



LEGAL DIVISION
DISCIPLINARY AND INTEGRITY UNIT

Case Law

Control and Disciplinary Body & Appeals Body

Season 2013/2014
January 2014 - June 2014

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FOREWORD

Dear Sir or Madam,

I am pleased to provide you with the case law of the UEFA Control and Disciplinary Body and the UEFA Appeals Body for the period January to June 2014.

According to Article 45 of the UEFA Disciplinary Regulations: "The UEFA administration publishes decisions issued by the disciplinary bodies. Where such a decision contains confidential information, the UEFA administration may decide, ex officio or at the request of either one of the parties or the disciplinary inspector, to publish an anonymised version."

This document contains the leading cases from the UEFA Control and Disciplinary Body, as well as all of the decisions of the UEFA Appeals Body during this time period.

While you are looking through the document, if you wish to return to the contents page, please click on the 'Case Law' heading at the top of each page. Also, if you would like to skip to a specific case, please click on the name of the case in the table of contents and you will be taken directly to the case.

I hope this document is helpful for you and we remain at your disposal should you have any questions.

Yours faithfully,

U E F A

A handwritten signature in blue ink, consisting of a stylized 'E' and 'G' intertwined, with a horizontal line at the bottom.

Emilio García
Head of Disciplinary and Integrity



Control and Disciplinary Body

Decision of 13 February 2014

Apollon Limassol

(Racist behaviour of supporters)

Circumstances of the case:

After the final whistle of the UEFA Europa League match against Legia Warszawa on 12.12.13, a group of Apollon Limassol fans directed racist abuse towards Legia's player Hassamo Junior Dossa Momade Omar. While the player was leaving the pitch, approximately ten Apollon Limassol fans clearly addressed monkey chants towards him. In addition, an Apollon Limassol fan jumped on the top of the tunnel in order to spit on the player.

Legal framework:

Art. 14 DR *Racism/discriminatory conduct*.

Decision:

The CDB ordered the partial closure of the Apollon Limassol Stadium for their next UEFA competition home match. In particular, the sectors located on both sides of the tunnel area were ordered to be closed. The club was also fined €60,000.

Chairman: Thomas Partl (AUT)

Vice-Chairmen: Jim Hansen (DEN)
Jacques Antenen (SUI)
Sandor Berzi (HUN)

Members: Joël Wolff (LUX)
Hans Lorenz (GER)
Rudolf Repka (CZE)
James Shaw (NIR)
Tomàs Gea (AND)

In fact:

In the 67 minute Apollon Limassol FC Sangoy Gaston was sent off of the field of play by means of a second caution for committing a reckless foul play against his opponent.

During the halftime Apollon Limassol FC supporters confronted the police, resulting in one local fan arrested.

During the first and second half of the game, objects, i.e empty bottle of glas, metal bar (hand flare), lighter, carton cup (cola) were thrown by Apollon Limassol FC supporters.

During lining up more than 30 bengal lights and flames were ignited. These were followed by: Min. 3: 1 (white) flame; Min. 9: 2 flames + smoking bomb; Min. 10: Flame; Min. 11: Flame; Min. 13: Flame; Min. 25: Flame; Min. 30: Flame; Min. 61: Flame; Min. 88: Flame.

At the 64 minute, a fan who was involved in throwing stuff on the pitch felt down into the aisle (deep discharge, about 4 meters down).

After the final whistle, on both sides of the tunnel a limited group of Apollon Limassol FC fans stayed at their position waiting the Legia team to come out. These supporters focused their attention in Legia's player Hassamo Junior Dossa Momade Omar. Whilst this player was leaving the pitch and entering the tunnel, approximately ten Apollon Limassol FC fans were clearly addressing monkey chants against him. Also an Apollon Limassol FC fan jumped on the top of the tunnel in order to spit on the player.

The Club in their statements dated on 21 December 2013 argue that the incident took place at the end of the game and was related to an episode between the Apollon Limassol FC head coach and the Legia's player Hassamo Junior Dossa Momade Omar who allegedly was provoking the supporters. The reaction of these fans was caused by the disrespectful attitude of the player. Nonetheless, the Club punished these supporters banning them from entering in the stadium. The Club stress that they will carry on with their campaign against racism which started in 2006 and was awarded by UEFA and the local authorities. Finally, Apollon Limassol FC stress that it is the first

time that a racist incident takes place from the side of their supporters during an UEFA competition match where the Club has intensify their efforts to eliminate racist behaviors in their stadium. The more detailed arguments made by the club in support of its written submissions are set out below in as far as they are relevant.

In law

Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control and Disciplinary Body is competent to deal with the case.

Dismissal: Sangoy Gaston

Action taken by the referee (in this case sending off the player) does not prevent the Control and Disciplinary Body from taking additional action (i.e. increasing the standard punishment) if the circumstances warrant it.

It has been the UEFA disciplinary bodies' long lasting practice to qualify as rough play in the sense of article 15 (1) (a) DR any act committed, by which the offending player tackles carelessly and tolerates injuring or endangering the opponent.

Rough play is sanctioned under the terms of article 15 (1) (a) DR with a one-match suspension or for a definite period. Such a sanction constitutes the minimum punishment. Should the circumstances so dictate, the Disciplinary Body may extend the duration of this suspension (article 17 DR).

In the case in hand Apollon Limassol FC Sangoy Gaston was sent off of the field of play by means of a second caution for committing a reckless foul play against his opponent.

In the light of the above, the act of the Apollon Limassol FC Sangoy Gaston, as described above constitutes a rough play, which is punishable under the terms of Article 15 (1) (a) DR.

The crowd disturbances

In the case in hand, Apollon Limassol supporters confronted the police, resulting in one local fan arrested.

The confrontation with the police has to be qualified as an act of hooliganism, which is considered as a particular serious offence. Such behaviour in and around the stadium by Apollon Limassol supporters is all the more unacceptable as it tarnish the image of football and UEFA and it must be punished with severity as a result.

The Control and Disciplinary Body recalls again that according to Article 8 DR, which stipulates the principle of strict liability, clubs and member associations are to be held liable for the conduct of their supporters, even if they are themselves not at fault. Art. 16 (2) (h) DR picks up on this principle.

Therefore, Apollon Limassol is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

The throwing of objects

Throwing of objects is a serious offence in that it cannot only disrupt the orderly running of the match but also, and more importantly, endanger the physical integrity of those attending the match, i.e other spectators, officials and even the players on the pitch. For this reason, the throwing of objects is strictly forbidden.

According to Article 8 DR, which stipulates the principle of “strict liability”, and Article 16 (2) (b) DR, which picks up on such, the club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.

In the case in hand, objects, i.e empty bottle of glass, metal bar (hand flare), lighter, carton cup (cola) were thrown by Apollon Limassol FC supporters.

Therefore in the present case Apollon Limassol FC supporters is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

The ignition of fireworks

As it is the case for the throwing of objects incidents, the setting off of fireworks is a serious offence in that it cannot only disrupt the orderly running of the match but also, and more importantly, endanger the physical integrity of those lighting the fireworks, other spectators, officials and, in some cases, even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.

Here again it shall be recalled that it has long been established in case law that strict liability applies regardless of fault. Apollon Limassol FC cannot therefore argue that it is not liable on the grounds that it did not commit any fault (see CAS 2002/A/423 PSV Eindhoven, page 12).

In the case in hand, the supporters from Apollon Limassol FC ignited more than 30 bengal lights and flames during the above mentioned match.

According to Article 16 (2) (c) DR above, Apollon Limassol FC is to be held responsible for this misconduct by its supporters and must be penalised accordingly.

The insufficient organization: lack of searching

The purpose of the UEFA Safety and Security Regulations is to maintain the safety and security of everyone present at the match (Article 2 of the UEFA Safety and Security Regulations). In order to achieve this goal there are several provisions concerning spectator control at the stadium.

According to Article 33 of the UEFA Safety and Security Regulations, screening and searching must be carried out sensibly and effectively to ensure that spectators do not bring into stadium fireworks or objects that could be used in acts of violence.

In the case in hand, during lining up more than 30 bengal lights and flames were ignited. In addition, a fan who was involved in throwing stuff on the pitch felt down into the aisle. Additionally, the safety and security personnel was not able to prevent the confrontation between the police and the Apollon Limassol FC supporters.

The Club does not give any explanation on how such a large number of pyrotechnic devices and missiles entered the stadium if not with the spectators. It shall be noted that experience in this field leads the Control and Disciplinary Body to conclude that when a number of pyrotechnic devices and missiles are discovered in the stadium, this is a consequence of a lack of controls.

It shall be noted that the above incidents linked to the number of spectators attending the match gives enough evidence to conclude that the organization of the match was all but satisfactory.

Consequently, the Control and Disciplinary Body advises Apollon Limassol FC in relation to this situation in hope that more appropriate measures will be implemented in further matches and in order to avoid the introduction of any, or at least not such large number of pyrotechnics within the stadium, to implement more effective means to prevent the arisen of incidents as the ones observed during the above mentioned match.

According to Article 2 of the UEFA Safety and Security Regulations and Article 33 of the UEFA Safety and Security Regulations above, Apollon Limassol FC is to be held responsible for their negligent attitude towards the organization of the match and must be punished accordingly.

Racist behaviour

Article 14 DR states as follows:

- 1) Any person under the scope of Article 3 who insults the human dignity of a person or group of persons by whatever means, including on the grounds of skin colour, race, religion or ethnic origin, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction.*
- 2) If one or more of a member association or club's supporters engage in the behaviour described in paragraph 1, the member association or club responsible is punished with a minimum of a partial stadium closure.*
- 3) The following disciplinary measures apply in the event of recidivism:*
 - (a) a second offence is punished with one match played behind closed doors and a fine of € 50,000;*
 - (b) any subsequent offence is punished with more than one match behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.*

- 4) If the circumstances of the case require it, the competent disciplinary body may impose additional disciplinary measures on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.*
- 5) If the match is suspended by the referee because of racist and/or discriminatory conduct, the match may be declared forfeit.*
- 6) The above disciplinary measures may be combined with specific directives aimed at tackling such conduct.*
- 7) All forms of ideological, political and religious propaganda are forbidden. If this provision is breached, paragraphs 1 to 6 above apply by analogy.*

Article 14 DR is a special rule taking over the principle set out in article 8 DR which stipulates that member associations and clubs are responsible for racist conducts of their supporters. This responsibility is given for offences committed by any person supporting the team before, during or after the match, irrespective of the fault of the club or association in question (strict liability).

The fight against racism is a high priority for UEFA. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. All racist misbehaviours shall be considered as serious offences against the disciplinary regulations and shall be punished regarding the circumstances and the previous records with the outmost severe sanctions.

In the case in hand, after the final whistle, on both sides of the tunnel a limited group of Apollon Limassol FC fans stayed at their position waiting the Legia team to come out. These supporters focused their attention in Legia's player Hassamo Junior Dossa Momade Omar. Whilst this player was leaving the pitch and entering the tunnel, approximately ten Apollon Limassol FC fans were clearly addressing monkey chants against him.

According to Article 38 DR, "facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided". In this regard, it shall be noted that the above mentioned incident was witnessed by the UEFA delegate and the UEFA security officer.

The Club do not dispute the facts, but stress that the reaction of the Apollon Limassol FC supporters was due to the provocation exercised by the Legia Warszawa player which, so the club, was disrespectful to the head coach.

The Control and Disciplinary Body deems that the alleged chants have to be considered as a discriminatory behaviour in the sense of Article 14 DR. As underlined in various disciplinary decisions issued by the competent UEFA bodies, discrimination is in total contradiction with the values of football, notably tolerance, friendship and respect. It is irrelevant that the player may have provoked this reaction, which indeed was not proven by the club. There is no justification to address such discriminatory, utmost regretful and indecent chants against an individual.

As the racist behaviour of home supporters is established, the Control and Disciplinary Body considers that Apollon Limassol FC shall be held responsible for their supporter's racist behaviour during the above mentioned match and must be sanctioned accordingly.

Determination of the appropriate measure

Regarding the several incidents occurred during the above mentioned match, apart from the one related to the racist behaviour of the Apollon Limassol supporters which will be dealt with separately, the sanction to be imposed on the club, based on Article 17 DR the Control and Disciplinary Body determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.

In the present case, the Control and Disciplinary Body identified and took into account the following concrete circumstances:

- the seriousness of the offences committed;
- the club's previous record: Apollon Limassol have been already punished for improper conduct of their supporters, and, in particular, for the ignition and throwing of objects;
- the club's previous record: Apollon Limassol have been already punished for insufficient organization;

Regarding the red card against the Apollon Limassol player Sangoy Gaston, it must be noted that the one-match ban provided for by article 15 (1) (a) DR is a minimum penalty that can be increased in particular circumstances.

Recklessly tackling an opponent as described by the match official is a grave rough play and thus a serious threat for the integrity of the opponent. There are no exceptional circumstances that would allow a plea of mitigation. In this regard and in compliance with the constant practice of the UEFA disciplinary bodies related to a second caution in the same match, as already communicated by letter to the Club on 13 December 2013, a one-match suspension shall be considered as the appropriate punishment.

Regarding the racist incidents perpetrated by the Apollon Limassol supporters, the Control and Disciplinary Body draws the attention to the fact that after the enforcement of the new Disciplinary Regulations, on 1 June 2013, the fight against racist behaviour has entered into the next stage. It has resulted in more severe sanctions towards racist behaviours. As such, if one or more of a member association or club's supporters engage in the behaviour described in Article 14 (1), the member association or club responsible is punished with a minimum of a partial stadium closure

(Article 14 (2) DR). Only in exceptional circumstances the related sanctions concerning this misbehaviour, which are contained in Article 14 (2) and (3) DR, are to be modified.

In the case in hand, no exceptional circumstances are to be considered that may allow the Panel to deviate from the standard sanction, see the partial closure of the Apollon Limassol FC Stadium.

It is irrelevant that the Club have no previous records, because the lack of previous incidents concerning racism shall in no way be considered as an exceptional circumstance but rather a regular, common and desired situation. In this regard, the Club would have to face, more serious

and severe sanctions in accordance with Article 14 (3) DR, i.e match behind closed doors, deduction of points, etc, if he might have incurred again in a racist infringement.

It is also irrelevant that the Club's policy towards racism is remarkable. The Control and Disciplinary Body encourages this, but here again notes that it is bound by the requirements attached to the exceptional circumstances established in Article 17 (3) DR. Implementing policies to confront racism in football stadiums is the less an optimal starting point to challenge this situation, but further from that it shall not be considered as an exceptional circumstance.

Bearing in mind the above the Control and Disciplinary Body orders the partial closure of the Apollon Limassol FC Stadium during the next UEFA competition match in which Apollon Limassol will play as the host club, and in particular the sectors located directly on both sides of the tunnel area of Apollon Limassol stadium. Furthermore, the Panel considers that Apollon Limassol FC is fined € 60'000 for the crowd disturbance, the throwing of missiles, the ignition of fireworks and the insufficient organization.

As for the player's this UEFA disciplinary body deems that the Apollon Limassol FC player Sangoy Gaston shall be suspended for the next UEFA competition matches for which he would be otherwise eligible.

Decision of 13 February 2014

CSKA Moscow

(Assault / Racist banner)

Circumstances of the case:

In the 67th minute of the match against Viktoria Plzen on 10.12.2013, the referee showed a direct red card to CSKA Moskva player Alan Dzagoev for violent conduct. He kicked an opponent's leg when the ball was not in play.

In 92nd minute, CSKA Moskva player Pontus Wernbloom was also sent off for violent conduct. Again, when the ball was not in play, he kicked an opponent in the leg.

After the match Keisuke Honda of CSKA Moskva yelled at the referee and gesticulated with a pointing finger. The referee did not show any disciplinary action at the time because of the tense atmosphere. Immediately after, one of the representatives of CSKA Moskva came from the bench and showed applauding gestures towards the referee's team.

Multiple racist and far-right symbols were also displayed by CSKA Moskva supporters during the match.

Legal framework:

Art. 14 DR *Racism/discriminatory conduct*. Article 15(1)(e) DR *Assault*.

Decision:

The CDB ordered CSKA Moskva to play their next home UEFA competition match behind closed doors. The club was also fined €50,000 for the racist behaviour of supporters, €16,000 for the improper conduct of the team, and €10,000 for the setting off of fireworks by supporters. The players Alan Dzagoev and Pontus Wernbloom were both suspended for three matches. The CDB decided to close the disciplinary proceedings opened against the player Keisuke Honda and the CSKA Moskva official.

<u>Chairman:</u>	Thomas Partl (AUT)
<u>Vice-Chairmen:</u>	Jim Hansen (DEN) Jacques Antenen (SUI) Sandor Berzi (HUN)
<u>Members:</u>	Joël Wolff (LUX) Hans Lorenz (GER) James Shaw (NIR) Tomàs Gea (AND)

In fact:

Factual circumstances

In 67th minute the referee showed a direct red card to CSKA Moskva player No 10 Alan Dzagoev on intervention of the second assistant who told the referee that he should be sent off because of violent conduct. In particular, he kicked an opponent's leg with his foot when the ball was not in play.

In 92nd minute CSKA Moskva player No 3 Pontus Wernbloom was sent off for violent conduct. In particular, when the ball was not in play, he kicked an opponent in the leg.

After the match Player No 7 of CSKA Moskva Keisuke Honda was yelling against the referee and threatening him with gesticulation with his pointing finger. The referee did not show any disciplinary action because of the tense atmosphere. Immediately after, one of the representatives of PFC CSKA Moskva from the bench came to the referee and showed applauding gestures against the referee's team.

During the above mentioned match a high number of fireworks and several bombs and rockets were ignited by CSKA Moskva supporters.

Furthermore, two red cards and three yellow cards were showed by the referee to CSKA Moskva team.

Finally, multiple racist and far-right symbols were displayed by CSKA Moskva supporters within the Štruncovy Sady Stadión.

Club's submissions

The Club in their statements dated on 14 January 2014 recognises the incidents regarding the ignition of fireworks, the improper conduct of the team and the conduct of the club's officials and the players.

Briefly, regarding the alleged racist incidents, PFC CSKA Moskva stresses that the banners condemned by the FARE reports have been previously used by the CSKA during international and domestic matches. No adverse consequence has been sent to the Club.

Furthermore, the banners were inspected by the police and other security personnel and none was reported or confiscated by them. Additionally, the UEFA Delegate did not notice the banners. Concerning the alleged “SS” skulls, the Club point out that the fact that the “SS” used skulls and crossbones does not necessary mean that its use is a homage to the Nazi era. In fact, so the Club, the use of skull and crossbones as military insignia started before the appropriation by the Nazi party and in Germany prior to the WWII. Some examples related to another use of these symbols were forwarded by the Club in this regard; see Poole Pirates Speedway in England, FC St Pauli in Germany, Oakland Raiders in California, United States.

Moreover, CSKA draws the attention to the fact that the Appeals Body has already established that symbols that are likely to be understood by a large number of spectators as a political reference to extremist and discriminatory ideologies are prohibited. Taking this into account the skull and crossbones cannot be included in this approach. Concerning the Celtic cross, the Club stress that the symbol does not correspond to the Celtic cross but rather to a symbol linked to the military in general. Concerning the shady horse flag, CSKA raises that by means of the image provided by FARE it cannot be definitely stated that the alleged flag contained any variation of the swastika. It is rather disputable that the Shady Horse image is really well known by the average football fan worldwide and even by the public in general. Related to the “Tyr” rune flag, the Club underline that the origins of this symbol are not linked to the Nazi ideology, being, here again, no obvious homage to the Nazi era. The same arguments result from the use of the “Zaria 18” flag. Besides, the Club hold that there was no violation of Article 14 DR because it cannot be definitely stated that these either insulted the human dignity of a person or group of persons nor were aimed at a specific group of people or aimed at delivering a political message as per Article 14 (1) DR.

Additionally, CSKA relies on the freedom of expression which is protected under the Swiss law both by Article 16 of the Swiss Federal Constitution and by Article 10 European Convention on Human rights (ECHR). Thus, so the Club, the use of these symbols is protected by the provisions related to the freedom of expression, provided that they do not constitute a criminal offence. In this regard, the Club raised out the necessary conjunction of two accumulative conditions in order to establish a criminal offence on racism, see the representation of an ideology intended to humiliate or denigrate and the propaganda purposes attached to them. Consequently, merely shocking or offending UEFA is not sufficient to limit the Article 10 rights of those fans under Swiss law.

In addition to the above, the Club draws the attention to the fact that UEFA is at risk of unjustly interfering with Article 10 ECHR. The Club concludes that strict liability of fans is only justifiable where the conduct in question is unlawful as it is the case with hooliganism and match fixing which are prohibited by criminal law in the vast majority of the European states.

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

In law

Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control and Disciplinary Body is competent to deal with the case.

Direct red card: Alan Dzagoev and Pontus Wernbloom

The UEFA disciplinary bodies have stipulated a number of times that any act committed with direct or oblique intention through which the physical or psychological well-being of the referee, a player or any other person present at a match is harmed or threatened, before, during or after the game, constitutes serious unsporting conduct classified under the general term "assault" in accordance with Article 15 (1) (e) DR. In the case of a particularly serious attack on a person's physical or psychological well-being, we therefore talk of "serious assault" in the sense of letter g) of this same provision.

According to the constant practice of the UEFA disciplinary bodies, assault in the sense of the above provision consists of any act committed not only intentionally but also recklessly by which the opponent's physical or psychological well-being is interfered with. Such an act would involve aggressive contact such as head butted, kicking, punching, shaking, pushing, pinching, hitting, spitting.

In the case in hand, the referee showed a direct red card to CSKA Moskva player No 10 Alan Dzagoev on intervention of the second assistant who told the referee that he should be sent off because of violent conduct. In particular, he kicked an opponent's leg with his foot when the ball was not in play. Further, the CSKA Moskva player No 3 Pontus Wernbloom was sent off for violent conduct. In particular, when the ball was not in play, he kicked an opponent in the leg.

According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

Consequently, the action of both the CSKA Moskva player Alan Dzagoev and CSKA Moskva player Pontus Wernbloom as described by the referee constitutes assault under the terms of Article 15 (1) (e) DR.

Improper conduct of player and official towards the referee

According to Article 15 (1) (a) (3) and (5) DR, a suspension for one competition match or a specified period applies for repeated protests against or a failure to comply with the referee's orders and for unsporting behaviour.

Moreover, according Article 15 (1) (b) a suspension for two matches or a specified period is applied for pestering any match official.

Finally, according to Article 15 (1) (h) DR a suspension for fifteen competition matches or a specified period is applied for assaulting a match official.

The Control and Disciplinary Body notes that within the UEFA Disciplinary Regulations there are several provisions which are aimed to protect the position and authority of the referee and his/her team at UEFA competition matches. Nevertheless, this UEFA disciplinary body deems that the referee shall also exercise his authority and to take the necessary disciplinary measures against anyone contravening the UEFA Regulations. In particular, the referee is obliged to inform the alleged perpetrators of any incident that may lead to a specific period of suspension, as it is the case of repeated protesting, failure to comply, assaulting a match official, etc.

In the case in hand, CSKA Moskva player Keisuke Honda was yelling against the referee and threatening him with gesticulation with his pointing finger. Afterwards, one of the representatives of PFC CSKA Moskva from the bench came to the referee and showed applauding gestures against the referee's team.

The Panel deems that in this particular case the fact that the official did not show any disciplinary action, as recognized by the referee himself, is crucial. Even assuming the fact that the referee avoided to take any disciplinary action because of the tense atmosphere, it is still not enough to justify the non-fulfilment of his duties. It shall be kept in mind that the level of the UEFA competition and the presumed experience of the referee constrain the referee to apply the required disciplinary measure, which in these particular situations would allow the Panel to impose further disciplinary measures.

Consequently, the Control and Disciplinary Body is restrained from entering *ex officio*, as it was the responsibility of the referee to impose the corresponding disciplinary measure, being a poor description of the circumstances not satisfactory to justify the imposition of any disciplinary sanctions against the player or the Club's official. Therefore, the Control and Disciplinary Body decides to close the disciplinary proceedings opened against the PFC CSKA Moskva player Keisuke Honda and the PFC CSKA Moskva official.

Improper conduct of the team

According to Article 15 (4) DR a sanction can be taken against an association or a club, if individual disciplinary sanctions have been imposed by the referee on at least five players during the match.

In the present case two red cards and three yellow cards were showed by the referee to CSKA Moskva team.

Bearing the above in mind, CSKA Moskva is to be held responsible for the misconduct of their supporters and must be punished accordingly.

The ignition of fireworks

Setting off of fireworks is a serious offence in that it cannot only disrupt the orderly running of the match but also, and more importantly, endanger the physical integrity of those lighting the fireworks, other spectators, officials and, in some cases, even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.

It has long been established in case law that strict liability applies regardless of fault. According to Article 8 DR, which stipulates the principle of “strict liability”, and Article 16 (2) DR, which picks up on such, the club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.

In the case in hand, a high number of fireworks and several bombs and rockets were ignited by CSKA Moskva supporters.

Bearing the above in mind and according to Article 16 (2) (c) DR, CSKA Moskva is to be held responsible for the misconduct of their supporters and must be punished accordingly.

Racist behaviour

Article 14 DR states as follows:

- b) Any person under the scope of Article 3 who insults the human dignity of a person or group of persons by whatever means, including on the grounds of skin colour, race, religion or ethnic origin, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction.
- c) *If one or more of a member association or club's supporters engage in the behaviour described in paragraph 1, the member association or club responsible is punished with a minimum of a partial stadium closure.*
- d) *The following disciplinary measures apply in the event of recidivism:*
 - 1) a second offence is punished with one match played behind closed doors and a fine of € 50,000;
 - 2) *any subsequent offence is punished with more than one match behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.*
- e) *If the circumstances of the case require it, the competent disciplinary body may impose additional disciplinary measures on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.*
- f) *If the match is suspended by the referee because of racist and/or discriminatory conduct, the match may be declared forfeit.*
- g) *The above disciplinary measures may be combined with specific directives aimed at tackling such conduct.*
- h) *All forms of ideological, political and religious propaganda are forbidden. If this provision is breached, paragraphs 1 to 6 above apply by analogy.*

The fight against racism is a high priority for UEFA. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. All racist misbehaviours shall be considered as serious offences against the disciplinary regulations and shall be punished regarding the circumstances and the previous records with the outmost severe sanctions.

In the case in hand, multiple racist and far-right symbols were displayed by CSKA Moskva supporters within the Štruncovy Sady Stadión.

In particular, the FARE observer witnessed the displaying of a "Red-Blue Warriors" banner with SS Totenkopf skull, a banner containing the Celtic cross, a 'Shady Horse' banner with variations of swastika, a "Einfach Jugend" banner with Tyr rune on it and a 'Zaria 18' banner.

The Club argue that the alleged racist banners were displayed in previous international and domestic matches without being reported or confiscated by either the police or security personnel nor the UEFA Delegate.

The Panel considers that the above arguments are irrelevant in order to establish the violation of Article 14 DR. The disciplinary action against violations of UEFA's legal system cannot rely on a dogmatic approach in which every incident is apprehended by the UEFA officials in their reports, being the lack of such denunciations ground to justify the exoneration of the Club or the association. The fact that these banners were not acknowledged by the UEFA Delegate in the past does not prevent the UEFA Delegate to inform of their existence and, furthermore, the Control and Disciplinary Body to impose the appropriate disciplinary measure, if any is required.

Nonetheless, the UEFA Disciplinary Regulations provide several means which allow to properly face the possible failures concerning the acknowledgement of incidents at UEFA competition matches. It shall be recalled that disciplinary proceedings may be opened on the basis of official reports, but also, among others, at the request of the UEFA disciplinary inspector who may have had knowledge of or may have gathered new evidences which could justify the opening of disciplinary proceedings. In this regard, it shall be recalled that the statute of limitations on prosecution for offences related to racism is established in five years, being the acknowledgement of such incidents based on new evidences, i.e video or image footage, reports, the perpetrator's confession etc., a sufficient reason to open disciplinary proceedings against the Club or the association involved.

Moreover, the Club insist on the fact that the skull and cross bones symbolism started before the appropriation by the Nazi party prior to the Second World War. CSKA Moskva on the basis of an Appeals Body decision assert that these symbols are not likely to be understood by a large number of spectators as a political reference to extremist and discriminatory ideologies, which would lead these otherwise to be prohibited.

The Club reach the same conclusion as with regards to the Celtic cross symbolism, the Tyr rune and the use of a flag containing "Zaria 18". Furthermore, they assume that it could be linked to the military in general, being no obvious homage to the Nazi era.

It shall be recalled, here again, that the UEFA disciplinary bodies had already established that these symbols have racist connotations and are, therefore, contrary to Article 14 DR, i. e. Appeals Body decision of 14 May 2013, Dynamo Kyev vs UEFA; UEFA Case law Jan-June 2013, pg. 96; Appeals Body decision of 26 June 2013, Zenit St. Petersburg vs UEFA; UEFA Case law Jan-June 2013, pg. 120).

It cannot be argued at this stage that, due to the fact that other branches like the military, use the same symbolism, the use of the above symbols is exempted of any racist component. It is as weak as to portray that the Nazi salute has no racist connotations because the Romans gave it during the Roman Empire (See Appeals body decision 11 March 2013, Lazio vs UEFA; UEFA Case law Jan-June 2013, pg. 60).

Regarding the SS Skull, it shall be recalled that it was once a symbol of special SS groups ("SS-Totenkopfverbände"), now used (among others) by Combat 18 – an international neo- Nazi terrorist organisation.

The Celtic Cross, on its side, is a worldwide symbol for "the supremacy of the white race" and one of the main neo-Nazi and racist symbols. It's widely spread at football stadiums on banners, scarves, flyers. Often used as a replacement for the letter O.

Further, the Tyr-rune has been used as a fascist symbol. It was the badge of the "Sturmabteilung" (SA) training schools, the "Reichsführerschulen" in Nazi Germany. It was also used amongst "Hitler Youth" and the SS. FARE in its report adds that the 'Tyr' rune was appropriated by the Nazi Party in Germany and used as a symbol for the leadership schools (Reichsführerschulen) of Hitler's brownshirts, the Sturmabteilung and became the emblem of the 32nd SS Volunteer Grenadier Division 30 January. Since then, neo-Nazis and white supremacists have continued to use the Tyr rune. Despite the Tyr rune initially not having any racist meaning, in the 20th century and until today it has been largely appropriated by the neo-Nazis worldwide.

As for the banner of the Shady Horse, the Panel is comfortable satisfied with the explanations given by the FARE observer pointing at the variations of the swastika symbol contained in this banner for which he submits also an image of the alleged banner.

Concerning the banner containing the number "18", the number stands for the first and eighth letter of the alphabet (18= AH = Adolf Hitler). It can be found for example in the name of the English neo-Nazi group Combat 18.

Consequently the above arguments handled over by the Club shall be rejected.

Furthermore, CSKA Moskva stress that it cannot be definitely stated that the above symbolism insulted the human dignity of a person or group of persons nor were aimed at a specific group of people or aimed at delivering a political message in accordance with Article 14 (1) DR.

In this regard the Panel can only but to agree with the line followed by its jurisprudence and deem that the displaying of banners with a symbol or racist signs that are generally recognised as racist, expressing the idea that some races are inherently superior (physically, intellectually, or culturally)

has to be considered as racist behaviour in the sense of Article 14 DR. As underlined in various disciplinary decisions issued by the competent UEFA bodies, amongst them the above quoted, racism is in total contradiction with the values of football, notably tolerance, friendship and respect.

It has been long been established by the CAS that regarding disciplinary proceedings the standard of proof relies on the comfortable satisfaction of the Panel, if not the balance of probabilities as it has been concluded for cases involving match fixing (See CAS 2009/A/1920 FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v/ UEFA; CAS 2010/A/2172 Mr Oleg Oriekhov v/ UEFA; CAS 2010/A/2266 Mészáros & Poleksic v/UEFA and CAS 2011/A/2528 Olympiakos Voulou FC v/ UEFA). Consequently, the comfortable satisfaction of the Panel is required to definitely state that the above use of this symbolism insulted the human dignity of a person or group of persons.

Consequently the above mentioned statements shall also be rejected.

Further to the above, the CSKA hold that the displaying of such banners by their supporters is protected by the freedom of expression contemplated in Article 16 of the Swiss Federal Constitution and in Article 10 European Convention on Human rights (ECHR), provided that they do not constitute a criminal offence. In this sense, CSKA deems that under the Swiss Criminal Code this cannot be interpreted as racist as it does not fulfil the two accumulative conditions of Article 261bis Swiss Criminal Code, see the representation of an ideology intended to humiliate or denigrate and the propaganda purposes attached to them.

As it has already been pointed out by the CAS case law, under Swiss law – as under most legal systems – associations, and in particular sporting associations, possess the power, first, to adopt rules of conduct to be followed by their direct and indirect members; and, second, to apply disciplinary sanctions to members who violate those rules, on condition that their own rules and certain general principles of law – such as right to be heard and proportionality – be respected.

In this regard, several CAS awards have admitted that the authority by which a sporting association may set its own rules and exert its disciplinary powers on its direct or indirect members does not rest on public or penal law but on civil law (CAS 2005/C/976&986 FIFA & WADA, point.127; CAS 98/208 N, J, Y, W v. FINA; CAS 1998/002 R v./ IOC). This has been explicitly confirmed by the jurisprudence of the Federal Supreme Court of Switzerland (See judgment of 15 March 1993)

The ECHR application alleged by the Club follows the same path, as this Convention “is meant to protect the individuals’ fundamental rights vis-à-vis governmental authorities and, in principle, they are inapplicable per se in disciplinary matters carried out by sports governing bodies, which are legally characterized as purely private entities” (CAS 2005/C/976&986 FIFA & WADA).

Bearing the above in mind the above, here again the arguments submitted by the Club shall be rejected.

Taking into account the high number of symbols, which are acknowledged to have racist connotations, used by CSKA supporters at the above mentioned match, the UEFA disciplinary bodies’ jurisprudence on similar cases, as well as the principle of zero tolerance of UEFA towards racism, the Control and Disciplinary Body is at least comfortable satisfied that the content of the

above mentioned banners violated Article 14 DR. Therefore, the club is to be held responsible for the racist behaviour of their supporters and must be punished accordingly.

Determination of the appropriate disciplinary measure

Regarding the setting off and throwing of fireworks and the improper conduct of the team, the Control and Disciplinary Body has to take into account all circumstances of the case, both aggravating and exonerating (Art. 17 DR). In the present case, the Control and Disciplinary Body considered in particular

- The seriousness and multiplicity of the offences committed;
- The fact that PFC CSKA Moskva has already been punished for the setting of fireworks;
- The fact that PFC CSKA Moskva has already been punished for the improper conduct of the team;

Taking the above in mind, the Control and Disciplinary Body decides that a fine PFC CSKA Moskva € 16'000 for the improper conduct of the team and a fine € 10'000 for the setting off of fireworks are the appropriate disciplinary measures.

As with regards to the fixing of the sanction against the players, here again the existence of both aggravating and exonerating circumstances must be examined (article 17 DR).

Kicking an opponent is an act of assault, which, as a matter of principle, does not allow a plea of mitigation. The Control and Disciplinary Body has taken into consideration the fact that the players have no previous record from the last five years, but given the nature of the act committed, this is not enough to justify a reduction in the standard punishment.

In the case in hand, both players committed an action of kicking an opponent without challenging the ball. By doing so, both CSKA players placed the physical well-being of their opponents in danger. It could have caused serious injuries and pain and is to be considered a particular brutal behavior.

In view of the above considerations, as well as the constant practice of the UEFA disciplinary bodies, a three-match suspension for both players is therefore considered to be the appropriate sanction in this case.

Regarding the racist behaviour of CSKA Moskva supporters, the Control and Disciplinary Body draws the attention to the fact that after the enforcement of the new Disciplinary Regulations, on 1 June 2013, the fight against racist behaviour has entered into the next stage. It has resulted in more severe sanctions towards racist behaviours. As such, if one or more of a member association or club's supporters engage in the behaviour described in Article 14 (1), the member association or club responsible is punished with a minimum of a partial stadium closure (Article 14 (2) DR).

Only in exceptional circumstances the related sanctions concerning this misbehaviour, which are contained in Article 14 (2) and (3) DR, are to be modified.

As this case refers to a second infringement during this season, Article 14 (3) (a) DR applies, being the minimum standard sanction of one match to be played behind closed doors and a fine of € 50,000.

In light of the above considerations, the Control and Disciplinary Body orders PFC CSKA Moskva to play the next (1) match as a host club behind closed doors and fines the Club with € 50'000.

Decision of 20 March 2014

Ajax

(Crowd disturbances / Illicit banner)

Circumstances of the case:

Before the UEFA Europa League match against FC Salzburg on 27.02.2014, about 40 Ajax fans without tickets made a surge at the entrance to enter the stadium, running and pushing the stewards. A large number of Ajax fans attempted to overcome the system by jumping over the barriers and forcing their way into the stadium. Police were required to intervene and CS Gas was deployed to restore order. Eight persons were injured, including one police officer and one steward who were both hospitalised.

At kick off, the Ajax fans displayed banners saying 'Fuck Red Bull'. These banners were also displayed in the 41st and 59th minutes of the match. The content was also sung by the Ajax fans.

Legal framework:

Art. 16(2)(h) *lack of order or discipline inside or around the stadium*

Art. 16(2)(e) *DR use of gestures, words, objects to transmit any message that is not fit for a sports event.*

Decision:

The CDB fined Ajax €40,000.

Ad-hoc Chairman: Jim Hansen (DEN)
Vice-Chairman: Jacques Antenen (SUI)
Members: Joël Wolff (LUX)
Rudolf Repka (CZE)
James Shaw (NIR)
Hans Lorenz (GER)
Tomàs Gea (AND)

In fact:

During the above mentioned match several incidents were reported by the UEFA officials at the entrance of the stadium.

There were about 40 AFC Ajax fans without tickets who made a surge at the entrance to enter the stadium, running and pushing the stewards. A large number of AFC Ajax fans attempted to overcome the system by jumping over the barriers and forcing their way into the stadium. Police in Level 1 were required to intervene and CS Gas was deployed to restore order. Eight persons were injured including one police officer and one steward who were hospitalised.

