrupt practices no longer than just over fifty years, with the first ever match-fixing incidents taking the form of point shaving in the late 1940s. Unlike soccer, where match-fixing has been afoot for longer and at frequent intervals across the world, basketball in North America has faced few, though noticeable and momentous, cases where the interface between players, referees, the relevant national sports association and even colleges came into play when individuals were charged with match-fixing. One of these incidents involved an NBA referee and the other college basketball games.

A thirteen-year veteran National Basketball Association (“NBA”) referee, Tim Donaghy was indicted by the Federal Bureau of Investigation (“FBI”) for his involvement in a gambling scandal that span two seasons.¹⁹ Donaghy was found²⁰ to have used confidential information

¹⁸ Gokhale 321.

¹⁹ Transcript of NBA Commissioner David Stern Press Conference [July 24, 2007] <http://www.nba.com/news/sternpc_070724.html> accessed 11 January 2012.

²⁰ *United States v. Donaghy*, 570 F. Supp 2d 411 [E.D.N.Y. 2008].

to bet on NBA games, and provided this confidential information to bookies and gamblers, violating NBA rules, policies, and procedures.²¹

The FBI explained that Donaghy had placed bets on NBA games, including games he had officiated and disclosed confidential NBA information, including player injuries and the names of the referees assigned to specific games, to individuals for use in betting on NBA games.²²

Donaghy's co-conspirators, James Battista and Thomas Martino, were also indicted, on February 8, 2008, in the U.S. District Court for the Eastern District of New York, being charged with conspiracy to commit wire fraud and conspiracy to transmit wagering information.²³ Battista was sentenced to a prison term of fifteen months, and Martino was sentenced to a prison term of twelve months and one day on July 24, 2008. Five days later, the verdict on Donaghy was given as well, sentencing him to a prison term of fifteen months. A monetary fine of approximately US \$217,000 was also imposed on the defendants as restitution to the NBA.^{24,25}

Aside from the controversial Donaghy incident, professional basketball has also witnessed point-shaving as another form of match-fixing in as early as 1951, in college basketball history.^{26,27} Thirty-five active and former college players were accused of fixing games, with

²¹ Cf. Official Rules of the NBA (2011-2012) (available at <<http://www.nba.com/element/mp3/2.0/sect/podcastmp3/PDF/2011-12-NBA-RULE-BOOK.pdf>>); NBA.com Network Privacy Policy (available at <http://www.nba.com/news/privacy_policy.html>). The 2005 Collective Bargaining Agreement has prohibited team owners and employees, including players and coaches, and League employees, including referees, from betting, directly or indirectly, on NBA games (see National Basketball Association, NBA Const., Art. 35A(g). Article 35(f) covers players.). The NBA also prohibits the intentional disclosure of confidential League or team information (see National Basketball Association, NBA Legal Compliance Policy and Code of Conduct, § II.C.).

²² L B Pedowitz, 'Report to the Board of Governors of the National Basketball Association' [1 October 2008] 2 <http://hosted.ap.org/specials/interactives/_documents/100208nba_pedowitz.pdf> accessed 11 January 2012.

²³ *United States v Battista & Martino* 570 F. Supp 2d 411 (E.D. NY. 8 February 2008).

²⁴ *Id.* at Indictment para. 7-15.

²⁵ See M S. Schmidt 'Disgraced NBA referee sentenced to prison' (International Herald Tribune, 30 July 2008) <<http://www.iht.com/articles/2008/07/30/sports/REF.php>> accessed 20 December 2011.

²⁶ See 'Point-shaving remains a concern in college athletics' (USA Today, 9 May 2007) <http://www.usatoday.com/sports/college/2007-05-08-point-shaving-cover_N.htm> accessed 14 January 2012; J

at least 86 games having been fixed between 1947 and 1951. Twenty players²⁸ and fourteen gamblers were indicted and convicted in the incident. Similar to professional soccer, there need not be any shadowy gamblers offering bribes, as the players can presumably place bets themselves, rendering a coconspirator an unnecessary added expense.²⁹

2. A Prime Example of Collaborative Corrupt Activity: The Sophisticated Interplay Among Players in Fixing Soccer Matches

Perhaps match-fixing in professional soccer has been the focal point of not just the headlines in the press, but of regulatory bodies, be it governmental or organizational (such as with soccer clubs, football federations or international sporting authorities).

With professional soccer, match-fixers often times rely on various methods to have access to and gain credibility with players. These methods may even include arranging their accommodation so as to share the same hotel corridor as the players and officials. Deploying ‘runners’ to ensure access between the ‘fixer’ and the players is another method that can be used to infiltrate the team. After gaining access to the players through such methods, the match-fixer may approach the player in order to propose the match-fixing deal. Once the deal has been agreed upon, the ensuing steps would be for the corrupt member of the team to be contacted by the bookie, which then discloses to the corrupt player which game to lose, offering him money to distribute to himself and the other corrupt players involved.³⁰

With such an intertwined bond among the individuals involved in fixing a soccer match, a central corrupt player would have to build a corrupt network on the team, which would

Goldstein, ‘Explosion: 1951 scandals threaten college hoops’ (ESPN Classic, 19 November 2003) <http://espn.go.com/classic/s/basketball_scandals_explosion.html> accessed 14 January 2012; J Wolfers, ‘Point Shaving: Corruption in NCCA Basketball’ *Exposing Cheating and Corruption* [May 2006] [AEA Papers and Proceedings, Vol. 96, No. 2] 279.

²⁷ D Bermhardt, S Heston, ‘Point Shaving in College Basketball: A Cautionary Tale for Freakonomics’ [12 March 2008] available at <<https://netfiles.uiuc.edu/danber/www/bernhardt/pointshaving.pdf>> accessed 16 December 2011.

²⁸ These players included Jack Molinas, Sherman White, Ralph Beard and Alex Groza. Molinas bet on his own team, Columbia University, averaging 12 points per game before the NBA banned him for life.

²⁹ Wolfers 283.

³⁰ For further reading on insider dealings within soccer, see: D Hill, *The Fix: Soccer and Organized Crime* (McClelland & Stewart 2010); A Yazar, C Spapens et al, *Crime, Addiction and the Regulation of Gambling* (Martinus Nijhoff Publishers, 2008).

consequently lead to collaborative corrupt activity. Goalkeepers as well as defenders all would have a role to play in match-fixing, either by leaving their area as far as possible or placing the ball too far away for the goalkeeper to clear or gather it.

The 2006 World Cup Finals marks a prime case for match-fixing that started off at a KFC restaurant in Bangkok, and led to the infamous max-fixer, Lee Chin, infiltrating team players and predetermining the result of the matches that were to be played.³¹

In another soccer scandal, a Spanish judge, Judge Baltasar Garzon, sent German prosecutors information suggesting that Russian mobsters fixed a UEFA³² Cup semi-final game between the Russian teams Zenit St. Petersburg and Bayern Munich.³³ Similar other cases have been noticeable in Vietnam,³⁴ Singapore,³⁵ Italy,³⁶ Germany,³⁷ Greece³⁸ and Poland³⁹ as well.

³¹ For an interview about the case with the match-fixing investigator, Declan Hill, See Interview Transcript Conducted with the Spiegel (9 January 2008) <<http://www.spiegel.de/international/world/0,1518,575586,00.html>> accessed 10 January 2012.

³² Union of European Football Associations (Union des Associations Européennes de Football) (“UEFA”) (founded June 15, 1954).

³³ ‘Russian Mob Suspected of Fixing UEFA Cup Soccer Match’, *Associated Press* (THESTAR.COM, 1 October 2008) <<http://www.thestar.com/Sports/article/509616>> accessed 28 December 2011.

³⁴ See ‘Vietnam May Allow Soccer Betting’, *Xinhua* (People’s Daily Online, 6 January 2006) <http://english.peopledaily.com.cn/200601/06/eng20060106_233379.html> accessed 15 February 2012 (describing how Vietnam Football Federation proposed legal betting scheme which would partially fund local soccer and likely include illegal betting). The Vietnam Football Federation (VFF) passed on to investigative police a suspected fixing by several football players from the national U-23 team of a game with Laos in group B at the 26th SEA Games. Various sources stated that an investigation is necessary to gather evidence to either punish corrupt footballers, or prove their innocence. Investigative police had concluded that Vietnamese footballers fixed a match at the 2005 SEA Games in Bacolod, Philippines and as a result, certain corrupt players were imprisoned and banned from professional football for a certain period. Trong Hoang, who missed a penalty kick in the 87th minute in the Laos game, Van Quyet has come under speculation for his behavior on the field after Van Thang extended the lead to 3-1 in the 90+3rd minute. It has been alleged that footballers under the influence of bookmakers wish to fix the match result at 2-1 so that they can make a double win, both pocketing three points for a win and pocketing money paid by bookmakers. (See ‘Vietnam under suspicion of SEA Games match fixing’ (Tuoi Tre News, 24 November 2011) <<http://www.tuoiitrenews.vn/cmlink/tuoiitrenews/sports/vietnam-under-suspicion-of-sea-games-match-fixing-1.52232>> accessed 17 February 2012; ‘Police keep eyes on SEA Games match-fixing suspicion’ (Tuoi Tre News, 17 December 2011) <<http://www.tuoiitrenews.vn/cmlink/tuoiitrenews/sports/police-keep-eyes-on-sea-games-match-fixing-suspicion-1.54924>> accessed 17 February 2012) (See also ‘Vietnam football team owners wary of corruption’ (Tuoi Tre News, 8 September 2011)

<<http://www.tuoitrenews.vn/cmlink/tuoitrenews/sports/vietnam-football-team-owners-wary-of-corruption-1.43581>> accessed 17 February 2012, explaining that it has been a long practice in Vietnam for clubs to “wine and dine” referees and give them envelopes with money inside before a game.).