Some masked AFC Ajax fans climbed on to the steel barrier at the front of the tribune at this point in an aggressive way.

During the 'hold back' phase at the end of the match, Ajax supporters became aggressive towards police and stewards.

In 61 minute in the 1st lower tier of the away team section, six flares and some smoke bombs were ignited by the supporters.

At kick off the AFC Ajax fans displayed banners saying 'Fuck Red Bull'. These banners were also displayed in the 41st and 59th minute of the match. The content was sung by the AFC Ajax fans.

The Club in their statements dated on 7 March 2014, draw the attention to the fact that AFC Ajax prepared the away match in a very professional manner and reacted adequately whenever an incident occurred.

Regarding the incident concerning the attempt of AFC Ajax supporters to force the entrance to the stadium, the Club argue that they informed the UEFA security officer about the arrival of their supporters to the stadium in a police escorted from the city center 30 minutes prior to the match, and that the entrance was far from ideal explicitly advising to add a police barrier at a sufficient distance from the entrance. Regretfully, the barrier was not installed provoking a safety and security failure and allowing supporters to walk closely to the entrance.

Regarding the confrontation between Ajax supporters and the police forces, AFC Ajax argue that the Salzburg establish a long timeframe for the Ajax supporters to begin to leave the stadium after the match, see 30 minutes. In this period of time one of the Club's supporters fainted after 15 minutes. The lack of first aide assistance provoked the excitement of several supporters, causing the disturbances.

Regarding the incident involving AFC Ajax supporters climbing the steel barrier, the Club underline that this action was due to the enthusiasm in the away sector. The Club stress that they urge their stewards to interfere and request these supporters to stop with this behaviour.

Regarding the illicit chants, the fireworks and the banner incidents, AFC Ajax insist on the fact that the away security personnel has no authority to implement body searches as it would exceed their jurisdiction. Consequently, away teams are completely dependent from the home security personnel and the local police forces. In order to illustrate their arguments the Club put some irregularities that took place at the entrance, i.e supporters entering without ticket, Salzburg stewards walking away during the entrance procedure, etc. In particular, concerning the displaying of banners, the Club stress that once the banners were taken into the away sector it was impossible to remove them. As for the illicit chants, these, so the Club, were given in two short moments. Finally, AFC Ajax considers that they have a clear and explicit policy against the use of fireworks, being the aim of the Club to make their supporters aware of the danger of setting off of fireworks.

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

In law

Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control and Disciplinary Body is competent to deal with the case.

Article 16 (2) DR states as follows:

However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

- a) the invasion or attempted invasion of the field of play;*
- b) the throwing of objects;*
- c) the lighting of fireworks or any other objects;*
- d) the use of laser pointers or similar electronic devices;*
- e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
- f) acts of damage;*
- g) the disruption of national or competition anthems;*
- h) any other lack of order or discipline observed inside or around the stadium.*

Crowd disturbances

In the case in hand, there were about 40 AFC Ajax fans without tickets who made a surge at the entrance to enter the stadium, running and pushing the stewards. A large number of AFC Ajax fans attempted to overcome the system by jumping over the barriers and forcing their way into the

stadium. Police in first Level were required to intervene and CS Gas was deployed to restore order. Eight persons were injured including one police officer and one steward, both hospitalised.

Some masked AFC Ajax fans climbed on to the steel barrier at the front of the tribune at this point in an aggressive gesture.

During the 'hold back' phase at the end of the match, Ajax supporters became aggressive towards police and stewards.

The Club do not dispute the above mentioned facts by means of their statements, but insist, that the security and safety measures implemented by the host team were poor. Furthermore, they justify the climbing of the fence by their supporters on the basis of the enthusiasm in the away sector.

Concerning the confrontation with the police forces, the Club holds that it was caused due to the negligence of the match organiser in establishing a timeframe for the Ajax supporters to begin to leave the stadium as well as taking too long to assist an AFC Ajax supporter who fainted 15 minutes after the end of the match.

Nevertheless, the confrontation against the police forces shows a serious lack of discipline and qualifies as an act of hooliganism, which is considered as a particular serious offence. Such behaviour in and around the stadium by AFC Ajax supporters is all the more unacceptable as it tarnishes the image of football and UEFA, and it must be punished with severity as a result.

The above incident added to the fact that the behaviour of the AFC Ajax supporter before and during the match was the less inappropriate during different moments of the match, can only lead the Control and Disciplinary Body to the conclusion that during the above mentioned match AFC supporters perpetrated clear and serious violations of the provisions contained in Article 16 (2) DR.

The Control and Disciplinary Body recalls that according to Article 8 DR, which stipulates the principle of strict liability, clubs and member associations are to be held liable for the conduct of their supporters, even if they are themselves not at fault. Art. 16 (2) (h) DR picks up on this principle.

Taking the above into consideration, the Control and Disciplinary Body deems that AFC Ajax is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

Setting off and throwing of fireworks

Setting off fireworks is a serious offence in that it cannot only disrupt the orderly running of the match but also, and more importantly, endanger the physical integrity of those lighting the fireworks, other spectators, officials and, in some cases, even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.

According to Article 8 DR, which stipulates the principle of “strict liability”, and Article 16 (2) DR, which picks up on such, the club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.

In the case in hand, six flares and some smoke bombs were ignited by the AFC Ajax supporters.

The Club, here again points out that the organization of the match was poor as with regards to the implementation of security measures.

The above arguments are irrelevant as with regards to the clarification of the facts and the classification of the above-mentioned incident. The Club is responsible for any violation conducted by their supporters against the UEFA Disciplinary Regulations. It includes the setting off of fireworks in accordance to Article 16 (2) (c) DR.

Therefore in the present case, AFC Ajax is to be held responsible for the improper conduct of their supporters and must be punished accordingly.

The displaying of an inappropriate banner and illicit chanting

The Control and Disciplinary Body takes this opportunity to recall, that it cannot allow football matches organised by UEFA to become forums for people who want to abuse the game’s popularity to publicise their political or religious opinions. This is the reason why Article 16 (2) (e) DR expressly forbids the transmission of any message which is not fit for football during football matches.

In the present case, at kick off the Ajax fans displayed banners saying 'Fuck Red Bull'. These banners were also displayed in the 41st and 59th minute of the match. AFC Ajax supporters chanted the above mentioned wording of the banner.

The Club by means of their submissions underline, here again, that the Club’s security personnel has no authority to implement body searches as it would exceed their jurisdiction. Consequently, away teams are completely dependent from the home security personnel and the local police forces.

Regarding the illicit chants the Club do not dispute the incidents but stress that these chants were given in two short moments.

However, the Control and Disciplinary Body cannot comply with the assertions made by the Club for the same reasons stated above concerning the setting off of fireworks. It follows that the infringement contemplated in Article 16 (2) (e) DR was perpetrated by their supporters, being the content of the banner and the offensive chants obviously not football or sports related.

Consequently, such a message is not fit for a sports event, like the one in question and therefore violates article 16 (2) (e) DR.

Determination of the appropriate disciplinary measure

Based on Article 17 DR, the Control and Disciplinary Body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances.

In the present case, the Control and Disciplinary Body identified and took into account the following concrete circumstances:

- the seriousness and multiplicity of the offences committed;
- the confrontation with the police forces, being that an act of hooliganism;
- the club's previous record: AFC Ajax have been already punished for the improper conduct of their supporters, in particular, the ignition of fireworks, the displaying of banners and crowd disturbances;

Bearing in mind the above, the Control and Disciplinary Body considers that a sanction of 40'000€ concerning the above incidents shall be deemed as the adequate disciplinary measure.

Decision of 28 March 2014

Republic of Ireland

(Assault)

Circumstances of the case:

After the final whistle of the match against Serbia in the European Under-17 Championship on 26.03.2014, the Republic of Ireland player Whelan Corey kicked an opponent on the leg in a violent manner.

Legal framework:

Article 15(1)(e) DR *Assault*.

Decision:

The CDB suspended the player Whelan Corey for three matches.

Chairman: Thomas Partl (AUS)

Concerning:

After the final whistle of the above mentioned match, the player Whelan Corey from the Football Association of Ireland kicked an opponent on the leg in a violent manner.

Furthermore, the referee imposed five cautions and two red cards against the Football Association of Ireland in the course of the above mentioned match.

The association in their statements dated on 28 March 2014 accept the facts as stated by the UEFA referee but requests that the most lenient sanction applicable in Article 15 UEFA Disciplinary Regulations applies. The association relies on the fact that a Serbian player spat on the player Whelan Corey beforehand, which gave rise to the misconduct of the player Whelan Corey. Furthermore, The Football Association of Ireland draws the attention to the fact that it is Corey Whelan's first card at association level football. Regarding the improper conduct of the team, the Football Association of Ireland underline that a number of incidents throughout the match created an intimidating atmosphere and led to overall frustration, i. e several tackles from the opponent's team, lack of protection of the referee, spitting offence, etc.

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

In law

Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control and Disciplinary Body is competent to deal with the case.

Red card: Corey Whelan

The UEFA disciplinary bodies have stipulated a number of times that any act committed with direct or oblique intention through which the physical or psychological well-being of the referee, a player or any other person present at a match is harmed or threatened, before, during or after the game, constitutes serious unsporting conduct classified under the general term "assault" in accordance with Article 15 (1) (e) DR. In the case of a particularly serious attack on a person's physical or psychological well-being, we therefore talk of "serious assault" in the sense of letter g) of this same provision.

According to the constant practice of the UEFA disciplinary bodies, assault in the sense of the above provision consists of any act committed not only intentionally but also recklessly by which the opponent's physical or psychological well-being is interfered with. Such an act would involve aggressive contact such as head butted, kicking, punching, shaking, pushing, pinching, hitting, spitting.

In the case in hand, the referee showed directly the red card to the player Whelan Corey from the Football Association of Ireland for violent conduct. In particular, the player kicked his opponent on the leg in a violent manner. It shall be recalled that this action took place after the final whistle and, therefore, when the match was already finished.

According to Article 38 DR, “facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided”.

Consequently, the conduct of the player Whelan Corey from the Football Association of Ireland as described by the referee above constitutes assault under the terms of Article 15 (1) (e) DR.

Improper conduct of the team

According to Article 15 (4) DR a sanction can be taken against an association or a club, if individual disciplinary sanctions have been imposed by the referee on five or more players during the match.

In the present case seven disciplinary sanctions (five cautions and two red cards) have been imposed by the referee against the Football Association of Ireland during the course of the match.

Referring to the above provision, the association is to be held responsible for the misconduct of their players and must be punished accordingly.

Determination of the appropriate disciplinary measure

As regards the fixing of the sanction concerning the player Whelan Corey from the Football Association of Ireland, the existence of both aggravating and exonerating circumstances must be examined (article 17 DR).

Kicking in a violent manner an opponent is an act of assault, which, as a matter of principle, does not allow a plea of mitigation.

The Control and Disciplinary Body has taken into consideration the fact that the player has no previous record from the last five years, but given the nature of the act committed, this is not enough to justify a reduction in the standard punishment.

The fact that the Serbian player may have spat towards the player Whelan Corey from the Football Association of Ireland is not enough to justify the violent reaction from the player Whelan Corey.

Certainly, by kicking his opponent in a violent manner after the final whistle, the player Whelan Corey from the Football Association of Ireland placed the physical well-being of his opponent in danger. It could have caused serious injuries and pain and is to be considered a particular brutal behavior.

In view of the above considerations, as well as the constant practice of the UEFA disciplinary bodies, a three-match suspension is therefore considered to be the appropriate sanction, as well as the standard sanction in accordance with Article 15 (1) (e) DR.

As regards the fixing of the sanction concerning the improper conduct of the team, here again, the existence of both aggravating and extenuating circumstances must be examined (Article 17 DR). In this regard, the existence of previous records constitutes an aggravating circumstance (Article 19 DR).

Therefore, it has been taken into account, that the Football Association of Ireland have been already punished for the improper conduct of the team within the last 5 years.

The association argue that the intimidating atmosphere created during the match led to overall frustration, which may have influence the conduct of their players. The Control and Disciplinary Body deems that the context of the match is irrelevant. The fact that the number of cautions and red cards obviously exceeds the number that triggers the application of Article 15 (4) DR perfectly portrays the aggressive attitude of the Football Association of Ireland team.

In light of the above consideration, the Control and Disciplinary Body deemed a sanction of EUR 2'500.- as the appropriate disciplinary measure in the present case.



APPEALS BODY

Decision of 22 January 2014

AC Milan

(Rough Play)

Circumstances of the case:

In the 22nd minute of the UEFA Champions League match against Ajax on 11.12.2013, Riccardo Montolivo of AC Milan committed a late foul challenge upon an opponent near to the touchline and in close proximity to the assistant referee. The challenge made by Montolivo involved excessive force, and the contact made by him using his foot against his opponent's leg seriously endangered the safety of the opponent. It left the Ajax player requiring treatment. In the opinion of the match officials, this tackle was an act of serious foul play and therefore, having stopped the match and awarded a direct free-kick to Ajax, the referee showed the AC Milan player a red card.

Legal framework:

Article 15(1)(a)(2) DR *Rough play*.

Decision:**CDB:**

The CDB suspended the player Riccardo Montolivo for two matches.

AB:

The appeal of AC Milan and Riccardo Montolivo was rejected, and the CDB decision of 16 December 2013 was confirmed.

Ad Hoc Chairman: Goetz Eilers

Whereas:

In fact:

A.

According to the official match report issued by the referee, in the 22nd minute of the 2013/14 UEFA Champions League match between AC Milan and AFC Ajax on 11 December 2013, the Italian player number 18, Riccardo Montolivo, was sent off for fouling an opponent near the touchline, in close proximity to the assistant referee. The challenge was late, involved excessive force and the contact between his foot and his opponent's leg seriously endangered the latter's safety.

Other offences were punished by the UEFA Control and Disciplinary Body in the disputed decision, but as they are not challenged by the appellant, they will not be considered in the present appeal proceedings.

B.

On 16 December 2013, the UEFA Control and Disciplinary Body decided to suspend the player Riccardo Montolivo for two UEFA club competition matches. It concluded that the observations made by the referee were accurate and therefore considered the player's act as rough play in the sense of Article 15(1)(a) of the UEFA Disciplinary Regulations.

C.

On 19 December 2013, Riccardo Montolivo and AC Milan submitted a statement of appeal against the Control and Disciplinary Body's decision of 16 December 2013.

On 7 January 2014, AC Milan submitted the grounds for its appeal, in which it called for a reduction of the suspension to one match or, alternatively, a one-match suspension combined with a fine to be donated to charity at UEFA's discretion. AC Milan also asked the UEFA Appeals Body to conduct these appeal proceedings in writing pursuant to Article 53(3) of the Disciplinary Regulations.

In support of the appeal, the appellant began by suggesting that the Control and Disciplinary Body had failed to take mitigating circumstances into consideration. According to the appellant, the involuntary nature of Montolivo's act should constitute a mitigating factor justifying the reduction of the punishment.

The appellant also claimed that the Control and Disciplinary Body had failed to respect its own case law. To support this, it put forward the following examples:

- The case of the Paris Saint-Germain player Zlatan Ibrahimović was similar and he was suspended for only one match.
- The player Antonio Barragán was sent off for tackling an opponent from behind during the UEFA Champions League match between Valencia CF and FC Bayern München on 20 November 2012. He was suspended for only one match.
- The player Nicolas Pareja was sent off for tackling an opponent from behind during the UEFA Champions League match between SL Benfica and FC Spartak Moskva on 7 November 2012 and was suspended for only one match.

Finally, the appellant described the player's career and his lack of previous offences in 108 UEFA competition matches which, it claims, should have been taken into consideration as a mitigating circumstance justifying a reduction of the suspension.

D.

On 14 January 2014, the UEFA disciplinary inspector submitted his response to the appeal, calling for it to be rejected as unfounded. He thought there was no doubt that the player's act constituted rough play in the sense of Article 15(1)(a) of the Disciplinary Regulations and warranted a two-match suspension.

E.

No hearing was held, since the appellant had asked for the proceedings to be conducted in writing only.

After examining the entire case file, in particular the challenged decision, the grounds for appeal and the disciplinary inspector's reply to the appeal, and after viewing the footage of the incident, the ad hoc chairman of the Appeals Body, as a judge sitting alone, deliberated and decided as follows.

The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

In law:

1.

a) The Appeals Body's jurisdiction in this matter is established by Articles 24 and 54 of the UEFA Disciplinary Regulations. It is therefore competent to examine the case in full, both factually and legally (Article 58(2) of the Disciplinary Regulations).

In accordance with Article 24(3) (b) of the UEFA Disciplinary Regulations, *"The chairman of the Appeals Body, one of its vice-chairman or one of his member acting as ad hoc chairman may take a*

decision as a judge sitting alone:” inter alia in cases where the sanction imposed by the CDB is a fine of up to €25,000 or a suspension from playing or carrying out a function for up to two matches.

In the case in hand, the player suspension is limited to two-match suspension. The factual and legal circumstances also permitted this solution. Consequently therefore, the Chairman ad hoc of the Appeals Body was entitled to examine the merits of the present case as a judge sitting alone.

2.

- a) Under the terms of Article 52 of the UEFA Statutes, disciplinary measures may be imposed for unsportsmanlike conduct, breaches of the Laws of the Game and contravention of UEFA’s Statutes, regulations, decisions and directives.
- b) Under the terms of Article 15(1)(a)(2) of the Disciplinary Regulations, a suspension for one competition match or a specified period is imposed for **rough play**. According to Article 15(1)(e) of the Disciplinary Regulations, a suspension for three competition matches or a specified period is imposed for **assaulting** another player or another person present at the match.
- c) The appellant, who does not deny the facts, only questioned the intentional nature of the player’s act and the Control and Disciplinary Body’s failure to take this and other mitigating circumstances into consideration. Before going further, the judge would like to clarify the distinction between rough play and assault, since this could help the appellant with future assessments. He will then examine whether the Control and Disciplinary Body abused its discretionary powers by suspending the appellant for two matches.

3.

- a) The UEFA disciplinary bodies have had many opportunities to define under what circumstances an attack on an opponent’s physical integrity is to be considered an “assault” and when it should be considered “rough play”. The decisive elements when classifying such an incident and distinguishing between the two types of offence are the challenge for the ball and the dangerousness of the act. In particular, the ball is considered unplayable if it is too far away from the player concerned, if it is outside the field of play or if the referee has already whistled to stop the game.

If, following the referee’s whistle to stop play, the offence was committed in a challenge for the ball, but when the ball was no longer in play, it cannot be considered “only” rough play in the sense of Article 15(1)(a)(2) of the Disciplinary Regulations.

Similarly, and depending on the violent or intentional nature of the challenge for the ball, an assault may even be committed.

4.

According to Article 38 of the Disciplinary Regulations, facts contained in match officials' reports are presumed to be accurate. However, proof of their inaccuracy may be provided. In other words, the referee's report should be considered trustworthy and truthful, unless it can be proven clearly and without doubt that it does not reflect the truth.

In the present case, the referee reports that Riccardo Montolivo "committed a late foul challenge upon an opponent near to the touchline and in close proximity to my assistant referee number 2". He adds that Montolivo's challenge "involved excessive force, and the contact made by him using his foot upon his opponent's leg seriously endangered the safety of that opponent".

The video footage submitted by the appellants does not contradict the referee's description of the incident and even confirms that the tackle was unnecessary, needless and likely to cause a serious risk of injury. In the absence of convincing evidence casting doubt on the truthfulness of the referee's report, the facts as described by the referee must be admitted.

5.

The appellant argues that the fact that the player had absolutely no intention to injure his opponent (*animus dolus*) should have been considered as a mitigating circumstance. This argument is unfounded. Indeed, it was precisely because of this absence of intention that the Control and Disciplinary Body rightly qualified his act as "rough play" under Article 15(1)(a)(2) of the Disciplinary Regulations. Had Riccardo Montolivo deliberately tried to injure his opponent without playing the ball, he would have been sanctioned for "assault" under Article 15(1)(e).

6.

a) As regards the sanction imposed for this offence, the club argues that the Control and Disciplinary Body failed to respect its own case law. Indeed, comparing two punishments imposed by the UEFA disciplinary bodies is usually a fruitless exercise. It is very difficult to base a claim on the principle of equal treatment because of differences in circumstances and the number of both objective and subjective elements that are taken into account when determining punishments, which are therefore tailored to the individual case.

For clarification and educational purposes, however, the following can be added concerning the cases referred to by the appellant:

- the player Antonio Barragán, who was sent off during the UEFA Champions League match between Valencia CF and FC Bayern München on 20 November 2012 for tackling an opponent from behind, was suspended for two matches, contrary to the appellant's claim that he was suspended for one match.

- Nicolas Pareja, contrary to the appellant's statement, was not sent off for a tackle from behind but for denying an obvious goalscoring opportunity (during the match Benfica v/ Spartak of 07.11.12), which is always punished with a one-match suspension (see confirmation letter of 8 November 2012).
- The case of the AC Milan player is markedly different from that of Zlatan Ibrahimović (UEFA Case Law, Season 2012/2013, January-June, at pag. 90) who was in front of his opponent and could therefore be seen approaching. Moreover, Ibrahimović did not lunge in, with his studs showing, at the same speed as Riccardo Montolivo. These cases should therefore be treated differently.

The appellant therefore misjudged UEFA's disciplinary case law, which is consistent. Therefore, its argument in this respect must be ruled out.

7.

The appellant mentions the player's lack of previous offences. In this respect, it must be pointed out that UEFA's disciplinary bodies, referring to the case law of the Swiss Federal Supreme Court, have consistently decided that there is nothing exceptional about someone – in this case, a footballer – having an unblemished previous disciplinary record. This can only be taken into account as a mitigating factor if the player has enjoyed a particularly long career and played in a particularly high number of European competition matches.

In John Terry's case (UEFA Case Law, Season 2012/2013, July-December, at pag. 49), the absence of previous offences was considered a mitigating circumstance because he had played more than 150 UEFA competition matches without even being cautioned. This cannot be compared to Riccardo Montolivo's record (contrary to the appellants' opinion, according to the UEFA database, Montolivo has played 79 UEFA competition matches), which cannot be considered exceptionally good. Consequently, there is no mitigating circumstance in this respect.

Moreover, the fact that the player who was injured by Riccardo Montolivo participated in the domestic championship a few days later does not change the fact that Riccardo Montolivo was guilty of rough play. This argument must also be ruled out.

8.

The standard sanction for "rough play" is a suspension for one UEFA competition match or for a specified period.

In this case, the first-instance body considered that the particular circumstances justified an increase of this standard disciplinary measure, since the player had rushed at his opponent sideways on and stuck out his right foot, with his studs pointing towards his opponent's ankle,

when the latter had more or less already released the ball and failed to see the challenge coming. Riccardo Montolivo, carried forward by his own momentum, was unable to stop and arrived too late to play the ball. He therefore risked endangering his opponent's physical integrity (reckless or *dolus eventualis*). Such tackles are always considered dangerous acts. In the present case, the challenge could almost be described as an assault, since the ball had already been released by Riccardo Montolivo's opponent. The victim was unable to continue playing in the match due to the injury that he sustained.

Riccardo Montolivo's clean UEFA disciplinary record and his appropriate behaviour after the incident are not sufficient to counterbalance this aggravating circumstance.

The judge is of the opinion that the Control and Disciplinary Body neither abused nor exceeded its broad powers of discretion. Its decision complies with the principles of legality and proportionality.

The fact that Riccardo Montolivo did not intend to injure his opponent also does not constitute a mitigating circumstance, since the absence of intention constitutes one of the conditions of rough play. This was also confirmed in the Ribéry case (CAS 2010/A/2114 FC Bayern München & Franck Ribéry v/ UEFA).

On the basis of the above, the judge has no option but to uphold the initial decision and reject the appeal. Since they were conducted in writing, the costs of the proceedings will be lower than if an oral hearing had been held.

9.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The judge decides at his own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

In the present case, the costs of the proceedings (€2,000 in total) are charged to the player and AC Milan. The Italian Football Federation is jointly liable for any failure to pay these costs.

Decision of 22 January 2014

Ajax

(Racist/Discriminatory banner)

Circumstances of the case:

During the UEFA Champions League match against Celtic on 6.11.2013, Ajax supporters displayed an offensive banner with the wording "Fenian Bastards".

Legal framework:

Art. 14 DR *Racism/discriminatory conduct*.

Decision:**CDB:**

The CBD fined Ajax €25,000.

Appeals Body:

The UEFA disciplinary inspector's appeal was partially admitted, with the Appeals Body ordering Ajax to close sector 127 behind the goal for their next UEFA home match. The cross-appeal lodged by Ajax was rejected.

Chairman: Pedro Tomás, Spain
Vice-Chairman: Goetz Eilers, Germany
Member: Björn Ahlberg, Sweden

Whereas :

In fact:

A.

In its decision of 12 November 2013, the UEFA Control and Disciplinary Body fined AFC Ajax €25,000 for violating Article 16(2)(e) of the UEFA Disciplinary Regulations. It based its decision on the fact that AFC Ajax supporters had displayed a banner containing the words “Fenian Bastards”, which, in its opinion, constituted inappropriate behaviour for which the club should be held liable under Article 16(2) of the Disciplinary Regulations.

B.

The Control and Disciplinary Body notified its decision without grounds to the club and the UEFA disciplinary inspector on 12 and 14 November 2013 respectively. The disciplinary inspector requested the decision with grounds in accordance with Article 52 of the UEFA Disciplinary Regulations. On 27 November 2013, the decision with grounds was notified to the disciplinary inspector and AFC Ajax.

C.

On 21 November 2013, the UEFA disciplinary inspector addressed his statement of appeal to the Appeals Body. On 26 November 2013, he submitted the grounds for his appeal, which can be summarised as follows:

- Not only is the expression “Fenian Bastards” clearly a reference to the Catholic community and, therefore, to the religious origins of Celtic FC and its supporters, but it also appears derogatory and discriminatory.
- The word “Fenian” was used in the 19th century to refer to independent Irish nationalists. However, for several decades, the word has particularly been used against Celtic FC, in the context of its derby matches against Rangers FC, as a reference to the Catholic and Irish origins of the club and its supporters. As a discriminatory expression, “Fenian Bastards” must be punished under Article 14 of the Disciplinary Regulations.

- The Control and Disciplinary Body has already had the opportunity to examine the use of the expression "Fenian Bastards" in the past. For example, in its decision of 28 April 2011 against Rangers FC, it punished the song "We hate Celtic Fenian Bastards" as a racist chant (see decision of 28 April 2011, pages 2 and 5). The banner displayed in the stand occupied by AFC Ajax supporters at the match on 6 November 2013 had the same objective, or at least produced the same result, i.e. provocation of the Celtic FC supporters. Such provocation must be prohibited, especially when it involves the use of discriminatory language.

- AFC Ajax's argument that the supporters who displayed this banner have never considered the words discriminatory is irrelevant. Such an excuse is invalid, since the only relevant fact is the significance the words on the banner may objectively have for a large number of spectators. The decisive factor is whether the text on the banner might, in these people's opinion, insult the dignity of a person or group of persons. Such an insult only needs to be objectively possible for such a banner to be prohibited.

The disciplinary inspector requested the amendment of the Control and Disciplinary Body's decision of 12 November 2013 against AFC Ajax, with the effect that AFC Ajax be required to close the stand behind the goal, where the banner was displayed, for its next UEFA club competition match at the Amsterdam Arena and fined €10,000. As additional investigative measures, the appellant requested that two witnesses be heard, one of them in person and the other via telephone.

D.

On 13 December 2013, AFC Ajax submitted new conclusions together with its response to the appeal. It requested that the sanction issued by the first-instance body be amended as follows:

- The UEFA Control and Disciplinary Body's decision of 12 November 2013 is confirmed, with respect to the conclusion that AFC Ajax did not violate Article 14 of the UEFA Disciplinary Regulations.

- The UEFA Control and Disciplinary Body's decision of 12 November 2013 is set aside, with respect to the conclusion that AFC Ajax is liable under Article 16(2) of the UEFA Disciplinary Regulations.

- The UEFA Appeals Body rules in favour of AFC Ajax and dismisses and nullifies the disciplinary measures imposed.

- The appeal is rejected and the costs of the proceedings are charged to UEFA.

In support of its reply to the appeal, AFC Ajax states, in substance, the following.

- AFC Ajax was surprised about how the procedure had evolved: since the charge had solely been based on Article 14 of the Disciplinary Regulations, AFC Ajax had only defended itself in the light of that article, whereas the Control and Disciplinary Body had ultimately considered that the banner fell under Article 16(2) of the Disciplinary Regulations. Therefore, AFC Ajax had not been given the opportunity to answer the new charge. However, the club fully agreed with the decision that the banner could not be considered discriminatory.
- AFC Ajax contested the disciplinary inspector's argument that the word "Fenian" had discriminatory connotations. It pointed out that the Celtic FC supporters called themselves "Fenian" and took pride in the use of this word. Therefore, for Celtic FC supporters, the term "Fenian" could be neither racist nor offensive and the expression used at the match concerned, i.e. "Fenian Bastards", was not racist.
- The respondent also stressed that its supporters had used the disputed word "Fenian" because the Celtic FC supporters themselves had used it. Therefore, it had never crossed the opposing supporters' minds that it could ever be considered discriminatory.
- Contacted by AFC Ajax about the term "Fenian Bastards", the Scottish Football Association's disciplinary services manager had commented that half the Celtic supporters used the word "Fenian" as a badge of honour while the other half might consider it unpleasant. The Scottish FA did not consider the word "Fenian" racist. It neither warned nor punished Celtic FC or Rangers FC for calling each other "Orange Bastards" and "Fenian Bastards" respectively, since it considered such provocative words part of the game.
- Finally, the respondent objected to the hearing of the two witnesses called by the disciplinary inspector without giving any valid reason for its objection.

E.

The disciplinary inspector concluded that the new conclusions submitted by AFC Ajax in its response should be rejected.

F.

At today's hearing, AFC Ajax was represented by Barbara Stork, legal counsel. UEFA was represented by Jean-Samuel Leuba, disciplinary inspector.

The Appeals Body chairman opened the hearing by introducing the panel. He informed the parties that the hearing would be recorded and explained the procedure. He then informed the parties

that two witnesses would be heard: David Scott, CEO of the NGO Nil by Mouth, a Scottish anti-sectarian charity, and David Hassan, a lecturer at the University of Ulster (Northern Ireland) who had written books and articles about sectarianism. The first witness could not attend the hearing, but the latter was present. The chairman said that he would question the first witness by telephone in the presence of the parties, who would be able to listen to the questioning live via loudspeaker and put questions to the witness directly.

No objections were raised.

The first witness, David Scott, stated that he was aware of the banner in question, since it had been widely commented on in Scotland. He had been shocked to see it. He did not know whether the Scottish FA punished the use of the term “Fenian Bastards” during domestic matches. He indicated that, if this banner had been displayed in Scotland, the person responsible would have been prosecuted. He confirmed that “Fenian Bastard” was definitely derogatory towards Roman Catholics. He thought the word “Fenian” by itself was not derogatory, but it was when combined with the word “Bastard”.

The second witness, David Hassan, said he was a professor at the University of Ulster and had written books and articles about sectarianism. Asked by the disciplinary inspector to explain the origin of the word “Fenian”, he replied as follows: “Fenian” came from the Irish word “Fianna”, which meant “legend” or “hero”. The Fenians (also known as the Irish Republican Brotherhood) had been formed in 1858 and were committed to removing the British presence in Ireland by military means. The word had originated at a time of remarkable levels of emigration from Ireland to many parts of the world, including Scotland, which in turn had resulted in the formation of Celtic FC. The Fenian movement was therefore a political and ideological organisation dedicated to the formation of a sovereign and independent Ireland.

In more recent times, the term “Fenian” had been used as a derogatory reference to members of the Roman Catholic faith, almost exclusively in Scotland and Northern Ireland. The term “Fenian Bastard” was particularly derogatory, implying, on the one hand, support for a militant form of Irish republicanism and, on the other, strong disregard for Catholics. In the context of Celtic FC, therefore, on account of its reputation as a club with strong Irish nationalist and Catholic connections, the use of the term “Fenian Bastards” to describe the club and its supporters was discriminatory and sectarian.

In his opinion, the word “Fenian” was deeply derogatory towards Roman Catholics and people of Irish origin. He also indicated that Celtic FC supporters used it during their matches in an ironic way.

G.

After the witness had been cross-examined, the floor was given to the parties.

Since no further evidence was submitted, the parties were given the floor to plead, reply and rejoinder. In substance, they reiterated the arguments given in their written pleadings and developed and maintained their requests.

The arguments given by the parties in support of their pleadings – both written and oral - are set out below, insofar as they are relevant for reaching the decision.

The arguments concluded, and the Appeals Body deliberated behind closed doors. The following was established.

In law:

1.

The UEFA Appeals Body has jurisdiction to hear the case in question under Articles 24(4) and 54 of the UEFA Disciplinary Regulations.

Consequently, the Appeals Body is competent *ratione materiae* to deal with the appeal lodged by UEFA and the cross-appeal lodged by AFC Ajax against the UEFA Control and Disciplinary Body's decision of 12 November 2013.

The Appeals Body also notes that the appeal and cross-appeal were submitted within the time limits and in the form required. They are therefore admissible under Article 53 of the Disciplinary Regulations.

The Appeals Body can therefore re-examine the case in full, both factually and legally (Article 58(2) of the Disciplinary Regulations).

2.

Before examining the case further, the Appeals Body deemed it appropriate to deal, on a preliminary basis, with the respondent's following observations and objections.

Objection regarding the witnesses called by the disciplinary inspector

The Appeals Body endorsed its chairman's letter to the respondent of 6 January 2014, in which he had stated that he saw no good reason, legal or otherwise, not to question the two witnesses called by the disciplinary inspector and rejected AFC Ajax's request to exclude these witnesses from the hearing.

Amendment of the legal basis of the charge by the Control and Disciplinary Body.

The respondent also claims that its right to a fair hearing was not respected by the Control and Disciplinary Body as, according to the correspondence it first received from UEFA disciplinary services, informing it of the opening of the procedure, it was charged under Article 14 of the Disciplinary Regulations, whereas the Control and Disciplinary Body finally decided the case under Article 16(2). The respondent claims that it therefore had no chance to defend itself against the new charge based on Article 16(2).

It is an established principle that UEFA disciplinary services are under no obligation to mention all the rules and regulations that might be applicable when announcing the opening of a disciplinary procedure. Only the relevant facts and guidance as to the legal qualification of the alleged offence(s) need to be mentioned, in order to give the club the opportunity to dispute the allegations and argue that they do not constitute an offence under the Disciplinary Regulations.

In other words, the letter from UEFA disciplinary services, which is not a judicial body, announcing that a procedure has been opened, is merely designed to inform the parties of that fact. The initial legal qualification of the alleged offence(s) contained in that letter has no binding effect on the Control and Disciplinary Body. It is important, and in accordance with the UEFA Statutes, that the members of the disciplinary bodies remain independent and free to examine the case both factually and legally. The respondent has had the opportunity to defend itself in connection with its supporters' misbehaviour and to dispute the legal qualification of the acts in question.

New conclusion of the respondent.

As regards the new conclusion submitted by the respondent in its reply to the appeal, the panel and the disciplinary inspector agreed to consider it a cross-appeal in the sense of Art. 56 of the Disciplinary Regulations. This cross-appeal was considered by the Appeals Body, which also gave the first appellant the opportunity to reply to it.

3.

a) Under Article 52 of the UEFA Statutes and Article 11(3) of the Disciplinary Regulations, unsporting conduct, breaches of the Laws of the Game and infringements of the statutes, regulations, decisions and directives of UEFA warrant disciplinary measures.

According to Article 2(b) of the UEFA Statutes, one of UEFA's objectives is to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason. The fight against any form of racism is a high priority for UEFA, which has a policy of zero tolerance of racism and discrimination on the pitch and in the stands.

In this respect, the UEFA Executive Committee decided to strengthen the provisions of the latest UEFA Disciplinary Regulations (which entered into force on 1 June 2013) with regard to discriminatory conduct. Through this amendment, which makes provision for more severe sanctions than before, the UEFA Executive Committee wanted to send a strong message that discriminatory behaviour has no place at football matches organised by UEFA.

Article 14(1) of the Disciplinary Regulations now specifies that any person under the scope of Article 3 of the Disciplinary Regulations who insults the human dignity of a person or group of persons by whatever means, including on the grounds of skin colour, race, religion or ethnic origin, will be suspended for ten matches or a specified period of time.

Article 14(2) adds that, if one or more of a member association or club's supporters engage in the behaviour described in Article 14(1), the member association or club responsible is punished with a minimum of a partial stadium closure. This provision reflects the strict liability principle enshrined in Article 8 of the Disciplinary Regulations, under which member associations and clubs are responsible for the conduct of their supporters, irrespective of their own fault.

b) Article 16(2) of the Disciplinary Regulations states that:

"However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

- a) the invasion or attempted invasion of the field of play;*
- b) the throwing of objects;*
- c) the lighting of fireworks or any other objects;*
- d) the use of laser pointers or similar electronic devices;*
- e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
- f) acts of damage;*
- g) the disruption of national or competition anthems;*
- h) any other lack of order or discipline observed inside or around the stadium."*

This rule (letter e) prohibits the transmission, by any means, of messages that are not fit for a sports event at UEFA matches. This particularly includes provocative or insulting messages.

c) In relation to this more general provision, Article 14 of the Disciplinary Regulations is a *lex specialis*, which prohibits a very specific type of "message that is not fit for a sports event", namely

messages with discriminatory and/or racist content. Such a message may therefore fall under both Articles 14 and 16 of the Disciplinary Regulations.

5.

In the case in hand, there is no doubt, and it is also uncontested, that AFC Ajax supporters displayed a banner containing the words “Fenian Bastards” during a UEFA match. The appellant only contested the qualification of such words by the Control and Disciplinary Body, arguing that this behaviour should have fallen under Article 14, governing discriminatory conduct, instead of Article 16, as the Control and Disciplinary Body finally decided.

AFC Ajax only contested the legal qualification of the use of this banner as an offence under Article 16 of the Disciplinary Regulations, and even the Control and Disciplinary Body’s right to qualify it as such an offence after qualifying it as an offence under Article 14 when the procedure was opened. It also stressed that the words on the banner were not discriminatory.

6.

a) Even if the fight against racism is a high priority for UEFA, which has a policy of zero tolerance towards any form of racism and discrimination on the pitch and in the stands, this fight must be conducted with full respect for the law and the disciplinary bodies must be careful not to qualify as racist or discriminatory provocative or unfair messages or symbols whose discriminatory or racist nature can, in fact, not be objectively admitted.

b) In the present case, the only question that the Appeals Body must address is whether, in view of the context of the case, the message “Fenian Bastards” that appeared on the banner displayed was discriminatory (Article 14 of the Disciplinary Regulations), simply unfit for a football match (Article 16), or admissible.

In its case law, notably in its decision FC Zenit of 26 June 2013 (UEFA Case Law, Season 2012/2013, January-June, at pag. 120), the UEFA Appeals Body provides further guidance on how to assess controversial symbols. This guidance, which applied to the former Article 11bis of the Disciplinary Regulations, can also be applied to the current Article 14. The criteria for assessing the discriminatory nature of a symbol also apply when evaluating whether specific terms, words or expressions should be considered discriminatory or not.

According to this guidance, if it is likely that a large number of reasonable spectators or viewers consider a symbol as racist and conclude that the people who displayed it were promoting discriminatory behaviour or ideas, the symbol contravenes the rule forbidding discriminatory and racist messages. In the present case, the Appeals Body will take this guidance into consideration in its analysis.

7.

At so-called “Old Firm” matches, i.e. derby matches between Celtic FC and Rangers FC, the fans of both clubs are accustomed to expressing their mutual hatred by fighting and insulting each other, with anti-Catholic songs performed by Rangers FC fans and IRA songs by Celtic FC fans. Among these provocative songs, “Billy Boys” and “Fenian Bastards” are often performed by Rangers FC supporters. In Scotland, this religion-based hatred is known as religious sectarianism or bigotry. Without going into the complex historical reasons for this, it is important to note that Celtic FC is traditionally Catholic while Rangers FC is traditionally Protestant.

The Scottish public authorities believe that football should not be used as a platform by individuals seeking to spread their bigoted views.

Last year, one supporter was banned from football matches for performing offensive and sectarian chants at a match between Rangers FC and Motherwell FC (see The Scotsman online, 14 January 2014).

Both witnesses, whose statements were coherent, measured and not based on any strategic or personal motive, since they have no apparent interest in the outcome of these proceedings, confirmed that “Fenian Bastards” is a derogatory term directed at Roman Catholics. Originally a political term, it is now used to stigmatise a group of people on the grounds of their origin and religious beliefs, and therefore clearly meets the conditions provided for in Article 14(1) of the Disciplinary Regulations.

In view of the above, it is clear that, in Scotland, references to “Fenian Bastards” are not only derogatory, but also unlawful and could lead to criminal proceedings. For UEFA and the Appeals Body in particular, this proves that a large number of people perceive this expression as offensive and that its use at football matches should therefore be considered an offence and punished accordingly.

8.

The Control and Disciplinary Body considered that the discriminatory nature of the banner containing the disputed expression was not completely clear (see page 3, paragraph 5 of the decision). It thought there was some doubt in the club’s favour and therefore decided to apply Article 16 rather than Article 14 of the Disciplinary Regulations.

The Appeals Body cannot share this view. Indeed, as indicated above, it is well known, at least in Scotland, that a message or song referring to “Fenian Bastards” is an anti-Catholic message that is deeply offensive and discriminatory towards all Catholics and people from the Republic of Ireland.

Moreover, in its decision of 24 May 2006, the Appeals Body had already overturned a similar decision of the Control and Disciplinary Body and considered the “Billy Boys” song performed by the Rangers FC supporters, containing a reference to “Fenian Bastards”, to be sectarian and discriminatory. In its own decision issued in 2011, the Control and Disciplinary Body had sanctioned Rangers FC for the discriminatory conduct of its supporters, who had sung “We hate Celtic Fenian Bastards”. In other words, UEFA case law in this field is and must remain clear and consistent, and should have guided the Control and Disciplinary Body’s first-instance decision. This is important not only for the Celtic FC supporters in the stadium but also for the thousands of them who stayed at home to watch the match on television.

In this context, the fact that the Scottish FA’s disciplinary services manager thought that half the Celtic FC fans would consider the use of “Fenian Bastards” offensive while the other half would not, does not demonstrate that the term is inoffensive. Even if this statement were true, the fact that half of the people referred to as “Fenian Bastards” feel offended is sufficient for UEFA to consider the expression offensive and to prohibit it in football stadiums. Moreover, the fact that the Scottish FA, for its own internal reasons, does not consider references to “Fenian Bastards” as an offence cannot prevent the UEFA disciplinary bodies from punishing such behaviour, since they are independent bodies. This argument, which therefore is clearly unfounded and even reckless, does not merit a more detailed assessment.

The same answer can be given to the respondent’s argument that Celtic FC supporters use the term “Fenian Bastards” to describe themselves. The assessment given above demonstrates that the prohibition of such objectively discriminatory conduct is not a matter of communitarianism. Moreover, it is important to point out that the Celtic FC supporters concerned used these words at domestic rather than UEFA matches.

9.

In view of the above, it is established, according to clear UEFA case law, that the AFC Ajax supporters who displayed the banner containing the words “Fenian Bastards” acted in a discriminatory manner towards the Celtic FC supporters and the Catholic community and violated particularly Article 14 of the Disciplinary Regulations, since their provocative message is recognised as being offensive and discriminatory towards a group of persons on the grounds of religion and ethnic origin.

In other words, there is nothing in the case file or in the club’s arguments to justify the Control and Disciplinary Body’s decision not to follow the precedent set. It is therefore the Appeals Body’s opinion that the first-instance body was wrong to consider that the offence only fell under Article 16(2)(e) of the Disciplinary Regulations.

10.

Since Article 14 of the Disciplinary Regulations therefore applies, the sanction to be issued is governed by Article 14(2), which provides that if one or more of a member association or club's supporters engage in the behaviour described in Article 14(1), the member association or club responsible is punished with a minimum of a partial stadium closure.

In the present case and in the absence of any aggravating circumstance, the Appeals Body imposes this minimum sanction (Article 14(2)).

In this respect, in order to determine which stand should be closed, the Appeals Body has to take into consideration several factors, notably the seriousness of the offence committed, safety and security issues and the delegate's report, although it is not bound by the latter. In this case, having assessed all the relevant circumstances, it orders AFC Ajax to close sector 127 behind the goal for the next UEFA club competition match to be played at the Amsterdam Arena.

However, the Appeals Body is of the opinion that the disciplinary inspector failed to provide sufficient grounds to impose the €10,000 fine requested in his conclusions. As a result, the Appeals Body rejects this conclusion.

The Appeals Body does not consider it necessary to impose a fine in addition to the partial stadium closure.

11.

Based on the above considerations and the conclusions of each of the parties, the appeal lodged by UEFA through its disciplinary inspector is partially admitted and the cross-appeal lodged by AFC Ajax is rejected.

12.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

The requests of the appellant and the cross-appellant have different outcomes. It is therefore appropriate to charge all the costs of the proceedings to AFC Ajax. However, in view of the circumstances of the proceedings, the Appeals Body decides, for the sake of fairness, to charge €4,000 to AFC Ajax and the rest to UEFA. The Royal Netherlands Football Association is jointly and severally liable for the payment of the costs and fine charged to AFC Ajax (Article 59(2) of the Disciplinary Regulations)

Decision of 22 January 2014

Arsenal

(Assault)

Circumstances of the case:

During the UEFA Youth League match between Arsenal Youth and Olympique de Marseille Youth on 25.11.2013, the Arsenal player Isaac Hayden kicked an opponent in the ankles after being fouled.

Legal framework:

Article 15(1)(e) DR *Assault*.

Decision:

CDB:

The CDB suspended the player Isaac Hayden for the next three UEFA competition matches for which he would otherwise be eligible.

Appeals Body:

The appeal was rejected and the CDB's decision of 11 December 2013 was confirmed.

Chairman: Pedro Tomás, Spain
Vice-Chairmen: Goetz Eilers, Germany
Michael Maessen, Netherlands
Members: Björn Ahlberg, Sweden

W h e r e a s :

In fact:

A.

According to the referee's report on the 2013/14 UEFA Youth League match between Arsenal FC Youth and Olympique de Marseille Youth on 25 November 2013, the Arsenal player No4, Isaac Hayden, was sent off in the 44th minute for kicking his opponent on the ankle.

B.

In the decision taken at its meeting on 11 December 2013, the UEFA Control and Disciplinary Body stated that, by kicking his opponent, Isaac Hayden had endangered the physical well-being of his opponent. As a result, it decided that the player's action as described constituted assault in the sense of Article 15(1)(e) of the UEFA Disciplinary Regulations and suspended the player for three UEFA competition matches. In accordance with Article 17 of the Disciplinary Regulations, the Control and Disciplinary Body examined the existence of both aggravating and mitigating circumstances and concluded that, in this particular case, there were no reasons to either scale down or increase the sanction. The decision was notified on 18 December 2013.

C.

On 19 December 2013, Arsenal FC and the player concerned informed UEFA of their intention to lodge an appeal against the decision. On 7 January 2014, the club and the player submitted their appeal pleadings. In their submissions, the appellants provided video footage of the incident as evidence. They argued that Arsenal FC would play a maximum of ten UEFA Youth League matches this season. Coupled with the fact that the player missed almost half a game after receiving the red card, this meant that he would miss a very significant percentage of Arsenal's matches this season. Therefore, they claimed that the Control and Disciplinary Body's decision was disproportionate.

According to the appellants, Isaac Hayden's conduct was merely an act of frustration at his opponent's unacceptable conduct. They rejected the Control and Disciplinary Body's claim that his conduct was particularly serious and dangerous, and could cause serious injury and pain. With the support of the video footage, they argued that the force used by the player was minimal and did not put his opponent in danger of sustaining any injury. Isaac Hayden's act caused no injury or discomfort, as his opponent's lack of reaction showed.

They also stressed that the incident had no impact on the match. They compared this case with an incident that took place during the UEFA EURO 2012 qualifying match between England and Montenegro on 8 October 2011, when the player “Wayne Rooney kicked an opposing player with considerably greater force than was used by IH [Isaac Hayden] in the Match, and was given three-match suspension, which was reduced to two-match suspension on appeal”.

They also put forward, in substance, the following factors that they considered mitigating circumstances:

- the player had never previously received a red card;
- this was an isolated incident;
- Arsenal FC’s fair play record over recent years is excellent and demonstrates the club’s adherence to and respect for the Laws of the Game;
- Arsenal FC educates its players about the importance of behaving properly and maintaining the high standards of the club;
- the player’s opponent had provoked the incident by fouling him and causing him to fall to the ground. When he was on the ground, his opponent had continued to kick his legs as if he were trying to win the ball, even though there was no chance of him winning possession from that angle. One of his opponent’s kicks had cut the back of his calf.
- Isaac Hayden apologised for his act.

The appellants concluded that a three-match suspension was clearly excessive in these circumstances.

D.

On 14 January 2014, the UEFA disciplinary inspector submitted his response to the appeal, requesting that it be rejected, the decision be upheld and the costs of the proceedings be charged in full to the appellants. In his opinion, the player’s conduct was clearly an assault in the sense of Article 15(1)(e) of the Disciplinary Regulations, which is not contested by the appellants. As regards the Wayne Rooney case referred to by the appellants, the disciplinary inspector noted that the legal assessment of the facts was different from one case to the other and that, when the Wayne Rooney incident had occurred, the referee had not stopped the game and the ball was being disputed by both players. In the case at hand, there were no particular circumstances to justify a reduction in the sanction, which should be confirmed.

E.

No hearing was held, since the appellant had requested that the proceedings be conducted in writing only.

After examining the entire case file and viewing the video footage, the UEFA Appeals Body deliberated and decided as follows. The parties' more detailed arguments are set out and examined below, in so far as they are relevant to the decision.

In law:

1.

- a) The Appeals Body has jurisdiction to hear the case in question under Articles 24(4) and 54 of the UEFA Disciplinary Regulations. The player and the club lodged their appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeal fee paid on time. The appeal is therefore admissible under the terms of Article 53 of the Disciplinary Regulations.
- b) According to Article 58(2) of the Disciplinary Regulations, the Appeals Body can re-examine the case in full, both factually and legally.

2.

- a) Under Article 52 of the UEFA Statutes, 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.

The Appeals Body has, on several occasions, noted that any act committed intentionally or through oblique intention, through which the physical or psychological well-being of the referee, a player or any other person present at a match is harmed or threatened before, during or after the match, constitutes serious unsporting conduct classified under the general term "*assault*" in accordance with Article 15(1)(e) of the Disciplinary Regulations. A particularly serious attack on a person's physical or psychological well-being is considered "*serious assault*" in the sense of letter (g) of the same provision.

- b) Upon examination of the images, it is established in this case that Isaac Hayden clearly kicked his opponent in the calf or lower leg. This act obviously falls under Article 15(1)(e) of the Disciplinary Regulations. The only question to be examined, therefore, is whether the Control and Disciplinary Body abused its powers of discretion by suspending the appellant for three matches.

3.

According to Article 15(1)(e) of the Disciplinary Regulations, assault is punished by a suspension for three competition matches or for a specified period. This, however, is a standard sanction that can be scaled down or increased in particular circumstances (Article 17(2) of the Disciplinary Regulations). Indeed, in accordance with the general rules of law, the punishment is fixed according to any mitigating or aggravating circumstances. In addition to its function of enforcing the rules, a punishment should pursue a preventative and educational aim. The disciplinary body must,

moreover, reserve the right to punish all misconduct, from the most minor to the most serious. It can, therefore, in assessing the specificities of a particular case, reduce or increase standard sanctions if circumstances so dictate.

4.

In the case at hand, the appellants have submitted various arguments that they consider mitigating circumstances justifying a reduction of the standard sanction imposed by the Control and Disciplinary Body. The Appeals Body responds to each of these as follows:

b) *Disproportional effect of the penalty:*

When the competent disciplinary body has to use the discretionary powers conferred on it by the UEFA Statutes and UEFA Disciplinary Regulations, proportionality must be observed. In other words, a restrictive measure must be capable of producing the expected results and there must be due proportion between the objective and subjective elements of the offence and the sanction. Balancing these elements and other general principles, the disciplinary body must keep the purpose of the sanction in reasonable balance with the deprived interests.

In the present case, the fact that Isaac Hayden missed the rest of the match after receiving his red card is inherent to any expulsion. Any subsequent disciplinary sanction is independent of this immediate expulsion by the referee.

Under the Disciplinary Regulations, the standard sanction for assault is a three-match suspension. This suspension is considered necessary to enable the aims of the punishment to be achieved, i.e. to reform the player and prevent a repetition of the offence. In the absence of mitigating circumstances, the concrete effects of the suspension for the player sanctioned must be exceptionally harsh if they are to be considered a possible reason to reduce the standard suspension imposed against a player who has committed an assault under Article 15(1)(e) of the Disciplinary Regulations.

In the case in hand, the suspension for the next three UEFA competition matches does not prevent the player from taking part in domestic competition or even representing his national team.

Therefore, its effect on the player's activity is limited and the argument that the Control and Disciplinary Body's decision is disproportionate must be ruled out.

c) *Minimal force used and absence of injury*

The absence of excessive force and injury was taken into account in the decision not to treat Isaac Hayden's act as a "serious assault" in the sense of Article 15(1)(g) of the Disciplinary

Regulations. Depending on the circumstances of the case, any injuries caused by an assault could, at the most, be considered a reason to increase the standard three-match suspension. However, the absence of such consequences does not constitute a mitigating circumstance.

d) *Comparison with the Wayne Rooney case*

The appellants seem to claim inequality of treatment with Wayne Rooney on the grounds that, although his conduct was more violent than that of Isaac Hayden, he was only suspended for two matches.

Firstly, it should be pointed out that, as well as receiving a two-match suspension, Wayne Rooney was ordered to perform a full day of community football service, which is an additional punishment (Article 6(2)(h) of the Disciplinary Regulations).

Secondly, comparing two punishments imposed by the UEFA disciplinary bodies is usually a fruitless exercise. It is very difficult to base a claim on the principle of equal treatment because of differences in circumstances and the number of both objective and subjective elements that are taken into account when determining punishments, which are therefore tailored to the individual case.

For clarification purposes, it can be noted, however, that in the Wayne Rooney decision, the Appeals Body converted the third match of the suspension into community football service on exceptional grounds, notably the extraordinary disciplinary record of the player, who had never previously been sent off in more than 100 UEFA matches. This obviously cannot be compared with Isaac Hayden's record of 14 UEFA matches.

e) *Alleged mitigating circumstances*

Although the fact that Isaac Hayden's gesture was an isolated incident and not a case of recidivism, it cannot be considered a mitigating circumstance.

Although Arsenal FC's fair play record over recent years and its efforts to educate its players are laudable, they cannot be considered a mitigating circumstance justifying a reduction of the sanction imposed for an offence committed by one of its players.

Although the player's apologies are to be welcomed and taken into account in the overall assessment of the circumstances, they cannot be considered a mitigating circumstance.

The appellants seem to argue that alleged provocation by an opponent should be considered a mitigating circumstance. In this respect, the Appeals Body must point out that taking justice into one's own hands is not acceptable. It is the match officials' responsibility to report any

infringement of the UEFA regulations for due sanction. Otherwise, all players who were victims of unlawful acts during a match would have an excuse to commit an offence themselves, without serving the standard sanction for it. Moreover, in the present case, there is no clearly proven act of serious provocation that could be considered, together with the other subjective elements, when determining the severity of the sanction.

5.

On the basis of all the above, the Appeals Body deems the standard sanction of a three-match suspension to be entirely justified, taking into consideration the act itself and the absence of relevant mitigating circumstances. Consequently, the Control and Disciplinary Body has neither exceeded nor abused its discretionary power and its decision conforms to the principles of legality and proportionality. The first-instance decision should therefore be upheld and the appeal rejected.

6.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

As the proceedings were conducted in writing, in the present case, the costs are limited to €2,000 which will be borne in full by the player and Arsenal FC. The Football Association is jointly liable for any failure to pay these costs.

Decision of 22 January 2014

Olympiacos

(Racist banner)

Circumstances of the case:

During the UEFA Champions League match against RSC Anderlecht on 10.12.2013, Olympiacos supporters displayed a banner with a neo-nazi symbol (SS skull).

Legal framework:

Art. 14 DR *Racism/discriminatory conduct*.

Decision:

CDB:

The CDB ordered the partial stadium closure of the Olympiacos stadium. In particular, the lower tier of the North Stand was ordered to be closed for the club's next UEFA home match. The club was also fined €30,000.

Appeals Body:

The appeal was rejected and CDB's decision of 16 December 2013 was confirmed.

Chairman: Pedro Tomás, Spain
Vice-Chairmen: Goetz Eilers, Germany
Michael Maessen, Netherlands
Member: Björn Ahlberg, Sweden

W h e r e a s :

In fact:

A.

According to the official match reports, a number of incidents occurred during the 2013/14 UEFA Champions League match between Olympiacos FC and RSC Anderlecht on 10 December 2013. For example, Olympiacos FC supporters ignited several pyrotechnic devices before, during and after the game. They also directed a laser pointer at the referee. No female security personnel were at the gates to screen and search supporters. A banner showing a skull was displayed throughout the match. In the second half, a steward tried to remove it, but it was displayed again at a later stage. In addition, a large flag depicting a skull was waved throughout the match by the same supporters. These are all facts that were considered by the Control and Disciplinary Body as established.

B.

In its decision of 16 December 2013, the UEFA Control and Disciplinary Body ordered the partial closure of the Olympiacos FC stadium. It decided in particular to close the lower tier of the north stand during Olympiacos FC's next home UEFA club competition match and fined the club €30,000 for the following offences:

- discriminatory conduct of supporters, who displayed a skull, a recognised Nazi symbol (Article 14 of the Disciplinary Regulations);
- ignition of fireworks and use of a laser pointer by supporters (Article 16 of the Disciplinary Regulations);
- lack of organisation, with no female stewards to conduct body searches (Article 33(4) of the UEFA Safety and Security Regulations).

C.

On 20 December 2013, Olympiacos FC submitted a statement of appeal against the Control and Disciplinary Body's decision of 16 December 2013 and paid the appeal fee of €1,000.

On 23 December 2013, Olympiacos FC submitted its grounds of appeal. It denied the discriminatory nature of the skull displayed by its supporters and claimed that the FARE report denouncing the incident was not an official report in the sense of Article 38 of the Disciplinary

Regulations. It also denied the case of recidivism that had been applied. The appellant's statement can be summarised as follows.

Discriminatory behaviour

Skulls have been used as symbols for many thousands of years in different civilisations and carry different meanings and messages, notably the message of victory over death and the resurrection of Jesus Christ. They are not necessarily linked to the SS.

The skulls on the banner displayed at the above-mentioned match are not associated with any racial wording or meaning. They are associated with "Gate 7" of the stadium, where 21 supporters died in 1981 while trying to leave the stadium to celebrate a victory for their club. These skulls are used to commemorate that day and bear no resemblance to the symbol that is generally recognised as racist.

The Control and Disciplinary Body failed to examine the symbol carefully and to consider its context.

Other improper conduct by Olympiacos FC and its supporters

The appellant refers to the arguments submitted to the Control and Disciplinary Body and requests the cancellation of the €30,000 fine that was imposed.

D.

On 14 January 2014, the UEFA disciplinary inspector submitted his response to the appeal, requesting that the appeal be rejected, with the costs of the appeal proceedings charged accordingly.

E.

On 21 January 2014, i.e. the day before the hearing, Olympiacos FC faxed an additional document to the UEFA Appeals Body, requesting that, for safety and security reasons, if the Appeals Body were to uphold the Control and Disciplinary Body's decision of 16 December 2013, sector G3 should be closed rather than the entire north stand initially designated in the decision.

F.

No hearing was held as the appellant did not oppose the proposal that the current proceedings be conducted in writing.

After examining the entire case file, in particular the challenged decision, the photograph of the skull in question, the official match reports, the grounds for appeal and the disciplinary inspector's reply to the appeal, the Appeals Body deliberated and decided as follows.

The parties' more detailed arguments are set out and examined below, in so far as they are relevant to the decision.

In law:

1.

a) The UEFA Appeals Body's jurisdiction in this matter is established by Article 24 of the UEFA Disciplinary Regulations. It is therefore competent to examine the case in full, both factually and legally (Article 58(2) of the Disciplinary Regulations).

b) The appeal meets the formal requirements and deadline laid down in Articles 53 *et seq.* of the Disciplinary Regulations. Consequently, the Appeals Body may examine its merits.

2.

With reference to the letter sent by Olympiakos FC on 21 January 2014, the Appeals Body notes that, according to Article 53 of the Disciplinary Regulations, parties must submit their grounds for appeal and all documents or evidence they deem necessary within five days of the expiry of the time limit for declaration of the intention to appeal. In other words, any submissions made after this deadline are considered late. According to this provision, it is obvious that the letter sent by Olympiakos FC on 21 January 2014, i.e. after the submission of the grounds of appeal, is late. However, since the observations that Olympiakos FC made in this letter relate to the safety and security of supporters and may need to be considered if a partial stadium closure is confirmed, the Appeals Body decided it had to consider the letter in question.

3.

a) Regarding the contested official nature of the FARE report, the Appeals Body recalls that FARE is an official UEFA partner, for which ridding football of racism and discrimination is a priority. Chosen from among various state and private bodies dealing with this problem at European level, FARE is an umbrella group of more than 100 NGOs, fan groups, migrant and ethnic minority organisations, individuals and members of the football family, including former players and representatives of professional clubs and players' unions, with representatives in around 40 countries around Europe.

Before each season, FARE presents to UEFA a work programme detailing the activities it has planned throughout the forthcoming season. UEFA is aware of FARE's activities and of the fact that it monitors UEFA matches, using neutral observers who clearly must not have any interest in either of the clubs involved in the matches that they observe.

FARE has been a UEFA partner for around ten years and experience has shown that it does not report incidents unless they have been directly observed by one of its neutral observers appointed and present at the match in question.

b) In this regard and according to Article 48 of the Disciplinary Regulations, disciplinary proceedings can be opened on the basis of "(a) official reports; (b) where a protest has been lodged; (c) for reported offences falling within the scope of these regulations; (d) at the request of the UEFA Executive Committee, the UEFA President or the UEFA General Secretary", etc.

In this case, it is clear that the FARE report must be considered as a report of a violation of UEFA regulations in the sense of the aforementioned Article 48(c) of the Disciplinary Regulations. Therefore, the Control and Disciplinary Body was right to take the FARE report into account, especially as its content was not disputed. Finally, Article 37 of the Disciplinary Regulations establishes the freedom of evidence, which means that cases may be judged on the basis of more than just the official match reports.

4.

a) Under Article 52 of the UEFA Statutes and Article 11(3) of the Disciplinary Regulations, unsporting conduct, breaches of the Laws of the Game and infringements of UEFA's Statutes, regulations, decisions and directives are punished by means of disciplinary measures.

According to Article 2(b) of the UEFA Statutes, one of UEFA's objectives is to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason.

b) The fight against racism is a high priority for UEFA, which has a policy of zero tolerance of racism and discrimination on the pitch and in the stands.

In this respect, the UEFA Executive Committee, as UEFA's legislative body, decided to strengthen the provisions of the latest UEFA Disciplinary Regulations (which entered into force on 1 June 2013) with regard to discriminatory conduct.

c) Article 14(1) of the Disciplinary Regulations specifies that any person under the scope of Article 3 of the Disciplinary Regulations who insults the human dignity of a person or group of persons by whatever means, including on grounds of skin colour, race, religion or ethnic origin, will be suspended for ten matches or a specified period of time. If one or more of a member association or club's supporters engage in the behaviour described in Article 14(1), the member association or club responsible is punished with a minimum of a partial stadium closure (Article 14(2)).

Article 14(2) of the Disciplinary Regulations is a special rule reflecting the principle of strict liability enshrined in Article 8, whereby member associations and clubs are responsible for the conduct of their supporters. This responsibility applies to offences by any person supporting the team, whether they are committed before, during or after the match, irrespective of the fault of the club or association in question (hence "strict liability").

d) According to Article 16(2) of the Disciplinary Regulations, the disciplinary measures provided for in Article 6(1) may be imposed on clubs in the event of inappropriate behaviour on the part of their supporters, especially the lighting of fireworks (Article 16(2)(c)). Moreover, Article 8 of the Disciplinary Regulations empowers UEFA to ensure that its objectives and the obligations imposed on its members are respected not only by the latter, but also by third parties for whose actions UEFA members are responsible. This provision makes clubs responsible for the misconduct of their players, officials, members and supporters, and any other party acting on behalf of the club at a match, whether or not they are at fault themselves ("causal" or "strict liability").

This case must be examined in the light of the above-mentioned provisions and principles.

5.

Lighting of pyrotechnic devices, use of laser pointer and absence of female stewards for screening and searching of spectators

The danger and inconvenience caused by the lighting and throwing of fireworks and the use of laser pointers has been the subject of many articles by sports authorities, not least UEFA. The UEFA Appeals Body has also, on many occasions, explained why the use of fireworks is strictly forbidden. The Control and Disciplinary Body's decision provides a succinct but cogent, contextualised reminder. The Appeals Body can only agree with its conclusions and therefore considers it unnecessary, for the most part, to reproduce them here.

For the rest, in light of the official match reports, the photographs in the case file, the facts described, the regulatory provisions cited, the club's poor previous record, and the fact that the club itself did not deny the offence, the Control and Disciplinary Body was right to hold Olympiacos FC liable for its supporters' behaviour in accordance with the principle of strict liability established by Articles 8 and 16(2) of the Disciplinary Regulations. Accordingly, although the appellant's argument, presented to the first-instance body, that tremendous efforts have been put in place to educate its supporters is laudable, it cannot exempt the club from its responsibility. Contrary to what the appellant seems to indirectly argue, the use of pyrotechnic devices in football stadiums is not inevitable. Many matches are played throughout Europe without a single pyrotechnic device or laser pointer being used.

In view of the above, and based on the aforementioned Articles 8 and 16 of the Disciplinary Regulations, the Control and Disciplinary Body was clearly right to fine Olympiacos FC for its supporters' improper and dangerous actions.

Regarding the absence of female security personnel to screen and search supporters, which constitutes a clear violation of Article 38(4) of the UEFA Safety and Security Regulations (2006

edition), the Control and Disciplinary Body had no option but to hold the appellant liable, since the latter failed to provide any substantial argument to counter the accuracy of the UEFA delegate's report in this respect (Article 38 of the Disciplinary Regulations).

6.

Displaying of a discriminatory symbol

It is uncontested that Olympiacos FC supporters displayed banners and a flag depicting a skull several times during the above-mentioned match. The only question to consider is whether or not this symbol is to be considered racist or discriminatory under Article 14 of the Disciplinary Regulations.

The appellant claims that the skull showed by its supporters has no discriminatory meaning, while FARE denounces it as a Nazi and racist symbol.

The Appeals Body accepts that many symbols that were hijacked by the Nazi regime to use as emblems previously had a non-violent meaning: the swastika and the Celtic cross are two examples. The same is true of the skull. The Appeals Body does not deny that the skull can be used to signify victory over death. However, it is common knowledge that this meaning was distorted when such a skull was used by the 3rd Panzer Division of the Nazi army during the Second World War and this image is now one of the most popular symbols for neo-Nazis and white supremacists.

Although a non-racist depiction of a skull, bound to local or regional tradition, may be possible, just like other symbols that are widely recognised as references to the Nazi era and white supremacy, it has no place in UEFA football competitions. In other words, in the context of a UEFA competition, no symbol that is likely to be understood by a large number of spectators as a political opinion or a reference to extremist and discriminatory ideologies is allowed. In this respect, UEFA has broad powers of discretion in its decision-making and clubs participating in its competitions must consider and respect its practice.

UEFA is not alone in prohibiting fascist, Nazi or extremist symbols. Indeed, such symbols are prohibited under the legislation of some European states, e.g. Article 261bis of the Swiss Criminal Code, and under the Council of Europe's General Policy Recommendation of 25 June 2004.

The fact that the club steward rightly intervened to remove the banner depicting the skull clearly shows that the club is perfectly aware that the banner showing the skull is considered discriminatory by UEFA.

In any case, the Appeals Body is satisfied that the skull (known as a Totenkopf) displayed by the appellant's supporters could be perceived by a large number of reasonable supporters (or viewers, as the match was broadcast on television) as a Nazi and discriminatory symbol.

The UEFA Control and Disciplinary Body was therefore right to hold Olympiacos FC to account for its supporters' conduct and to penalise the club accordingly.

7.

Since this offence falls under Article 14 of the Disciplinary Regulations, according to Article 58, par.2, the Appeals Body re-examines the case from both a factual and a legal perspective but due to long standing practice it remains for the Appeals Body also to examine whether the Control and Disciplinary Body respected the relevant regulations and legal principles, in particular that of proportionality, or abused its discretionary power by ordering the closure of the north stand during the club's next home UEFA competition match and by fining the club €30,000.

In view of the circumstances of the case, in particular the principle of zero tolerance of discriminatory acts of any kind, the repeated displaying of the disputed banner, even after a steward had removed it, is clearly inadmissible. As far as Article 14 of the Disciplinary Regulations is concerned, the appellant has no previous record in this respect in line with the Appeals Body jurisprudence (UEFA Case Law, Season 2013/2014, July – December, at pag. 104). However, regarding the other offences committed by its supporters in this match, the club has a poor record. It should be noted that, according to the practice of the UEFA disciplinary bodies, a clean disciplinary record has no effect on the punishment imposed, since it is not taken into account as a mitigating circumstance. Consequently, there are no mitigating or exceptional circumstances in this respect. The sanction imposed by the Control and Disciplinary Body is measured.

By ordering Olympiacos FC to close one of its stands at its next home UEFA club competition match, the Control and Disciplinary Body issued the minimum sanction for racist behaviour (Article 14(2) of the Disciplinary Regulations). Since the additional sanction imposed is designed to punish the other offences committed by the club's supporters, which are repeat offences, the Control and Disciplinary Body's decision in this regard also fully conforms to the principles of legality, proportionality and equality of treatment. It should therefore be upheld and the appeal rejected.

Article 14 of the Disciplinary Regulations does not stipulate how to determine which part of the stadium should be closed under Article 14(2). This gives the disciplinary bodies broad powers of discretion in this respect. In the present case and without questioning the principle of the partial stadium closure ordered by the Control and Disciplinary Body, the Appeals Body has to take account of the safety and security constraints submitted by the appellant in its letter of 21 January 2014 and approved by the UEFA safety and security officer, Kenny Scott, of which the Control and Disciplinary Body was not aware when it took its decision. Since the partial closure of the north stand would involve five gates, all of which give access to both the upper and lower tiers of the stand, it would be extremely difficult for the stewards to prevent the fans moving from the upper to the lower tier. In such circumstances, the Appeals Body deems it appropriate to order Olympiacos FC to close the G3 and G4 lower and upper tiers for its next home UEFA club competition match.

The Appeals Body takes this opportunity to point out that, even if the official match report describes where the incident occurred, this does not prevent the competent disciplinary body from ordering the closure of another part of the stadium if appropriate.

8.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

As the proceedings were conducted in writing, the costs are limited to €2,000, which will be borne in full by the appellant, Olympiacos FC. The Hellenic Football Federation is jointly liable for any failure to pay these costs and the original fine.

Decision of 22 January 2014

HNK Rijeka

(Racist banner)

Circumstances of the case:

During the UEFA Europa League match against Real Betis on 3.10.2013, Rijeka supporters displayed two banners with a racist and far-right symbol (Celtic Cross).

Legal framework:

Art. 14 DR *Racism/discriminatory conduct*.

Decision:

CDB:

The CDB ordered a partial stadium closure by closing Sector D of the HNK Rijeka supporters for their next home UEFA match. The club was also fined €8,000.

Appeals Body:

The appeal was rejected and the CDB's decision of 17 October 2013 was confirmed.

Chairman ad hoc: Michael Maessen, Netherlands
Vice-chairman: Goetz Eilers, Germany
Member: Björn Ahlberg, Sweden

WHEREAS:

In fact:

A.

By decision of 17 October 2013, the UEFA Control and Disciplinary Body fined HNK Rijeka €8,000, having first held that the club had breached UEFA's security regulations as public passageways were blocked and second held the club responsible for the behaviour of its fans who, at the 2013/114 UEFA Europa League match HNK Rijeka vs. Real Betis Balompié on 03 October 2013 displayed two banners containing a Celtic cross. As a result it fined €8,000 on Rijeka and closed the Sector D of the HNK Rijeka stadium during the next (1) UEFA club competition match in which HNK Rijeka would play as a host club.

B.

On 31 October 2013, HNK Rijeka informed UEFA of its intention to appeal against the Control and Disciplinary Body's decision of 17 October 2013.

On 01 November 2013, the appellant requested the stay of execution of this decision. On his decision of 05 November 2013, the Chairman of the Appeals Body decided as judge sitting alone to dismiss the appellant's request.

In its appeal pleadings of 04 November 2013, the club underlined that it appealing only the point 1 of the operative part of the challenged decision, i.e. the partial stadium ban and request the Appeals Body to put this point aside. Consequently, other offences were also punished by the Control and Disciplinary Body in the disputed decision, but as they are not challenged by the appellant, they will not be considered in the present appeal proceedings.

The appellant bases its argument on the written statement of its group of supporters "Armada Rijeka" and argues in substance as follows:

The banner with Celtic cross used were not as aim to glorify the white race or to hurt the dignity of any person or group of persons relating to race, body colour, religious or ethnic affiliation. Furthermore, Celtic cross is being used by this group of supporters since the beginning of the group. The appellant also underlines that all the circumstances of the context must be estimated to

establish the intention of the supporters, which is a crucial factor, in order determine the existence of racist or any other discriminatory behaviour. Therefore, appellant concludes that the conditions to implement Art. 14 DR are not met.

C.

On 14 November 2013, UEFA submitted its response to the appeal via its disciplinary inspector, requesting that the appeal be rejected and the partial stadium ban and the €8,000 fine upheld, with the costs of the appeal proceedings charged accordingly.

D.

No hearing was held as neither the appellant nor the UEFA Disciplinary inspector requested the proceedings to be conducted orally.

After examining the entire case file, in particular the challenged decision, the grounds for appeal and the disciplinary inspector's reply to the appeal, the UEFA Appeals Body deliberated and decided as follows.

The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

In law:

1.

The Appeals Body has jurisdiction to hear this case under Article 24(4) of the UEFA Disciplinary Regulations.

HNK Rijeka lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeals fee was paid on time. The appeal is therefore admissible under the terms of Articles 53 and 54 of the Disciplinary Regulations.

The Appeals Body will therefore examine the case in full, both factually and legally (Article 58(2) of the Disciplinary Regulations).

2.

a) Under Article 52 of the UEFA Statutes and Article 11(3) of the Disciplinary Regulations, unsporting conduct, breaches of the Laws of the Game and infringements of the statutes, regulations, decisions and directives of UEFA warrant disciplinary measures.

According to Article 2(b) of the UEFA Statutes, one of UEFA's objectives is to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason. The fight against any form of racism is a high

priority for UEFA, which has a policy of zero tolerance of racism and discrimination on the pitch and in the stands. In this respect, the UEFA Executive Committee decided to strengthen the provisions of the latest UEFA Disciplinary Regulations (which entered into force on 1 June 2013) with regard to discriminator conduct. Through this amendment, which makes provision for more severe sanctions than before, the UEFA Executive Committee wanted to send a strong message that discriminatory behaviour has no place at football matches organised by UEFA.

b) Article 14(1) of the Disciplinary Regulations (DR) now specifies that any person under the scope of Article 3 of the Disciplinary Regulations who insults the human dignity of a person or group of persons by whatever means, including on the grounds of skin colour, race, religion or ethnic origin, will be suspended for ten matches or a specified period of time.