³⁵ See Tan Yo-Hinn, ‘Former Malaysia National Coach Chow Guilty of Match Fixing’ (AsiaViews, 21 December 2010) <http://asiaviews.org/index.php?option=com_content&view=article&id=10892:featuresalias1226&catid=5:features&Itemid=27> accessed 28 December 2011 (noting judge’s rejection of Chow’s no-corrupt-intent defense); see also ‘Former Malaysia Coach Convicted of Match Fixing’ (Asian Football Confederation, 9 April 2007) <<http://www.the-afc.com/en/member-association-news/asean-news/8335>> accessed 28 December 2011 (explaining how Lam wanted to bribe a goalkeeper to concede goals in a June 2005 match); ‘Singapore reports match-fixing’ (China Daily, 5 October 2006) <http://www.chinadaily.com.cn/sports/2006-10/05/content_702032.htm> accessed 28 December 2011.

³⁶ See ‘Italy: Giuseppe Signori held in football fixing probe’ (BBC News Europe, 1 June 2011) <<http://www.bbc.co.uk/news/world-europe-13620144>> accessed 27 November 2011; ‘Maxi-investigation on betting: Match-fixing in Serie B and C’ (La Gazzetta dello Sport, 1 June 2011) <<http://english.gazzetta.it/Football/01-06-2011/maxi-investigation-on-betting-801443349776.shtml>> accessed 27 November 2011. Italian police arrested a number of individuals on 1 June 2011, who were suspected of fixing a number of matches in Serie B and the Lega Pro (the old Serie C). The Italian Football Federation announced on 9 August 2011 the first-degree charges for those individuals who were involved in the match-fixing. The charges ranged from monetary fines and point-based deduction for football clubs, to being banned from football activities for individual players. A second investigation was initiated on 19 December 2011 against active as well as former football players after a defender for the Italian association football club, Associazione Sportiva Gubbio 1910, denounced a match-fixing attempt from Zamperini.

³⁷ See ‘Bribed Referee Sentenced to Prison’, (International Herald Tribune, 17 November 2005), <<http://www.iht.com/articles/2005/11/17/sports/REF.php>> accessed 28 December 2011; see also Richard Milne, ‘Referee Makes Watchdogs’ Hearts Flutter’ (Financial Times, 2 February 2005), <<http://www.ft.com/intl/cms/s/2/06f47d0c-7161-11d9-a5d6-00000e2511c8.html#axzz1mTM2vrKY>> accessed 28 December 2011, (explaining how Germany was embarrassed by Hoyzer’s actions so much that it changed its referee rules to try to prevent gambling: German referees will know only two days before a game which one they will officiate). Prior to the 2006 FIFA World Cup, FIFA set up an “Early Warning System” (“Système alerte précoce”) to monitor sports betting on all FIFA tournaments to prevent sports betting having any negative impact on these matches in Germany.

³⁸ See ‘Greece Hit By Massive Football Match Fixing Scandal’ (Caughtoffside, 25 June 2011) <<http://www.caughtoffside.com/2011/06/25/greece-hit-by-massive-football-match-fixing-scandal/>> accessed 28 December 2011; see ‘Match-Fixing Scandal Strikes Greek Football’ (International Business Times, 25 June 2011), <<http://www.ibtimes.com/articles/169537/20110625/greek-football-scandal.htm>> accessed 28 December 2011. Sixty-eight individuals, including two league club presidents, club owners, players, referees and even a police chief, faced a multitude of charges in, *inter alia*, illegal gambling, fraud, extortion and money laundering.

3. A Gentlemen's Game Gone Corrupt: Match-Fixing in Cricket

Being the governing body of cricket and having just above 100 members, the International Cricket Council (“ICC”) has been closely observing its professional standards of discipline for international cricket while also coordinating actions against corruption and match-fixing through its Anti-Corruption and Security Unit. It is no surprise that match-fixing also affected cricket, given its long history with gambling. In the early 18th century, the fame of cricket was partly a consequence to its popular gambling scene.⁴⁰ While cricket has long been seen as a sport which is a highly suitable model of a moral sport,⁴¹ the “gentlemen’s game” has not escaped allegations of match-fixing since the early 1980s (though unethical conduct in cricket goes as far back as the 19th Century).⁴² Even though there were no rules covering players betting on matches in which they were involved at the time, a Code of Ethics was introduced in 2002, applying to all ICC directors, staff and committee members, prohibiting them from betting on any cricket match.⁴³

The interplay among sports players in weaving the network for fixing a match is also prevalent in cricket. The scenario where the captain of the team or an influential member pressures another team member into being involved with match manipulation finds its example in the India-South Africa match-fixing incident that took place in 2000, where the

Being described as “the darkest page in the history of Greek football” by the Greek Deputy Culture Minister, Giorgos Nikitiadis, the alleged match-fixing involved accusations of colluding with a criminal organization to rig matches. As a result of this scandal, the Greek Parliament was faced with the decision to whether cut funding for football, access for teams to state owned stadiums and coverage of matches by state television unless the game in question was “cleared up”.

³⁹ See ‘Poland Detains Three Football Referees in Match-Fixing Probe’ (ABA Criminal Justice Section, Global Anti-Corruption Task Force, 10 October 2011) <<http://www2.americanbar.org/sections/criminaljustice/CR121212/Pages/default.aspx>> accessed 28 November 2011. Three football referees were detained for a suspected involvement in match-fixing activities during the 2004-2005 season, with indictments issued against nearly 400 individuals, including players, referees and officials from clubs.

⁴⁰ U. Naidoo, ‘On the Front Foot Against Corruption’ [2004] [International Sports Law Review] 3.

⁴¹ Gokhale 322.

⁴² O Eastwood, ‘Unethical conduct by Professional sports players and the legal implications for their team mates and employer’ [2001] [International Sports Law Review] 1.

⁴³ See Section 7, ICC Code of Ethics (available at <http://static.icc-cricket.yahoo.net/ugc/documents/DOC_4232285803347164886ED9920D5D55DB_1285745959474_735.pdf>).

Delhi police intercepted a telephone conversation between a London-based bookie, Sanjie Chawla, and the captain of the South African Cricket team, Hansie Cronje, in which it was agreed that matches will be thrown in exchange for money.⁴⁴ Cronje was banned from cricket.

IV. REGULATING MATCHES WITHOUT HAVING A FIXTURE FOR A LEGAL FRAMEWORK: CAS, NATIONAL LAWS AND THE PROSPECT (OR LACK THEREOF) FOR SELF REGULATION

A. Developing *Lex Sportiva*: The Role of CAS⁴⁵ in Occupying a Distinct Niche to Resolve Disputes Relating to Match-Fixing

⁴⁴ See also ‘Hansie Cronje Match-Fixing Scandal to be reopened’ (Mail & Guardian Online, 15 November 2011) <<http://mg.co.za/article/2011-11-15-cronje-matchfixing-scandal-to-be-reopened/>> accessed 22 January 2012.