Article 14(2) DR adds that, if one or more of a member association or club's supporters engage in the behaviour described in Article 14(1) DR, the member association or club responsible is punished with a minimum of a partial stadium closure. This provision reflects the strict liability principle enshrined in Article 8 of the Disciplinary Regulations, under which member associations and clubs are responsible for the conduct of their supporters, irrespective of their own fault.

3.

a) In the case in hand, it is uncontested, that supporters of Rijeka displayed banners containing Celtic crosses. The appellant only challenges the application of Art. 14 DR by arguing that those Celtic crosses would not represent Nazi or neo Nazi signs or symbols to these supporters. In other words, the appellant only contests the legal qualification of the use of this symbol as an offence under Article 14 DR.

It is important to underline that a symbol can appear in different forms: words, sounds, gestures or visual or virtual images that represent, stand for or suggest an idea or belief. In the case in hand, the contested symbols are two Celtic Cross.

The appellant disputes the racist or neo-Nazi meaning of this symbol for the supporters who displayed the banners in question arguing that the Celtic cross had been used in the supporting iconography of its supporters from the early beginning of the supporters group.

b) However, even if this has been the case, it cannot be ignored, that this symbol has been diverted from any other meaning by neo Nazi to make it their power symbol. It has so with gained a generally recognized discriminatory character. The Celtic cross has a religious origin and may have different meanings in the eyes of those using it. However, the Nazis hijacked and used the Celtic cross to such an extent, that it is now linked to their philosophy, which is based on the fact that some races are inherently superior to others. Along with many other symbols, the Celtic cross, which appears on the litigious banner was used by the 3rd SS Panzer Division (armed wing of the

Germany Nazi Party during the Nazi era in Germany). Since then, this sign is widely and worldwide understood and recognized as symbol of the Nazi power and its discriminatory and racist ideas.

The Celtic cross is one of the most popular symbols for neo-Nazis and white supremacists. It has become and is now mostly perceived a discriminatory symbol. As a consequence, UEFA cannot allow it at its matches event. Any other decision in this regard would legitimate the presence during UEFA matches of a symbol which is a worldwide known as a symbol for supremacy of the white race.

c) Displaying banners with symbols that are generally recognised as racist symbols (expressing the idea that some races are inherently superior physically, intellectually, or culturally) has to be considered as discriminatory behaviour in the sense of Article 14 DR, irrespective of the actual intention of those using it. As underlined in various disciplinary decisions issued by the competent UEFA bodies, racism is in total contradiction with the values of football, notably tolerance, friendship and respect. Consequently, no sign whatsoever, which can be understood by a large number of spectators as having a racist connotation, is admissible in a stadium where UEFA matches are playing.

In view of the above, the panel has no doubt that the symbol (Celtic cross) appearing on litigious banner has gained a racist and discriminatory connotation since the Nazi Era.

The appellant argument according to which this group of supporters having used the banner with Celtic cross since the creation of the group does not help, as to comply with the principle of zero tolerance it is essential that any symbols linked in any way to discrimination are prohibited on any football ground, irrespective of the fact that notably this group of supporters have been using this banner with Celtic cross for years.

In view of the above considerations, the appeal filed by Rijeka must be rejected.

4.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

As the proceedings were conducted in writing, the costs are limited to €2,000, shall be borne by HNK Rijeka and the Croatian Football Federation is jointly liable for any failure to pay these costs and the original fine.

Decision of 31 January 2014

Paris Saint-Germain

(Late kick off)

Circumstances of the case:

The team of Paris Saint-Germain came out of the dressing room 1:28 minutes late for the start of their UEFA Champions League match against Benfica on 10.12.2013.

Legal framework:

Art. 11(2)(g) DR *late kick off*

Decision:

CDB:

The CDB fined Paris Saint-Germain €10,000. The CDB also decided to enforce the previously suspended disciplinary measure of a one match suspension against Mr Laurent Blanc (decided by the CDB on 11 December 2013).

Appeals Body:

The Appeals Body Chairman complied with the identical request of the parties. Accordingly, the decision of the CDB of 30 January 2014 was amended. The coach Laurent Blanc was suspended for one match, and this disciplinary sanction was suspended under a probationary period of one year. Laurent Blanc was also fined €10,000.

Chairman: Pedro Thomas

CONSIDERANT:

En fait :

A.

Le délégué UEFA du match de Champions League de l'UEFA qui a opposé, le 10 décembre 2013, SL Benfica vs. Paris Saint-Germain (ci-après: PSG), a mentionné dans son rapport « *The [players] of PSG came before the match 1,28 minute late out of the dressing room. Further the goalkeeper was during the VD kick off sine not read* ».

B.

Par décision du 30 janvier 2014, le président de l'Instance de contrôle et de discipline de l'UEFA, statuant en tant que juge unique, a infligé une amende de €10,000 au PSG et interdit à son entraîneur Laurent Blanc d'exercer sa fonction pour un match, en révoquant le sursis prononcé à son encontre dans sa décision du 11 décembre 2013.

Constatant que le club en était à son troisième retard de coup d'envoi, l'instance de contrôle a en cela suivi sa pratique instaurée depuis l'entrée en vigueur du nouveau règlement disciplinaire de l'UEFA en juin 2013 concernant la matière de sanctionner les entraîneurs pour retard du coup d'envoi dû à l'arrivée tardive des joueurs sur le terrain de jeu :

Un premier retard est sanctionné par un avertissement à l'encontre de l'entraîneur, un second retard par un match de suspension assorti d'un sursis et un troisième retard par un match de suspension.

Dans le cas en l'espèce en effet, l'entraîneur en cause avait reçu un avertissement dûment notifié pour le retard de ses joueurs en date du 23 octobre 2013. Par décision du 17 octobre 2013, l'Instance de contrôle et de discipline (ICD) l'a suspendu pour un match assorti d'un sursis sans que le club fasse appel. Ce n'est qu'à la troisième infraction, soit après le troisième retard de ses joueurs, que l'ICD a prononcé contre lui une suspension ferme d'un match.

C.

Le 31 janvier 2014, Laurent Blanc et PSG ont fait appel de la décision de l'Instance de contrôle et de discipline et, le 6 février 2014, le PSG en son nom et de celui de l'entraîneur Laurent Blanc, a déposé un mémoire d'appel.

Le PSG indique en substance qu'aucun texte ne prévoit que l'entraîneur principal serait automatiquement responsable pour le retard du coup d'envoi causé par ses joueurs. Il considère qu'en l'absence d'un texte exprès, nul ne peut être responsable disciplinairement que de son propre fait. Le PSG indique aussi que dans aucun rapport officiel le nom de Laurent Blanc n'avait été mentionné et que la décision attaquée n'apporte aucun élément permettant d'identifier le comportement inapproprié dont Laurent Blanc serait accusé. Pour les appelants le principe de « *Nulla poena sine lege* » n'aurait pas été respecté.

Pour les appelants, l'art. 36 du Règlement sur l'octroi de la licence et du fair play financier ne serait pas applicable, en vertu de l'art. 2 al. 1 RD. Enfin, le PSG ne trouve pas de lien de causalité entre le retard du coup d'envoi et le comportement personnel de Laurent Blanc. Pour conclure, les appelants demandent que la décision du 30 janvier soit reformée en ce sens que la suspension d'un match prononcée à l'encontre de Laurent Blanc soit annulée.

Les appelants ne contestent pas le retard de l'équipe du PSG lors dudit match. Ils ont indiqué dans leur prise de position devant la première instance le 17 décembre 2013 que « ce retard est dû à un problème de communication, les joueurs n'ayant pas été informés à temps de leur obligation de sortir du vestiaire pour le coup d'envoi du match » (cf. pièce 4 produit par les appelants).

Les appelants ne contestent pas non plus que c'est la troisième fois en trois mois que le PSG se présente en retard à la sortie des vestiaires.

D.

L'UEFA, par son inspecteur disciplinaire, a déposé ses observations à l'appel le 6 juillet 2009. Elle conclut au rejet de l'appel, sous suite de frais.

E.

Le Président ouvre la séance et constate la présence des parties et de l'inspecteur disciplinaire. Il les informe de la procédure qui sera suivie et les avise que les débats, tenus en français, sont enregistrés.

L'inspecteur disciplinaire constate l'absence de l'intéressé, pourtant dûment convoqué par demande du président de l'instance d'appel, par un courriel du 7 février 2014 des services disciplinaires.

Le PSG explique que le calendrier très chargé de l'entraîneur et notamment la préparation du match contre Leverkusen la semaine suivante, l'ont empêché d'être présent à l'audience. Le président en prend acte.

Pour le reste, les parties et l'Inspecteur disciplinaire reprennent, en substance, les motifs développés à l'appui de leurs conclusions dans le cadre de l'échange des écritures. Il en sera fait état dans les considérants en droit du présent arrêt, pour autant que cela soit utile à la solution du litige.

F.

Aucun autre moyen de preuve supplémentaire n'étant réclamé, la séance est suspendue à la proposition du président pour leur permettre de tenter de trouver un arrangement. Les négociations aboutissent à la requête commune suivante :

"PSG, Laurent Blanc et l'Inspecteur disciplinaire adoptent les demandes identiques suivantes:

L'entraîneur Laurent Blanc est suspendu pour un match. Cette suspension est assortie d'un sursis d'une année.

Laurent Blanc est en outre condamné à une amende de € 10'000.

La décision de l'Instance de contrôle et de discipline de l'UEFA du 11 décembre 2013 n'est pas concernée par les présentes demandes et est donc maintenue dans son intégralité.

Les frais de la procédure sont pris en charge par PSG et son entraîneur solidairement à raison de la moitié, le solde étant mis à la charge de l'UEFA"

Suite à cette requête commune des parties, le président de l'Instance d'appel en a examiné le contenu à huis clos et constaté :

En droit:

1.

a) Conformément à l'article 24 al. 3 let c) RD, « *le président de l'Instance d'appel, l'un de ses vice-présidents ou l'un de ses membres agissant comme président ad hoc peut statuer en tant que juge unique si les parties et l'inspecteur disciplinaire présentent les mêmes requêtes* ».

Sa compétence pour trancher le présent cas en tant que juge unique est donc donnée.

b) Selon l'Article 34 al. 5 RD, si les parties et l'inspecteur disciplinaire présentent les mêmes requêtes, les instances disciplinaires peuvent choisir de statuer conformément à ces requêtes. La jurisprudence de l'UEFA a tracé les périmètres permettant à l'instance appelée à statuer de rejeter une requête commune.

Selon cette jurisprudence, une requête ne doit pas être ratifiée lorsqu'elle est manifestement insoutenable, méconnaît gravement une norme ou un principe juridique clair et indiscuté ou encore heurte de manière choquante le sentiment de la justice et de l'équité. Il ne suffit pas que sa motivation soit insoutenable; encore faut-il que la décision à laquelle elle tend apparaisse arbitraire

dans son résultat. A cet égard, l'instance d'appel ne s'écarte de la solution retenue que si celle-ci apparaît insoutenable, en contradiction manifeste avec la situation effective adoptée sans motifs objectifs et en violation d'un droit certain. Il n'y a pas arbitraire du seul fait qu'une autre solution paraît également concevable, voire même préférable (cf. arrêt du 28 mars 2007 dans la cause FC Internazionale Milano, Valencia CF et consorts v UEFA consid. 1a).

Dans le cas d'espèce, le Président constate que par décision du 17 octobre 2013, l'Instance de contrôle et de discipline avait déjà sanctionné l'entraîneur en cause pour le retard de son équipe. Tant l'entraîneur que son club, qui n'avait pas, en son temps, contesté les fondements de cette première décision, étaient ainsi au courant de ce que la réglementation UEFA attend d'un entraîneur en ce rapport avec l'obligation, pour son équipe, de se présenter sur le terrain de jeu à l'heure. La requête identique à laquelle se rallient les appelants permet de considérer que ce fait et l'existence d'un fondement réglementaire suffisant à justifier une sanction de l'entraîneur sont maintenant admis.

2.

a) L'accord des parties sur ce point ne permettant pas de créer la base légale d'une sanction si celle-ci devait être insuffisante, il importe néanmoins de vérifier si une base légale suffisante permet effectivement de sanctionner l'entraîneur Laurent Blanc du fait du retard de son équipe sur le terrain. En effet, si le principe « nulla poena sine lege » devait avoir été violé, l'arrangement convenu entre les parties ne pourrait être ratifié.

b) En droit suisse, les associations valablement constituées ont la légitimité d'imposer des sanctions ou d'autres mesures contraignantes à leurs membres, joueurs ou à toute autre personnes soumises à leur juridiction. Ce faisant, elles n'exercent pas un pouvoir délégué par l'Etat mais une prérogative propre relevant du droit associatif conféré par la loi. Par conséquent, les procédures disciplinaires ne sauraient être considérées comme soumises au droit pénal. Dans le même sens, cf. Jean-François Perrin et Christine Chappuis, Droit de l'association 3^e éd. P. 40)

Dans ce cadre, les associations sportives en particulier, telles que l'UEFA, font souvent usage, dans leurs règlements disciplinaires, de formules générales pour créer une base légale permettant de sanctionner tout comportement susceptible et propre à porter préjudice aux intérêts de l'association et qui n'est pas expressément couvert dans une norme spécifique plus précise. Cela tient au fait qu'il leur est impossible de désigner de façon exhaustive et précise tous les comportements et manquements contraire à ses objectifs et les sanctions adéquates. La doctrine majoritaire en Suisse considère que de telles des formules très générales interdisant aux membres des comportements susceptibles et propres à porter préjudice aux intérêts de l'association remplissent l'exigence d'une base légale (Bodmer, p. 90 ; Vieweg Sport, Sport und Recht, p. 828 ; Margareta Baddeley, L'association Sportive face au droit, p.233). La jurisprudence et les publications des associations sportives à l'intention de leurs membres complètent et expliquent d'ailleurs souvent la portée de telles formules générales dans des cas concrets.

c) Dans le cas d'espèce, c'est l'article 11 du Règlement disciplinaire qui, en plus de la l'avertissement qu'a constitué sa toute première condamnation, permet de fonder la sanction prononcée à l'égard de l'entraîneur Laurent Blanc. Il prévoit que :

Les associations membres et les clubs ainsi que leurs joueurs, officiels et membres doivent respecter les Lois du Jeu ainsi que les statuts, règlements, directives et décisions de l'UEFA, et observer les principes de loyauté, d'intégrité et d'esprit sportif.

Enfreint ces principes celui qui, notamment:

corrompt ou tente de corrompre, de manière active ou passive;

se comporte de manière insultante ou contrevient d'une autre manière aux règles élémentaires de la bienséance;

utilise un événement sportif pour une manifestation étrangère au sport;

discrédite le football et, plus particulièrement, l'UEFA par son comportement;

enfreint des décisions ou des directives des organes de juridiction de l'UEFA, ou des décisions du Tribunal Arbitral du Sport relatives à des procédures dans lesquelles l'UEFA est partie;

ne respecte pas les instructions données par les arbitres;

ne se présente pas à un match ou s'y présente en retard, de manière fautive, ou est responsable du retard du coup d'envoi (...) »;

Cette disposition et en particulier son alinéa 2 b) et g) est à elle seule suffisante comme base légale pour réprimer le comportement de l'entraîneur. En effet, bien qu'ayant déjà été averti qu'il est responsable de faire en sorte que son équipe soit à l'heure sur le terrain pour le coup d'envoi, il a récidivé au mépris des règles de la bienséance et des enjeux sportifs et contractuels de la compétition.

A cela s'ajoute que la jurisprudence bien établie des Instances disciplinaires de l'UEFA exige des officiels des équipes mais surtout des entraîneurs un comportement d'autant plus respectueux de la réglementation qu'ils sont des meneurs d'hommes ayant autorité sur leurs joueurs. Cette responsabilité est plus évidente encore dans les vestiaires. La responsabilité de l'entraîneur est également confirmée par l'article 36 du règlement sur l'octroi des licences.

3.

a) S'agissant de la sanction, le mécanisme de graduation mis en place par l'Instance de contrôle et de discipline dans l'application de l'art, 11 al. 2 lit g DR échappe à toute critique. Il démontre la volonté de l'autorité de commencer par rendre les entraîneurs attentifs aux conséquences d'éventuels retards de leur équipe en n'instituant leur suspension effective que comme sanction ultime.

Dès lors que la solution retenue dans les requêtes identiques des parties ne s'en éloigne pas fondamentalement et qu'il s'est bien plus agi de prendre en compte le fait que la deuxième sanction prononcée à l'encontre de l'entraîneur pour le même motif ne lui a été formellement notifiée qu'après qu'il a commis sa troisième infraction du même type, elle n'est manifestement pas insoutenable.

Certes, l'octroi d'un sursis, dans le cadre de cette troisième infraction, déroge au mécanisme de graduation prévu par la jurisprudence. Toutefois, il se justifie pour le seul motif que la troisième infraction n'est pas intervenue après la seconde condamnation, mais avant. La présente décision ne saurait donc être considérée comme remettant en cause la jurisprudence de l'Instance de contrôle et de discipline de l'UEFA.

b) Au vu de ce qui précède, la requête commune des parties est ratifiée, conformément à l'art. 34 al. 5 RD.

Il s'ensuit que la décision de l'Instance de contrôle et de discipline du 30 janvier 2014 est modifiée en ce sens que la révocation du sursis est annulée et remplacée par les conclusions de la requête commune ratifiée.

4.

L'instance d'appel décide librement de la répartition des frais de la procédure qui comprennent l'ensemble des dépenses de l'Instance d'appel, entre les différentes parties et l'UEFA. (art. 44 al. 2 RD).

En l'espèce, il se justifie de s'en tenir à la solution commune proposée par les parties. Partant, les frais, qui s'élèvent à EUR 6'000, sont mis à la charge des parties à raison de la moitié chacune, soit par €3'000 à la charge du l'entraîneur solidairement avec le PSG, sous déduction de l'avance de frais, l'UEFA assumant l'autre moitié de €3,000.

Decision of 14 February 2014

Juventus

(Lighting and throwing of fireworks)

Circumstances of the case:

During the UEFA Champions League match Juventus vs. FC København on 27.11.2013, a fire cracker was thrown from Juventus fans towards the Kobenhavn fans.

Legal framework:

Art. 16(2)(c) DR *lighting of fireworks*

Decision:

CDB:

The CDB fined Juventus €20,000.

Appeals Body:

The Appeals Body Chairman complied with the identical request of Juventus and the UEFA Disciplinary Inspector. As a result, the challenged decision was amended and the fine was reduced to €10,000.

Chairman: Pedro Tomás

W H E R E A S:

According to the UEFA delegate of the above-mentioned match, one loud fire cracker was set off in 8th minute, which lead to a small amount of grey smoke lasting a few seconds. The delegate was informed after the game (from Daniel Rommedahl of FCK, who had been informed by Danish stewards and Police) that this cracker had been thrown from the Juventus fans section. In addition, local supporters blocked the public passageways.

On 11 December 2013, the Control and Disciplinary Body decided to fine Juventus €20,000 for improper conduct by its supporters for having set off a loud firecracker and blocked the public passageways.

On 13 January 2014, Juventus lodged an appeal against this decision. The appellant denied the fact that its supporters set off the loud fire cracker and pointed out that the incident was not witnessed by the delegate himself. The fact that this incident would have been committed by Juventus supporters was not satisfactorily evidenced. The appellant principally requests to set aside the decision of the CDB and to reduce the fine.

In his response to the appeal and after a close examination of the case file, the Disciplinary Inspector agreed with the appellant to consider that the incident relative to the setting off of the loud fire cracker by the Juventus supporters was not sufficiently established, contrary to the other incident (passageways were blocked), which was clearly witnessed and corroborated by photos.

Consequently, the Disciplinary Inspector considered that Juventus cannot be blamed for improper conduct by its supporters under Art. 16(2) DR. She concluded that a fine of €10,000 would be the appropriate sanction.

In its letter dated 3 February 2014 Juventus, agreed with the conclusion of the Disciplinary Inspector, which lead to identical requests in the sense of Article 34(5) DR.

In accordance with Article 24 (3) of the UEFA Disciplinary Regulations, the Chairman of the Appeals Body, one of its vice-chairman or one of its members acting as ad hoc chairman may take a decision as a judge sitting alone in case where the requests of the parties and the disciplinary inspector are identical.

Given the identical conclusions of the appellants and of the UEFA Disciplinary Inspector, the result is the chairman considered the appeal hearing becomes superfluous (Article 57 (2) DR).

Given that the now identical requests of the parties and which are in line with the guidance of the jurisprudence of UEFA in this field, the Chairman has no objection to overrule the identical findings of the parties. He shall then comply with their requests in application of Article 34 (5) DR. Consequently, the fine of €20,000 imposed on Juventus shall be reduced to €10,000.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

As the proceedings were conducted in writing, the costs are limited to €2,000, shall be borne equally by the appellants and UEFA.

Decision of 30 April 2014

Belgium. Omar Rahou

(Racist/discriminatory gesture)

Circumstances of the case:

During the European Futsal Championship match Belgium vs. Romania on 28.01.2014, the Belgian player Omar Rahou, when celebrating his goal, put one arm to the ground bending the other arm at the elbow, moving the open hand to the bicep. The UEFA Disciplinary Inspector submitted a report, considering that this gesture was the one known as the "quenelle", which was drawn to public attention weeks before by the world's press due to a similar case involving the West Bromwich Albion player Nicolas Anelka.

Legal framework:

Art. 14 DR *Racism/discriminatory conduct*.

Decision:

CDB:

The CDB suspended the player Omar Rahou for the next ten UEFA national competition matches and/or UEFA club competition matches for which the player would otherwise be eligible.

Appeals Body:

The appeal was admitted. Therefore, the player Omar Rahu was declared free of any disciplinary sanction.

Président: Pedro Tomás, Spain
Vice-présidents : Goetz Eilers, Germany
Michael Maessen, Netherlands
Membres: Levent Biçakci, Turkey
Barry Bright, England

C o n s i d é r a n t :

En fait :

A.

Il ressort des images vidéo que lors du match de futsal Belgique contre Roumanie du 28.01.2014, le joueur Omar Rahou (ci-après : l'appelant ou le joueur en cause) après avoir inscrit un goal à la 4ème minute de la deuxième mi-temps, a célébré cet unique goal de son équipe en plaçant un bras sur l'épaule et en balançant l'autre vers le bas.

Dans son rapport du 7 février 2014, l'inspecteur disciplinaire a considéré ce geste comme étant une querelle tombant ainsi sous le coup de l'art. 14 du Règlement disciplinaire de l'UEFA (RD) et demandé l'ouverture d'une procédure disciplinaire à l'encontre du joueur.

B.

Par courrier du 11 février 2014, le conseil du joueur, Me Jean-Pierre DEPREZ, a demandé à être entendu en audience. Dans sa lettre du 17 février 2014, le président de l'Instance de contrôle et de discipline a accédé à sa requête.

Dans un courrier du 18 février 2014, Me DEPREZ a indiqué à l'Instance de Contrôle et de discipline « *D'une part, je suis actuellement retenu jusqu'à la fin de ce mois de février 2014 par des débats en Cour d'Assises de la province du Hainaut (...). « D'autres part, j'ai d'ores et déjà réservé une semaine – à mon sens bien méritée- de congé à l'étranger, soit jusqu'au 11 mars inclusivement ».*

Par un courrier du 24 février 2014, les services disciplinaires informent Me Jean-Pierre Deprez que l'audience de l'Instance de contrôle et de discipline aura lieu le 4 mars 2014.

Dans son courrier du 26 février 2014, Me Jean-Pierre Deprez exprime sa désapprobation quand à la date choisie et informe les services disciplinaire qu'il ne sera pas présent pas plus du reste que son client.

Les services disciplinaires dans un courrier du 26 février 2014 ont invité le joueur ainsi que son conseil de participer à l'audience par visioconférence. Le conseil du joueur a décliné cette offre au motif qu'une telle audition à distance ne répondrait pas aux standards de l'art. 6 de la CEDH.

L'audience fixée a eu lieu le 4 mars 2014 en l'absence du joueur et de son conseil.

Par décision du 4 mars 2014, l'Instance de contrôle et de discipline, retenant que le geste du joueur Omar Rahou constituait une quenelle et partant un comportement discriminatoire au sens de l'article 14 RD, l'a sanctionné de dix matches de suspension. Le dispositif de la décision a été notifié le jour même au joueur via sa fédération, l'Union Royale Belge des Sociétés de Football Association (URBSFA).

En date du 7 mars 2014, le joueur a adressé par écrit un avis d'appel aux services disciplinaires de l'UEFA.

Le 13 mars 2014, l'Instance de Contrôle et de discipline (ICD) a notifié sa décision motivée au joueur en cause par l'entremise de l'URBSFA.

C.

Dans la motivation de son appel du 20 mars 2014, le joueur fait valoir en substance et pour l'essentiel ce qui suit :

Il a reçu une éducation empreinte de respect des autres, d'autodiscipline et d'excellence. Il se consacre depuis l'âge de 11 ans essentiellement à « son » Futsal.

En posant le geste qualifié de « quenelle » en marquant le seul but de son équipe contre la Roumanie, le joueur a placé sa main gauche sur le chiffre 4 ornant son maillot, sa main droite étant agitée de tremblements destinés à tenter d'insuffler à son équipe l'énergie qui lui faisait défaut à ce stade du match. Il n'a pas été sanctionné par l'arbitre pour ce geste qui ne se voulait pas stigmatisant et ce n'est que par la suite qu'Omar Rahou a appris qu'on le considérait comme non conforme au règlement UEFA. Il le conteste.

Son conseil, qui a répété par écrit ses contestations s'agissant de la qualification du geste en question et entendait intervenir à ses côtés dans une défense orale, s'est vu dans l'incapacité de reporter la séance de l'instance de contrôle et de discipline fixée au 4 mars 2014, soit à une date où il était indisponible. Une conférence téléphonique le jour de la séance lui a été proposée en lieu et place mais il n'a pas fait usage de cette possibilité qui, selon lui, ne rencontre pas les standards des droits de la défense au regard notamment de l'art. 6 CEDH.

Après avoir rappelé l'analyse du geste dit de « la quenelle » par l'UEFA et le Professeur Gérard Simon, Directeur du Laboratoire de Droit du Sport à l'Université de Bourgogne, il conclut que le geste du joueur n'est en rien un « salut nazi inversé » mais uniquement un geste destiné à motiver ses coéquipiers, d'autant que, comme le déclarent deux spectateurs qui le connaissent bien (Fatih Ozden et Anas Amerkad), Omar Rahou est exemplaire à la ville et sur le terrain et ne sait même pas ce que veut dire une quenelle.

Les images montrent que la main gauche du joueur ne se pose pas sur son bras droit mais sur son chiffre emblématique no 4 en haut à droite de son maillot et que son bras droit n'est pas tendu fixement mais agité de tremblements multiples, la main relâchée.

La comparaison avec le cas du joueur Anelka, sanctionné pour cinq rencontres seulement pour une quenelle incontestée, permet de se rendre compte des différences évidentes distanciant leurs deux gestes et de l'inadmissibilité de la sanction infligée au recourant.

Pour les motifs invoqués, il conclut à ce que le joueur ne se voie imposer aucune sanction disciplinaire.

D.

Le Président de l'Instance d'appel ouvre la séance.

Il constate la présence des parties, les informe de la composition de l'Instance et de la procédure qui sera suivie. Il attire leur attention sur le fait que les débats sont enregistrés (art. 34 al. 3 RD).

Dans la mesure où le geste dit de la quenelle n'avait, à sa connaissance, jamais encore été traité par l'Instance d'appel, son Président a jugé que la question méritait d'être examinée dans une composition élargie à cinq membres, conformément à l'art. 24 al. 2 RD.

Les parties ne soulèvent aucune objection. Les images fournies par les parties sont visionnées à plusieurs reprises ainsi que celles du joueur Anelka faisant le geste de la quenelle. Aucun moyen de preuve supplémentaire n'étant requis, la parole est donnée aux parties.

Il sera fait état de leurs arguments dans les considérants en droit de la présente décision, pour autant que cela soit utile à la solution du litige.

En droit:

1.

a) La compétence de l'Instance d'appel de connaître d'un appel contre une décision de l'Instance de contrôle et de discipline est donnée par les articles 24 et 54 RD.

L'appel a été interjeté dans le délai et les formes prescrits. Il est motivé et le droit d'appel a été versé dans le terme réglementaire. Il est par conséquent recevable en la forme selon les art. 53 et 54 RD.

b) Aux termes de l'art. 58(3) RD, l'Instance d'appel procède à un nouvel examen complet du cas tant en fait qu'en droit. La décision d'appel confirme, modifie ou casse la décision contestée.

L'appel a ainsi un effet dévolutif complet. Il permet à l'Instance supérieure de rejuger tous les points de fait et de droit sur lesquels la première instance a déjà statué. L'Instance d'appel peut donc reconsidérer et apprécier une deuxième fois l'affaire au fond et elle rend, en principe, une nouvelle décision.

2.

a) Dans ses écrits et lors de l'audience, l'appelant estime avoir perdu une instance parce que la première instance a maintenu l'audience prévue à une date à laquelle son conseil avait indiqué être indisponible.

A ce sujet l'Instance d'appel tient à rappeler que la première instance ne tient en principe pas audience et que le droit d'être entendu des parties est réputé être respecté par une procédure écrite à ce stade (art. 51 al.1 RD). Cela tient aux particularités du droit disciplinaire et à la nécessité de pouvoir rendre une décision susceptible de recours à suffisamment brève échéance pour que le sort disciplinaire d'un participant à une compétition à considérer soit scellé rapidement dans la mesure où il impacte les données de la compétition elle-même. La tenue d'une audience en première instance reste ainsi exceptionnelle et l'autorité jouit d'un libre et large pouvoir d'appréciation pour déterminer si elle se justifie et jusqu'à quand elle doit impérativement être tenue pour ne pas retarder indûment la procédure (Art. 51 al. 2 RD).

Dans ce contexte et vu la nécessité d'exercer la justice sportive avec une célérité toute particulière à ce domaine, il n'est pas d'usage de fixer les audiences en fonction de la disponibilité des représentants des joueurs, officiels ou club, comme c'est le cas en droit civil. Ceux-ci doivent savoir qu'en cas de procédure disciplinaire contre leur client joueur, club ou officiel, ils doivent se rendre disponible à brève échéance si une audience est à prévoir et a fortiori si c'est eux qui la demandent. La date des audiences des instances disciplinaires est de plus tributaire également de la disponibilité de ses membres, composés de personnes de diverses provenances européennes.

En l'espèce, le joueur avait, par son conseil, demandé à être entendu en audience en première instance déjà. Le Président de l'instance avait accédé à cette demande et fixé la date de l'audience en fonction des impératifs indiqués ci-avant. Dès lors, et surtout à ce stade, l'ICD n'avait ni l'obligation ni le loisir de déplacer la date de l'audience à la demande et en fonction de l'agenda du

conseil du joueur, indisponible à la date fixée, y compris semble-t-il pour l'intervention à distance par téléphone et/ou visioconférences proposée par l'instance.

Dans la mesure où il a pu faire valoir tous ses arguments par écrit et où il lui a de plus été accordé d'être entendu en audience déjà en première instance, ce dont il n'a en définitive pu ou voulu faire usage pour des raisons qui lui appartiennent, l'appelant ne saurait se prévaloir d'avoir été privé d'une instance. D'ailleurs l'appelant a lui-même reconnu lors de l'audience d'appel que son droit d'être entendu avait été respecté.

b) S'agissant encore, et même si cela n'est pas déterminant en l'espèce, du grief de l'appelant selon lequel la conférence téléphonique qui lui a été proposée pour participer à distance à l'audience fixée au 04.03.2014 ne rencontrerait pas les standards des droits de la défense et violerait l'art. 6 de la Convention Européenne de Droit de l'Homme (CEDH), l'Instance d'appel tient à souligner ce qui suit : cette disposition s'applique à tout tribunal établi par la loi. Les instances disciplinaires internes à l'UEFA, relevant d'une association au sens de l'art. 60ss du Code civil suisse, elles ne peuvent être qualifiées de tribunaux au sens de la CEDH, qui ne leur est dès lors pas applicable telle quelle. Cela dit, les instances disciplinaires de l'UEFA se doivent de respecter les principes généraux du droit et partant le droit d'être entendu des personnes engagées en procédure devant elles (dans le même sens TAS 2000/A/290 p. 12). Dans le cas d'espèce, et pour les motifs expliqués ci-avant, le droit d'être entendu de l'appelant en première instance a été respecté.

Ces questions de procédure étant clarifiées, il convient maintenant d'examiner l'affaire au fond.

3.

a) Aux termes de l'art. 2 al. 1 de ses Statuts, l'UEFA a notamment pour but de promouvoir le football en Europe dans un esprit de paix, de compréhension et de fair-play, sans aucune discrimination fondée sur la politique, le sexe, la religion, la race ou sur toute autre raison; (let. b).

La lutte contre la discrimination sur le terrain de jeu et dans les tribunes constitue un souci majeur et permanent des autorités de l'UEFA, qui en fait une priorité. Dans cette lutte, UEFA a instauré le principe de tolérance zéro.

b) En tant que législateur, le Comité Exécutif de l'UEFA a décidé de renforcer son arsenal réglementaire de la lutte contre la discrimination en augmentant les sanctions relatives à ces infractions dans son Règlement disciplinaire (RD).

Ainsi par exemple, l'art. 14 RD dispose-t-il que toute personne soumise au présent règlement en vertu de l'article 3 qui porte atteinte à la dignité d'une personne ou d'un groupe de personnes, par quelque moyen que ce soit, en raison de sa couleur de peau, de sa race, de sa religion ou de son

origine ethnique sera passible d'une suspension d'au moins dix matches ou pour une durée déterminée, ou de toute autre sanction appropriée.

c) Lorsque les images d'une rencontre montrent qu'un joueur a contrevenu a eu un comportement discriminatoire mais que, sur le moment, le corps arbitral n'a rien vu et rien rapporté, l'UEFA a la possibilité d'ouvrir une enquête conformément aux art. 38 ss RD qui aboutira, cas échéant, à une décision disciplinaire (art. 46 RD).

4.

a) S'agissant du geste litigieux, il consiste selon l'expression « glisser une quenelle » inventée par l'humoriste controversé Dieudonné il y a une dizaine d'années, à placer le bras tendu vers le bas et à placer son autre main sur l'épaule.

Il est admis que le geste dit de la quenelle, vient de l'expression « glisser une quenelle » inventée par l'humoriste controversé Dieudonné il y a une dizaine d'années et devenu signe de ralliement de ses partisans. Il consiste à tendre un bras vers le bas tout en posant la main de l'autre bras sur l'épaule de ce bras. Il est comparé alternativement à une variante de bras d'honneur ou à une allusion au fist-fucking, la signification du geste étant de sodomiser symboliquement quelqu'un, en mimant le fait de lui enfoncer le bras dans l'anus.

Ce geste a été qualifié par la Licra (Ligue internationale contre le racisme et l'antisémitisme [en France]), de "signe de ralliement à l'humoriste Dieudonné plusieurs fois condamné pour antisémitisme et reconnu correspondre au salut nazi inversé, antisémite »

b) Appelées à juger une quenelle du joueur Anelka, l'Association Anglaise de Football a récemment considéré, dans une décision du 3 mars 2014 que le geste du joueur consistant à placer son bras tendu vers le bas et à placer son autre main sur l'épaule lorsqu'il célébrait son but était une quenelle discriminatoire, même si le joueur lui-même n'est pas raciste.

c) Sollicité par l'Inspecteur disciplinaire Mr Miguel Liétard pour un avis sur le geste dit « de la quenelle », le professeur Gérard Simon, spécialiste en droit du Sport de l'Université de Dijon, a indiqué en substance dans son rapport que l'humoriste Dieudonné Mbala Mbala avait déjà fait l'objet de 9 condamnations pénales, dont 7 définitives pour avoir, lors de ses spectacles ainsi que sur le réseaux sociaux, et notamment par le geste de la « quenelle » qui se présente comme l'inversion du salut nazi de sinistre mémoire, eu des comportements jugés gravement antisémites. Sans ambiguïté, le professeur Gérard Simon qualifie ce geste de discriminatoire.

5.

a) L'appelant lui-même ne conteste pas que le geste dit de la quenelle soit discriminatoire. Par contre, il conteste que son geste lors du match Belgium vs. Romania (1:6), du 28.01.2014 pour

célébrer son premier but en équipe nationale ait été une quenelle au sens défini plus haut, comme l'a retenu l'Instance de contrôle et de discipline dans sa décision du 4 mars 2014.

Le joueur en cause dit ne pas savoir ce qu'est le geste de la quenelle et n'en avoir jamais entendu parler. L'instance de séant doute fort qu'un joueur de futsal jouant en Belgique dans la partie francophone n'ait pas entendu parler du geste de la quenelle, qui a fait grand bruit dans les médias francophones, mais cette question n'est pas déterminante.

b) Au vu des images de la scène litigieuse, il est manifeste que le joueur en cause, après avoir marqué son but, a couru en plaçant à plusieurs reprises un bras au niveau de l'épaule et en balançant l'autre bras dirigé vers le bas. Dans sa course, Rahou a été arrêté par ses coéquipiers qui le félicitaient et à cette occasion, il a remis un bras au niveau de l'épaule mais la position de l'autre bras n'était pas claire.

Les explications données par le joueur et son conseil pour expliquer la nature de ce geste, à savoir que Rahou posait sa main sur son no. 4 balançant l'autre bras pour dire à ses coéquipiers « il faut y aller, réveiller vous, etc. » ne sont pas très convaincantes. Il faut reconnaître néanmoins que le geste effectué par Rahou n'est pas clair au point qu'il puisse être admis sans équivoque qu'il s'agit d'une quenelle. Il reste cependant qu'avec cette posture ambiguë, le joueur Rahou a pris de sérieux risques de créer une confusion chez les gens qui l'ont vu et auront pu y voir un signe de ralliement antisémite.

6.

a) En cas de doute quant à la réalité des faits retenus par l'Instance de contrôle et de discipline, le doute doit profiter à l'appelant.

b) Compte tenu en effet de la lourde sanction encourue en cas de violation de l'art. 14 al.1 DR, les faits reprochés doivent être univoques. Dans le cas présent, les images vidéo vues à plusieurs reprises ne permettent pas de retenir sans équivoque que le geste effectué par le joueur Rahou après son but était une quenelle. Le simple fait d'éprouver – contrairement au cas du joueur Anelka – le besoin de voir les images à plusieurs reprises pour se faire un avis, est révélateur de la difficulté et de l'hésitation des membres de l'Instance d'appel à qualifier ce geste. Celle-ci suffit à libérer le joueur.

c) Au vu de ce qui précède et faute de certitude suffisante et même de vraisemblance prépondérante, l'Instance d'appel ne peut confirmer que l'acte commis par le joueur en cause était une quenelle tombant sous le coup de l'art. 14 RD. L'appel interjeté par le joueur doit dès lors être admis et celui-ci libéré de toute mesure disciplinaire, les frais d'appel de €4'000 devant être mis à la charge de l'UEFA.

Decision of 30 April 2014

Galatasaray

(Illicit banner. Late kick off. Setting off of fireworks)

Circumstances of the case:

Regarding the UEFA Champions League match Galatasaray v Juventus on 11.12.2013, prior to kick off three smoke bombs were set off by Galatasaray supporters. In the 85th minute, two Bengal lights were also set off.

Behind the goal in the North stand, three flags of the Republic of North Cyprus were put on the fence.

In the 72nd minute, a banner was shown in the upper tier of the East stand reading: "Keep out of the Arctic -Greenpeace".

In addition, both teams were late out of their dressing rooms before kick-off.

Legal framework:

Art. 16(2)(e) DR *use of gestures, words, objects to transmit any message that is not fit for a sports event*

Art. 11(2)(g) DR *late kick off*

Art. 16(2)(c) DR *lighting of fireworks*

Decision:

CDB:

The CDB fined Galatasaray:

- €15,000 for the security incident regarding the Greenpeace action.
- €12,000 for the illicit banner relating to the Republic of North Cyprus.
- €10,000 for the late kick off.
- €5,000 for the setting off of fireworks.

The CDB also suspended the Galatasaray coach Roberto Mancini for the next UEFA competition match in which he would otherwise participate. This suspension was deferred for a probationary period of two years.

Appeals Body:

The appeal was dismissed and the CDB's decision of 13 February 2014 was upheld.

<u>Chairman:</u>	Pedro Tomás, Spain
<u>Vice-chairmen:</u>	Goetz Eilers, Germany Michael Maessen, Netherlands
<u>Members:</u>	Barry Bright, England

W H E R E A S :

In fact

A.

According to the delegate and security officer's reports, at the UEFA Champions League match Galatasaray AŞ v Juventus played on 10 December 2013, local supporters in the east stand set off smoke bombs prior to kick-off. The game was subsequently abandoned due to bad weather, as heavy snow was falling.

The abandoned match was replayed the next day, on 11 December 2013. Pyrotechnic devices were again lit during the replay, especially Bengal lights in the west stand. In addition, both teams came out of their respective dressing rooms late, thereby delaying the start of the game, and three flags of the Turkish Republic of Northern Cyprus were displayed by local supporters, as well as a Greenpeace banner that read "Keep out of the Arctic".

B.

At its meeting on 13 February 2014, the UEFA Control and Disciplinary Body decided as follows:

1. to fine Galatasaray AŞ €15,000 for the security breach relating to the Greenpeace banner;
2. to fine Galatasaray AŞ €12,000 for the illicit banner relating to Northern Cyprus;
3. to fine Galatasaray AŞ €10,000 for the late kick-off;
4. to fine Galatasaray AŞ €5,000 for the lighting of fireworks;
5. to suspend the coach of Galatasaray AŞ, Roberto Mancini, from the next UEFA competition match for which he would be eligible (deferred for a probationary period of two years).

The Control and Disciplinary Body found, in substance, that the lighting of pyrotechnic devices before and during the match, and the fact that both teams come out of their dressing rooms late, delaying the start of the game, constituted offences under Articles 11(2)(g), 16(2)(c) and 16(2)(e) of the UEFA Disciplinary Regulations (DR). Furthermore, it decided that the abovementioned banner and flags were not fit for football and constituted a violation of Article 16(2)(e) DR. The Control and Disciplinary Body took into consideration the number of incidents and their seriousness and deemed the fines imposed to be the appropriate disciplinary measures.

C.

In its statement of appeal of 18 March 2014, the appellant contested all the charges upheld by the Control and Disciplinary Body in the challenged decision. The appellant's arguments are summarised below.

Late kick-off

According to the appellant, there was no clear legal basis for punishing the head coach, Mancini, for the team lining up late, as he himself had shown no fault or negligence. Article 36 of the UEFA Club Licensing and Financial Fair Play Regulations had nothing to do with the late kick-off in question and the sanction against the coach therefore violated the general principles of "nullum crimen sine lege" (no crime without law). Moreover, there was only one late kick-off charge and yet the UEFA Control and Disciplinary Body had imposed two separate sanctions: a €10,000 fine for the club and a deferred one-match suspension for the coach. This violated the principle of "ne bis in idem", which the appellant took to mean that no sanction could be imposed twice for the same cause.

The appellant requested that the Appeals Body overturn the Control and Disciplinary Body's decision to suspend their coach from one UEFA competition match under a probationary period of two years..

Illicit banner and flags

According to the appellant, the Greenpeace banner that read "Keep out of the Arctic" contained no political, ideological, religious, offensive or provocative message within the meaning of Article 16(2)(e) DR, as it was only about environmental concerns. In this respect a €15,000 fine was very severe, especially as the banner had only be displayed for a very short time. The appellant called for the fine to be replaced by a warning.

Regarding the Turkish Republic of Northern Cyprus flags, the appellant claimed that the Control and Disciplinary Body had incorrectly interpreted these flags as illicit banners as they did not contain any message not fit for football. Moreover, they had been displayed at other UEFA matches and had never been reported as illicit by other UEFA match officials. The appellant requested that the Appeals Body overturn the Control and Disciplinary Body's decision on this point.

Lighting fireworks

The pyrotechnic devices used on 10 December 2013 had been lit before kick-off as a sign of support for the team, while those set off on 11 December 2013, just after the home team's goal, had been used in celebration. In neither case had the pyrotechnic devices had an influence on the game, interrupted the flow of play or endangered players, supporters or officials. The appellant again requested that the Appeals Body overturn the €5,000 fine imposed on the club in the first instance.

Finally, the appellant requested that the appeal proceedings be conducted in writing.

D.

On 4 April 2014, UEFA submitted its response to the appeal through its disciplinary inspector. It called for the appeal to be rejected and for the costs of the proceedings to be charged to the appellant.

E.

No hearing was held as the appellant had requested that the proceedings be conducted in writing only.

After examining the entire case file, in particular the challenged decision, the grounds for appeal and the disciplinary inspector's reply to the appeal, the UEFA Appeals Body deliberated and decided as follows:

The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

In law

1.

a) The Appeals Body has jurisdiction to hear the case in question under Articles 24(4) and 54 DR. Galatasaray AŞ lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeal fee was paid on time. The appeal is therefore admissible under the terms of Article 53 DR.

b) According to Article 58(2) DR, the Appeals Body can re-examine the case in full, both factually and legally.

2.

a) Under Article 52 of the UEFA Statutes, 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.

b) Article 16(2)(e) DR stipulates that:

"all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

- a) the invasion or attempted invasion of the field of play;*
- b) the throwing of objects;*
- c) the lighting of fireworks or any other objects;*
- d) the use of laser pointers or similar electronic devices;*
- e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
- f) acts of damage;*
- g) the disruption of national or competition anthems;*
- h) any other lack of order or discipline observed inside or around the stadium."*

The aim of this provision is to guarantee the safety and security of any person attending a match organised by UEFA and to prevent such matches from being used as a forum in which anyone can express an opinion or display a message that has no place at the sports event or competition and as such goes against the values of peace that football conveys.

c) UEFA's disciplinary bodies have always considered coaches to be key models of the ethics of football. It emerges from this that it is the responsibility of the coach to encourage and teach fair play and good sportsmanship, as he has the greatest potential to influence the behaviour and attitude of his players on the field.

d) Article 11 DR states:

"¹Member associations and clubs, as well as their players, officials and members, must respect the Laws of the Game, as well as UEFA's Statutes, regulations, directives and decisions, and comply with the principles of loyalty, integrity and sportsmanship.

²For example, a breach of these principles is committed by anyone (...) who culpably reports late – or not at all – for a match, or is responsible for a late kick-off."

UEFA enacted this provision in response to the increasing number of cases of late kick-offs. It creates the legal basis for holding the coach responsible for any such delay by his team.

e) Regarding the abovementioned match, the kick-off time had been fixed by Article 12.02 of the 2013/14 UEFA Champions League regulations, which stipulates that: *"As a rule, the play-offs, group matches, round of 16 matches, quarter-finals, semi-finals and final kick off at 20.45 CET. Exceptions to this rule can be set by the UEFA administration."*

The present case must be examined in light of these provisions and principles.

3.

The challenged decision contains four parts, namely the one-match suspension for the coach, the late kick-off fine, the fine imposed for the use of pyrotechnic devices by supporters and the fine for the inappropriate flags and banners displayed by the same supporters.

Coach Roberto Mancini

It emerges from the UEFA delegate's report that, despite the intervention by the UEFA delegate and the venue director to get Galatasaray out on time for kick-off, the appellant club left their dressing room late, causing a 1min 30sec delay to kick-off. This is not disputed by the appellant. Moreover, in a UEFA Control and Disciplinary Body decision dated 21 November 2013, Mancini had already been warned about a similar delay at a UEFA Champions League match against København on 5 May 2013.

The appellant disputes the coach's liability, arguing a lack of legal basis ("nulla pene sine lege"). However, the abovementioned Article 11(2)(g) DR is the legal basis in this case and the appellant's arguments in this respect must therefore be ruled out.

Galatasaray contests the responsibility of the coach on the basis that he did not, it said, commit any fault or negligence. It is generally accepted in football that in the dressing room players are under coach's authority. Indeed, as leader, the coach has an influence on the whole team, including in the dressing room. It is therefore his duty, among other things, to make sure his players show up on time on the field of play. Unless it can be proven that he took all the steps one could reasonably expect a coach to take to try to ensure the players were ready on time on the field, it can only be assumed that the players' lateness reflects a failure in the way the coach exercised his authority. Consequently, the coach's responsibility in the case of his team arriving late on the field is basically engaged. The appellant in this case did not offer any evidence to prove that the coach had taken all necessary steps to make sure his team was on the field on time and that he had therefore committed no fault or negligence.

As far as its sanction against the coach is concerned, the Control and Disciplinary Body applied Article 11(2)(g) DR together with the following system of escalation: warning for a first delay and

one-match suspension on probation for the second one. Only if a third delay occurs a one-match suspension become effective. The coach in this case, Mancini, was given a warning about his team delaying kick-off in the 2013/14 UEFA Champions League match København v Galatasaray AŞ on 5 November 2013.

The appellant also suggests that the Control and Disciplinary Body was mistaken in its application of Article 36 of the UEFA Club Licensing and Financial Fair Play Regulations in this case. However, the first instance body merely referred to this provision to demonstrate the role of the coach in the UEFA system and in terms of match management. It was not used as a legal basis for imposing a sanction on the coach.

Ne bis in idem

The appellant suggests that imposing a sanction on both the coach and the club for the same offence constitutes a violation of the principle “ne bis in idem”. In reality, however, this principle protects one and the same person from being punished for an offence for which they have already been punished or acquitted. In the present case, two different people or entities, namely the coach and his club, have been punished for having each violated Article 11(2)(g) DR. This article explicitly makes provision for different offenders, each of whom has a different responsibility with regard to the team reporting late: the coach’s responsibility is fault-based (individual), allowing him to offer evidence to refute his presumed fault, while the club’s responsibility is that of strict liability (applicable to clubs and national associations). This dual system of punishment is justified by the main goal of the provision, which is to reinforce punctuality and respect for kick-off times.

More broadly speaking, the main goal of Article 11(2)(g) DR is to guarantee the proper running of matches organised by UEFA by avoiding delays (first or second half kick-off), as these can seriously undermine the relationship between UEFA and its commercial partners, as well as violating the principle of equality of treatment compared with teams who start on time and respect the regulations. As a result, the proper implementation of Article 11(2)(g) DR requires the disciplinary bodies to be able to punish both the club and the coach and the argument of a violation of the principle “ne bis in idem” must be ruled out.

The appellant does not deny the fact that its team came out of the dressing room late and caused the 1min 30sec delay. Indeed, according to Article 12.02 of the 2013/14 UEFA Champions League regulations, the play-offs, group matches, round of 16 matches, quarter-finals, semi-finals and final kick off at 20.45CET. The UEFA administration can make exceptions to this rule but in this case did not.

As indicated above, the coach could have provided evidence that he had done everything in his power to have his team appear on time on the field. As he did not do so, the Control and

Disciplinary Body rightly held both the club and the coach responsible for the team's conduct and punished them accordingly. The fine imposed was proportionate to the club's poor record in relation to late kick-offs. It must also be noted that the sanction imposed on the coach is moderate, as it is suspended for a probationary period.

Illicit banner and flags

According to Article 2(b) of the UEFA Statutes, one of UEFA's objectives is to promote football in Europe in a spirit of peace, understanding and fair play. Article 16(2)(e) DR, which forbids the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event – particularly messages that are of a political, ideological, religious, offensive or provocative nature – concretises this objective. The goal of this provision is to avoid having UEFA matches or events used to convey messages that are likely to contradict the values football should impart or that express opinions that could disturb the peace at UEFA matches. To achieve this goal and avoid potentially endless debates about the nature of each individual banner or message, Article 16(2)(e) DR prohibits any message that is "not fit for a sports event". Under this provision, the organiser has to ensure that banners entering into the stadium are free of ANY message that has nothing to do with a fair football match and that, in case of doubt, these banners are submitted to UEFA for approval. Football matches shall not serve as podiums for any political or philosophical opinions.

In the case at hand, the fact that the Greenpeace banner and flags of the Turkish Republic of Northern Cyprus were displayed in the course of the abovementioned match is not disputed.

Irrespective of the arguably laudable content of the Greenpeace banner, it and the Turkish Republic of Northern Cyprus flags clearly displayed messages that have nothing to do with football. On top of that, taking advantage of a UEFA competition to display flags of the Turkish Republic of Northern Cyprus during a match in which a Turkish club is playing has to be seen as a political message which could be considered provocative and which, in any case, contradicts the peace that UEFA promotes for its matches in accordance with the objectives enshrined in Article 2 of the UEFA Statutes. UEFA cannot tolerate such conduct at its matches. The fact that these flags have apparently been displayed at other UEFA matches without consequence does not change their legal qualification; it simply means that they were previously not reported to UEFA.

In other words, the Control and Disciplinary Body was perfectly right to consider these political flags and the ecologists' banner "not fit for a sport event" within the meaning of Article 16(2)(e) DR and therefore inadmissible at a UEFA match.

Lighting fireworks

It must be noted that the club did not dispute the lighting of pyrotechnic devices by its supporters. The Appeals Body also notes the appellant's arguments that the smoke bombs and Bengal lights used by its supporters had no influence on the game, did not disturb the flow of play and did not threaten the safety of players, supporters or officials, but given that all kinds of fireworks are strictly forbidden (Article 16 DR), these arguments do not change the legal situation or warrant further examination. Consequently, the Control and Disciplinary Body's decision in this respect is beyond criticism and the appellant's arguments must be ruled out.

4.

In view of the above and after having taken all the circumstances into account (Art. 17 DR) – in particular the repeated nature of the offences committed (Art. 19 DR) – the Control and Disciplinary Body rightly imposed various fines on the club and suspended the coach. Its analysis is beyond criticism and shall be upheld.

5.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings and at the full discretion of the Appeals Body (Article 44(2) DR).

In the present case, as the proceedings were conducted in writing only, the costs are limited to €2,000 in total. Due to the outcome of the appeal, they shall be charged to Galatasaray AŞ, with the Football Association of Turkey jointly liable for these costs and the fines.

Decision of 30 April 2014

St Gallen

(Illicit banner)

Circumstances of the case:

Before kick-off of the UEFA Europa League match against Swansea City on 12.12.2013, St. Gallen supporters displayed a banner which was not approved by UEFA.

In addition, at the beginning of the second half they also displayed another banner, which contained the following wording: "Verhaftet und an Stuehl bunde-bald bechomed mir Thaibox stunde. Inne mit de Jungs". (Literal English translation: "*Arrested and tied to a chair – soon I'll get Thai boxing lessons. Get the boys inside.*")

Legal framework:

Art. 16(2)(e) DR *use of gestures, words, objects to transmit any message that is not fit for a sports event*

Decision:

CDB:

The CDB fined St. Gallen €25,000.

Appeals Body:

The appeal was rejected and the CDB's decision of 13 February 2014 was upheld.

Chairman: Pedro Tomás, Spain
Vice-chairmen: Goetz Eilers, Germany
Michael Maessen, Netherlands
Members: Levent Biçakci, Turkey
Barry Bright, England

W h e r e a s :

In fact:

A.

During the pre-match meeting, FC St Gallen representatives asked the UEFA representatives whether the banners their supporters were planning to display during the match complied with UEFA regulations. The UEFA delegate informed them that they did not.

During the official lunch, the UEFA delegate stressed that UEFA's decision not to allow these banners to be displayed should be respected. Despite this warning, supporters behind the right-hand goal (as viewed from the main stand) displayed one of the forbidden banners before kick-off. At the beginning of the second half, they displayed another banner that had not been approved by the UEFA delegate, showing the text: "**Verhaftet und an Stuehl bunde-bald bechomed mir Thaibox stunde. Inne mit de Jungs**" (literal English translation: "**Arrested and tied to a chair – soon I'll get Thai boxing lessons. Get the boys inside.**")

B.

In a decision of 13 February 2014, the UEFA Control and Disciplinary Body fined FC St Gallen €25,000 for its supporters' use of these prohibited banners during the above-mentioned match.

Based on the UEFA officials' match reports, the Control and Disciplinary Body held that local supporters had displayed banners containing messages not fit for a football event. It considered a €25,000 fine to be the appropriate disciplinary measure in light of the seriousness of the offence and the club's previous disciplinary record.

C.

On 19 February 2014, the decision without grounds was notified to the club.

On 21 February 2014, FC St Gallen requested the grounds of the decision, which were duly notified on 14 March 2014.

On 17 March 2014, FC St Gallen appealed against the Control and Disciplinary Body's decision. It submitted the grounds of appeal on 24 March 2014.

The appellant requested primarily that the decision and procedural costs be overturned and, in the alternative, that the fine be reduced to €15,000. It rejected the accusation that the banners displayed had contained messages not fit for a football event. In its opinion, the Control and Disciplinary Body had wrongly assessed the facts and incorrectly applied the relevant provision. Its written statement can be summarised as follows:

- the UEFA Control and Disciplinary Body wrongly considered that the banners transmitted messages not fit for a sports event and that displaying it constituted inappropriate behaviour. With regard to Article 16(2)(e) of the UEFA Disciplinary Regulations, the Control and Disciplinary Body failed to describe and/or explain in what way the words on the banners expressed a political or religious opinion. In the disputed decision, the Control and Disciplinary Body merely made a general, unsubstantiated claim that the words on the banner violated Article 16(2)(e) of the Disciplinary Regulations. In the appellant's view, the message in question was, at most, humorous and represented nothing other than the exercise of the freedom of expression as a fundamental right of every citizen granted by both Article 16(2) of the Swiss Federal Constitution and Article 10 of the European Convention on Human Rights. Consequently, Article 16(2)(e) of the Disciplinary Regulations had not been violated;
- the disputed decision did not clarify whether the people who had allegedly displayed the banners were supporters of the appellant;
- the appellant denied having been negligent in terms of controls and failing to take all possible precautions in order to prevent inappropriate behaviour by its supporters, as it conducted all necessary and reasonable entry checks and took action wherever necessary and possible;
- finally, if the Appeals Body confirmed the club's responsibility, it requested that the sanction be reduced to a fine of €15,000, taking into account the following two previous cases:
 - o case 1: during the UEFA Europa League match between Cliftonville FC and Celtic FC on 17 July 2013, a banner containing the text "FREE BRADLEY MANNING" was displayed and the Control and Disciplinary Body punished Cliftonville FC with a fine of €10,000, which was reduced to €5,000 by the Appeals Body.

- case 2: during the UEFA Europa League match between KKS Lech Poznań and FC Honka Espoo on 25 July 2013, stickers containing the text "Good night left side" and an image of one man kicking another were distributed at the stadium entrance. KKS Lech Poznań were punished with a €10,000 fine.

D.

On 14 April 2014, UEFA submitted its reply to the appeal via its disciplinary inspector, requesting that the appeal be rejected and the costs charged accordingly.

E.

At today's hearing, FC St Gallen was represented by Thomas Stadelmann and UEFA by its disciplinary inspector Miguel Liétard Fernández-Palacios.

The chairman informed all parties of the procedure to be followed and reminded them of the composition of the Appeals Body. He also drew their attention to the fact that the hearing would be recorded, in accordance with Article 34(3) of the UEFA Disciplinary Regulations. The parties agreed to the procedure and raised no objections.

Mr Benni Burkart, FC St Gallen Event AG head of security and infrastructure was heard as a witness. He essentially stated the following:

- FC St Gallen had a very good relationship with its supporters and, due to a similar incident in the past, it had been agreed that no pyrotechnic devices or political messages would be used or shown in the stadium.
- The fans had told FC St Gallen about the banners (with words and with graphic) that they were going to display at the match. Mr Burkart had informed the UEFA delegate about the banners and the UEFA delegate had told him that such banners were prohibited.
- He had returned to meet the supporters again. They had claimed that they were exercising their freedom of opinion, that this was not a political statement and that they were not attacking anyone. Mr Burkart had then been to see the main supporters' organisation, which had been unable to say what the messages meant.
- The CEO of FC St Gallen, Mr Burkart and the police had met to discuss the possibility of having the banners removed by force. The police had strongly advised against such an idea. Since the police had been the only authority with the power to remove the banners, the club had left them.

F.

The floor was given to the parties for their initial pleadings.

The appellant repeated that the club had not had the power to remove the banners by force and that this had been the police's responsibility. It also argued that a message was only considered inappropriate in the sense of Article 16(2)(e) of the Disciplinary Regulations if it was not covered by the freedom of expression, e.g. if it was a racist or insulting message. The club's only obligation was to make sure that the banners did not find their way into the stadium and, in this respect, the delegate's report mentioned that the organisation of the match had been appropriate. The club could not be blamed as it had done everything possible, the match had taken place peacefully, no pyrotechnic devices had been used, and no damage to property had been noted.

Responding to a question from the panel regarding the meaning of the text "***Verhaftet und an Stuehl bunde-bald bechomed mir Thaibox stunde. Inne mit de Jungs***", the appellant was clear about the second sentence of the text, which meant "*Let the boys come into the stadium*". It speculated about the remainder of the text, referring to information widely reported in the press, according to which a violent young offender, "C.", had followed a long-term training programme including Thai boxing lessons as part of his rehabilitation.

Finally, the appellant confirmed that the venue director and the UEFA delegate had not agreed to these banners being shown.

The disciplinary inspector confirmed his reply to the appeal and underlined that the appellant had been warned prior to the game that these banners should not be displayed.

The parties and the disciplinary inspector were given the floor for their second pleadings in accordance with Article 57(3) of the Disciplinary Regulations. They presented and expanded on the arguments set forth in their written pleadings and maintained their original requests.

Afterwards, the parties and disciplinary inspector left the room for the Appeals Body to deliberate

The arguments presented by the parties in support of their claims in their written and oral pleadings are reproduced below insofar as they are relevant to the dispute.

The Appeals Body concluded the hearing, deliberated and decided as follows.

In law:

1.

- a) The Appeals Body's jurisdiction in this matter is established by Articles 24(4) and 54 of the UEFA Disciplinary Regulations. It is therefore competent to examine the case in full, both factually and legally (Article 58(1) of the Disciplinary Regulations).
- b) The appeal meets the formal requirements and deadline laid down (Article 53 *et seq.* of the Disciplinary Regulations).

Consequently, the Appeals Body may examine its merits.

2.

- a) Article 16(2)(e) of the UEFA Disciplinary Regulations (2013 edition) states that " (...) all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives *even* if they can prove the absence of any negligence in relation to the organisation of the match: (...) the use of gestures, words, objects or any other means to transmit any message that is *not fit for a sports event*, particularly messages that are of a political, ideological, religious, offensive or provocative nature".

The aim of this provision is to guarantee the safety and security of any person attending a match organised by UEFA and to prevent such matches being used as a forum in which anyone can express an opinion or display a message that is not relevant to the sports event or competition.

- b) In the present case, it is not disputed that supporters behind the goal displayed two banners that were considered inadmissible by the UEFA delegate. The appellant contests, on the other hand, that the perpetrators of this act were its supporters and that the banner showing the text "*Verhaftet und an Stuehl bunde-bald bechomed mir Thai-box stunde. Inne mit de Jungs*" fell under Article 16(2)(e) of the Disciplinary Regulations.

3.

- a) Aware of the debate provoked throughout the country by the special and expensive treatment ordered in the canton of Zurich for a violent young offender, including private Thai boxing lessons (see swissinfo.ch), the panel considers the clear, obviously provocative reference to this case in the litigious banner to be not fit for a sports event in the sense of Article 16(2)(e) of the Disciplinary Regulations. Not only has it nothing to do with the sports event, but it may also be understood as a call for violent acts to be carried out in the

stadium (Inne), suggesting that the perpetrators would only risk being offered Thai boxing lessons as a punishment.

b) In this respect, the freedom of expression the appellant puts forward as an argument to contest the inappropriate nature of the message (Article 10 of the Swiss Constitution) does not help its case:

- according to Swiss law governing the principle of organisational autonomy, in particular Article 63 of the Swiss Civil Code, UEFA, as a non-profit organisation, has enormous freedom to determine rules in order to defend itself against behaviour detrimental to the goals laid down in its statutes (see, in the same sense, Margaret Baddeley, *L'association sportive face au droit*, p.116).
- as part of its autonomy, UEFA is free to decide which messages it considers "fit for a football event". In order to determine whether a message is fit for a football event, the organiser must consult the UEFA representative at the stadium or call UEFA, which decides on a case-by-case basis, and accept the consequences of UEFA's evaluation.
- UEFA regulations do not give supporters an automatic right to display a banner. The mere fact that a message was displayed in the stadium apparently in connection with the case of the young Zurich offender "C." was sufficient to constitute a breach of UEFA rules, whether the message itself was offensive or not, as its content was not fit for a football event.

b) The official report states that *"persons located behind right goal (from the main stand)"* displayed the forbidden banners. According to Article 38 of the Disciplinary Regulations, facts contained in match officials' reports are presumed to be accurate. However, proof of the inaccuracy of the content of these reports may be provided. In this case, the burden of proof was on FC St Gallen, who expressed doubt but failed to provide substantial evidence to counter the accuracy of the facts reported.

The notion of "supporters" used in disciplinary law is broad and does not permit a distinction between official and unofficial supporters. Objective clues suggesting that they support one club and not the other must be observed before, during and after the match before a person can be considered a supporter of one particular club.

It is clear that, in the present case, the supporters who displayed these banners were local supporters, since they were recognised as those who had previously spoken to the FC St Gallen representative about displaying the banners prior to kick-off. They ignored the advice of the UEFA representative, who had informed them that these banners were not

admissible. For all the above reasons, the club's suggestion that it was not proven that the supporters concerned were FC St Gallen supporters must be ruled out.

- c) The appellant also argued that only the police could remove the banners. This argument is rather flimsy, since the UEFA delegate had firmly stated that the banners in question should not be displayed as they were not in line with UEFA rules. This should have caused the appellant to conduct stringent checks at the gate in order to ensure that these banners were not taken into the stadium. If the checks had been carried out properly, the club would have prevented banners from entering the stadium. In this context, the possible refusal of the police to remove the banners that were taken into the stadium despite being expressly prohibited does not exonerate the club of its responsibility according to UEFA regulations.

4.

- a) Regarding the sanction to be imposed, the appellant refers to two previous cases to justify its alternative request that the fine be reduced to €15,000. In this respect, the Appeals Body recalls that comparing two punishments imposed by the UEFA disciplinary bodies is usually a fruitless exercise. It is very difficult to base a claim on the principle of equal treatment because of differences in circumstances and the number of both objective and subjective elements that are taken into account when determining punishments, which are therefore tailored to the individual case.
- b) In the present case, the Appeals Body considers the fine of €25,000 imposed by the Control and Disciplinary Body to be reasonable and proportionate. This is particularly true when, in accordance with Articles 17 and 19 of the Disciplinary Regulations, all the circumstances, particularly recidivism, are taken into account. Indeed, following the UEFA Europa League match between FC St Gallen and FC Kuban Krasnodar on 19 September 2013, the appellant had already been sanctioned in connection with banners displayed by its supporters containing a reference to a state prosecutor. This is, therefore, a case of recidivism and an aggravating circumstance.

The fact that the UEFA representative had informed the club prior to the match that the banners in question were prohibited and that the supporters, who had also been informed, carried on regardless of this warning is another aggravating circumstance which justifies the sanction imposed.

- c) In light of the above, the Appeals Body holds that the Control and Disciplinary Body correctly interpreted the applicable provisions and case law in this case and took account of all the facts in proper proportion. Under the aforementioned circumstances, the fine could

even be considered relatively lenient. As a result, the Control and Disciplinary Body's decision of 13 February 2014 must be upheld and the appeal rejected.

5.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations). In the present case, the costs of the proceedings (€4,000 in total) are charged to FC St Gallen and the Swiss Football Association is jointly liable for any failure to pay these costs, as well as the fine.

Decision of 30 April 2014

Valencia

(Protest against a caution)

Circumstances of the case:

During the UEFA Europa League match Sevilla vs. Valencia on 24.04.2014, the referee showed Valencia player Alcacer Garcia Francisco a yellow card for unsporting behaviour. This was the third caution of the player during the competition, which meant he would be suspended for the next UEFA competition match for which he would otherwise be eligible.

Valencia lodged a protest against this yellow card, requesting that it be rescinded so that the player could participate in the second leg of their UEFA Europa League semi-final.

Legal framework:

Art. 50 DR *Admissibility of protests*

Art. 9 DR *Decisions taken by the referee*

Decision:**CDB:**

The CDB declared the protest inadmissible.

Appeals Body:

The appeal lodged by Valencia was dismissed. Consequently, the disciplinary consequences of the yellow card shown to the player Alcacer García Francisco would remain.

<u>Chairman ad hoc:</u>	Michael Maessen, Netherlands
<u>Vice-chairman:</u>	Goetz Eilers, Germany
<u>Members:</u>	Levent Biçakci, Turkey Barry Bright, England

Whereas:

In fact:

A.

It emerges from the referee report of the 2013/14 UEFA Europa League match between Sevilla FC played on 24 April 2014, that the player no. 16 from Valencia, Alcacer Francisco Garcia, was shown a yellow card for unsporting behaviour in the 89th minute. This was the third yellow cards received by the player in the competition, following yellow cards received in two different previous matches.

On 25 May 2014, UEFA received a protest lodged by Valencia regarding the yellow card (the third one) received by the player on this match.

B.

On 28 April 2014, the Chairman of the Control and Disciplinary Body based on the UEFA jurisprudence and the clear meaning of Article 9 and 50 DR, rejected the protest lodged by Valencia regarding the disciplinary consequences of the yellow card shown to its player Alcacer Garcia Francisco during the mentioned match and confirmed the disciplinary sanction resulting from the referee's aforementioned decision, i.e. the suspension of the player for the next match. The CDB considered that requirements laid down in Article 9 of the UEFA Disciplinary Regulations for lifting of the sanction imposed against a player as a result of yellow card were not met.

C.

In its written statement dated 29 April 2014, the Appellant referred to its statement presented before the first instance disciplinary body arguing that the CDB would have wrongly interpreted Art. 9(2) and (3) DR as the referee's decision regarding the yellow card of the player Alcacer Francisco Garcia was based on an obvious error in the sense of Art. 9(2) DR.

The player Alcacer Francisco Garcia was not the person to be punished as he was not the responsible of the incident for which the referee intervened.

The referees obvious mistake impedes the defence of an innocent player and violates the principle “In dubio pro reo”. According to the appellant, the mistake in the sense of Art 9(2) DR also includes mistakes which confront with the sport fair play.

D.

On 29 April 2014, UEFA submitted its response to the appeal through its disciplinary inspector, who requested that the appeal be rejected and the procedural costs charged to the appellant

E.

No hearing was held as the appellant requested that the proceedings be conducted in writing only.

After examining the entire case file, in particular the challenged decision, the grounds for appeal and the disciplinary inspector’s reply to the appeal, the UEFA Appeals Body deliberated and decided as follows.

The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

In law:

1.

a) The Appeals Body has jurisdiction to hear the case in question under Articles 24(4) and 54 of the UEFA Disciplinary Regulations. Valencia CF lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeal fee paid on time. The appeal is therefore admissible under the terms of Article 53 of the Disciplinary Regulations.

According to Article 58(2) of the Disciplinary Regulations, the Appeals Body can re-examine the case in full, both factually and legally.

c) According to the Law 5 of the Laws of the Game, any disciplinary action taken by the referee on the field of play is final. This fundamental principle is confirmed by Article 50(2) DR: “*Protests may not be lodged against factual decisions taken by the referee*”. Only the disciplinary consequences resulting from a referee’s decision may, in very specific cases, be rectified by the disciplinary body (Article 9(1) DR). UEFA’s consistent disciplinary practice in this area limits such rectification to cases in which there is an unequivocal mistaken identity by the referee.

Article 9(3) DR, states : “*A protest against a caution or expulsion from the field of play after two cautions*”

is admissible only if the referee's error was to mistake the identity of the player." The application of this provision must involve not only an error but an obvious error on the identity of the player sanctioned.

According to Article 45 DR, facts contained in match officials' reports are presumed to be accurate, unless proof of their inaccuracy is provided. In the present case, after viewing the video footage of the incident, the Appeals Body considers it is confirmed, that the Valencia player rushed towards the opponent goalkeeper. The appellant failed to provide substantiated evidence to counter this fact, which the referee qualified as a violation of the Laws of the Game. In any case, there is no doubt, that the player in question was involved in the act sanctioned, so that there is no case of "mistaken identity".

Even if, by watching the video footage numerous times, one might share the views of the appellant, in considering the decision of the referee an error, this cannot be qualified as an obvious error falling under Article 9(2) DR.

Therefore, there are no grounds for reviewing the disciplinary consequences of the referee's decision, i.e. the suspension for one competition match.

2.

a) A protest against a caution is admitted only if the referee's error – should it have been committed – was to mistake the identity of the player cautioned (Art. 9(3) DR). In no way do the rules allow the disciplinary panel to act as Referee supervisors that would re-examine the referee's discretionary decisions after the match.

In the present case, the club brought up with its own interpretation of Art 9(2) DR. It considers that the referee committed a factual mistake, which constitutes an obvious mistake in the sense of Art. 9(2) DR as the act of the player would not have justified a yellow card. This interpretation is not in line with the actual meaning of Art. 9 (3) DR as explained above.

b) Even if the qualification of the gesture sanctioned is debatable, the identity of its author is not: the evidence provided by the club (the footage of the incident) clearly shows that the player involved in the incident was indeed Alcacer Francisco Garcia. In other words, the appellant's protest would have been admitted if the referee had mistaken the player's identity when showing the yellow card to Alcacer but this was not the case.

In the light of the above, and in the absence of mistake on the identity of the player sanctioned, there is no legal basis to cancel the consequence of this yellow card administered to Alcacer Francisco Garcia. The Control and Disciplinary Body correctly interpreted the relevant provisions in this regard and its decision of 28 April 2014 must be upheld.

3.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

In the present case, the costs of the proceedings (€1,000 in total) are charged to the Valencia C.F. The Football Federation of Spain is jointly liable for any failure to pay these costs.

Decision of 14 May 2014

Benfica.

(Protest)

Circumstances of the case:

During the match against Juventus on 01.05.2014, the referee showed a direct red card to Benfica player Lazar Markovic. In the 89th minute, during a break in play, Juventus player Mirko Vucinic came out of his technical area and entered the Benfica technical area in an aggressive manner. This resulted in several members of the Benfica and Juventus technical staff being involved in a heated confrontation. During this confrontation, the player Lazar Markovic pushed a member of the Juventus technical staff in a violent manner. He was shown a red card by the referee and dismissed from the technical area.

Benfica lodged a protest against this red card, requesting that it be rescinded so that the player could participate in the UEFA Europa League final.

Legal framework:

Art. 50 DR *Admissibility of protests*

Art. 9 DR *Decisions taken by the referee*

Decision:

CDB:

The CDB declared the protest inadmissible.

Appeals Body:

The appeal was rejected and the CDB's decision of 6 May 2014 was upheld.

Ad Hoc Chairman: Michael Maessen

Whereas:

In fact:

A.

The referee's report of the above-mentioned match reads that *"In the 89th minute, during a break in play, Juventus number 9, Mirko Vucinic, came out of his technical area and entered the Benfica technical area in an aggressive manner. This resulted in several members of the Benfica and Juventus technical staff being involved in a heated confrontation. I witnessed the Juventus number 9 and **the Benfica number 50** [the player Lazar Markovic] pushing a member of the opposition's technical staff in a violent manner. They were both dismissed from the technical area".*

In its written note dated of 02.05.2014, which reached UEFA on 05.05.2014 at 08:49, Benfica filed a protest regarding the red card showed to the player Lazar Markovic by the referee during the above-mentioned match. According to the club, this dismissal is a result of the obvious error by the referee in the sense of Art. 9DR. Therefore, the red card must be cancelled and the player Lazar Markovic allowed to play the return leg match.

B.

In its decision of 6 May 2014, the Control and Disciplinary Body rejected the protest against this sending off of the player Lazar Markovic from the technical area failing a mistake in the identity of the player sanctioned (Article 9 (3) DR).

C.

On 9 May 2014, Benfica appealed the decision of the Control and Disciplinary Body and requested to set it aside the challenged and to establish that the decision of the referee to send off the player Lazar Markovic for having pushed a member of the opposition's technical staff in a violent manner is an obvious error as defined by Article 9 of the DR. They also requested to rule that the Benfica's player should not be considered as suspended for the following match Sevilla FC v/ SL Benfica to be played on 14.05.2014. The appellant provided a video footage and photos to support its opinion

D.