⁴⁵ Tribunal Arbitral du Sport – Court of Arbitration for Sport (“CAS”). The CAS is an arbitration body created in 1983 by the International Olympic Committee. The CAS hears and settles disputes directly or indirectly of a private nature relating to sport, including commercial issues such as those arising over sponsorship contracts. On that note, Article R27 of the Code of Sports-related Arbitration provides that the CAS has jurisdiction solely to rule on disputes connected with sports. In terms of the types of disputes that may be brought to the CAS, a distinction can be made between disputes arising from all types of legal relations between parties where it has been decided to invoke a CAS arbitration and disputes arising from last instance decisions given by the tribunals of sports federations, when their statutes and regulations or a specific agreement provide for CAS jurisdiction. The former types of disputes would typically comprise of disputes relating to sponsorship, TV and athlete management contracts, and issues of civil liability, while the latter types of disputes typically include those relating to disciplinary issues, in particular, doping, and decisions concerning the selection and eligibility of athletes. Natural persons as well as sports associations or companies can bring cases before the CAS provided that the agreement to bring disputes before the CAS is in writing. Furthermore, disputes brought forward to the CAS as an appeals court must be brought after all of the legal remedies available at the national level have been exhausted. Article 60 of the Regulations Governing the Implementation of the UEFA Statutes (Edition 2010) (*infra* IV.B.2) stipulates that “Associations shall include in their statutes a provision under which disputes of national dimension arising from or related to the application of their statutes or regulations shall, subject to their national legislation, be referred in the last instance to an independent and impartial court of arbitration, to the exclusion of any ordinary court”, thereby making it obligatory for sports associations to refer disputes to the CAS for disputes that are of a national nature. For disputes that have a European dimension, Article 61 of the same Regulation bestows CAS with exclusive jurisdiction to hear cases as an ordinary court of arbitration for “(a) disputes between UEFA and associations, leagues, clubs, players or officials; and (b) disputes of European dimension between associations, leagues, clubs, players or officials”. The awards issued by the CAS are final and binding on the parties from the moment it is communicated and it may in particular be enforced in

With its functioning and role being akin to that which may be observed in the structure of an ordinary corporate entity, the CAS, just like a compliance manager or an auditor in a company, acts as a regulatory body in sports for, *inter alia*, hearing disputes involving bribery and imposing sanctions just as a corporate entity would.⁴⁶

A case that merits particular attention is the *Oriekhov v UEFA*⁴⁷ case, which exemplifies CAS's no-nonsense approach in view of Article 6 of UEFA's General Terms and Conditions for [Football] Referees.⁴⁸ A lifetime ban against the Ukrainian football referee, who was the Appellant, was upheld in CAS on January 18, 2011. By upholding the decision of the UEFA Control and Disciplinary Panel, CAS assumed that the referee was not guilty of manipulating the match or receiving financial inducements to influence its outcome.

The panel, however, concluded that the referee's failure to report that he had been the subject of unlawful approaches regarding the manipulation of the outcome of UEFA Europa League fixture on November 5, 2009 was sufficiently serious to justify a lifetime ban from any football related activities, pursuant to Article 15(1)(f) of the UEFA Disciplinary Regulations. The panel's general observations about match-fixing and its prevalence in professional sport were expressed in the following lines:

“78. [The] Panel has to remind itself that match-fixing, money laundering, kickbacks, extortion, bribery and the like are a growing concern, indeed a cancer, in many major sports, football included, and must be eradicated. The very essence of sport is that competition is fair; its attraction to spectators is the unpredictability of its outcome.

accordance with the New York Convention on the Recognition and Enforcement of Arbitral Awards, which has more than 125 signatories.

⁴⁶ Unlike its traditional meaning (*supra* notes 2 and 3), bribery in sports is understood less narrowly, thereby accepting those acts that are deemed fraudulent as constituting bribery where committed by officials, who are not indeed “public” officials, *per se*. Having what has now been coined as “whistleblowers” also allows sports law regulations, and consequently the role of CAS, a broader sphere of application (“Whistleblowers” are known as those who report individual or organizational violations of national laws to their supervisors or to the governing body (be it the government or the sports federation or the national sports league association), reporting alleged wrong-doings.).

⁴⁷ CAS 2010/A/2172.

⁴⁸ Article 6(3), UEFA General Terms and Conditions for Referees (“*Any Referee who is the target or considered to be the target of attempted bribery shall notify UEFA immediately.*”).

80. *It is therefore essential...for sporting regulators to demonstrate zero-tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such criminal activities. Match officials are an obvious target for those who wish to make illicit profit through gambling on match results (or indeed on the occurrence of incidents within matches). They must be reinforced in their resistance to such criminal approaches.”*

The panel’s conclusion was that the Appellant “*lamentably failed not only to obey the relevant regulations in their letter and spirit, but indeed to display any common sense*”, finding that the Appellant’s alleged mitigation was “*inadequate to displace the conclusions of three footballing bodies as to the appropriate penalty for his misconduct*” and the lifetime ban was upheld.

A lifetime ban against a non-player was also upheld by CAS in the case of *FK Pobeda, Zabrcanec and Zdraveski v UEFA*.⁴⁹ A UEFA Disciplinary Panel, at first instance, concluded that the President of the Macedonian Football Club, FK Pobeda, Zabrcanec and the club captain Zdraveski were guilty of manipulating the outcome of a Champions League qualifying match in exchange for a financial benefit. The UEFA Disciplinary Panel imposed lifetime bans to both individuals and the football club, FK Pobeda, was banned from participating in any European competition for a period of eight years.

CAS overturned the team captain’s lifetime ban, on grounds that the panel was not “*comfortably satisfied*”⁵⁰ of the Zdraveski’s guilt.⁵¹ However, CAS upheld the lifetime ban against Zabrcanec, concluding that he was “*personally involved in the manipulation of the matches*” and that he “*actively participated in fixing the games.*”

⁴⁹ CAS 2009/A/1920.

⁵⁰ The standard used pursuant to existing CAS jurisprudence on disciplinary doping cases is “(to the) *comfortable satisfaction*”, which the World Anti-Doping Code sets as a “*standard of proof in all cases [being] greater than a mere balance of probability but less than proof beyond a reasonable doubt.*” (at Article 3.1).

⁵¹ CAS statement at para. 108 (“*Contrary to the UEFA Appeal Body’s arguments, the fact that [Zdraveski] left in the middle of the first game and did not even travel to the second game, is rather evidence of the fact that he was not involved in the plot.*”).

B. Sports Organizations and their Rules as a Force in Shaping the Legal Framework for Regulating Match-Fixing

From the Federation of Equestrian Sports to the European Confederation of Volleyball, from the International Boxing Association to the International Ice Hockey Federation, many of the multitudinous sporting organizations have their own regulatory framework for drawing the boundaries of and tightening the saddles for permissible performance when it comes to fair play. To give an insight into such frameworks, the regulatory framework of the FIFA, which also covers its European sub-branch, the UEFA, assumes increased importance and hence, merits particular attention.

1. FIFA⁵² Code of Ethics 2009 Edition

The FIFA Code of Ethics (“Code of Ethics”) sets out a framework within which the integrity and the reputation of football, worldwide, can be safeguarded. The Code of Ethics, in its first provision, clearly sets out whom it is applicable to: all officials, which means all board members, committee members, referees and assistant referees, coaches, trainers and any other persons responsible for technical, medical and administrative matters in FIFA, a confederation, association, league or club. The scope of application of the Code of Ethics finds its legal basis with this provision, thereby covering all of FIFA’s continental confederations (such as UEFA, Confederation of North, Central American and Caribbean Association Football (“CONCACAF”), Confederation of African Football (“CAF”), Asian Football Confederation (“AFC”), Oceania Football Confederation (“OFC”) and South American Football Confederation (“CONMEBOL”)).

More specifically, in regard to corruption in football, Article 10 of the Code of Ethics expressly prohibits officials from accepting gifts and other benefits that exceed the average relative value of local cultural customs from any third parties. Most importantly, with this provision, the Code of Ethics provides an absolute prohibition for officials to accept gifts of cash, in any amount or form. In the successive article to the Code of Ethics, it is prohibited for officials to accept bribes and from bribing third parties or from urging or inciting others to do so in order to gain an advantage for themselves or third parties. The proper compliance to the Code of Ethics is observed by the Ethics Committee, which judges cases that come under the jurisdiction of the FIFA.

⁵² Fédération Internationale de Football Association (International Federation of Football Association) (“FIFA”) (founded on May 21, 1904).

2. UEFA General Terms and Conditions for Referees⁵³ and Regulations Governing the Implementation of the UEFA Statutes⁵⁴

UEFA General Terms and Conditions for Referees (“UEFA General Terms and Conditions”) provide in Article 6 that “[r]eferees undertake not to accept any gifts worth more than CHF 200 (or of an equivalent value) from bodies and/or persons directly and/or indirectly connected with the UEFA matches for which they have been appointed.” The UEFA General Terms and Conditions make it clear that referees must immediately notify the UEFA in the event that they have been made a target of attempted bribery or are considered to be a target for such.⁵⁵ The obligations to not give bribe are also regulated in the UEFA General Terms and Conditions, where it is stated under Article 6/4 that “referees shall refrain from offering gifts or souvenirs to the UEFA delegate, referee inspector or team representatives.”

The confidentiality provision in the UEFA General Terms and Conditions also ensure that referees refrain from divulging any information in the case where they are targeted in a match-fixing ploy.⁵⁶ Since the UEFA General Terms and Conditions cover topics that fall strictly within the ambit of sports law, it is not surprising to note Article 14 referring any disputes that may arise to the jurisdiction of CAS, under Swiss laws.

Similarly, the Regulations Governing the Implementation of the UEFA Statutes (“UEFA Regulations”) regulates in Article 52 the disciplinary jurisdiction, where,

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

Among the disciplinary measures that may be imposed against Member Associations and clubs, are, *inter alia*, warnings, reprimands, fines, annulment of the result of a match, an order that a match be replayed, the deduction of points, awarding a match by default and the disqualification from competitions in progress and/or exclusion from future competitions.

⁵³ Edition 2003.

⁵⁴ Edition 2010, *supra* n. 43.

⁵⁵ Article 6/3, the UEFA General Terms and Conditions; *supra* n. 45.

⁵⁶ Article 7, UEFA General Terms and Conditions (“Referees shall not disclose (except UEFA) and are bound to treat information received in the course of their refereeing activities as strictly confidential before, during and after any appointments to officiate in that capacity.”)

C. Match-fixing on the European Union's Agenda

Very recently, the Council of the European Union took steps, addressing match-fixing and considering initiatives that could be taken and implemented by its member states as well as the various bodies of the European Union. On June 1, 2011, the European Council and the representatives from the governments of the member states met to consider a three-year work plan for sport.⁵⁷ As part of the organizational matters of sport, the issue of match-fixing and corruption were addressed as the first “theme” that the Member States and the Commission should give priority to for the period of the proposed work plan (which is until mid-2014).⁵⁸

What is more striking is that in its efforts to effectively address match-fixing, the European Union adopted a Council Conclusions on Combating Match-Fixing⁵⁹ (“Council Conclusions”) on December 23 2011, inviting the member states to take account of the concerns relating to match-fixing, to monitor and to contribute to the work of international fora,⁶⁰ while also sharing information and considering political declarations that would be exchanged between public authorities, the sport organizations and betting operators.^{61,62}

The European Economic and Social Committee (“EESC”) has also drawn considerable attention to this problematic issue in their opinion on the “Green Paper on online gambling in the Internal Market”.⁶³ As part of the “public interest objectives”, the EESC has vehemently stated that “the integrity of sport should be preserved at all costs”, propagating what it considers is “a system [that] should be put in place which is not limited to simple detection, but which also includes preventive, educational and enforcement measures”.⁶⁴

⁵⁷ Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on a European Union Work Plan for Sport for 2011-2014 [OJ 2011/C 162/01].

⁵⁸ *Id.* at 2, and Annex I.

⁵⁹ OJ 2011/C 378/01.

⁶⁰ *Id.* at 4.1.

⁶¹ *Id.* at 4. 4.

⁶² *Id.* at 5.4. (The European Council further invites the Commission to consider making a proposal for Council Recommendations on combating match-fixing.)

⁶³ COM(2011) 128 final, OJ C 24, 28 January 2012.

⁶⁴ *Id.* at 3.14.

These developments certainly reflect the sensitivities that the European Union wishes to effectively address. As a result of these efforts, the European Commission has now been invited into considering the launching of a study, mapping the situation with regard to match-fixing in the European Union and beyond, identifying the existing problems and initiatives aimed at fighting match-fixing as well as proposing recommendations on possible solutions to be adopted at the European and the international level.

D. Is Regulating Match-Fixing A National Conundrum? Domestic Laws and Match-Fixing

While laws regulating match-fixing in the context of white collar crimes may not be prevalent in most countries, various countries have proposed or adopted anti-corruption legislation during the past six months,⁶⁵ including Indonesia,⁶⁶ Jordan,⁶⁷ Morocco,⁶⁸ Taiwan,⁶⁹ and Ukraine.⁷⁰ Furthermore, the Council of Europe Criminal Law Convention on Corruption⁷¹

⁶⁵ See '2011 Mid-Year FCPA Update' (Gibson Dunn, 11 July 2011) <<http://www.gibsondunn.com/publications/pages/2011Mid-YearFCPAUpdate.aspx>> accessed 28 November 2011.

⁶⁶ Legislation proposed in Indonesia, which ratified the U.N. Convention in 2006, would replace Indonesia's existing anti-graft legislation and would address foreign public bribery, commercial bribery, and match-fixing in sporting events (*supra* n. 65, *Id.*); also see Public Anti-Corruption Initiatives, Indonesia Country Profiles (Business Anti-Corruption Portal) <<http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/indonesia/initiatives/public-anti-corruption-initiatives/>> accessed 23 January 2012.

⁶⁷ In Jordan, King Abdullah II authorized the country's Anti-Corruption Commission to bring corrupt officials to justice, declaring that combating corruption is now a top priority for the country. All of Jordan's governmental institutions, including the royal court, are now subject to scrutiny by the Commission (*supra* n. 65, *Id.*).

⁶⁸ In Morocco, King Mohammed VI adopted a draft anti-corruption law that aims to protect witnesses and whistleblowers, in the hope of reducing the fear of reporting corruption (*supra* n. 65, *Id.*).

⁶⁹ Recently enacted Taiwanese legislation established a new anti-corruption agency that will be responsible for formulating, coordinating, and promoting Taiwan's anti-corruption policies and regulations, including by conducting investigations and supervising the ethics divisions of other governmental agencies (*supra* n. 65, *Id.*).

⁷⁰ The Ukrainian Parliament recently enacted legislation targeting corruption within its own ranks. The bill, which went into effect on July 1, 2011, obliges elected officials to disclose their income and expenditures publicly (*supra* n. 65, *Id.*); see also Public Anti-Corruption Initiatives, Ukraine Country Profile (Business Anti-Corruption Portal) <<http://www.business-anti-corruption.com/country-profiles/europe-central-asia/ukraine/initiatives/public-anti-corruption-initiatives/>> accessed 23 January 2012; Private Anti-Corruption Initiatives, Ukraine Country Profile (Business Anti-Corruption Portal) <<http://www.business-anti->

calls for member states to adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law. From among those countries, some in particular merit further contemplation of their unique domestic laws in relation to pinning match-fixing in their legal structure.

Poland has taken legislative steps in order to combat corruption in sports. The Polish Sports Act in particular includes provisions defining and penalizing sports fraud.⁷² Furthermore, the anti-corruption amendment which changed article 296b of the Polish Penal Code now covers professional sports corruption under “economic crimes”.

In the UK, the Fraud Act of 2006⁷³ adds fraud to the list of criminal offences under the Gambling Act of 2005.⁷⁴ With this provision, individuals involved in match-fixing and who fall outside the prosecution of sporting governing bodies are prosecuted.

Additionally, the Prevention of Corruption Act (“POC Act”) of 1916⁷⁵ defines what should be understood from “public duty”,⁷⁶ while also laying out the legal basis for offences and penalties for, *inter alia*, public servants taking gratification other than legal remuneration in respect of an official act, taking gratification, in order, by corrupt or illegal means, to influence public servant, public servant obtaining valuable things, without consideration from person concerned in proceeding or business transacted by such public servant.

According to s.13(1)(d)(ii) of the POC Act, “*a public servant is said to commit the offence of criminal misconduct, if he by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.*” To bring the act of match-

corruption.com/country-profiles/europe-central-asia/ukraine/initiatives/private-anti-corruption-initiatives/> accessed 23 January 2012.

⁷¹ CETS No. 173, 27 January 1999.

⁷² ‘Information Paper from the Polish Delegation’ (EU Sports Directors Meeting, Gödöllő, 27-28 June 2011) <http://www.bso.or.at/fileadmin/Inhalte/Dokumente/Internationales/Information_der_polnischen_Delegation.pdf> accessed 17 February 2012.

⁷³ Enacted on 8 November 2006.

⁷⁴ Enacted on 7 April 2005.

⁷⁵ Together with the Prevention of Corruption Act 1906, and the Public Bodies Corrupt Practices Act 1889, the three laws are known as the Prevention of Corruption Acts 1889 to 1916.

⁷⁶ Article 2(b), POC Act 1988 (“*“public duty” means a duty in the discharge of which the State, the public or the community at large has an interest*”).

fixing one has to bring “cricketers”, for example, under “public servants”. S.2(c)(viii) further defines “public servant” as a person who holds an office by virtue of which he is authorized or required to perform any public duty. But the question remains as to whether cricketers really conduct any public duty. It would be reasonable to assume that cricketers are mere professionals governed by independent contracts to entertain people by playing cricket. As such, the POC Act would not be applicable for match-fixing incidents.

Match-fixing is set to become a specific criminal offence carrying penalties of up to 10 years in prison under Australian law after the states and territories struck a deal to tackle corruption in sport.⁷⁷

The Australian government has agreed to draft legislation that identifies match-fixing as a crime and ensures punishments remain consistent. Under the proposal, match-fixers will spend up to 10 years behind bars regardless of where the crime occurs in Australia, with similar penalties for anyone engaged in “match-fixing conduct” or those who encourage others to do so. In October 2011 in Sydney, former NRL player Ryan Tandy was found guilty of trying to manipulate the first score of a 2010 match in Queensland, convicted of the formal charge of attempting to obtain a financial advantage by deception.

E. The Interplay between Regulating the Variegated Forms of Match-Fixing, the Participating Players and Media Coverage

Corrupt exchanges, be it at the forefront on the agendas of national legislative bodies, sports federations or even the media, are increasingly becoming entangled with not just the role of the individuals involved in fixing matches (i.e. whether it is a player, a bookie, a referee or a club manager who takes part in), but also with domestic, international and supranational laws of different jurisdictions and organizations across the world as well as with media. The significance of appropriately regulating such exchanges, especially when the matter concerns sports law, necessitates a fair and accurate review of the existing legislation (be it structured within the criminal law system of one jurisdiction or the disciplinary codes of an organization) and the correct layout of legal disputes and controversies on the media. The section on Turkey below will precisely reflect how one jurisdiction in particular has used a certain incident as a stepping stone in molding its own laws to address match-fixing concerns.