UEFA, through its disciplinary inspector, submitted its reply to the appeal on 14 May 2014. It concluded that the appeal should be rejected, with the costs charged to the appellants.

E.

No hearing was held as the appellant requested that the proceedings be conducted urgently.

After examining the entire case file, the ad hoc chairman of the UEFA Appeals Body decided as follows.

The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

In law:

1.

Under Article 24(3) of the UEFA Disciplinary Regulations, the chairman of the Appeals Body, one of its vice-chairmen or one of its members acting as ad hoc chairman may take a decision as a judge sitting alone, notably in urgent cases.

In the case at hand, SL Benfica's next match is scheduled for Thursday 15 May 2014. In order to give SL Benfica time to deal with the consequences of the decision, it was considered appropriate to deal with the case urgently, as the appellant had requested. The clear factual and legal circumstances of the case also meant that it could be dealt with urgently. Therefore, it is up to the ad hoc chairman to examine the merits of the case as a judge sitting alone.

Within the present appeal, only the protest and not the nature and gravity of the offence reported to have been committed by the player Lazar Markovic (pushing the opposite team official) will be dealt with.

2.

The object of the protest lodged by SL Benfica can only be to question the disciplinary consequences of the final decision taken by the referee on the field of play. According to Law 5 of the Laws of the Game in particular, disciplinary action taken by the referee on the field of play cannot be reviewed. This principle is confirmed by Article 9 of the Disciplinary Regulations, which states:

- "(1) Decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies;*
- (2) In cases where a decision by the referee involves an obvious error (such as mistaking the identity of the person penalised), only the disciplinary consequences of that decision may be reviewed by the disciplinary bodies (...)"*

Under Article 38 DR, facts contained in match officials' reports are presumed to be accurate. However, the proof of the inaccuracy of the contents of these reports may be provided. In other words, the burden of proof of inaccuracy of facts reported by match officials lies on the party charged.

According to Article 9(2) DR the cancellation of the consequence of a sending off of a player or team official can be cancelled in case of the decision of the referee involves an obvious error such as mistaking the identity of the person to be sanctioned.

According to Article 9(3) of the UEFA Disciplinary Regulations, *"a protest against an expulsion from the field of play after two cautions is admissible only if the referee's error was to mistake the identity of the player"*.

3.

In the present case, the referee reported clearly to UEFA that *"I witnessed (...) **the Benfica number 50** [the player Lazar Markovic] pushing a member of the opposition's technical staff in a violent manner"*, the referee did not mistake the player identity as it was the player no. 50 who pushed the opposite team technical staff. As indicated in Art. 38 DR, this presumption can be rebutted by the party charged.

Consequently, the only question which the ad hoc chairman must address is whether, in this case, the Control and Disciplinary Body properly assessed the evidence brought before him before concluding that Lazar Markovic was the really one who pushed the opposite team official as reported by the referee or whether, on the contrary, the evidence is sufficient to rebutted the facts reported by the referee and therefore to cancel the consequence of the player sending off as it was a mistaken identity by the referee.

The appellants denied that the player Lazar Markovic pushed one technical staff member of the opposite team as reported by the referee. In accordance with Art.38 DR second sentence, the burden of proof to counter the accuracy of the facts related in the match official's report, lies on appellants. In this respect, they provided video footage and photos to demonstrate that the player Laza Markovic did not pushed anyone in this brawl that occurred in the 89th minute of the match.

After having assessed the evidence provided by the appellants, the ad hoc chairman noticed that the video footage and photos do not show the beginning of the incident when it started. Instead this evidence only showed the following part when the player was walking around without committing any reprehensible act.

The ad hoc chairman, deemed legitimate to conclude that the appellants decide to provide video where the player incident cannot be seen in order to exonerate the player Lazar Markovic. And come to the conclusion that the appellants failed to provide substantial evidence to rebut the presumption of the accuracy of the facts reported by the referee that it was the player Lazar Markovic who was involved in the incident in question.

4.

In the light of the above, the ad hoc chairman of the Appeals Body can only confirm that the Control and Disciplinary Body correctly assessed the facts and legal provisions and that its decision to reject the protest filed by SL Benfica and its player is beyond any criticism. Therefore, the appeal lodged by SL Benfica and its player must be rejected and the Control and Disciplinary Body's decision confirmed.

5.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

In the present case, the costs of the proceedings (€2,000 in total) are charged to the player and SL Benfica. The Portuguese Football Federation is jointly liable for any failure to pay these costs.

Decision of 14 May 2014

Real Madrid. Xabi Alonso

(Protest against a caution)

Circumstances of the case:

During the UEFA Champions League match against Bayern München on 29.04.2014, the referee showed Real Madrid player Alonso Olano Xabier a yellow card for unsporting behaviour.. This was the third caution of the player during the competition, which meant he would be suspended for the next UEFA competition match for which he would otherwise be eligible.

Real Madrid lodged a protest, and requested that this sanction be replaced with a fine, or suspended until the whole appeal process reached a conclusion.

Legal framework:

Art. 50 DR *Admissibility of protests*

Art. 9 DR *Decisions taken by the referee*

Decision:

CDB:

The CDB declared the protest inadmissible.

Appeals Body:

The appeal was rejected and the CDB's decision of 6 May 2014 was confirmed.

Ad Hoc Chairman: Michael Maessen

W h e r e a s:

In fact:

A.

On 30 April 2014, Real Madrid CF filed a protest against “the consequences of the yellow card shown to the Player (14) Alonso Olano, Xabier on minute 38 of the match played yesterday, April 29th, 2014 in the Allianz Arena between FC Bayern München and Real Madrid CF”. This was the third yellow card received by the player in the competition, following yellow cards received in two previous matches (i.e. FC København v Real Madrid CF on 10 December 2013 and Borussia Dortmund v Real Madrid CF v on 8 April 2014).

B.

In a decision of 6 May 2014, the UEFA Control and Disciplinary declared the protest lodged by Real Madrid CF inadmissible and confirmed the disciplinary sanction resulting from the referee’s aforementioned decision, i.e. the suspension of the player for the next match. The first-instance body ruled that the requirements laid down in Article 9 of the UEFA Disciplinary Regulations for the lifting of the sanction imposed against a player as a result of a yellow card were not met.

C.

On 7 May 2014, Real Madrid CF appealed against the Control and Disciplinary Body’s decision of 6 May 2014, asking for the sanction to be replaced with a fine or, alternatively, for the execution of the sanction to be stayed until the whole appeal process had been concluded.

In support of its appeal, the club argues, in substance, that there is a lack of proportionality between the sanction issued against the player and the foul he committed. On viewing the images of the incident that resulted in the caution, “it simply is not understandable for anyone to conceive that the consequence of such a light action is the prohibition to play nothing else than the UCL Final”. Giving various legal and jurisprudential references relating to the issue of proportionality, the appellant claims that UEFA’s wide margin of autonomy to regulate its own affairs and apply its disciplinary sanctions must be exercised with due consideration for the general principles of law, such as the right to be heard and proportionality. In the case at hand, it argues that the proportionality principle has not been respected and the concrete circumstances not duly considered in accordance with Article 17 of the UEFA Disciplinary Regulations. The appellant suggests that the Appeals Body has the power to reduce the sanction from a suspension to a fine.

To justify its request for a stay of execution of the sanction, the appellant merely refers to Article 55 of the Disciplinary Regulations.

D.

UEFA, through its disciplinary inspector, submitted its reply to the appeal on 12 May 2014. It concluded that the appeal should be rejected, with the costs charged to the appellants.

E.

No hearing was held as the appellant requested that the proceedings be conducted in writing only.

After examining the entire case file, in particular the challenged decision, the grounds for appeal and the disciplinary inspector's reply to the appeal, the ad hoc chairman of the UEFA Appeals Body decided as follows.

The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

In law:

1.

Under Article 24(3) of the UEFA Disciplinary Regulations, the chairman of the Appeals Body, one of its vice-chairmen or one of its members acting as ad hoc chairman may take a decision as a judge sitting alone, notably in urgent cases.

In the case at hand, Real Madrid CF's next match is scheduled for Saturday 24 May 2014. It happens to be the final of 2013/14 UEFA Champions League. In order to give Real Madrid CF time to deal with the consequences of the decision, it was considered appropriate to deal with the case urgently, as the appellant had requested. The clear factual and legal circumstances of the case also meant that it could be dealt with urgently. Therefore, it is up to the ad hoc chairman to examine the merits of the case as a judge sitting alone.

2.

Under Article 11 of the Disciplinary Regulations, member associations and clubs, as well as their players, officials and members, must respect the Laws of the Game, as well as UEFA's Statutes, regulations, directives and decisions, and comply with the principles of loyalty, integrity and sportsmanship.

Under paragraph 2.04(e) of the 2013/14 UEFA Champions League Regulations, each club must confirm in writing that the club itself, as well as its players, agree to respect the statutes and regulations to be eligible to participate in the 2013/14 UEFA Champions League.

3.

a)

The object of the protest lodged by Real Madrid CF is the disciplinary consequences of the action taken by the referee on the field of play. According to Law 5 of the Laws of the Game in particular, disciplinary action taken by the referee on the field of play cannot be reviewed. This principle is confirmed by Article 9 of the Disciplinary Regulations, which states:

"(1) Decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies;

(2) In cases where a decision by the referee involves an obvious error (such as mistaking the identity of the person penalised), only the disciplinary consequences of that decision may be reviewed by the disciplinary bodies (...)"

In the present case, the appellant does not dispute the fact that, exercising his discretionary powers, the referee considered that the act committed by the player deserved a yellow card, and that this yellow card was the third the player had received in the competition. In other words, nobody is claiming that the referee committed an "obvious error" and there is no legal basis for even considering a review of the consequences of this third yellow card.

b)

Based on Article 60 of the Disciplinary Regulations, Article 22 of the 2013/14 UEFA Champions League Regulations states the following:

"22.01 As a rule, a player who is sent off the field of play is suspended for the next match in a UEFA club competition. The Control and Disciplinary Body is entitled to augment this punishment. For serious offences the punishment can be extended to all UEFA competition categories.

22.02 In case of repeated cautions:

a) before the group stage, a player is suspended for the next competition

match after three cautions in three different matches, as well as after the fifth caution;

b) from the first match in the group stage, a player is suspended for the next competition match after three cautions in three different matches, as well as following any subsequent odd-numbered caution (fifth, seventh, ninth, etc.).

22.03 Single yellow cards and pending suspensions are always carried forward

either to the next stage of the competition or to another club competition in the current season.

22.04 Exceptionally, all yellow cards and pending yellow-card suspensions expire on completion of the play-offs. They are not carried forward to the group stage.

22.05 Cautions and pending yellow-card suspensions from club competition matches expire at the end of the season"

This provision is a clear legal basis which permits no adjustment by the disciplinary bodies other than a possible increase of the automatic suspension for the next match following a direct red card.

c)

As an experienced club that participates in UEFA competitions every year, the appellant knows very well the automatic disciplinary consequence of an accumulation of yellow cards. Moreover, Real Madrid FC and the player Alonso Olano Xabier know it, since he deliberately received a yellow card during the UEFA Champions League match between AFC Ajax and Real Madrid CF (0-4) on 23 November 2010 in order to miss the next match, in which nothing was at stake, and thus avoid being suspended for important forthcoming matches (see UEFA Appeals Body Decision of 2 December 2010).

d)

Besides, the system under which an accumulation of yellow cards leads to a match suspension is customary in football, as the following examples demonstrate:

Article 17(3) of the FIFA Disciplinary Code stipulates that: *"If a player receives a caution in two separate matches of the same FIFA competition, he is automatically suspended from the next match in that competition (...)".*

Article 12 of the Circular Letter 6-2013/2014 of the Royal Spanish Football Federation stipulates that: *"En el Campeonato Nacional de Liga la acumulación de cinco amonestaciones en el transcurso de la misma temporada y competición determinará la suspensión por un partido"* (In the national competition the accumulation of five cautions in the same season and competition implies the suspension of one match).

Article 11(2) of the Swiss Football Association's disciplinary regulations stipulates that: *"Un joueur qui reçoit plusieurs avertissements dans des matchs différents de la même compétition ou de différentes compétitions est suspendu conformément aux dispositions d'exécution du présent Règlement disciplinaire"* (A player who receives more than one caution in different matches in the same competition or different competitions is suspended in accordance with the implementing provisions of these disciplinary regulations).

4.

a) According to Article 9(3) of the UEFA Disciplinary Regulations, *"a protest against an expulsion from the field of play after two cautions is admissible only if the referee's error was to mistake the identity of the player"*.

Based on this provision, the only grounds on which the Control and Disciplinary Body could declare the appellant's protest admissible is if the referee mistook the player's identity when showing the yellow card to Alonso Olano Xabier. For this reason only, the present appeal could be rejected without further argument.

b) For clarification purposes, however, the Appeals Body wishes to make clear that the automatic suspension imposed for an accumulation of yellow cards may not be replaced with another sanction listed in Article 6 of the Disciplinary Regulations. It is the mandatory legal consequence of the accumulation of yellow cards and not, as the appellant argues, the "standard sanction" for a particular act whose gravity and specific circumstances should be assessed. In other words, in the present case, the suspension of the player Alonso Olano Xabier for the next match, which happens to be the UEFA Champions League final, was imposed not as the sanction for his last foul, but as the necessary consequence of the three yellow cards that he rightly received for various accumulated offences in different matches (Article 60 of the Disciplinary Regulations and Article 22 of the 2013/14 UEFA Champions League Regulations).

Nevertheless, the ad hoc chairman would like to comment briefly on the Franck Ribéry case mentioned by the appellant as an example of proportionality. In the Ribéry case, the principle of proportionality was relevant because the panel was required to assess the nature of the offence and of the sanction. A red card was shown and disciplinary proceedings were opened. In such a case the disciplinary body had to determine the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the case, taking into account both aggravating and mitigating circumstance (Article 17(1) DR). In the case at hand, however, there was no such requirement.

This being said, the appellant's references to UEFA's autonomy and the proportionality principle do not change the legal situation of the player in the present case. Indeed, under another general legal principle, i.e. that of legality, the Control and Disciplinary Body had no option but to impose the contested suspension for the next match. Any other decision would have violated UEFA's own rules.

c) In the light of the above, the ad hoc chairman of the Appeals Body can only confirm that the Control and Disciplinary Body correctly assessed the facts and legal provisions and that its decision is beyond any criticism. Therefore, the appeal lodged by Real Madrid CF and its player must be rejected and the Control and Disciplinary Body's decision confirmed.

d) The aforementioned Article 11 of the Disciplinary Regulations requires clubs to act in good faith. Moreover Article 44.3 of the Disciplinary Regulations states that costs caused abusively by a party are charged to the party responsible. In this regard, the ad hoc chairman of the Appeals Body considers that, since the appellant: (i) is fully aware of all the rules concerning the accumulation of yellow cards, (ii) did not contest at any time in these proceedings the yellow card shown by the referee in the field of play (which is precisely the object of the protest procedure) and (iii) the forcing of the current proceedings by Real Madrid, which is in contradiction with the previous conduct of the club (i.e. the involvement of the same player at stake in a deliberately third yellow card in the season 2010/2011 or the simple fact that the appellant did not contest the “alleged” disproportionate suspension of its player Luka Modric for accumulating three yellow cards earlier this season), it is legitimate to consider that the appellant has acted in bad faith, which is unacceptable on the part of such a large European club.

5.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

In the present case, the costs of the proceedings (€10,000 in total) are charged to the player and Real Madrid CF. The Royal Spanish Football Federation is jointly liable for any failure to pay these costs.

Decision of 2 June 2014

Eskişehirspor

(Match fixing. Admission criteria)

Circumstances of the case:

In July 2011, Turkish police arrested several persons as part of investigations into match fixing. Among the arrested persons were representatives of Eskişehirspor, Bülent Uygun (Head Coach) and Ümit Karan (player). They were suspected of match fixing activities concerning the matches, Eskişehirspor vs. Fenerbahçe on 9 April 2011, and Eskişehirspor vs Trabzonspor on 22 April 2011.

On 9 May 2014, Eskişehirspor submitted the Admission Criteria Form for the UEFA Club Competitions 2014/2015, in which clubs are required to declare any direct or indirect involvement in match-fixing activities.

On 19 May 2014, the UEFA General Secretary referred the case of Eskişehirspor to the CDB, on the grounds that the club appeared not to have met all the conditions for admission to the competition.

Legal framework:

Art. 2.08 and 2.09 UEFA Europa League Regulations *Admission criteria*

Decision:

Appeals Body:

The Appeals Body decided that Eskişehirspor were not eligible to participate in the 2014/2015 UEFA Europa League season.

Chairman: Pedro Tomás, Spain
Vice-chairmen: Goetz Eilers, Germany
Michael Maessen, Netherlands

Whereas :

In fact:

A.

On 3 July 2011, the Turkish police arrested several persons as part of the investigations pursued in matters concerning match fixing. Among the arrested persons there were also representatives of Eskişehirspor FC (Eskişehirspor): Bülent Uygun (Head Coach of Eskişehirspor) and Ümit Karan (Eskişehirspor player); were among the arrested persons who were suspected of having conducted match fixing actions concerning the matches, Eskişehirspor vs. Fenerbahçe SK played on 9 April 2011 and Eskişehirspor vs Trabzonspor played on 22 April 2011.

The enquiry regarding these persons was in the wake of an investigation conducted by the Turkish police authorities in 2011 regarding match fixing that took place in the Turkish championship in which officials and players of Turkish clubs were involved.

B.

On 9 May 2014 Eskişehirspor submitted the Admission Criteria Form for the UEFA Club Competitions 2014/2015. In its admission criteria form, Eskişehirspor declared inter alia that:

"On 3 July 2011, many people had been taken into custody by police and on 10 July 2011. 61 individuals had been arrested, including club officials and professional players on match fixing allegations.

Eskişehirspor PFCD's Head Coach Mr Bülent Uygun, Player Mr. Ümit Karan, Player Mr Sezer ÖZTÜRK and Sportive Director Mr. Zafer TÜZÜN were among those alleged involved individuals.

Turkish Football Federation has cleared Eskişehirspor as a result of disciplinary proceedings and no sanction is forced upon our club. Eskişehirspor was never a part of the trial process in both 16th High Criminal Court and 5th Court of Appeals nor in any Turkish Football federation Disciplinary Bodies. All the actions occurred were individual acts which our club was not a part of.

On 10 August 2012, Istanbul 16th High Criminal Court announced findings of its decision regarding the case and sentenced Eskişehirspor PFCD's Head coach Bülent Uygun with 11 Months and 7 Days of imprisonment and Player Omit Karan with 7.5 Months of imprisonment.

Lastly, Director Mr. Zafer TÜZÜN and Player Sezer ÖZTÜRK was acquitted of all the accusations by the verdict of the Istanbul 16th High Criminal Court and no Punishment is given to the individuals

On 17.01.2014, the 5th Criminal Chamber of the Court of Appeals approved the verdict of Istanbul 16th High Criminal Court against Bülent Uygun and Omit KARAN as it is in accordance with the Turkish Criminal Code.

Eskişehirspor was not a defendant in the proceedings before the state court and the verdict was not given against our club but against individuals related to the club (...)".

C.

On 19 May 2014, the UEFA General Secretary referred the case of Eskişehirspor to the UEFA Control and Disciplinary Body in accordance with paragraph 2.13 of the Regulations of the UEFA Europa League 2014/15 (hereinafter: UEL Regulations), on the grounds that the club appeared not to have met all the conditions for admission to the competition. Moreover, the UEFA General Secretary asked to the UEFA Disciplinary Inspector to conduct an investigation over the above-mentioned admission form.

On 21 May 2014, the UEFA administration informed Eskişehirspor of the instigation of proceedings in accordance with the UEFA Disciplinary Regulations (hereinafter: DR) and attached the UEFA Disciplinary Inspector's report. In particular, and as a preliminary procedural request, the UEFA Disciplinary Inspector requested for the sake of the smooth running of the competition to refer the case to the UEFA Appeals Body in accordance with Article 34 (3) UEFA Statutes and Article 24 (4) DR

On 21 May 2014, the Chairman of the Control and Disciplinary Body informed Eskişehirspor, that he had decided to submit the case directly to the Appeals Body in accordance with Article 23(3) DR in conjunction with Article 24(4) DR.

D.

Based on the investigations conducted by the Turkish prosecutor, on the minutes of phone conversations tapped by the Turkish police, on the decisions of the Turkish Football Federation (hereinafter: TFF) and on two Turkish court decisions, both the Istanbul 16th High Criminal Court and the Criminal Chamber of the Supreme Court decision, the UEFA Disciplinary inspector requested the competent UEFA disciplinary Body to declare the ineligibility of Eskişehirspor to participate in the upcoming UEFA Europa League 2014/2015 in accordance with Article 2.08 UEL Regulations (UELRL). In addition, according to Art. 2.09 UELRL, he called for the imposition of an additional sanction against Eskişehirspor of one additional season of exclusion from any future UEFA Competitions as well as a EUR 300.000 fine (three hundred thousand euro).

The Disciplinary Inspector report can be summarised as follows:

On 3 July 2011, the Turkish police arrested and detained 61 individuals as part of its investigation into alleged match fixing within Turkish football. It emerges from the file provided by the Turkish prosecutor to the TFF that two matches in the domestic league were concerning the club of Eskişehirspor.

In the context of the investigation, criminal as well as disciplinary proceedings were opened against the Eskişehirspor head coach Bülent Uygun and the player Ümit Karan.

Decisions of the Turkish Football Federation

Eskişehirspor vs. Fenerbahçe SK played on 9 April 2011.

The player Ümit KARAN and the head coach Bülent UYGUN of Eskişehirspor were brought before the the Professional Football Disciplinary Committee of the TFF (PFDC) for the alleged attempt to influence the result of the match Eskişehirspor vs. Fenerbahçe SK played on 9 April 2011. In its decision dated 6 May 2012, the PFDC declared that there were no grounds for the imposition of sanction on the player Ümit KARAN and the coach Bülent UYGUN for having influenced the above-mentioned match.

Eskişehirspor vs Trabzonspor played on 22 April 2011

On 6 May 2012 the PFDC sanctioned the player Ümit Karan with “... a ban on exercising any football related activity for a period of 2 years for attempting to influence the result of this match”.

Having reached the opinion, “that the said [person was] engaged in intense activities to affect the match result and, such actions were quite effective to achieve desired result thus an opinion has been formed that [he] attempted to such activities”.

The coach however was found not guilty regarding this match.

Decision of the 16th High Criminal Court

On 2 July 2012, the Istanbul 16th High Criminal Court rendered its decision, whose grounds were released on 10 August 2012.

The decision of the court was based on a large-scale investigation into match fixing in Turkish football in which the wiretap was used, witnesses testimonies delivered, etc.

The Court judged that a criminal organisation was formed under the leadership of the President of Fenerbahçe SK Aziz Yıldırım and it had been proven that match-fixing and incentive bonus were made during 13 matches of the season 2010/2011, including Eskişehirspor vs. Fenerbahçe SK of 9 April 2011 and Eskişehirspor vs Trabzonspor played on 22 April 2011.

The Criminal Court was convinced that Eskişehirspor head coach, Bülent Uygun and the player, Umit Karan, were involved in match fixing under Turkish law. Consequently, Eskişehirspor head coach, Bülent Uygun was sentenced to 1 year and six months of imprisonment *"due to being a member of the crime organization established in the leadership of Aziz Yıldırım in order to influence the match results in Turkish Professional Super League via match-fixing and incentive bonus"*.

He was also sentenced to 1 year and six months of imprisonment and four thousand days of punitive fine *"due to the fact that it is established that he committed the crime of match-fixing in Eskişehirspor – Trabzonspor competition played on 22/04/2011"*.

Eskişehirspor player Ümit Karan, was sentenced to 1 year and 6 months in prison and four thousand days of punitive fine due to the fact he *"has been proven guilty of the crime, providing incentive bonus in order to influence the outright result of Eskişehir-Trabzonspor football match played on 22.04.2011 in the Turkish Professional Super League"*.

Furthermore, he was sentenced to imprisonment for a term of nine months and subject to a judicial fine of two thousand days due to the fact that the crime *"had been committed with the promise of providing incentive bonus"*.

In relation to the match Eskişehirspor vs. Fenerbahçe played on 9 April 2011, Eskişehirspor player Ümit Karan was acquitted of the charge of fraud by involvement in match fixing because *"match fixing and incentive bonus had not been defined as an actual crime prior to the Law numbered 6222."*

Turkish Law No. 6222 in which match-fixing was included as a crime was passed on 14 April 2011, four days after that match.

All these decisions were appealed before the Supreme Court of Turkey. On 17 January 2014, the 5th Criminal Chamber of the Supreme Court of Istanbul rendered a decision regarding the appeals against the Criminal Decision. The Supreme Court confirmed all the appealed decisions.

E.

In its statement sent to UEFA on 31 May 2014, Eskişehirspor does not contest the essential facts as reported by the Disciplinary Inspector, and in particular the involvement of its former coach and one of its players in match-fixing activities. Eskişehirspor argues in substance as follows:

- Eskişehirspor lost a decisive match in its quest for qualification for the 2011/12 UEFA Europa League due to the bribing activities of another Turkish club and suffered a severe damage. It is a victim and does not understand why UEFA seeks to additionally sanction the club.
- the Disciplinary Regulations edition 2008 ("DR 2008") mentioned in the Disciplinary Report are not applicable, and when signing the Admission Criteria Form for the UEFA Club Competitions 2014/2015, Eskişehirspor did not undertake to comply with the DR 2008 or with the retroactive application of the DR.
- the application of the principle of strict liability in this case is contested: Article 6(1) DR (ed. 2008) shall be interpreted restrictively. Arguing that CAS justifies strict liability according to Article 6 DR (ed. 2008) with regard to the responsibility of clubs for the conduct of their supporters because supporters are not bound by the UEFA regulations, this article shall not apply to this case as the individuals who committed the alleged violation of the rule here are bound by the UEFA regulations, and their direct responsibility is not engaged. There is here no need to also hold the club liable without any specific fault or negligence.
- Article 6 DR (ed. 2008) does not apply in relation to Article 2.08 of the Regulations of the UEFA Europa League 2014/15 as the latter provision does not include reference to the general provision of the UEFA Disciplinary Regulations, such as Article 6 DR (ed. 2008)
- CAS discussed the definition of direct and indirect involvement in its award CAS 2013/A/3258. Such direct or indirect involvement of the club did not take place in this case.
- The club cannot be punished according to Article 2.09 UELR for the violation of Article 5 DR (ed. 2008) as this would constitute a violation of the principle of non-retroactivity, because the club accepted the UEFA Regulations which were in place at the time it signed the declaration, i.e. in 2013, as it signed the Admission Criteria Form on 9 May 2014. There is no declaration whatsoever that the Appellant accepted to be bound by the 2008 DR in 2011.

- UEFA has no competence to sanction Eskişehirspor in accordance with Article 2.09 UELR, as the match-fixing activities are exclusively related to two Turkish championship games in the season 2010/11 season and do not fall within the disciplinary competence of UEFA.
- Not only the Disciplinary Inspector did not mention aggravating circumstances but he also failed to consider mitigating circumstances that justify a substantial reduction of the sanction requested. Among these mitigating circumstances, Eskişehirspor mentions that the club was obviously a victim of match fixing rather than an offender; the club has no knowledge of a case in which UEFA sanctioned the victim of an inducement by a third party: in all cases such as Olympiakos Volou, Fenerbahçe, Steaua Bucuresti and Besiktas, UEFA sanctioned the team that initiated the match fixing for its own benefit; the individuals involved created an unfair disadvantage for the club; the club took all possible precautionary measures to avoid this situation, as a performance bonus was foreseen for the coach if the club would finish in the 5th or 6th position in the championship, etc.
- Eskişehirspor requests the Appeals Body to declare lack of competence to decide the case in view of its lack of jurisdiction over match-fixing at the national level; alternatively, to reject the request of the Disciplinary Inspector and confirm that no sanction whatsoever shall be imposed on the club; alternatively, to impose the lowest possible monetary sanction and no period of ineligibility on the club; alternatively, to impose no monetary sanction and decide that any period of ineligibility/sanction be deferred for a probationary period of five years; in all cases, find that no order against the club shall be made with respect to the cost of these proceedings.

F.

The Chairman opened the hearing and noted the presence of the party charged and of the Disciplinary Inspector. He informed them of the composition of the Appeals Body and of the procedure to be followed. He advised them that the discussions would be recorded. They did not raise any objections and did not require any further procedural directions.

The parties were given the floor to plead, reply and rejoinder. The additional arguments given by the parties in support of their pleadings – written and oral – are set out below, insofar as they are relevant.

In Law:

1.

Bearing in mind the urgent circumstances of the case, which might have an important impact on the smooth running of the UEFA Europa League 2014/2015 and based on Article 50.3 of the UEFA Statutes and Article 24.4 DR, the Appeals Body complies with the decision taken by the Chairman of the Control and Disciplinary Body to transfer the case to this UEFA disciplinary body and confirms, herewith, its competence to deal with the present case in accordance with Article 24(4) DR.

No objections have been raised in this regard by the parties involved.

2.

The present case is to be dealt with in accordance with the UEFA Disciplinary Regulations in force when the offence was committed. As the incident occurred during the season 2011/2012 of the Turkish Championship, the UEFA Disciplinary Regulations of 2008 apply with regard to the alleged offence. In addition, it shall be noted that the UEFA Disciplinary Regulations Edition 2013 are relevant to any procedural and organisational issue.

In this respect, it may be recalled that CAS has already ruled that: "in general, it is necessary to apply the laws, regulations or rules that were in force at the time the facts occurred. This general principle is, however, subject to several exceptions, including an exception for laws or rules that are procedural in nature."(CAS 2000/A/274). This approach is also confirmed by CAS 2013/A/3256 when stating that the UEFA 2012 DR, which were in force on the date disciplinary proceedings were instigated against Fenerbahçe, were applicable concerning the procedural and organisational issues. In the present case, the disciplinary proceedings were instigated against Eskişehirspor on 21 May 2014.

In view of the above, the argument raised by the Appellant concerning the applicable version of the UEFA Disciplinary Regulations shall be dismissed.

3.

Under the terms of Article 2 of its Statutes, UEFA's objectives particularly include to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason (letter a), to prevent all methods or practices which might jeopardise the regularity of matches or competitions or give rise to the abuse of football (letter e), and to ensure that the needs of the different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account (letter j).

According to Article 50 (3) UEFA Statutes:

“The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures”.

Article 52 of the UEFA Statutes provides that, 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.

According to Article 1.01 UEL Regulations, said regulations govern the rights, duties and responsibilities of all parties participating and involved in the preparation and organisation of the 2014/15 UEFA Europa League including its qualifying phase and the play-offs (hereinafter: the Competition).

Article 2.07 UELR reads as follows:

“To be eligible to participate in the competition, a club must fulfill the following criteria:
(...)

g) it must not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level and must confirm this to the UEFA administration in writing”.

According to Article 2.08 UELR:

“If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition.”

Article 2.09 UELR reads as follows:

“In addition to the administrative measure of declaring a club ineligible, as provided for in paragraph 2.08, the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations”.

Article 5 DR (Edition 2008) states that member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship (paragraph 1). A breach of these principles is committed by anyone who, in particular, engages in or attempts to engage in active or passive bribery and/or corruption (paragraph 2(a)), or acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of behaviour in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party (paragraph 2 (j)).

Article 6(1) DR (Edition 2008) provides for the responsibility of members associations and clubs for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the member association or club

Preserving the uncertainty of the outcome of football matches is UEFA's prime concern. Indeed, it is the *raison d'être* of organized football. If supporters would know the result of a match in advance or the goals to be scored there would be no sporting interest in watching and/or attending football games. It would spell the end of football. Therefore, UEFA has a zero tolerance policy towards anyone, including club's and association's officials, players or members, who jeopardize the uncertainty of the outcome of football matches.

The present case shall be examined in the light of these provisions and principles.

4.

The Appeals Body recalls that, in accordance with Article 2.08 UELR, it is for UEFA to “(...) *concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match (...)*”. The standard of proof to be applied with regard to the admission of clubs for UEFA competitions has therefore been sufficiently established in Article 2.08 UELR, i.e the standard of comfortable satisfaction.

The Appeals Body considers necessary to recall that CAS already decided on the applicable standard of proof concerning cases of admission of clubs for UEFA competitions and/or additional

disciplinary measures with regard to these incidents (see, among others, CAS 2009/A/1920, CAS 2010/A/2172, CAS 2010/A/2266, CAS 2011/A/2528, CAS 2013/A/3258 and CAS 2013/A/3256).

In all these cases, CAS deemed as the appropriate standard of proof the one based on “comfortable satisfaction” (if not even the one of “balance of probabilities”). In particular, the CAS established that “taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, UEFA must establish the relevant facts “to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made” (CAS 2005/A/908). ”

Accordingly, the Appeals Body considers that the standard of proof to be applied in cases regarding the involvement of a club, in this case Eskişehirspor, in activities aimed to arrange the outcome of a match at national level, shall be “comfortable satisfaction”. This standard of proof is greater than a mere balance of probabilities but less than proof beyond reasonable doubt.

5.

In the present case, the facts as established by the Disciplinary Inspector in his report were not disputed by the Respondent. At the hearing, the Respondent admitted that the club cannot contest the content of the recordings and the acts of the head coach and the mentioned player of Eskişehirspor.

Therefore, the Appeals Body is comfortably satisfied with the facts as portrayed by the UEFA Disciplinary Inspector in his report. In summary, the Disciplinary Inspector established the following facts:

“Eskişehirspor vs. Fenerbahçe SK played on 9 April 2011

In the 27th week of the Turkish Super League season, Trabzonspor was at the top of the league standings, with 63 points. The club was leading Fenerbahçe SK by 2 points. Trabzonspor and Fenerbahçe SK were the only contenders for the championship. Therefore, the next matches for both teams were of vital importance.

Prior to the 28th week match between Eskişehirspor and Fenerbahçe SK on 9 April 2011, Eskişehirspor coach Bülent Uygun and one of his players Ümit Karan were contacted for match-fixing by Fenerbahçe SK president Aziz Yıldırım’s organisation.

An organisation, led by Fenerbahçe SK president Aziz Yıldırım, had been created to ensure the success of Fenerbahçe SK during the 2010/11 season.

In relation to this critical match of the season (Trabzonspor was at the top of the league standings, with 63 points, leading by two points), Fenerbahçe SK Officials opened one front to influence the outcome of Match 1. The Fenerbahçe SK Vice-President İlhan Eksioğlu by means of the intermediary Ali Kıratlı made a deal with the Eskişehirspor coach Bülent Uygun and the player Ümit Karan not to perform at their best of their abilities.

The Criminal Court assessed that the Fenerbahçe SK Vice-President İlhan Eksioğlu instructed intermediary Ali Kıratlı to go to Eskişehir to meet with Eskişehirspor player Ümit Karan and coach Bülent Uygun. He told Kıratlı that he did not want any problems relating to the match, which should result in favour of Fenerbahçe SK. They used encoded words such as "250 gram" to refer to the money that would be paid for the deal (this amount is considered to be 250,000 Dollars). Eksioğlu explained that there would be no problems with the money to be paid for the match-fixing and said to Ali Kıratlı; "There will be no delay or whatsoever, it will be right away, tell both of them", and added that the intermediary Ali Kıratlı could assure Eskişehirspor's coach Bülent Uygun and Eskişehirspor player Ümit Karan in this regard (page 80 Criminal Decision).

The above derives from a conversation between İlhan Yüksel Eksioğlu (a board member of Fenerbahçe SK) and the intermediary Ali Kıratlı, which reveals that Fenerbahçe SK triggered the necessary mechanisms in order to reach a deal concerning the match fixing:

The following wiretap is a recording of a telephone call between the intermediary Mr. Ali Kıratlı and The Fenerbahçe SK Vice-President İlhan Eksioğlu on 19 March 2011 at 14:28 hour:

Ali Kıratlı: "I'm going to Eskişehir now".

İlhan Eksioğlu: "Okay then you talk to him".

The following wiretap is a recording of a telephone call between Mr. Ali Kıratlı and Mr. İlhan Eksioğlu on 21 March 2011 at 17:14 hour:

İlhan Eksioğlu: "I'm going to err now".

Ali Kıratlı: "Okay shall I go out then".

İlhan Eksioğlu: "You talk to him now this... 250 gram".

Ali Kıratlı: "Have you talked to him?" (referring to if he talked to Aziz Yıldırım)

İlhan Eksioğlu: "I have...positive".

Ali Kıratlı: "I see, the thing you said".

İlhan Eksioğlu: "We'll apply the same rate in two kinds for both of them I mean let it be much do you understand?"

Ali Kiratli: "What you are saying is we'll apply our standards".

İlhan Ekşioğlu: "No, no 250 gram...gram".

Ali Kiratli: "I see 250-250.... I want to say something I mean will we use the same system or should we do it first, I'd say I should let him know I'm here".

İlhan Ekşioğlu: "Brother you tell him err we have no objection to that... don't do it first because this is a miracle I mean as soon as it finishes I mean right away".

Ali Kiratli: "Yeah I know it will be right away".

İlhan Ekşioğlu: "Okay, don't let it be delayed whatsoever, right away okay".

Ali Kiratli: "Should I tell the both of them at the same time or should I tell separately?"

İlhan Ekşioğlu: "You tell both of them at the same time".

Ali Kiratli: "Okay I'll tell them and I'll let you know okay... are you going?"

İlhan Ekşioğlu: "Yeah, I'll be leaving tomorrow".

Ali Kiratli: "I'll give you the information when you come at the weekend... here I can see him face to face".

Phone conversations taped by the police reveal that Ali Kiratli (intermediary) increased the match-fixing amount from 250,000 dollars to 300,000 by advising "I've increased by 50 each, it is green increase" (Criminal Decision pages, 80 and 319- 320).

Further, Ali Kiratli contacted Eskişehirspor's player Ümit Karan and the Eskişehirspor coach Bülent Uygun in order to agree on the terms of the match fixing deal.