⁷⁷ See ‘Match-Fixing to Become Specific Crime,’ (C Ja, The Sydney Morning Herald, 18 November 2011) <<http://news.smh.com.au/breaking-news-national/matchfixing-to-become-specific-crime-20111118-1nmi2.html>> accessed 18 December 2011.

Secondly, the intractable coverage of sporting events by the press, especially in view of extremely high-profile cases that have been escalated up to the government, exemplifies the role that media plays in drawing audiences to a circle or a forum for discussion, enabling the media to influence the public perception of “harmfulness” and of what the problem of “law and order” comprise.⁷⁸

In this respect, and following suit with the foregoing insight on the international framework thus far discussed, a pending investigation case, which is not older than several months, has captured not only the Turkish media’s attention, but also the Turkish lawmakers. The example of Turkey in particular will serve to show the close interplay between the different roles and influences of laws and organizations, as discussed above, while also giving a detailed insight into the current state of Turkey’s applicable laws to match-fixing.

V. INTROSPECTING ON A CONTEMPORARY EXAMPLE: TURKEY⁷⁹

The following sections discuss the legal fabric within which match-fixing, as a white-collar irregularity, is structured under Turkish laws. It will firstly give an overview of the basic factual vista of the ensuing investigation on match-fixing allegations in Turkey, followed by a discussion of the relevant legal provisions that would merit particular attention when interpreting the investigation that is currently proceeding before the Turkish national courts. The section will finally conclude with general observations on the match-fixing allegations in the backdrop of the Turkish legal framework.

⁷⁸ M Levi, ‘The media construction of financial white-collar crimes’ [2006] [46 Br. J. Criminol 6, 1037] 1038.

⁷⁹ This chapter of the contribution befits discussions encompassing individualized issues relating to an on-going criminal prosecution against individuals (presidents of sports clubs, technical directors, football players, sports clubs coaches and managers) concerning allegations of match-fixing, bribery, and organized crime, among others. The debate and controversy stirred by the prosecutorial phases that commenced very recently, and after a much-scrutinized investigation phase, thus fall outside the discussions furthered in this contribution, since a final judgment has not yet been given, and the impending allegations not yet proved. Any reference in this contribution to suspects in the criminal proceedings, consequently, warrants the recognition of the principle of “presumption of innocence”, which finds its legal basis in Article 38(4) of the Turkish Constitution, regulating the principles of crime and punishment (“*no one is to be deemed guilty until proven culpable*”), Article 6(2) of the European Convention of Human Rights, regulating the right to a fair trial (“*Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law*”) and Article 48 of the Charter of Fundamental Rights of the European Union, regulating presumption of innocence and right of defense (“*1. Everyone who has been charged shall be presumed innocent until proved guilty according to law. 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.*”).

A. Overview of the Turkish Sports Corruption Investigation and the Bill of Indictment⁸⁰

A contemporary match-fixing matter is currently afoot in Turkey since 2011⁸¹ and has been placed under the limelight by lawyers, politicians, and legal scholars, not to mention the media, from multiple perspectives including the adequacy of the legislative framework in regulating proportional sanctions for match-fixing to the political rift that may be emerging between the country's leading political figures. Coupled with the enactment of a specialized sports law to combat bribery, Law on the Prevention of Violence and Disorder in Sports⁸² may have stirred much debate and controversy when it entered into force in early 2011 and few would disagree that Law No. 6222, in essence, was promulgated with the will of the legislative that it would be applied initially for this particular investigation, which was initiated on December 2, 2010 against certain sports personalities. Some of these individuals were taken into custody in July 2011 and included the executives of one of the biggest soccer teams in Turkey as well as some other managers and ex-managers, coaches, trainers and players of certain other Turkish soccer teams.

On December 2, 2011, the bill of indictment was accepted and released, initially accusing 93 sports personalities,⁸³ among which are the chairman and certain executives of some major soccer teams, including Fenerbahçe, and 14 soccer players. The suspects have been accused of (i) match-fixing, (ii) establishing a criminal organization, and (iii) fraud. As of the time when this contribution was written, 16 of the 93 suspects have been arrested. Given the speed with which the investigation is unfolding, it may be considered to be by far the most comprehensive and resounding match-fixing investigation in the history of Turkish sports, having had reverberations among the public, especially from the fans of Fenerbahçe, a professional Turkish soccer club, and most notably the media.

⁸⁰ A formal written document accusing a person or persons named of having committed a felony or misdemeanor, lawfully laid before a grand jury (usually by a prosecutor) for their action upon it (Black, 165).

⁸¹ See 'Mass Arrests in Turkey in Football Match-Fixing Probe' (BBC News, 24 March 2010), <<http://news.bbc.co.uk/2/hi/europe/8586307.stm>> accessed 14 February 2012; 'Turkish court charges 15 more in Fenerbahce match-fixing scandal' (Guardian UK, 7 July 2011) <<http://www.guardian.co.uk/football/2011/jul/07/turkey-match-fixing>> accessed 14 February 2012.

⁸² Law No. 6222 on the Prevention of Violence and Disorder in Sports enacted on 14.04.2011 and published on the Official Gazette dated 14.04.2011 and numbered 27905 ("Law No. 6222").

⁸³ Since December 2, 2011, seven suspects have been acquitted, leaving the current number of suspects alleged to have committed match-fixing at 16 individuals.

The bill of indictment essentially establishes the investigation on two pillars of crimes: (1) those committed by the criminal organization led by the former president of a sporting club (“Criminal Organization 1”), and (2) those committed by the criminal organization led by the president of a sporting club (“Criminal Organization 2”).

According to the bill of indictment, Criminal Organization 1 is an organization which allegedly conducted unauthorized managerial activities to fix the results of soccer matches and to earn illegal benefits from soccer transfers in the process.

The audio surveillance for Criminal Organization 1 has revealed conversations – allegedly persuading the president of the Turkish Football Federation (“TFF”) to revoke the suspension on transfers of a certain soccer club – as exchanged between the leader of the respective organization and the president of the TFF. Furthermore, based on the indictment, a number of the Criminal Organization 1 members allegedly had illegal access (i.e. via bribery and forgery of documents) to the TFF’s questions of the manager license exam, facilitated the distribution of game tickets for certain soccer games without any fees and engaged in other allegedly illegal activities.

Suspicious conversations were alleged to have also been exchanged between the president of the TFF and the leader of the Criminal Organization 2. These conversations included alleged efforts to (1) persuade the referees so that they decide in favor of a certain soccer club and (2) influence the choice of a referee for certain soccer matches. Consequently, the investigation encircled the activities of the Criminal Organization 2 as well.

According to the bill of indictment, the leader of the Criminal Organization 2 allegedly fixed matches and ordered the executives of certain sporting clubs to take necessary measures for match-fixing. The executives of the sporting clubs allegedly contacted the managers and/or the coaches of the respective sporting clubs and at times, even with soccer players themselves, supposedly offering them money. The payments were reportedly made based on the direct order of the leader of the Criminal Organization 2, reportedly fixing 13 soccer matches, thus gaining unfair benefits.

Those individuals who have been accused of engaging in criminal behavior under the bill of indictment can be categorized as four groups;

- (i) The executives of sporting clubs,
- (ii) Managers and/or coaches of sporting clubs,

(iii) Soccer players and

(iv) Others (which include individuals who are not associated with sporting clubs and/or the soccer community).

However, special consideration should also be placed on individuals who are not a member of either of the criminal organizations, but are nevertheless accused of independent attempts at fixing matches apart from the alleged acts of the respective criminal organizations. For the purpose of this contribution, such individuals could also be considered as falling under the foregoing categorization.

The bill of indictment has further outlined that in committing criminal activities, “managers and/or coaches of sporting clubs”, “soccer players” and “others” were allegedly only expecting direct personal benefits (i.e. payments for match fixing, receiving free tickets for soccer games in exchange for obtaining personal gains, etc.), whereas the “executives of sporting clubs” were allegedly expecting indirect personal benefits (i.e. social and/or financial benefits from being an executive of a successful soccer club).

B. The Turkish Match-Fixing Legislation under Spotlight: A Faltering Legal Framework or a Blooming Initiative for Stable Enforcement?

1. The Investigation under Law No. 6222 and the Turkish Criminal Code

As has been referred to previously, Law No. 6222 was essentially, and initially, applied for a criminal investigation initiated on December 2, 2010 and it is considered to be the first legislation enacted in Turkey specifically sanctioning match-fixing, as being a criminal act. Most of the individuals who are subject to investigation are facing accusations of match-fixing as regulated under in Article 11 of Law No. 6222. In this respect, Article 11 of Law No. 6222 provides the legal footing for criminalizing match-fixing under the Turkish legal framework and reads as follows.

“Persons who provide earnings or other benefits in order to influence the outcome of a certain sports event shall be sentenced to imprisonment between one to three years and a judicial fine up to twenty thousand days. The person to whom the benefit was provided shall also be sanctioned under this crime as an accomplice.

The persons who contribute to the outcome of the sports event in line with the match-fixing agreement and with the knowledge of the match-fixing agreement shall also be sanctioned under the foregoing article. (...)”

The significance of regulating criminal sanctions in proportion to the criminal acts attributed to such penalties has far-reaching implications that merit the resolution of questions pertaining to the efficacy and enforcement of special laws such as Law No. 6222. The sanction of imprisonment stipulated under Article 11 of Law No. 6222, for example, was amended not more than 2 months ago, in December 2011.⁸⁴ The original version of the article set forth a more severe sanction of imprisonment between five to twelve years. However, only a few months after the enactment of Law No. 6222, the Turkish Parliament proposed an amendment precisely on this article, which would shorten the period of imprisonment. The President of Turkish Republic, Abdullah Gül, who may be regarded as the sole-holder of the reins in the Turkish political system, albeit ceremonially, at first vetoed this amendment proposal on December 2, 2011 and reverted it to the Turkish Grand National Assembly for re-evaluation. The Turkish Grand National Assembly, subsequently, sent the proposal back to the President of the Turkish Republic on December 13, 2011 without making any changes and finally, the amendment proposal, which now sets forth an imprisonment term of between one to three years, was approved by Abdullah Gül on December 14, 2011 and published on the Official Gazette on December 15, 2011. The amendment also provided that in case a person is sentenced to imprisonment due to committing match-fixing (as defined under Article 11 of Law No. 6222), that person shall also be banned, as per Article 53 of the Turkish Criminal Code,⁸⁵ from exercising their full duty in the directors and auditors board of sports clubs, federations and legal entities engaging in conducting sports activities.

In the match-fixing investigation in Turkey, individuals who fall under the two categories explained above (the “executives of sporting clubs” and “others”) have also being accused of

⁸⁴ Law No. 6259 on the Amendment of the Law on Prevention of Violence and Disorder in Sports, enacted on December 15, 2011 and published on the Official Gazette dated December 15, 2011 and numbered 28143.

⁸⁵ Turkish Criminal Code No. 5237, enacted on June 1, 2005 and published on the Official Gazette dated October 12, 2004 and numbered 25611.

establishing/being a member to a criminal organization under Article 220 of the Turkish Criminal Code⁸⁶ and aggravated fraud under Article 158 of the Turkish Criminal Code.⁸⁷

Furthermore, individuals who fall under the categories “managers and/or coaches of sporting clubs” and “soccer players” have also been accused of match-fixing under Article 11 of Law No. 6222, which provides for imprisonment of one to three years and a judicial fine of up to twenty thousand days, as well as aggravated fraud under Article 158 of the Turkish Criminal Code, which provides for imprisonment between two to seven years and a judicial fine up to five thousand days.

2. The Investigation under Legislation for White-Collar Irregularities

This section will provide an analysis on local regulations that might be applicable to the illegal misconduct of sports clubs as ‘legal entities’ and will seek to lay out the general legal vista for regulating white-collar irregularities under Turkish laws.

Aside from the criminal dimension of the ensuing investigation, match-fixing may be regarded as leading to the liability of the company its partners and the directors. In this respect, a two-pronged analysis can be made regarding publicly traded companies and non-public companies.

Non-public companies, which are limited liability companies and joint stock companies under Turkish law, are primarily subject to the provisions of the Turkish Commercial Code⁸⁸ (“TCC”). As per Article 336 of the TCC, board members of a joint stock company are obliged to duly keep the commercial books required as per the nature of business and to keep them during the legal period (i.e. 10 years). In this respect, board members will be obliged to compensate damages which arose from the non-fulfillment of this obligation stipulated under Article 336 of the TCC. The damage that has incurred can therefore be evaluated in two respects: (1) the damage arisen due to the use of these commercial books which have not been duly kept, as evidence and in favor of the company and (2) the compensation of the irregularity fine incurred by the company as a commercial entity as per Tax Procedural Law.

⁸⁶ The criminal sanction foreseen for establishing a criminal organization is imprisonment of two to six years, and for being a member to a criminal organization is imprisonment of one to three years.

⁸⁷ The criminal sanctions foreseen is imprisonment for two to seven years and a judicial fine of up to five thousand days)

⁸⁸ Turkish Commercial Code No. 6762, enacted and published on the Official Gazette numbered 9353 on July 9, 1956.

In this respect, in case it becomes evident that the non-public joint stock companies currently being investigated have been engaged in match-fixing, the board members of these companies would be held liable for the commercial books which have been inaccurately and irregularly kept, since they would not be reflecting the payments illegally made by the company for match-fixing or be reflecting those payments under other titles and therefore would be creating forged documents.

Publicly traded companies will be subject to the foregoing provisions of the TCC, as well as capital market legislation. Article 47/B of the Capital Market Law⁸⁹ reads as follows:

“Persons who do not provide information requested by Capital Market Board or by the persons authorized by the Capital Market Board; or persons who provide incomplete or inaccurate information; persons who do not present commercial books and records to the authorized persons; persons who hide or destroy such or persons who prevent the authorized persons from performing their duties ... shall be sentenced to imprisonment between one to three years and judicial monetary fine between two thousand up to five thousand days.”

In this respect, members of a publicly traded company who are responsible for providing information to the Capital Market Board would be held liable under the foregoing provision for providing inaccurate or incomplete information to the Capital Market Board.

Article 47/B/2 of the Capital Market Law stipulates that those who falsify their books and records, or who open an account as such, or conduct any financial fraudulent behavior over the foregoing or who misstate an independent auditing report or allow for such a report to be issues shall be penalized in accordance with the provisions relating to forgery under the Turkish Criminal Code.

Publicly traded companies are required to keep their corporate books and financial records in accordance with the provisions set out in Communiqué on the Principles and Provisions Regarding Financial Tables and Reports in the Capital Markets (Series XI, No.1)⁹⁰ and

⁸⁹ Capital Market Law No. 2499, enacted on July 30, 1981 and published on the Official Gazette dated July 30, 1981 and numbered 17416.

⁹⁰ Communiqué on the Principles and Provisions Regarding Financial Tables and Reports in the Capital Markets Series XI, No.1, enacted on January 29, 1989 and published on the Official Gazette dated January 29, 1989 and numbered 20064.

Communiqué on General Explanation Regarding the Determination of Independent Auditing Obligations, Public Disclosure and Issuance of Financial Records and Reports for Companies and Corporations Subject to the Capital Markets Law (Series No: XII, 1).⁹¹ According to Article 7 of Communiqué Series No. XII, 1, publicly traded companies are obliged to keep interim financial statement and income statement on a quarterly basis. The second quarterly records are subject to external auditing that is conducted by an independent auditing company. Communiqué on Accounting Standards (Series XI, No.11)⁹² further sets out certain provisions regarding the auditing of books and records for companies subject to the regulation of the Capital Markets Board.

Furthermore, partners and other relevant members of a publicly traded company are also obliged to disclose special occasions to public. The legislation which specifically regulates such material disclosures is the Communiqué on the Principles Regarding Material Disclosures to Public⁹³ (“Communiqué”). Internal information, as per the Communiqué, means information which are not yet disclosed to public, yet which might affect the value of the capital market instrument and the investment decisions of the investors. Article 14 of the Communiqué sets forth that partners of a publicly traded company should disclose internal information as well as the changes in these internal information already disclosed. Needless to say, accusation of match-fixing is in fact a material case which would affect the decisions of the investors.

Additionally, Article 18 of the Communiqué provides that shareholders of the company should provide an explanation regarding the accuracy of the news or rumors regarding the shareholders of an open joint stock company, who have the ability to influence the value of the capital market instrument and the investment decisions of the investors. Accordingly, a shareholder of a sports club, in light of the above legal rationale and basis, would be obliged to provide an explanation regarding the accuracy of information covered by the media;

⁹¹ Communiqué on General Explanation Regarding the Determination of Independent Auditing Obligations, Public Disclosure and Issuance of Financial Records and Reports for Companies and Corporations Subject to the Capital Markets Law Series No: XII, 1, enacted on February 18, 1992 and published on the Official Gazette dated February 18, 1992 and numbered 21146.

⁹² Communiqué on Accounting Standards Series XI, No.11 enacted on March 1, 1995 and published on the Official Gazette dated March 1, 1995 and numbered 22217.

⁹³ Communiqué on the Principles Regarding Material Disclosures to Public Series VIII, No: 54 enacted on February 6, 2009 and published on the Official Gazette dated February 6, 2009 and numbered 27133.

otherwise the management, as a whole, might be held accountable and may consequently face monetary fines pursuant to this particular provision.