The above mentioned contacts with the Eskişehirspor player Ümit Karan were initiated weeks before the match, as it is evidenced by means of a conversation between intermediary Ali Kiratli and Eskişehirspor player Ümit Karan from which it derives that the agreement had already been concluded and only the terms regarding the delivery of the money were missing.

The following wiretap is a recording of a telephone call between Eskişehirspor player Mr. Ümit Karan and the intermediary Mr. Ali Kiratli on 4 April 2011 at 12:06 hour:

Ali Kiratli: "Fine okay, don't forget the thing I said to you, I'll go okay"

Ümit Karan: "When?"

Ali Kiratli: "I'll get it on Wednesday and be coming on Thursday,.. do not do something wrong answer my calls"

Ümit Karan: "Okay brother"

Ali Kiratli: "It's between us okay, I'll find you and you come to see me at the hotel or whatever

As per contacts initiated with Eskişehirspor coach Bülent Uygun, it is portrayed by means of the police investigations that intermediary Ali Kiratli met with coach Bülent Uygun (along with the intermediaries Muhammet Şenyüz and Mustafa Anlı) in a café on 7 April 2014. This is proven by

different phone conversations related to the meeting point. In particular, by the following phone conversation:

The following wiretap is a recording of a telephone call between Eskişehirspor coach Mr. Bülent Uygun and the intermediary Mr. Ali Kiratli on 7 April 2011 at 21:17 hour:

Bülent Uygun: "Where are you? I'm at the facility".

Ali Kiratli: "I'm at err, are you at the facility... do you remember the place where we last ate, what was its name again, probably it's called Şef, I'm there now".

Particularly striking is the fact that the above conversation proves that the ties between the crime organization and the Eskişehirspor coach Bülent Uygun are common, as results from intermediary Ali Kiratli making reference to a previous meeting at the same place. Indeed, the Criminal Court considered that Bülent Uygun was part of the crime organization as it concluded that he was involved in the fixing of other matches by Fenerbahçe SK, i.e Sivasspor vs Fenerbahçe played on 11 May 2011.

Furthermore, during the same evening of the meeting with coach Bülent Uygun in a cafe, intermediary Ali Kiratli had a phone conversation with player Ümit Karan and asked to meet with him as well. Ümit Karan did not want to meet outside and invited him to his residence (page 324 Criminal Decision).

The following wiretap is a recording of a telephone call between Eskişehirspor player Mr. Ümit Karan and the intermediary Mr. Ali Kiratli on 8 April 2011 at 21:56 hour:

Ali Kiratli: "Yeah we are at the hotel, many of us".

Ümit Karan: "I just wanted to ask you if you needed anything...they are all here, no problem with us"

Ali Kiratli: "I'll see you before I leave, you send Efe okay... you give your uniform"

Ümit Karan: "Err he wanted Alex's uniform too, I told Alex though...you fix more uniforms there and tell him"

Ali Kiratli: "Okay I will, you send Efe after the match and I'll give them to him...nothing's wrong is there"

Ümit Karan: "no, no nothing is wrong".

It can only be concluded from the above that several Eskişehirspor players acknowledged and accepted the deal. In this regard, it is player Ümit Karan who indeed stresses "if you [intermediary Ali Kiratli] needed anything...they are all here, no problem with us", making it evident that the players had agreed on the deal to fix the match.

In addition, the use of encoded words reveals that by saying “fully equipped and ready”, he is referring to the money that he has with him for the match-fixing. This is so, as it was established that, following a physical pursuit operation by the police, the intermediary Kiratli had left his hotel earlier with a bag in his hand. The Eskişehirspor player Ümit Karan sent his driver Mustafa Efe to pick up intermediary Kiratlı. Mr. Kiratlı returned to the hotel later, after going to Eskişehirspor player Ümit Karan’s residence. When he entered the hotel he did not have the bag with him anymore. The vehicle that the Eskişehirspor player Ümit Karan sent to pick up intermediary Ali Kiratlı was parked in front of Eskişehirspor player Ümit Karan’s residence (Court decision pages 325).

The following wiretap is a recording of a telephone call between Eskişehirspor player Mr. Ümit Karan and the intermediary Mr. Ali Kiratli on 8 April 2011 at 21:56 hour:

Ali Kiratli: “Yeah we are at the hotel, many of us”.

Ümit Karan: “I just wanted to ask you if you needed anything...they are all here, no problem with us”

Ali Kiratli: “I’ll see you before I leave, you send Efe okay... you give your uniform”

Ümit Karan: “Err he wanted Alex’s uniform too, I told Alex though...you fix more uniforms there and tell him”

Ali Kiratli: “Okay I will, you send Efe after the match and I’ll give them to him...nothing’s wrong is there”

Ümit Karan: “no, no nothing is wrong”.

Here again, no other conclusion can be reached as with regards to the use of encoded words to disguise the transaction of the money, i. e the term “uniform” used to settle the delivery of the money.

The involvement of Eskişehirspor coach Bülent Uygun in the fixing of the match, is particularly obvious, as it follows from a conversation between Fenerbahçe SK Vice President İlhan Yüksel Ekşioğlu and the intermediary, Ali Kiratlı, concerning the tactical strategy to be implemented during the above mentioned match. Here, Eskişehirspor coach Bülent Uygun informed Ali Kiratlı that he wouldn’t field a proper team to beat Fenerbahçe SK.

The following wiretap is a recording of a telephone call between Fenerbahçe Vice President Mr. İlhan Ekşioğlu and the intermediary Mr. Ali Kiratli on 9 April 2011 at 11:58 hour:

Ali Kiratli: “We are at the Eskişehir facility...The chairman is here, he came at 10”

İlhan Ekşioğlu: “Has seen Bülent yet”

Ali Kiratli: “Of course he has, they were together, he went in the room and did something on the board... he said that if they played with that strategy he would beat them, it shouldn’t be like that...”

everything is fine just great, I'll call you after the match... I hope I will accept your congratulations... we'll take it off here this time... we'll sort it out here then everybody should go their separate ways... all went well here, just great".

The following wiretap is a recording of a telephone call between the Fenerbahçe SK Vice-President İlhan Eksioğlu and the intermediary Mr. Ali Kıratlı on 9 April 2011 at 17:49 hour:

İhsan Eksioğlu: "Brother err İvesa...Sezgin right side...left side Volkan, stoppers Veysel and Diego...midfield right side Burhan, Sezer, Alper Doğan...Erkan, Batuhan"

Ali Kıratlı: "Ümit is not in, is he"

İhsan Eksioğlu: "Ümit is not in"

It seems remarkable, first of all, that Fenerbahçe SK officials had such insider information prior to the match, which was allegedly given by the coach, and, secondly, that the above information was confirmed once the match began. In particular, Fenerbahçe SK won the match against Eskişehirspor 3-1, and Ümit Karan took the field in the second half.

Considering all of the above, the UEFA Disciplinary Inspector requests that the competent UEFA Disciplinary Body decides to its comfortable satisfaction that Eskişehirspor player Ümit Karan and Eskişehirspor coach Bülent Uygun made a deal with Fenerbahçe SK officials and intermediaries to fix the outcome of Match 1.

Eskişehirspor 0-0 Trabzonspor played 22 April 2011

At the end of 29th week of the Turkish Super League, Trabzonspor were leading by 2 points over Fenerbahçe SK. The 3rd placed team Bursaspor was 17 points behind, so mathematically no other club could win the championship as there were 5 matches remaining. Therefore the following matches for both teams were very important.

According to the TFF's rules, in the case of two teams being on an equal number of points, the teams are ranked by their head-to-head record against each other that season. Fenerbahçe SK had the better record against Trabzonspor. Therefore, at that stage, if Fenerbahçe SK were to win all of their remaining matches, a loss of 2 points by Trabzonspor was enough for the former to become champions.

Again, in relation to this critical match of the season, Fenerbahçe SK officials opened one front to influence the outcome of Match 2, played 22 April 2011. Fenerbahçe SK Vice-President İlhan Eksioğlu, again through intermediary Ali Kıratlı, made a deal with Eskişehirspor coach Bülent Uygun and player Ümit Karan in order to incentive the performance of the team during Match 2.

The setting up of the incentive bonus was expressly agreed between Eskişehirspor player Ümit Karan and Fenerbahçe SK intermediary Ali Kıratlı.

The following wiretap is a recording of a telephone call between intermediary Mr. Ali Kıratlı and Eskişehirspor player Mr. Ümit Karan on 21 April 2011 at 21:05 hour:

Ali Kıratlı: "...I'm home because I'll leave early in the morning"

Ümit Karan: "everything is fine, I've just had a meeting with the guys"

Ali Kıratlı: "Anything wrong"

Ümit Karan: "everything is fine"

Ali Kıratlı: "You mean all is going well"

Ümit Karan: (laughing) "We need to beat them."....

Furthermore, the arrangements aimed to influence Match 2 are particularly evident concerning this particular match, due to the fact that the different conversations between Fenerbahçe SK intermediary Ali Kıratlı and Eskişehirspor coach Bülent Uygun and player Ümit Karan reveal the tactical strategy, the team's lineup and the subsequent ways to achieve a satisfactory result for Fenerbahçe SK.

The following wiretap is a recording of a telephone call between the intermediary Mr. Ali Kıratlı and Fenerbahçe Vice President Mr. İlhan Ekşioglu on 21 April 2011 at 21:08 hour:

Ali Kıratlı: "... Ümit says 'I am getting them one by one... it is not like err I can't get them all at the same time and make it like a conference... I am getting by 2, 2, 3, 3, I am talking to them all'... he also says 'I can't make it like a conference because some of them are close lipped but some of them are not, I am talking to them all but one by one, there are translators, I'm getting them by 3-3, 4-4, I'll see them all today... he says he knows about it,... we talked to the man himself err our .. our I mean there is nothing that we should be under suspicion... I mean you just couldn't get 20 of them at the same time, some of them are foreign some of them not, I mean there is this and there is that"

In addition to the above, the police investigations portray that a conversation took place between the Fenerbahçe SK intermediary Ali Kıratlı and Fenerbahçe SK board member İlhan Ekşioglu in which Kıratlı advised Ekşioglu via text message that the players named Ivesa, Koray, Nada, Veysel, Volkan, Alper, Doga, Burhan, Pele, Sezer, and Batu would be playing, and that Ümit Karan (who they referred to as "captain") would come onto the field in the second half.

The match ended in a 0-0 draw, thus producing the required 2-point drop for Trabzonspor that would put Fenerbahçe SK at the top of the standings if it won its remaining matches (via a better head-to-head record).

After Match 2, some issues arised concerning the way Eskişehirspor's players were to receive their incentive bonus.

The following text message was sent by Eskişehirspor player Mr. Ümit Karan to the intermediary Mr. Ali Kıratlı on 23 April 2011 at 15:39 hour:

"Will we meet, the guys are asking about the uniforms"

In subsequent conversations, they referred to the money that Ümit Karan would distribute to the other players as "supplies". The money was not yet ready, and they referred to this by saying: "tell him that we haven't received any supplies yet"

The following wiretap is a recording of a telephone call between the intermediary Mr. Ali Kıratlı and the Fenerbahçe SK Vice-President İlhan Ekşioğlu on 30 April 2011 at 10:34 hour:

İlhan Ekşioğlu: *"You know the man captain of Fenerbahçe boat, he sent a message yesterday... he says 'tell err him the man whoever told you last week nothing to us'... he says 'tell him we haven't got anything, I'm telling you'... this captain of the boat nagged at me, I'm telling you man... do you understand your friend,... your friend, you know the captain of the boat your friend", (Ali says he understood) "...He told the other guy 'whoever sent you a message last week tell him that we haven't got any supplies yet'..."*

It derives from several phone conversations between Eskişehirspor player Ümit Karan and intermediary Ali Kıratlı that Karan subsequently made further requests to Kıratlı, asking to meet in person. However, at the same time intermediary Ali Kıratlı was having difficulty getting the money from Fenerbahçe SK Vice President İlhan Ekşioğlu (Criminal Decision, pages 375 to 377).

The use of encoded language is usual between the parties involved, sometimes referring to the incentive bonus money as the "trainers".

Finally, the delivery of the money was agreed in a particular place known by Fenerbahçe SK intermediary Ali Kıratlı and Eskişehirspor player Ümit Karan.

The following wiretap is a recording of a telephone call between the intermediary Mr. Ali Kıratlı and Eskişehirspor player Mr. Ümit Karan on 13 May 2011 at 14:16 hour:

Ümit Karan: "I'm coming to Istanbul brother...there is no match this week"

Ali Kıratlı: "Okay, you come then... We'll talk then"

Ümit Karan: "We might talk brother"

Ali Kıratlı: "I said we will, if you are coming to Istanbul and not playing then we can see each other any time we like man".

The following text message was sent by Eskişehirspor player Mr. Ümit Karan to the intermediary Mr. Ali Kıratlı on 13 May 2011 at 18:35 hour:

"I'm in Istanbul around our place, are you around here"

The following text message was sent by intermediary Mr. Ali Kıratlı to Eskişehirspor player Mr. Ümit Karan on 13 May 2011 at 18:36 hour:

"I will be, we'll meet at the ice cream shop"

The following wiretap is a recording of a telephone call between the intermediary Mr. Ali Kıratlı and Eskişehirspor player Mr. Ümit Karan on 13 May 2011 at 21:04 hour:

Ali Kıratlı: "Where are you?"

Ümit Karan: "I'll be there in 5 minutes brother".

The following wiretap is a recording of a telephone call between intermediary Mr. Ali Kıratlı and Eskişehirspor player Mr. Ümit Karan on 19 May 2011 at 13:41 hour:

Ali Kıratlı: "I'll be there tomorrow,... yeah yeah, I'll pop in the ice cream shop and leave my ice cream there, okay brother".

Ümit Karan: "Because I will do err ...tell"

Considering all of the above, the Disciplinary Inspector is comfortably satisfied that before the match Eskişehirspor – Trabzonspor in Eskişehir, the organization led by Fenerbahçe SK President Aziz Yıldırım was in close contact with the squad and coaching staff of Eskişehirspor. Intermediary Ali Kıratlı made offered Eskişehirspor players an incentive bonus through player Ümit Karan and the Eskişehirspor coach Bülent Uygun. This was carried out by instructions of Fenerbahçe SK Vice President İlhan Ekşioğlu. Eskişehirspor player Ümit Karan and Eskişehirspor coach Bülent Uygun accepted the offer, and the promised money was finally paid after Match 2".

With regard to the merits of the case and after evaluating all the evidence provided by the parties and included in the file, the Appeals Body establishes its comfortable satisfaction with the fact that a criminal organisation was formed under the leadership of the President of Fenerbahçe SK Aziz Yıldırım and it has been proven that match-fixing and/or incentive bonus were made during the matches Eskişehirspor vs. Fenerbahçe SK of 9 April 2011 and Eskişehirspor vs Trabzonspor played on 22 April 2011. The Appeals Body is convinced that head coach, Bülent Uygun and the player, Umit Karan were involved.

6.

With regard to liability, it is important to clarify Art. 6(1) DR (ed. 2008) and its current equivalent, Art. 8 DR, as this has been misunderstood by the Eskişehirspor. It must be recalled that numerous UEFA decisions have applied the strict liability principle laid down in these provisions and that the CAS has also confirmed the principle in many awards. To understand the strict liability of Art.6(1) DR it is necessary to read this provision in conjunction with Art. 17(1) DR (ed. 2008), which states: “The disciplinary body shall determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, taking account of both aggravating and mitigating circumstances. Subject to Article 6(1) of the present regulations, no disciplinary measures may be imposed in cases where the party charged bears no fault or negligence”. This means that when Art. 6(1) DR is concerned, a sanction can be imposed on a party without requiring fault or negligence on their part.

The club claims that the strict liability principle laid down in Art. 6(1) DR (ed. 2008) applies only in relation to supporters’ misconduct.

On the contrary, the principle of strict liability is established by Art. 6(1) DR (ed. 2008), which forms the legal basis that enables UEFA to ensure that its objectives and the rules governing its members are respected not only by the latter, but also by third parties for which they are responsible. According to this first paragraph of Art. 6 DR (ed. 2008), member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the association or club.

As a result of this rule, the responsibility of UEFA members and clubs depends only on the commission by such people (players, supporters, etc.) of an act that infringes UEFA rules, regardless of fault of the respective club or UEFA member. This strict liability is imposed on the member associations and clubs for the acts of specifically defined third parties. Member associations and clubs, even if they have committed no fault, are responsible for the misconduct of their officials and players. If such offences are established, the club is automatically held responsible and punished accordingly.

This principle has also been confirmed by many CAS award, not only relating to supporters but also to club officials, including for instance by CAS 2002/A/423 and CAS 2007/A/1217.

Even if the principle of strict liability is most commonly applied in cases of misconduct by supporters, the club is wrong to suggest that it is reserved solely for such cases. A club or national association can also be held responsible for improper conduct by its players in accordance with Art. 6(1) DR (ed. 2008).

In addition, it shall be noted that an official is anyone, with the exception of the players, performing an activity connected with football within an association or club, regardless of his title, the type of activity (administrative, sporting or any other) and the duration of the activity. Officials are in particular, managers, coaches and support staff (cf. FIFA Disciplinary Code Preliminary Title). Thus the coach Bülent Uygun is an official in the sense of Article 6 DR above-mentioned.

A coach is not only the key to the establishment of ethic and integrity in football but also a club representative. In this respect his attitude or behaviour directly affects the conduct of players, in particular the youngest ones, under his supervision. Therefore coach is expected to pay particular care to his conduct.

In the present case, it is admitted that a key official of the club, namely the head coach Bülent Uygun and the player Ümit Karan, breached article 50(3) of the UEFA Statutes and article 2.08 of the UEL 2014/2015, Art. 5(2)(a),(d) and (j) DR.

On the basis of Article 6(1) and Article 11 (1) (a) of the UEFA DR (ed. 2008) Eskişehirspor may be held responsible and be sanctioned for disciplinary infringements perpetrated by the above mentioned individuals.

7.

Regarding the legal basis of Article 2.08 and 2.09 UELR, the Appeals Body welcomes the fact that the CAS, in its award CAS 2013/A/3256, has already clarified the legal basis related to those disciplinary measures deriving from 2.05 and 2.06 UEFA Champions League Regulations, and, per analogy, also 2.08 and 2.09 UELR.

In particular, concerning the material scope of application of Article 2.08 UELR, the Appeals Body has no doubt, as the CAS did not have either, in the above mentioned award (see paragraph 193), in concluding that Article 5(1) in conjunction with Article 5(2)(a) of the UEFA DR (ed. 2008) to which Article 2.08 UELR refers, in principle, form a sufficient legal basis for sanctioning the offence of match-fixing and the measures to be taken against the Club by UEFA.

Concerning the territorial scope of application of Article 2.08 and 2.09 UELR, Eskişehirspor disputes the fact that UEFA has no competence to sanction it, as the match-fixing incidents were exclusively related to two domestic matches related to the Turkish Championship of the season 2010/11 season. Eskişehirspor therefore alleges that it does not fall within the disciplinary competence of UEFA.

Nevertheless, the Appeals Body can only comply with the assertions made by the CAS 2013/A/3256 concerning the territorial scope of application of the above mentioned provisions. In this regard,

the following statements contemplated in paragraphs 199 and 200 of said CAS award shall be outlined:

“The majority of the Panel is of the opinion that by means of article 2.06 of the UCLR UEFA A's competence for the imposition of "administrative measures" in national match-fixing cases pursuant to article 2.05 of the UCLR is extended to the imposition of disciplinary measures pursuant to article 2.06 UCLR, i.e. the extension of the territorial scope of article 5 of the UEFA DR (2008) is maintained.

The majority of the Panel finds that if this were to be interpreted any different, this would lead to a situation where a club that is clearly involved in national match-fixing and that qualifies for UEFA competitions, UEFA would only be entitled to issue the minimum sanction (according to article 2.05 UCLR), not however a further sanction (because article 2.06 of the UCLR would not be applicable). The majority of the Panel deems a one-year period of ineligibility to be rather short for a severe offence such as match-fixing and on this basis the majority of the Panel concludes that this could not have been the intention of UEFA in drawing up article 50(3) of the UEFA Statutes and 2.05 and 2.06 of the UCLR.”

Bearing in mind the above, the Appeals Body considers that there is sufficient legal basis to instigate disciplinary proceedings against Eskişehirspor as well as to impose sanctions on Eskişehirspor with regards to its involvement in any activity aimed at arranging or influencing the outcome of a match at national or international level in accordance with Article 2.08 UELR, as well as to determine any possible additional measures in the sense of Article 2.09 UELR.

In view of the above, the arguments raised by Eskişehirspor concerning the legal basis of Article 2.08 and 2.09 UELR shall be dismissed.

8.

The Appeals Body considers that before reaching a conclusion concerning the application of Article 2.08 UELR, the concept of “being involved” in activities aimed at arranging and/or influencing the outcome of a match shall be clarified.

The concept of "involvement" used in Article 2.08 UELR may be understood as covering a situation in which a Club is linked to match fixing activities and such involvement is established to a level of “comfortable satisfaction”.

The Appeals Body recalls, here again, that the above mentioned principle of strict liability put in parallel with Article 2.08 UELR means that the actions of players, officials, members, supporters and any other persons exercising a function at a match on behalf of a club, are attributable to the club

in the context of the eligibility of such club to take part in the UEFA Europa League (see para. 133; CAS 2013/A/3258).

The Panel considers the above statements in line with the "zero tolerance to match fixing" which, according to CAS jurisprudence (CAS 2010/A/2267) presents one of the most important values and principles of behavior in football (CAS 2009/A/1920, CAS 2010/A/2267 and CAS 2013/A/3258).

Bearing the above in mind, the Panel is comfortably satisfied that the head coach (a key person inside the structure of the club) and a player of Eskişehirspor were implicated in activities aimed at influencing the result of two matches played during the Turkish Championship 2010/2011. This has also not been disputed by Eskişehirspor itself.

Consequently, and according to the principle of strict liability, the implication of both the head coach and a player of Eskişehirspor triggers the responsibility of the club which is, thus, to be considered as being involved directly and/or indirectly in activities at arranging and/or influencing the outcome of the two mentioned matches in the sense of Art. 2.08 RUEL quoted above.

Eskişehirspor relies, among others, on the negative impact that the actions of the Eskişehirspor head coach and player had on the club, which allegedly was damaged in its possibilities to participate in UEFA competitions during the season 2011/2012, and now has to suffer a strong verdict depriving it again from the possibility to participate in the next UEFA Europa League competition season 2014/2015.

However, as stated above, UEFA applies a principle of zero tolerance towards match-fixing activities. It results that, as the one year exclusion of UEFA competitions is deemed as a minimum (as determined in CAS 2013/A/3256) and the liability of the club is at stake even if it bears no fault, according to the above mentioned principle of strict liability, the arguments raised by Eskişehirspor, are irrelevant as to the establishment of the involvement of the club and the imposition of the minimum sanction foreseen in Art. 2.08 UELR.

The Appeals Body deems, therefore, that Eskişehirspor shall be excluded from participating in the next UEFA Europa League competition 2014/2015 in accordance with Article 2.08 UEFA Europa League Regulations.

9.

Regarding the additional disciplinary measures contemplated in Article 2.09 UELR, the Appeals Body recalls that the CAS, in its award CAS 2013/A/3256, examined the "two stage process" implemented by UEFA by means of Article 2.05 and 2.06, UEFA Champions League Regulations, and per analogy, in Articles 2.08 and 2.09 UELR.

In particular the CAS stated as follows:

“The Panel is satisfied to accept that the introduction of article 50(3) in the UEFA Statutes and Article 2.05 and 2.06 in the UCLR, UEFA created a "two-stage process". The first stage (Article 2.05) being an "administrative measure", pursuant to which a minimum sanction would have to be imposed on the offender, by excluding it from European competitions for one season. The second stage (article 2.06) being a "disciplinary measure", which sanction would have to be imposed subsequent to the "administrative measure" and is not restricted by a maximum length. The Panel finds that this "two stage process" can be understood from article 50(3) of the UEFA Statutes in conjunction with article 2.06 of the UCLR, particularly because in the latter provision reference is made to "administrative measure" and "disciplinary measure", which, in the opinion of the Panel, one can only understand as to reveal UEFA's intention to differentiate between these two types of measures. Also the words "in addition to" seem to create a distinction between the two types of measures. Nevertheless, and for the avoidance of doubt, the Panel wishes to clarify that irrespective of the wording used, proceedings initiated by UEFA on the basis of article 2.05 of the UCLR are disciplinary in nature, because the subject matter in such proceedings is the imposition of a sanction” (See paragraph 162 CAS 2013/A/3256) .

Consequently, once the called “administrative measure” of one year exclusion of UEFA competitions in accordance with Article 2.08 UCLR is applied, which in CAS’ view shall be deemed as a minimum sanction, the competent disciplinary body, in this case the UEFA Appeals Body, still has the competence to impose additional disciplinary measures.

Nevertheless, the Appeals Body is comfortably satisfied with the conclusion that in the present case and in the light of all factual and legal circumstances the conditions to apply further disciplinary measures are not fulfilled.

Therefore, the Appeals Body rejects the request made by the UEFA Disciplinary Inspector to impose an additional sanction against Eskişehirspor of one additional season of exclusion from any future UEFA Competitions as well as a EUR 300.000 fine (three hundred thousand euro).

The Appeals Body, after having carefully listened to the arguments of Eskişehirspor and of the UEFA Disciplinary Inspector, is indeed satisfied that the minimum sanction of one year exclusion is appropriate, and that no further sanctions shall be imposed on Eskişehirspor. The Appeals Body doesn't share the analogy between doping and match-fixing offences.

10.

According to Article 44 DR (2013), the costs of proceedings before the Control and Disciplinary Body are borne by UEFA, except in protest case. In this case as the Appeals Body is acting as single instance, the Appeals Body applies this provision by analogy and departs from imposing proceedings costs.

Decision of 2 June 2014

Ludogorets

(Assault)

Circumstances of the case:

During the UEFA Europa League match against Valencia on 13.3.2014, the Ludogorets player Pedro Juliao Azevedo Junior was sent off for hitting a Valencia player with his shoulder. He also spat on the head of the Valencia player.

Legal framework:

Article 15(1)(e) DR *Assault*

Decision:

CDB:

The CDB suspended the player Pedro Juliao Azevedo Junior for six matches.

Appeals Body:

The appeal was accepted. Consequently, the CDB's decision of 20 March 2014 was modified and the player Pedro Juliao Azevedo Junior was suspended for the next three UEFA club competition matches for which he would otherwise be eligible.

Chairman: Pedro Tomás, Spain
Members: Goetz Eilers, Germany
Michael Maessen, Netherlands

W h e r e a s :

In fact:

A.

According to the referee's report, in the 80th minute of the above-mentioned match, the PFC Ludogorets 1945 number 11, Pedro Juliao Azevedo Junior, struck the Valencia CF number 12 with his shoulder in an off-the-ball incident. He was given a straight red card for violent conduct after his opponent fell to the ground.

Pedro Juliao Azevedo Junior then spat at the Valencia CF number 12.

In a decision of 20 March 2014, the UEFA Control and Disciplinary Body suspended Pedro Juliao Azevedo Junior for six UEFA competition matches. It found him guilty of "seriously assaulting an opponent" under Article 15(1)(e) of the UEFA Disciplinary Regulations and deemed his action serious enough to justify an increase of the standard three-match suspension.

B.

The operative part of the decision was notified to the player via his club on 26 March 2014.

On 27 March 2014, the club requested the grounds of the decision, which were notified on 30 April 2014.

The appellants submitted their declaration of appeal on 30 April 2014 and the grounds for the appeal on 9 May 2014.

C.

The appellants' written pleadings can be summarised as follows:

Regarding the admissibility of the appeal

The deadline for submitting the declaration of the intention to appeal was 3 May 2014, which was a Saturday. As a result, the deadline was carried forward to Monday 5 May 2014.

The deadline for submitting the grounds for appeal was Sunday 11 May 2014 and was therefore carried forward to 12 May 2014. Submitted on 9 May 2014, the grounds for appeal were therefore filed in due time and in accordance with Article 53 in conjunction with Article 35(2) of the Disciplinary Regulations.

Regarding the incident

The appellants admitted that the player Pedro Juliao Azevedo Junior had committed an assault but denied the second offence of spitting at an opponent and submitted video footage to support this argument. They claimed that, in the circumstances, the six-match suspension had been based on an improper assessment of the facts. Consequently, they asked the Appeals Body to reduce the sanction imposed on the player and to allocate the costs in accordance with Article 44 of the Disciplinary Regulations.

As the player Pedro Juliao Azevedo Junior had not participated in the 2013/14 UEFA Europa League round of 16 second leg against Valencia CF on 20 March 2014, the appellants also pointed out that he had already served the one-match suspension resulting from his dismissal.

D.

On 26 May 2014, the UEFA disciplinary inspector submitted her reply to the appeal and considered the following:

- Regarding admissibility, she considered the appeal inadmissible because the deadline for submitting the grounds for appeal had not been respected by the appellants.
According to the disciplinary inspector and pursuant to Article 53(2) of the Disciplinary Regulations, the time limit for submitting the grounds for appeal should have started on 4 May 2014 and expired on 8 May 2014. As the grounds for appeal had been submitted on 9 May 2014, they had been filed too late.
- Regarding the incident, having watched the video footage of the incident, the disciplinary inspector concluded that the second offence of spitting at an opponent had not occurred. The video footage therefore disproved the spitting offence alleged in the referee's report (Article 38 of the Disciplinary Regulations).
- In the disciplinary inspector's opinion, the standard sanction had been increased on the basis of facts that had not been established, since the video of the incident had not been available to the Control and Disciplinary Body when it had ruled on the case.

If the appeal were considered admissible, there would be grounds to reduce the sanction imposed on the player to a three-match suspension.

The disciplinary inspector left it to the Appeals Body to decide on the costs of the proceedings in accordance with Article 44 of the Disciplinary Regulations.

E.

Since neither the appellants nor the disciplinary inspector were opposed to the proceedings being conducted in writing, the chairman of the Appeals Body deemed it appropriate to conduct them in writing (Article 57 of the Disciplinary Regulations).

The Appeals Body considered the arguments presented by the appellants and the disciplinary inspector in their statements, which are included below in so far as they are relevant to the decision.

In law:

1.

a) The Appeals Body's jurisdiction in this matter is established by Articles 48 and 54 of the UEFA Disciplinary Regulations. It is therefore competent to examine the case in full, both factually and legally (Article 62(1) of the Disciplinary Regulations).

b) The appeal meets the formal requirements and deadline laid down (Article 53 *et seq.* of the Disciplinary Regulations):

- Under Article 35 of the Disciplinary Regulations:

"1 A time limit begins the day after which it is notified as per Article 34 paragraph 7. It is considered to have been observed if acted upon by 24.00CET (Central European Time) on the deadline date. Official holidays and non-working days are included in the calculation of time limits. Time limits are interrupted from 20 December to 5 January inclusive.

2 When a deadline expires on Saturday, Sunday or a public holiday in the Swiss canton of Vaud, where UEFA's headquarters are located, it is carried forward to the next working day.

- Article 53 of the Disciplinary Regulations states that:

"1 The parties directly affected by a decision and the disciplinary inspector all have the right to appeal.

2 A declaration of the intention to appeal against a decision by the Control and Disciplinary Body must be lodged with the UEFA administration, in writing, for the attention of the Appeals Body, within three days of notification of the relevant decision with grounds. Competition regulations may, however, shorten this deadline for the sake of the smooth running of the competition in question.

3 Within five days of the expiry of the time limit for the declaration of the intention to appeal, the appellant must file, in writing, the grounds for appeal, which must contain a legal request, an account of the facts, evidence, a list of the witnesses proposed (with a brief summary of their expected

testimony) and the appellant's conclusions (in particular on whether to conduct the appeal proceedings orally or in writing). After this deadline, the parties and the disciplinary inspector are not authorised to produce further written submissions nor evidence. In urgent cases, the chairman may shorten this deadline.

4 (...)

5 If these deadlines are not observed, the chairman declares the appeal inadmissible".

In this case, the deadline for submitting the declaration of the intention to appeal fell on Saturday 3 May 2014 and was carried forward to the next working day, which was 5 May 2014. As a knock-on effect, the five-day time limit for submitting the grounds of appeal in accordance with Article 53(3) of the Disciplinary Regulations started on 6 May 2014 and expired on 12 May 2014. As the grounds for appeal reached UEFA on 9 May 2014, they respected the deadline under Article 53 of the Disciplinary Regulations. In this respect, any other interpretation of Article 53 of the Disciplinary Regulations would violate the legality principle.

Consequently, the Appeals Body may examine the merits of the appeal.

2.

a) Having resolved this procedural issue, the panel noted that the appellants disputed the occurrence of the second offence, i.e. spitting at an opponent. After carefully viewing the footage of the incident provided by the appellants several times, the Appeals Body saw no reason whatsoever to question the accuracy of the referee's report.

b) The appellants attempted to deny the second offence but failed to provide substantial evidence to disprove the accuracy of the referee's report. The video footage clearly shows the player Pedro Juliao Azevedo Junior kicking and spitting at his opponent in kind of retaliation for a previous ball challenged between Pedro Juliao Azevedo Junior and his opponent. Contrary to the appellants' opinion, not one but two offences were committed: kicking and spitting. As established by the match official's report, Pedro Juliao Azevedo Junior assaulted his opponent. The facts as established by the Control and Disciplinary Body thus formed the basis for further examination of the case. It is beyond any doubt that Pedro Juliao Azevedo Junior committed an assault.

c) Anyone who strikes an opponent in an off-the-ball incident and spits at his opponent's head in this way demonstrates a lack of regard for his opponent's physical integrity. No player, let alone a professional, should behave like this. The panel also considered that the offending player spat at his opponent. Consequently, the Control and Disciplinary Body was right to classify the player's offence as a violation of Article 15(1)(e) of the Disciplinary Regulations.

The only question to be examined is whether the Control and Disciplinary Body abused its powers of discretion by suspending the appellant for six matches.

3.

a) Under Article 52 of the UEFA Statutes and Article 11(3) of the Disciplinary Regulations, unsporting conduct, breaches of the Laws of the Game and infringements of the UEFA Statutes, regulations, decisions and directives are punished by disciplinary means.

b) According to Article 38 of the Disciplinary Regulations, referees' reports must be considered truthful and reliable unless it can be proved otherwise. The burden of proof to counter the accuracy of official match reports lies with the party charged.

c) Under the terms of Article 15(1)(e) of the Disciplinary Regulations, a player who assaults another player or another person present at the match should be suspended for three competition matches or for a specified period. The term "assault" covers any deliberate act that endangers the physical well-being of an individual, including spitting and striking. As a rule, such acts do not need to cause pain in order to be sanctioned.

d) The disciplinary inspectors play a key role in the UEFA disciplinary system, since they are the watchdog of UEFA regulations. As such, they instigate proceedings against players, officials, national associations and clubs with the UEFA disciplinary bodies. However, their reports and findings are not binding on the disciplinary bodies, which have broad powers of discretion to assess the evidence in front of them and take decisions.

In this case, the Appeals Body has no reason to question the facts reported by the referee. Accordingly, the panel depart from the findings of the Disciplinary Inspector as far as the establishment of the facts is concerned. Consequently, it is established that, having kicked and spat at his opponent, Pedro Juliao Azevedo Junior is guilty of assault under Article 15(1)(e) of the Disciplinary Regulations.

4.

a) It has always been the Appeals Body's constant practice to consider the power of discretion to be abused or exceeded if the first instance based its decision on untrue or erroneous elements, failed to apply fundamental legal principles, considered irrelevant facts or ignored essential circumstances whose evaluation was compelling. In other words, the Appeals Body would not overturn a decision, even if it would have decided differently itself, as long as the challenged decision was within the scope of what appeared reasonable.

aa) Pursuant to Article 17(1) of the Disciplinary Regulations, the disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. In compliance with the general principles of law, the disciplinary sanction is thus fixed in accordance with the circumstances, the degree of fault and the

disciplinary record of the party concerned. In addition to this repressive element, the sanction must also pursue a preventive and educational objective.

ab) It is important to recall that the Control and Disciplinary clarifies the facts of the case in a summary manner, on the basis of official reports (Article 51 of the Disciplinary Regulations). In this respect, when taking its decision in this case, the Control and Disciplinary Body did not have access to the video footage, which clearly showed Pedro Juliao Azevedo Junior spitting at his opponent, although the act of striking his opponent with his shoulder was so slight that it did not deserve a three-match suspension on its own. The panel assumes that, if the Control and Disciplinary Body had seen the video footage of the incident, it would have reached a different decision.

b) The fact that Pedro Juliao Azevedo Junior brushed his opponent with the shoulder therefore does not merit a three-match suspension. However, this does not mean that this act should be ignored. It will be taken into consideration on its own merits. On the other hand, spitting at an opponent shows a serious lack of respect for others. Indeed, to spit at someone is, in itself, an expression of utmost contempt. Consequently, the act of spitting not only constitutes an assault but also signifies a total lack of respect and a disregard for human dignity.

5.

a) In view of the above, the panel concludes that a six-match suspension is not the appropriate sanction, bearing in mind that the offence of striking an opponent with the shoulder was very slight and does not, on its own, warrant a three-match suspension. As a result, this is a case of multiple offences in the sense of Article 18 of the Disciplinary Regulations, which requires the disciplinary body to take the disciplinary measure to be imposed for the most serious of the offences and increase it accordingly.

b) In the case at hand, the panel considers the offence of spitting as the most serious offence. As an assault deserves a three-match suspension, a serious assault such as spitting, combined with striking an opponent with the shoulder, justifies an increase of the sanction to a four-match suspension.

c) Since the video footage shows that the striking of the opponent with the shoulder was only slight, the Control and Disciplinary Body appears to have exceeded its powers of discretion by imposing a six-match suspension. In the Appeals Body's view, a four-match suspension is proportionate.

It follows that, since the player concerned did not participate in the second leg between Valencia CF and PFC Ludogorets 1945 on 20 March 2014 in accordance with paragraph 22.01 of the Regulations of the 2013/14 UEFA Europa League and Article 60(1) of the Disciplinary Regulations,

the remaining three matches of the suspension are the next three UEFA club competition matches for which the player would otherwise be eligible.