On a different note, Turkish law requires that both publicly traded and non-public companies will be subject to internal company procedures, if any, as laid out by that specific company. It is in fact not uncommon for major companies to have internal company principles, governing and sanctioning corruption and white-collar irregularities. To that end, employees working at these companies might face certain disciplinary sanctions, which could eventually lead to their release from work under internal company procedures.

Where applicable, foreign partners of the foregoing joint stock companies would also be liable in terms of the U.S. Foreign Corrupt Practices Act,⁹⁴ which requires companies that are stock traded on the U.S. exchange to meet certain standards regarding their accounting practices, books and records, and internal controls, as well as the U.K. Bribery Act.

Needless to say, companies that would be subject to an impending investigation might also suffer from loss of side-benefits, such as loss of reputation, advertisement and loss of product sales where applicable.

3. The Investigation under the Turkish Football Federation's Disciplinary Rules

Apart from the criminal and white-collar perspectives which have been outlined above in relation to the ensuing investigation, match-fixing can also be subject to certain disciplinary sanctions under the TFF's regulations. Article 58 of the TFF Disciplinary Instruction in particular imposes the following sanctions for influencing or attempting to influence the outcome of a sports event in an illegal manner or in a manner that is against sports ethics: disqualification from sports events or deprivation of rights for real persons and relegation for sports clubs with an additional monetary fine for persons or clubs involved in the violation. Providing incentive bonus to a football player or a club is also subject to the foregoing sanctions. In this respect, a two-tier investigation will be pursued for a single action of match-fixing: first, a criminal investigation to be conducted before criminal courts and second, a possible disciplinary investigation to be initiated by the TFF against individuals or sports clubs involved in the violation. To that end, TFF will not be authorized to implement the provisions of Law No. 6222 and apply criminal sanctions and similarly the court will not be authorized to the relegation of a sports club due to match-fixing.

⁹⁴ 15 U.S.C. §§ 78dd-1, et seq.

However, recent negotiations were held within the TFF, proposing to amend Article 58 of the TFF Disciplinary Instruction to impose less stringent sanctions, such as deleting the football team's points in the league, instead of relegation. This development originated a debate among football teams who have been made subject to the ensuing criminal investigation, with some of them objecting to the proposed amendment on Article 58. Needless to note, the TFF finally decided to preserve Article 58 in its original form.

C. Recent Developments Encompassing the Investigation

As has been detailed above, the investigation, which has been at the forefront of the agendas of legislators and the Turkish media, could be regarded as being by far the first and the most comprehensive match-fixing proceeding in the history of Turkish sports, having led to clamorous reverberations in the media,⁹⁵ as well as significant, though harmless disruption among sports fans, since the investigation, among other things, directly concerns the chairman and executives of one of the biggest soccer clubs in Turkey. In fact, according to some, Article 11 of Law No. 6222 was amended to include a shortened period of imprisonment due

⁹⁵ See 'The Biggest Match-Fixing Investigation in Turkey's History' ('Türkiye tarihinin en büyük şike soruşturması') *BBC Turkey* (Internet Haber, 3 July 2011) <<http://www.internethaber.com/turkiye-tarihinin-en-buyuk-sike-sorusturmasi-357225h.htm>> accessed 14 February 2012; 'A decision like an earthquake in Turkish football' ('Türk futbolunda deprem gibi karar') (Hürriyet News, 7 July 2011) <<http://hurarsiv.hurriyet.com.tr/goster/ShowNew.aspx?id=18192417>> accessed 14 February 2012; 'Harsh Responses from the Lawyers to the Match-Fixing Investigation' ('Şike soruşturmasına hukukçulardan sert tepki') (Hürriyet News, 8 July 2011) <<http://hurarsiv.hurriyet.com.tr/goster/ShowNew.aspx?id=18202504>> accessed 14 February, 2012; 'TFF Referred the Match-Fixing to the Ethics Committee' ('TFF şikeyi Etik Kurulu'na sevk etti') (Hürriyet News, 13 July 2011) <<http://hurarsiv.hurriyet.com.tr/goster/ShowNew.aspx?id=18246880>> accessed 14 February 2012; 'They Did Not Forget Aziz Yıldırım' ('Aziz Yıldırımını Unutmadılar') (HT Spor, 1 January 2012) <<http://www.htspor.com/futbol/haber/701874-aziz-yildirimi-unutmadilar>> accessed 14 February 2012; 'They Threw Turkish Football Into the Fire' ('Türk futbolunu ateşe attılar') (HT Spor, 24 August 2011) <<http://www.htspor.com/futbol/haber/662912-turk-futbolunu-atese-attilar>>-accessed 14 February 2012. For news coverage on Trabzonspor's statements regarding the allegations brought forward in the investigation see 'Response from Trabzonspor to Yıldırım and Odyakmaz' ('Trabzon'dan Yıldırım ve Odyakmaz'a yanıt') (NTVMSNBC Spor, 25 February 2012) <<http://www.ntvmsnbc.com/id/25325381>> accessed 27 February 2012 (as the investigation is ongoing, considerable controversy and debate still surrounds it and this contribution does not seek to further those debates, but merely gives an overview of the general outlook of the media concerning the investigation).

to intense public reactions. Upon the issuing of the bill of indictment, the Turkish football arena had to eventually, and gradually tackle certain other obstacles on its way.

In August 2011, the TFF banned Fenerbahçe from participating in the UEFA Champions League. It has been alleged that UEFA instructed the TFF to ban this team from participating in the Champions League and stated that it would otherwise impose heavier sanctions.⁹⁶ Upon TFF's ban decision, Fenerbahçe applied to CAS in September 2011 seeking for both damages incurred due to not participating in the Champions League and an interim measure to participate in the Champions League.⁹⁷ The team's request for an interim measure has been rejected, while the proceedings in relation to receiving compensation for damages incurred are still ongoing. Most recently, the UEFA submitted⁹⁸ a translation of the bill of indictment to CAS (prepared for the prosecuting purposes of the criminal charges and in which the plaintiff to the CAS case, the Turkish football team, is being investigated), which had great repercussions in the media, stating that UEFA now has the upper hand in pursuing the case pending before the CAS. Upon this recent development, one of the executives of the team, who is also personally being investigated for various allegations, sent a letter to the Chairman of UEFA, Michael Platini late January 2012, stating that the bill of indictment should not be regarded as concrete, definitive and reliable evidence, and hence, should not be adopted by the UEFA due to the discrepancies observed in it. The executives also directed certain questions to Platini, some hypothetical, regarding UEFA's understanding of the bill of indictment.

⁹⁶ See 'Fenerbahce out of Champions League after UEFA steps in' (Guardian UK, 24 August 2010) <<http://www.guardian.co.uk/football/2011/aug/24/fenerbahce-champions-league-uefa>> accessed 14 February 2012; E B Arseven, 'Turkish Match-Fixing: Criminal Law's Interaction With Sport' [World Sports Law Report, Cecile Park Publishing, September 2011] at 3, available at <http://www.martindale.com/members/Article_Atachment.aspx?od=2620398&id=1443358&filename=asr-1443398.pdf> accessed 15 February 2012.

⁹⁷ See 'The Giants Will Have Enormous Debts' (Radikal, 31 January 2012) <<http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1077247&CategoryID=101>> accessed 14 February 2012.

⁹⁸ For UEFA's involvement in the investigation, see 'UEFA Banned Fenerbahçe' ('UEFA Fenerbahçe'yi men etti') (HT Spor, 25 August 2011) <<http://www.htspor.com/futbol/haber/663167-uefa-fenerbahceyi-men-etti>> accessed 14 February 2012; 'Here is UEFA's plan!' ('İşte UEFA'nın planı!') (HT Spor, 3 January 2012) <<http://www.htspor.com/futbol/haber/702430-iste-uefanin-plani>> accessed 14 February 2012.

As of the acceptance of the bill of indictment on December 2, 2011 and the official commencement of the criminal proceedings, the investigation has merited the attention of the media in significant respects. A reason for such scrutinized media coverage would be considered as Fenerbahçe's involvement, which is one of the four major Turkish soccer teams, in the investigation, as well its famed executive. Where some claimed⁹⁹ that this was an operation of the Turkish government against Fenerbahçe to eventually be relegated, some others reacted strongly on the sanctions of match-fixing, stating that even assassination lead to lighter consequences. The financial loss of the investigated sports clubs has also drawn separate attention in the press, which indicated that Turkish soccer is suffering from one of its greatest financial losses in its history as a result of the investigation. The reaction of the public to the ban of Fenerbahçe from participating Champions League as detailed above also recently paved the way for the resignations of TFF Chairman Mehmet Ali Aydınlar and vice chairmen Göksel Gümüşdağ and Lütfi Arıboğan on January 31, 2012. The chairman, in his resignation note, indicated that he was unable to tolerate an environment wherein there is no trust and unethical behaviors of many persons and entities are permissible due to their benefits.

Most recently, FIFA, like UEFA, also requested a report from TFF regarding the investigation, which came as a surprise to TFF according to media.¹⁰⁰ FIFA's request was interpreted in the media as a threat for specifically organizations concerning national teams and thus for Turkish football. The repercussions in the media also suggested that FIFA's sudden interest in the investigation at this stage where there are only six months left until the 2014 World Cup playoffs can affect the Turkish national team's success.

D. A Simple Roadmap of Inaction for Traumatized Incumbents of a Sports Industry Facing Severe Anti-Corruption Enforcement: Don't Think, Just Don't Do Anything

⁹⁹ See 'It is Not Match-Fixing but AKP Who Scores the Goal at the Ballot Box' ('Sandıkta golü 'şike' değil AKP atıyor') (Radikal, 8 February 2012) <<http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1078060&CategoryID=84>> accessed 14 February 2012.

¹⁰⁰ See 'The Match-Fixing Investigation is Also on FIFA's Agenda... Here is the Final Letter Sent to the TFF...' ('Şike soruşturması FIFA'nın da gündeminde... İşte TFF'ye gönderilen son yazı...') (Internet Haber, 31 January 2012) <<http://www.internethaber.com/fifa-tff--398315h.htm>> accessed 14 February 2012; 'Flash News! FIFA Has Also Stepped in After UEFA' ('Flaş! UEFA'dan Sonra FIFA da Devrede') (HT Spor, 31 January 2012) <<http://www.htspor.com/futbol/haber/711267-flas-uefadan-sonra-fifa-da-devrede>> accessed 14 February 2012

The very first thing they teach you when dealing with any addiction is that you are not yet fit to think about the circumstances surrounding your addiction. So stop analyzing, and just concentrate on the action, or the lack thereof, they say. Say, for alcoholics, “Don’t Think, Just Don’t Drink” is the name of the game for the first cognitive awareness stages of breaking the chain of addiction. There will come a day when proper analysis of root causes of the drinking problem might help, but initially it must be all about not drinking.

A similar know-how must apply to the “owners” of a sports industry if that industry were to suddenly face severe anti-corruption enforcement. They should not analyze, protest, or god forbid, take action, even in the form of support. The only constructive role they could have at that stage is to allow for a full and thorough investigation and enforcement. They should not think about strategies, they should just refrain from action, any sort of it. The analogy is not presuming that they must be addicted to something wrong (i.e. bribery). On the contrary, both the guilty and the innocent have reasons to be terrorized and traumatized in case of such widespread enforcement impacting people they knew as one of their own, and one does not think objectively and clearly in such circumstances. Hence, the wisdom of remaining static. The Turkish example is an extremely valuable model of what happens if the incumbents decide to be very active without perhaps necessarily knowing much. The investigated individuals and clubs will of course think and scream and kick, as much as any innocent person or entity would do, regardless, at that stage, of whether or not they are actually innocent. They are of course to think and take action. It is their right of defense. Nevertheless, for the rest of the same industry, that is for the incumbents circulating in the same pot until the dawn raids of one fine day, the only productive and useful roadmap of action during their trauma while the industry is facing severe anti-corruption enforcement must be to avoid any interference with the investigation and evaluation processes. Avoid thinking. Avoid molding the landscape on which the investigation is being built. Avoid doing anything that could have any impact on the investigation. Avoid doing anything, really, as the clouds obscuring judgment might not allow a healthy distinction between those actions that would amount to interfering with the ongoing process, and those that would have a life of their own.

Otherwise, as now seen through the Turkish example, it is a matter of weeks, if not days, that the public might feel deliberately cheated on, as the steps proposed by the traumatized industry might rightly or wrongly signal a self-serving reluctance to face the music if a misconduct has indeed been undertaken, even if this were not to be the intention or true motive of the persons proposing a set of new steps. Who could justify or explain proposing -

as it was proposed in Turkey- less strict enforcement with a legislative change just when the most serious allegation of that type of conduct in the history of the nation is on the table? The no-big-deal attitude could well be pointing at the very roots and true creed of the sector that has brought matters to this point. When the quintessential figures of an industry are subject to a humiliating and painful investigation, could the rest of the owners of that industry have a meaningful and fruitful say in the equitable balances of crime and punishment?

A policy-making approach that would dilute the applicable legal consequences may not only set Turkey apart from all other countries whose legislative frameworks have undergone or are undergoing significant structural and contextual change in relation to this phenomenon, but is sure to be viewed as a lack of conviction to thoroughly cleaning the industry, if there is honestly something wrong.

When there are dismissive expressions such as “Did we kill a man, after all?”¹⁰¹ widespread in the media, enunciated by the alleged wrong-doers, and accompanied by “objective” comparisons in the media between the prison terms for crimes that are most offensive to the public and the crime of bribery (kind of allowing for a reading between the lines that bribery cannot be as bad as those crimes, after all, right?), it is not easy to passionately pursue an investigation thoroughly with all its legal consequences. The more interesting academic and intellectual question then presents itself - for the purposes of this particular piece of academic study - not as whether or not match-fixing actually happened in Turkey, but more importantly whether a certain level of consciousness on taking things lightly is indeed inferred and even observed after a most significant and damning set of allegations and charges are officially brought in the country, when a certain piece of legal instrument, having a more lenient penalty regime, was being passed by the legislative organ, although a rock solid will to get to the bottom of all of this might have been what was needed instead.

Essentially, one of the central tenets of competitive sporting events, that is fair-play, is tarnished with each mere attempt at match-fixing, and leaves such corrupt practices at a place that is no different than stealing, and the challenge is even furthered when the general sectoral tendency is to regard this phenomenon as not-so-harmless. As far as this happens to be the underlying theme, culture and motive, no matter how extensively Turkey seeks to develop its

¹⁰¹ See ‘Aziz Yıldırım: Did we kill a man?’ (‘Aziz Yıldırım: Adam mı Öldürdük?’ (Santra News, 1 February 2012) <<http://www.santrahaber.com/haber/Aziz-Yildirim-Adam-mi-Oldurduk/62183>> accessed 27 February 2012.

regulation of corruption in competitive sporting events, the enforcement of these rules should continue to be subject to the superior scrutiny of and the set of rules set out by supra-national sports federations.

Individuals who have been accused of being involved in the ensuing investigation are of course - as a matter of their fundamental rights - to be regarded as entirely innocent, until proven guilty, as per the presumption of innocence which has long been enshrined in national constitutions and international legal instruments, such as the European Convention on Human Rights. This contribution recognizes and treats them as such, since the matter is currently before the courts.

The central discussion, however, stems not from the factual occurrences that have had much reverberation in the Turkish sports arena, but from a much needed societal reflection and concern over the fact that millions of individual fans may have in fact been befooled, which, to a greater extent in turn raises question marks as to the logic and policy goals behind wanting a less stinging enforcement regime right after this risk is uncovered. This is a fact wanting much attention and deliberation.

VI. CONCLUSION

From countries having inflexible regulations on sports law to jurisdictions whose legal frameworks are being molded to better suit the needs of the ever changing legal framework of white-collar irregularities as observed in sports, match-fixing has become a prevalent phenomenon, if not a controversial concern with multiple dimensions, where governments, sports clubs/sports federations and individuals seek to make their way through this thicket in order to preserve two of the founding pillars of sports: integrity and ethics.

Cases involving match-fixing in fields of sports such as soccer, basketball and cricket have shed light unto the variegated forms that match-fixing may take, and the debates and discussions between CAS, international sport federations and national clubs have made it a topic of discussion that corruption could be very entrenched, and that it might not be confined to specific jurisdictions. While concerns as to the appropriate application of the Turkish legal framework may raise questions as to whether match-fixing has been regulated proficiently in Turkey in order to maintain the core values sports aim to enhance, international initiatives may well be setting new standards for the Turkish legal fora as well as national regulatory bodies in combating match-fixing. Be that as it may, preserving the concept of fair play is ever more difficult today, and it will be even more difficult tomorrow, as sporting events get

more hard core and lucrative by the day. George Orwell has pinpointed with a contrasting perception of what the essence of “serious” sport truly achieves:

*“Serious sport has nothing to do with fair play. It is bound up with hatred, jealousy, boastfulness, disregard of all rules and sadistic pleasure in witnessing violence: in other words it is war minus the shooting.”*¹⁰²

Accepting George Orwell’s words to be at least partially true about the nature of competition in serious sports activities means bearing the weight of reflecting the need for profound and strict legislative instruments and zero-tolerance on any form of corruption. Special instruments, which are tailor-made specifically to combat corruption in this field (such as the duty of referees to report an impending approach for bribery, even if this were to be rejected) should prevail and the sanctioning systems of those countries that have had experience in combating corruption in the sports arena should be formulated such that a more stringent regime to tackle match-fixing be employed. There will be true joy in the sports arena only when the legal instruments and mechanisms are entirely aligned and up to speed with the requirements of watching over the natural tendencies of “serious” sport.

¹⁰² G Orwell, *Shooting an Elephant and Other Essays* (Secker and Warburg, 1950), ‘The Sporting Spirit’ (also available at <http://orwell.ru/library/articles/spirit/english/e_spirit>).