6.

a) Under Article 44(2) of the Disciplinary Regulations, the allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated.

b) In the present case, the appellants asked the Appeals Body to reduce the sanction on the grounds that one of the offences (spitting at an opponent) had not been committed. Even though the Appeals Body considers that both offences were committed, it admits that the sanction imposed in the first instance was disproportionate and reduces it, as requested by the appellants. As a result, the costs of the proceedings are charged to UEFA.

Decision of 3 June 2014

Sivasspor

(Match fixing. Admission criteria)

Circumstances of the case:

In July 2011, Turkish police arrested several persons as part of investigations into match fixing. Among the arrested persons were Sivasspor's President, Mr Mecnun Otyakmaz, former board member Mr Ahmet Çelebi and player Mr Korcan Çelikay. They were suspected of match fixing activities relating to the match Sivasspor vs Fenerbahçe on 22 May 2011.

On 9 May 2014, Sivasspor submitted the Admission Criteria Form for the UEFA Club Competitions 2014/2015, in which clubs are required to declare any direct or indirect involvement in match-fixing activities.

On 19 May 2014, the UEFA General Secretary referred the case of Sivasspor to the UEFA disciplinary bodies to establish whether or not the club met the admission criteria for the 2014/15 UEFA Europa League.

Legal framework:

Art. 2.08 and 2.09 UEFA Europa League Regulations *Admission criteria*

Decision:**Appeals Body:**

The Appeals Body decided that Sivasspor were not eligible to participate in the 2014/2015 UEFA Europa League season.

Chairman: Pedro Tomás, Spain
Vice-chairmen: Goetz Eilers, Germany
Michael Maessen, Netherlands

Whereas:

In fact:

A.

On 3 July 2011, the Turkish police arrested several persons as part of the investigations pursued in matters concerning match fixing. Sivasspor's President, Mr Mecnun Otyakmaz, former board member Mr Ahmet Çelebi and player Mr Korcan Çelikay were among the arrested persons who were suspected of having conducted match fixing actions in relation with the match Sivasspor v Fenerbahçe SK played on 22 May 2011.

The enquiry regarding these persons was in the wake of an investigation conducted by the Turkish police authorities in 2011 regarding match fixing activities relating to the Turkish championship and in which officials and players of several Turkish clubs were involved.

B.

On 9 May 2014 Sivasspor FC (hereinafter: Sivasspor) submitted the Admission Criteria Form for the UEFA Club Competitions 2014/2015. In its admission criteria form, Sivasspor declared inter alia that:

"In order to inform UEFA on the match-fixing allegations against our Club members we hereby submit a detailed report respectfully.

On 3 July 2011, many people had been taken into custody by police and on 10 July 2011. 61 individuals had been arrested, including club officials and professional players on match fixing allegations.

Sivasspor's President Mr Mecnun Otyakmaz, former board member Mr Ahmet Çelebi and player Mr Korcan Çelikay were among those alleged involved individuals.

Additionally, Sivasspor's former Player Mr. Mehmet Yildiz was in custody but released by the court to stand without arrest after his testimony before the public prosecutor and the court on duty.

[...]

On 7 May 2012, Turkish Football Federation has cleared Sivasspor, and also the individuals related to our club, as a result of disciplinary proceedings.

On 10 August 2012, Istanbul 16th High Criminal Court announced findings of its decision regarding the case and sentenced Sivasspor President Mecnun Otyakmaz former board member Ahmet Çelebi, player Mr Korcan Çelikay and former player Mehmet Yildiz.

[...]

On 17.01.2014, the 5th Chamber of the Supreme Court decided to send the case file back to first instance body to review the punishments of Mr. Mecnun Otyakmaz, Mr Korcan Çelikay and Mr. Mehmet Yildiz for a consideration of the possibility of the postponement of the imprisonment decided for match-fixing accusations whereas the Chamber rejected all other appeal reasons.

Besides, the 5th Chamber of the Supreme Court upheld the verdict of the Istanbul 16th High Criminal Court against Faruk Tasseten and Ahmet Çelebi.

*Sivasspor was not a defendant in the proceedings before the state court and the verdict was not given against our club but against the President, Vice President, a player, a prior player and a prior board member of the club
[...].”*

C.

On 19 May 2014, the UEFA General Secretary asked the UEFA disciplinary bodies to open an investigation to establish whether or not Sivasspor met the admission criteria for the 2014/15 UEFA Europa League as stipulated, in particular, in Art. 2.07.g) of the Regulations of the UEFA Europa League 2014/15 (hereinafter “UELR”). Moreover, the UEFA General Secretary asked to the UEFA Disciplinary Inspector to conduct an investigation over the above-mentioned admission form.

On 21 May 2014, the UEFA administration informed Sivasspor of the instigation of proceedings in accordance with the UEFA Disciplinary Regulations (hereinafter: DR) and attached the UEFA Disciplinary Inspector’s report. In particular, and as a preliminary procedural request, the UEFA Disciplinary Inspector requested for the sake of the smooth running of the competition to refer the case to the UEFA Appeals Body in accordance with Article 34 (3) UEFA Statutes and Article 24 (4) DR

On 21 May 2014, the Chairman of the Control and Disciplinary Body informed Sivasspor, that he had decided to submit the case directly to the Appeals Body in accordance with Article 23(3) DR in conjunction with Article 24(4) DR.

D.

Based on the investigations conducted by the Turkish prosecutor, on the minutes of phone conversations tapped by the Turkish police, on the decisions of the Turkish Football Federation (hereinafter: TFF) and on two Turkish court decisions, both the Istanbul 16th High Criminal Court and the Criminal Chamber of the Turkish Supreme Court decision, the UEFA Disciplinary inspector requested the competent UEFA disciplinary Body to declare the ineligibility of Sivasspor to participate in the upcoming UEFA Europa League 2014/2015 in accordance with Article 2.08 UELR. In addition, according to Article 2.09 UELR, he called for the imposition of an additional sanction against Sivasspor of one additional season of exclusion from any future UEFA Competitions as well as a EUR 300.000 fine (three hundred thousand euro).

The Disciplinary Inspector report can be summarised as follows:

“In the context of the investigation, criminal as well as disciplinary proceedings were opened against the Sivasspor’s President Mr Mecnun Otyakmaz, former board member Mr Ahmet Çelebi and player Mr Korcan Çelikay.

Decisions of the Turkish Football Federation

On 6 May 2012 the Professional Football Disciplinary Committee of the TFF (“PFDC”) rendered its decision in proceedings n°2011/2012-1356 regarding the match Sivasspor vs. Fenerbahçe SK played on 22 May 2011, deciding that:

“THERE ARE NO GROUNDS FOR THE IMPOSITION OF A SANCTION on Aziz YILDIRIM, İlhan Yüksel EKŞİOĞLU, Tamer YELKOVAN, Cemil TURHAN, Mecnun OTYAKMAZ, Ahmet ÇELEBİ, Korcan ÇELİKAY, Bülent UYGUN, Mehmet YILDIZ, Sadri ŞENER, Recep DENİZER, Nevzat ŞAKAR, Faruk TAŞSETEN, Göksel GÜMÜŞDAĞ, Mehmet OFLAZ, İlhan ÇELİKAY and Mithat HALİS, brought before on charges of influencing the match result”.
(emphasis made on relevant Sivasspor officials and players)

Decision of the 16th High Criminal Court

On 2 July 2012 the Istanbul 16th High Criminal Court (hereinafter, the “Criminal Court”) rendered its decision (on 10 August 2012 with grounds, hereinafter, the “Criminal Decision”):

Criminal organisation under the leadership of Aziz Yıldırım (Fenerbahçe SK President)

The Court judged that a criminal organisation was formed under the leadership of Aziz Yıldırım (Fenerbahçe SK President) and it has been proven that match-fixing and incentive bonus were made during 13 matches of the season 2010/2011, including Sivasspor vs. Fenerbahçe SK of 22.05.2011 (the “Match”).

In particular reference to the match Sivasspor vs. Fenerbahçe SK, the Criminal Court considered and evaluated the evidence provided on pages 460 – 535 of the Criminal Decision. This section of the Criminal Decision clearly analyses how various officials, intermediaries and players of both Fenerbahçe SK and Sivasspor, including the Respondent’s President, a board member and two players, attempted to influence the outcome of the Match.

The Criminal Court was convinced that there have been repeated findings that officials and players of Sivasspor undertook activity aimed at influencing the outcome of this match.

The Criminal Court decided to impose the following sanctions regarding Mecnun Otyakmaz, (Sivasspor President).

He was sentenced to 1 year of imprisonment *“due to the fact that it is established that he aided the crime organization founded by AZİZ YILDIRIM in order to affect the results of the sports competitions by committing the crimes of match-fixing and incentive bonus in Turkish Professional Super League”*

He was also sentenced to 1 year and 6 months and 22 days of imprisonment and TRY 100.500 fine *“due to the fact that it is established that he committed the crime of match-fixing in order to affect the result of Sivasspor – Fenerbahçe competition played on 22.05.2011 in Turkish Professional Football League.”*, and *“due to the fact that the crime is committed by the defendant who is the chairman of the sports club”*.

Furthermore, he was banned *“from holding office in sports clubs, federations, management and audit bodies of legal entities which conduct sports activities within their framework”* and banned from *“watching the sports competitions as a safety measure.”*

Mr Ahmet Çelebi (Sivasspor board member) was sentenced to 1 year and 16 months and 3 days of imprisonment *“due to the fact that it is established that he was a member of the crime organization founded by AZİZ YILDIRIM in order to affect the results of the sports competitions by committing the crimes of match-fixing and incentive bonus in Turkish Professional Super League”*. (see Criminal Decision, pages 602-604).

Furthermore, he was sentenced to 1 year of imprisonment and a fine *“due to the fact that it is established that he committed the crime of match-fixing in İBB Spor – Fenerbahçe competition played on 01/05/2011 and Sivasspor – Fenerbahçe competition played on 22.05.2011 in Turkish Professional Super League in order to influence the match results”*.

The sanction was increased by 1/2 *“due to the fact that the crime is committed by the defendant – who is a member of the sport club’s executive board – and in the framework of an organization – which is established in order to commit crimes”*.

The Criminal Court decided to sanction Mr. Korcan Çelikay (Sivasspor player) with 1 Year And 6 Months of imprisonment *“due to the fact that it is established that Korcan Çelikay committed the crime of match-fixing in Sivasspor – Fenerbahçe competition played on 22.05.2011 in order to influence the match results in Turkish Professional Football League”*. (see Criminal Decision, pages 637-638).

Mr Mehmet Yildiz (Sivasspor player) was sentenced to 1 year and 6 months of imprisonment as he had *“been proven guilty of the crime, being involved in match fixing in order to influence the outright result of Sivasspor-Fenerbahçe match played on 22.05.2011 in the Turkish Professional Super League”*.

Decision of the 5th Criminal Chamber of the Supreme Court of Istanbul

On 17 January 2014, the 5th Criminal Chamber of the Supreme Court of Istanbul (the “Supreme Court”) rendered a decision (the “Supreme Court Decision”) regarding the appeals against the Criminal Decision.

The Supreme Court Decision establishes on pages 21 and 22 that:

“It was understood that a match-fixing agreement was made with Sivasspor football team players Mehmet Yıldız and Korcan Çelikay by the crime organization led by Aziz Yıldırım for playing badly in the competition in exchange for money so that the Sivasspor - Fenerbahçe A.Ş. football match would result in favor of Fenerbahçe A.Ş. football team; that a match-fixing agreement was also made with Sivasspor Club’s president Mecnun Otyakmaz, that suspects İlhan Yüksel Ekşioğlu, Ali Kıratlı, Tamer Yelkovan, Ahmet Çelebi, Bülent İbrahim İşçen, Abdullah Başak, Yusuf Turanlı and Fatih Akbaba – who were acting in line with the instructions of Aziz Yıldırım – took active part in these match-fixing activities; that they coordinated the whole process together; that Korcan Çelikay – brother of the suspect İlhan Çelikay – was talked to with the purpose of match-fixing; that he facilitated the execution of the crime by aiding the agreement process and that he participated in the action as an accessory; that despite the fact that it could not be detected who were the correspondents of the suspects Ali Kıratlı and Fatih Akbaba, and that there is a hesitation about the making of

agreement of match-fixing action, that their actions remained in the attempt phase; that the other suspect's actions were completed."

In relation to the appeal of Mr. Mecnun Otyakmaz (Sivasspor President), the Supreme Court decided to reject the appeal and confirm the Criminal Court verdict, but refer the case back to the first instance for a possible postponement of the imprisonment under the newer criminal Law of the prison sentence that had been imposed.

In relation to the appeal of Mr. Ahmet Çelebi (Sivasspor board member), the Supreme Court decided to reject the appeal and confirm the verdict of the Criminal Court against this official.

In relation to the appeal of Mr. Korcan Çelikay and Mr. Mehmet Yildiz (both Sivasspor players), the Supreme Court decided to reject the appeal and confirm the Criminal Court verdict, but refer the case back to the first instance for a possible postponement under the newer criminal Law of the prison sentence that had been imposed.

There Supreme Court therefore confirmed the findings of the Criminal Court in relation to the participation of Sivasspor players and officials in the fixing of the match against Fenerbahçe SK of 22 May 2011.

Proceedings before the CDB and AB involving the match Sivasspor vs. Fenerbahçe SK

On 22 June 2013, the CDB decided to sanction Fenerbahçe SK for the involvement of the club in *"influencing the result of [...] Sivasspor vs. [Fenerbahçe SK] of 22 May 2011 (with in particular payments offered and possibly made to a player of the other team to play in favour of Respondent)."*, among other matches.

On 15 July 2013, the AB confirmed that, in view of the evidence presented to it, attempts had been made to influence the result of the Match. In particular, the AB stated on page 27 of its decision that it *"considers that it is established that the President of Fenerbahçe SK, Mr. Yildirim, and a Fenerbahçe SK Executive Committee member, Mr. Exsioglu, conducted match-fixing in the match between Sivasspor and Fenerbahçe played on 22 May 2013"*.

While the AB decision in the matter of Fenerbahçe SK focused on that club and its officials' activities to fix the Match, the evidence presented to the AB in that file, which is submitted in these proceedings, clearly indicated the involvement of Sivasspor officials and players in the attempt to influence the result of the Match. The AB specifically acknowledged having taken into account *"a variety of evidence resulting firstly from the Police Digest and secondly from the 16th High criminal court decision"* in relation to the Match in question.

As this evidence was also taken into account by the Court of Arbitration for Sport (“CAS”) in the appeal against this decision, further reference will be made in the following section to the CAS’ assessment of the evidence regarding the Match.

Proceedings with CAS

On 28 August 2013, CAS issued an award in the appeal of Fenerbahçe SK against the above-referenced AB decision. When making its decision, the CAS Panel paid close attention to the evidence presented to it regarding the match played by Sivasspor and Fenerbahçe SK on 22 May 2011 (at paras. 489-539).

Notably, the CAS Panel concluded at para. 534 that (sic):

“The Panel finds that the alleged bad performance of Mr. Çelikay in itself is no proof of his involvement in the match-fixing scheme of Fenerbahçe. However, the Panel considers that the conversations between Mr. Turanly and Mr. Basak and between Mr. İlhan Çelikay and Mr. Turanly strengthen the proposition that Mr. Korcan Çelikay did not play to the best of his abilities in exchange for a certain sum of money that derived indirectly from Fenerbahçe officials. The Panel finds that this is supported by the conversation between Mr. Basak and Mr. Turanli mentioned supra. On this basis, the Panel is comfortably satisfied that Mr. Korcan Çelikay’s was involved in a match-fixing attempt of Fenerbahçe” (emphasis added).

The Supreme Court upheld all the convictions of the officials and players in respect of these matches, as will be explained further on.

E.

In their statement sent to UEFA on 2 June 2014, Sivasspor does not contest the essential facts concerning procedural and legislative developments as reported by the Disciplinary Inspector.

Briefly, Sivasspor raises out some procedural rule violations and opposes to the implication of the Sivasspor’s president Mecnun Otyakmaz, former board member Mr Ahmet Çelebi and its goalkeeper Mr. Korcan Çelikay in match fixing activities.

In substance, the Club holds as follows:

Procedural issues

- Sivasspor alleges that the standard of proof applicable in these proceedings is the standard of «beyond reasonable doubt ». It seems to rely on the fact that UEFA had the full access to the whole case file, to all the testimonies of individuals and to all evidence collected by the

Turkish police (i.e. including wiretaps, physical pursuit recordings, court statements, photographs, Police and Prosecutor statements). Moreover, in three years from the start of these investigations UEFA was provided with every decision and verdict of TFF Bodies, Criminal and Supreme Courts and UEFA had ample time to review and study these documents. Consequently, it is not possible to follow CAS 2013/A/3258 concerning the application of the standard of “comfortable satisfaction” which was made under different circumstances.

- Article 2.09 can only be applied to the clubs which had been involved in such activities and declared ineligible for one season according to article 2.08 but also did not fulfil the conditions under article 2.07.g, which means while informing the UEFA administration in writing, they provided false and/or misleading information in their application. This provision is not a confirmation but a totally new and additional provision to the DR in 2013 and can be applicable only to the violations which occurred after these Regulations came into force. Besides, this provision is not envisaged as a follower of art. 2.09 UELR but as an independent article. Consequently, Sivasspor argues that there is no legal ground in the Disciplinary Inspector’s report request for additional disciplinary sanctions against Sivasspor according to article 2.09 UELR.
- Due to the fact that only one player of Sivasspor is accused of match fixing and that Sivasspor gained no monetary or sportive benefit from the alleged match fixing, applying the strict liability principle established under UEFA Regulations and CAS Jurisprudence and sanctioning Sivasspor for an alleged conduct of a player for his own personal benefit would go against the motives behind the UEFA Principle “Zero Tolerance for Match-Fixing”.
- Sivasspor opposes the analogy between match fixing and doping cases made by the UEFA Disciplinary Inspector as with regards to the imposition of the adequate sanction. In substance, the Sivasspor stresses that in match-fixing cases, as in the present proceeding, it is the club who shall face strict liability according to the Disciplinary Inspector, even though the alleged conduct is made by a player and the club is also a victim, whilst in doping cases it is the athlete who carries the liability for his/her violations. Furthermore, even in the sanctioning system in Doping Cases the regulatory body requires that at least two members of a team should be found to be in violation, whereas in the present case Sivasspor is allegedly liable for the implication of only one player, Sivasspor’s goalkeeper Mr. Korcan Çelikay, in match fixing activities.

Factual circumstances

Sivasspor raised many different points concerning the wire-tapping investigations of the Turkish police, arguing that different interpretations of the conversations should be made and referring

specifically to the relationships between the parties, as well as the factual background of those involved.

In particular, Sivasspor states as follows:

- In the present proceeding, Sivasspor is put in a position to explain the alleged conducts of not only Mr. Korcan Çelikay but also individuals who have no ties to the club; Mr. Ilhan Eksiosglu, Mr. Yusuf Turanli, Mr. Abdullah Basak and Mr. Ilhan Celikay.
- The different usage of the word "attempt" by Turkish Criminal Court and Supreme Court should not be used against Sivasspor by the Disciplinary Inspector. Regarding the third front, as the facts established by the Turkish Criminal Court and Supreme Court are clear, there is no evidence that proves that these individuals had reached or even tried to reach any official, player, etc. within Sivasspor.
- The phone conversations referred by the Disciplinary Inspector to incriminate Korcan Çelikay , and ultimately Sivasspor, do not involve any reference to fixing the match between Sivasspor and Fenerbahçe on 22 May 2011. However, without any foundation and clearly disregarding other elements, i.e three matches in which Yusuf Turanli was convicted for match fixing, the conversations forwarded by the DI inspector are used to create a false assumption against Korcan Çelikay .
- The alleged conducts are only supported by phone conversations which have no direct or indirect reference to any match-fixing in relation to the match between Sivasspor and Fenerbahçe. Furthermore, the wording in these phone conversations is used by the Disciplinary Inspector clearly out of context to create a false assumption against Korcan Çelikay .
- There is no direct or indirect implication in the alleged act that a car was given to Mr. Basak for his role in the alleged match-fixing act in the match between Sivasspor and Fenerbahçe.
- Comparing the findings of the CAS Panel in CAS 2010/A/2172 related to the use of evasive means in match fixing activities, and the ones at stake in the present matter, there is a clear contradiction, since the actions of the individuals are clearly contrary to the expected actions if they were really transferring money related to a crime. Notwithstanding the fact that there is no evidence of the presence of money or an exchange of money, the illogical content of the assumptions should also be the sole reason to reject these allegations. The allegations are solely based on (wrong) assumptions rather than on actual evidence and must be rejected in whole.

- Sivasspor has clearly addressed each point which they presume to be wrongfully used in the report by the DI and allegedly showed clear evidence to support these explanations. However, at the same time, the DI cannot show the same effort to support his unfounded allegations.

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

F.

The Chairman opened the hearing and noted the presence of the party charged and of the Disciplinary Inspector. He informed them of the composition of the Appeals Body and of the procedure to be followed. He advised them that the discussions would be recorded. They did not raise any objections and did not require any further procedural directions.

The club called its goalkeeper, Korcan Çelikay , as a witness but had no questions to ask him. When asked by the Appeals Body and the disciplinary inspector, the goalkeeper confirmed that he had been found guilty of match-fixing in the first instance state court, but stated that he had lodged an appeal that was still ongoing.

The parties were given the floor to plead, reply and rejoinder. The additional arguments given by the parties in support of their pleadings – written and oral – are set out below, insofar as they are relevant.

In law:

1.

Bearing in mind the urgent circumstances of the case, which might have an important impact on the smooth running of the UEFA Europa League 2014/2015 and based on Article 50.3 of the UEFA Statutes and Article 24.4 DR, the Appeals Body complies with the decision taken by the Chairman of the Control and Disciplinary Body to transfer the case to this UEFA disciplinary body and confirms, herewith, its competence to deal with the present case in accordance with Article 24(4) DR.

No objections have been raised in this regard by the parties involved.

2.

The present case is to be dealt with in accordance with the UEFA Disciplinary Regulations in force when the offence was committed. As the incident occurred during the season 2011/2012 of the Turkish Championship, the UEFA Disciplinary Regulations of 2008 apply with regard to the alleged offence. In addition, it shall be noted that the UEFA Disciplinary Regulations Edition 2013 are relevant to any procedural and organisational issue.

In this respect, it may be recalled that CAS has already ruled that: “in general, it is necessary to apply the laws, regulations or rules that were in force at the time the facts occurred. This general principle is, however, subject to several exceptions, including an exception for laws or rules that are procedural in nature.”(CAS 2000/A/274). This approach is also confirmed by CAS 2013/A/3256 Fenerbahçe SK vs UEFA when stating that the UEFA 2012 DR, which were in force by the date disciplinary proceedings were instigated against the Turkish club, were applicable concerning the procedural and organisational issues (See para. 124 CAS 2013/A/3256).

3.

Under the terms of Article 2 of its Statutes, UEFA’s objectives particularly include to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason (letter a), to prevent all methods or practices which might jeopardise the regularity of matches or competitions or give rise to the abuse of football (letter e), and to ensure that the needs of the different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account (letter j).

According to Article 50 (3) UEFA Statutes:

“The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures”.

Article 52 of the UEFA Statutes provides that, 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.

According to Article 1.01 UEL Regulations, said regulations govern the rights, duties and responsibilities of all parties participating and involved in the preparation and organisation of the 2014/15 UEFA Europa League including its qualifying phase and the play-offs (hereinafter: the Competition).

Article 2.07 UELR reads as follows:

“To be eligible to participate in the competition, a club must fulfill the following criteria:
(...)

g) it must not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or

influencing the outcome of a match at national or international level and must confirm this to the UEFA administration in writing”.

According to Article 2.08 UELR:

“If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition.”

Article 2.09 UELR reads as follows:

“In addition to the administrative measure of declaring a club ineligible, as provided for in paragraph 2.08, the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations”.

Article 5 DR (Edition 2008) states that member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship (paragraph 1). A breach of these principles is committed by anyone who, in particular, engages in or attempts to engage in active or passive bribery and/or corruption (paragraph 2(a)), or acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of behaviour in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party (paragraph 2 (j)).

Article 6(1) DR (Edition 2008) provides for the responsibility of members associations and clubs for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the member association or club

Preserving the uncertainty of the outcome of football matches is UEFA’s prime concern. Indeed, it is the *raison d’être* of organized football. If supporters would know the result of a match in advance or the goals to be scored there would be no sporting interest in watching and/or attending football

games. It would spell the end of football. Therefore, UEFA has a zero tolerance policy towards anyone, including club's and association's officials, players or members, who jeopardize the uncertainty of the outcome of football matches.

The present case shall be examined in the light of these provisions and principles.

4.

Sivasspor disputes the application of "comfortable satisfaction" as the standard of proof in these proceedings. It claims that to exclude a club from a UEFA competition, UEFA must conclude "beyond a reasonable doubt" that the club has been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match.

The Appeals Body recalls that, in accordance with Article 2.08 UELR, it is for UEFA to "(...) concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match (...)". The standard of proof to be applied with regard to the admission of clubs for UEFA competitions has therefore been explicitly and so sufficiently established in Article 2.08 UELR, i.e the standard of comfortable satisfaction.

The Appeals Body considers necessary to recall that CAS already several times decided on the applicable standard of proof concerning cases of admission of clubs for UEFA competitions and/or additional disciplinary measures with regard to these incidents (see, among others, CAS 2009/A/1920, CAS 2010/A/2172, CAS 2010/A/2266, CAS 2011/A/2528, CAS 2013/A/3258 and CAS 2013/A/3256).

In all these cases, CAS deemed as the appropriate standard of proof the one based on "comfortable satisfaction" (if not even the one of "balance of probabilities"). In particular, the CAS established that "taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, UEFA must establish the relevant facts "to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made" (CAS 2005/A/908)".

Accordingly, the Appeals Body considers that the standard of proof to be applied in cases regarding the involvement of a club, in this case Sivasspor, in activities aimed to arrange the outcome of a match at national level, shall be "comfortable satisfaction". This standard of proof is greater than a mere balance of probabilities but less than proof beyond reasonable doubt.

5.

In the present case, the facts concerning the procedural development in the different proceedings before the Turkish disciplinary sporting, both the Istanbul 16th High Criminal and Turkish Supreme Court, the UEFA Disciplinary Bodies and the CAS, as established by the Disciplinary Inspector in his report, were not disputed by Sivasspor.

The Club argues that the Supreme Court actually returned the case concerning the Sivasspor officials to the lower court for a complete re-examination.

In this respect the statement of the Supreme Court in pages 21 and 22 reads:

"It was understood that a match-fixing agreement was made with Sivasspor football team players Mehmet Yıldız and Korcan Çelikay by the crime organization led by Aziz Yıldırım for playing badly in the competition in exchange for money so that the Sivasspor - Fenerbahçe A.Ş. football match would result in favor of Fenerbahçe A.Ş. football team; that a match-fixing agreement was also made with Sivasspor Club's president Mecnun Otyakmaz, that suspects İlhan Yüksel Ekşioğlu, Ali Kıratlı, Tamer Yelkovan, Ahmet Çelebi, Bülent İbrahim İşçen, Abdullah Başak, Yusuf Turanlı and Fatih Akbaba – who were acting in line with the instructions of Aziz Yıldırım – took active part in these match-fixing activities; that they coordinated the whole process together; that Korcan Çelikay – brother of the suspect İlhan Çelikay – was talked to with the purpose of match-fixing; that he facilitated the execution of the crime by aiding the agreement process and that he participated in the action as an accessory; that despite the fact that it could not be detected who were the correspondents of the suspects Ali Kıratlı and Fatih Akbaba, and that there is a hesitation about the making of agreement of match-fixing action, that their actions remained in the attempt phase; that the other suspect's actions were completed."

The Appeals Body is of the opinion that the Supreme Court rejected the appeal lodged by the clubs' officials and the players and returned the case to the lower instance only regarding the issue of the specific sanction imposed. The guilty verdict regarding match-fixing by club officials Mecnun Otyakmaz and Ahmet Çelebi and players Korcan Çelikay add Mehmet Yıldız, has been fully confirmed.

6.

Furthermore, at the hearing, Sivasspor did not contest the content of the recordings. Sivasspor mainly contests the partial content of those, the not taking into consideration of other conversations and evidences, and the conclusions reached by the UEFA Disciplinary Inspector following, in substance, the line taken by the CAS in CAS 2013/A/3258.

Therefore, the Appeals Body will address the facts as portrayed by the UEFA Disciplinary Inspector in his report, introducing the Club's assessments insofar as they are relevant, as well as adapting and/or commenting those other parts which might have an impact on the outcome of the case.

In summary, the Disciplinary Inspector established the following facts:

First front: Aziz Yildirim's (Fenerbahçe SK President) approach to Mecnun Otyakmaz (Sivasspor President)

According to the UEFA Disciplinary Inspector, a conversation between İlhan Yüksel Ekşioğlu (Fenerbahçe board member) and an intermediary, Faruk Yaşar, reveals that Fenerbahçe SK had employed three mechanisms, which Mr Ekşioğlu was confident would cause players to play to lose:

The conversation in which İlhan Ekşioğlu (Fenerbahçe SK board member) called Faruk Yaşar (intermediary) at the date of 17.05.2011 at: 16.37

Faruk Yaşar: "We have 2, 3 days left, we'll be the champion,... Is there anything?",
İlhan Yüksel Ekşioğlu: "ok 3 stitches,...I mean we'll make sports from every branch",
Faruk Yaşar: "90 Percent",
İlhan Yüksel Ekşioğlu: "100, 100",
Faruk Yaşar: "Sources are solid, then?",
İlhan Yüksel Ekşioğlu: "Very solid",
Faruk Yaşar: "They are not like the others aren't they?",
İlhan Yüksel Ekşioğlu: "No No". (tape:3013)

In a later conversation with the same Faruk Yasar (intermediary), Mr Eksioglu (Fenerbahçe SK board member) said:

The conversation in which Faruk Yaşar (intermediary) called İlhan Ekşioğlu (Fenerbahçe SK board member) at the date of 22.05.2011 at: 15.00:

It was found out that Faruk said; "Can we watch the game relaxed now? What are we going to do?", İlhan said; "We are in Kadıköy now, damn it.", that Faruk stated that 75% of the stands will be filled with Fenerbahçe SK fans and he said "Okay, I understand. We already knew that it would be like this. Will we be relaxed in terms of the other thing, İlhan said; "Yes Yes", Faruk said: "So, you made sure of your connections in the building site, right?", İlhan said: "I'm telling you to watch the game relaxed" (tape:3037).

The UEFA Disciplinary Inspector considered, that this again reveals the use of construction words as cover in the conversation in order to refer to match-fixing.

A conversation between Mr Ekşioğlu (Fenerbahçe SK board member) and Mr Aziz Yildirim (Fenerbahçe SK President) took place shortly after the first conversation between Mr Eksioglu and Frauk Yasar (intermediary):

The conversation in which İlhan Ekşioğlu (Fenerbahçe SK board member) called Aziz Yıldırım (Fenerbahçe SK President) at the date of 17.05.2011 at:17.53

Aziz Yildirim: "Are you on the land line?"
İlhan Yüksel Ekşioğlu: "Yes",
Aziz Yildirim: "We will send 550, right? ...Did you give all of the other one?"
İlhan Yüksel Ekşioğlu: "We gave",
Aziz Yildirim: "There is a problem there. I need to talk to you about it."
İlhan Yüksel Ekşioğlu: "Where is the problem?",
Aziz Yildirim: "Whatever, we'll talk about it tomorrow, it is not a big issue. Let me warn you. There is problem there... let's talk about it when we come together...Are you going to do it with Sapançalı or Şekerli?"
İlhan Yüksel Ekşioğlu: "I did it with 3 of them my president",
Aziz Yildirim: "You did it with three...Ok then. I'll talk to you tomorrow. ".
(tape:2427)

The first front, Aziz Yildirim's (Fenerbahçe SK President) approach to Mecnun Otyakmaz (Sivasspor President) is dealt with in the Criminal Court's Decision from page 463 onwards. Sivasspor was fighting against relegation, and Aziz Yildirim (Fenerbahçe SK President) had promised to beat their rivals in that struggle, so that Sivasspor would not be exposed to the risk of relegation even if it lost its last match against Fenerbahçe SK. This was then the position going into the last match.

At Aziz Yildirim's (Fenerbahçe SK President) request, Bulent Iscen (intermediary) arranged a meeting between Mecnun Otyakmaz (Sivasspor President) and Aziz Yildirim (Fenerbahçe SK President) for 11 May 2011.

The same day President Yildirim called the club's accountant, Mr Tamer Yelkovan (Fenerbahçe SK accountant), to instruct him regarding the transfer of money:

The conversation in which Aziz Yıldırım (Fenerbahçe SK President) called Tamer Yelkovan (Fenerbahçe SK accountant) at the date of 11.05.2011 at: 17.24

Aziz Yildirim: "Abdullah Kiğılı is transferring 400.000 from Fenerium now",
Tamer Yelkovan: "I just received the call, I was amazed",
Aziz Yildirim: "I called him...If there is money send it to Mr Tamer. They said that they were sending 400...you see I work from every angle",

Tamer Yelkovan: "If the players set this on fire, It will all be over". (tape:2405)

In this regard, the UEFA Disciplinary Inspector deems that the other intermediaries were skeptical about seeking to act through the president of the rival club:

The conversation in which Abdullah Başak (intermediary) called Yusuf Turanlı (intermediary) at the date of 13.05.2011 at 19.02

(Abdullah asked him whether Bülent called or not, Yusuf told him that he did not) Abdullah: "I have big news for you,...he went and talked to Mecnun,...İlhan said that "do not to talk to him, talk to me" I told him that "Yusuf won't be involved in that business anymore"", Yusuf: "...it shouldn't be this way, things get complicated this way...". (tape:3141)

That alleged skepticism appears to have been shared by Mr. Eksioğlu (Fenerbahçe SK board member):

Phone call to Abdullah Başak (intermediary) by İlhan Yüksel Ekşioğlu (Fenerbahçe SK board member) on 13.05.2011 at 19.35 (tape 2993)

ABDULLAH BAŞAK : Yes brother

İLHAN YÜKSEL EKŞİOĞLU : Are you going to get up early tomorrow as well?

A.B : Probably, brother

İ.Y.E : Good, I need to talk to you about a very important issue in the morning.

A.B : Brother, let me tell you something.

İ.Y.E : Huh!

A.B : I am very demoralized.

İ.Y.E : Why?

A.B : You know my brother Bülent?

İ.Y.E : Yes

A.B : He is up to something again, brother.

İ.Y.E : He always does! F.ck him!

A.B : Your man told him, but you don't know this.

İ.Y.E : No, no! I have just come from there now. I met with our number 1.

A.B : Number 1 is here with me. He called him

İ.Y.E : Okay my man. I told him everything.

A.B : Huh

İ.Y.E : Okay?

A.B : Huh (means yes)

İ.Y.E : I told him that the bastard is no good for even a f.ck... It is wrong... I told him what I had shown you.

A.B : Hih

İ.Y.E : I told him that you and your man are the keys for the operation.

A.B : Hih

İ.Y.E : But, I told him that you did not want to them to know him.

A.B : Yes

İ.Y.E : I told him "don't even know them, they don't want this in this way, they want me".

A.B : Yes

İ.Y.E : This is a summary of the conversation.

A.B : Ditto, ditto

İ.Y.E : Then I told him "you are calling Bülent and you tell him about these things, and then everything gets complicated".

A.B : Brother, if you excuse me, I want to tell you something. Do you know what I told him today? I told him "you said something to brother İlhan for something which does not even exist, and he resented me." Okay? I asked him "when did I do something behind your back? What happens if I do this? Who am I? Who am I? "

İ.Y.E : Now, look Apo. We have only one week left. We must settle down and think logical.

A.B : Yes, yes brother.

İ.Y.E : I told him everything, okay?

A.B : Look brother, I was with my other friend – brother – just now. He told me that he will not talk to anybody else other than you and me.

İ.Y.E : Ditto, okay, I told the same thing, listen to me for once, listen to me.

A.B : Okay brother, ditto

İ.Y.E : This is the actual bomb (flash news). You know, your man was saying that an answer was supposed to come from somewhere.

A.B : Yes

İ.Y.E : He talked about that issue, I will tell you tomorrow. That issue is okay. I will take my kid to Dereağzı for football school at 10 o'clock tomorrow in the morning.

A.B : Okay brother

İ.Y.E : Let's meet at 10 in Dereağzı, the news are very good.

A.B : Shall I also bring my other brother to there, brother?

İ.Y.E : It will be super

A.B : Okay brother okay.

İ.Y.E : Okay?

A.B : Okay brother.

İ.Y.E : At 10, in Dereağzı

A.B : Okay brother. Do you want anything else from me?

İ.Y.E : Only your well-being

A.B : I kiss you brother, my regards to you.

İ.Y.E : Okay, okay, me too.

Aziz Yildirim (Fenerbahçe SK President) is however set on his course. Mr Yildirim called Mr Bülent İbrahim İşcen, the intermediary:

The conversation in which Aziz Yıldırım (Fenerbahçe SK President) called Bülent İbrahim İşcen (intermediary) at the date of 13.05.2011 at:21.54 (tape:2409)

Bülent İbrahim İşcen: "I talked to that friend. They are set. He'll go and talk about the price, he asked about what was required, he said that he would talk about it in person... don't worry about the... but he says that hamsi side (referring to Trabzonspor) is putting pressure as well. I told him that we will prevent it from happening, I told him: "You will meet in person, You'll call, This is not a joke, There no need to involve too many persons, Make it a concise conversation, tomorrow is another day, everything should be known, but too much talking does not lead to any good, make it a concise conversation and everyone will know their duties,

Aziz Yildirim: "I think you should send Ahmet, too "(referring to Ahmet Çelebi),

Bülent İbrahim İşcen: "Of course, he is going, too...he will after our match on Monday or Tuesday and he'll stay in the camp for 5 days ...the friend – the one you told his name – ...we told him that if he did not do this, we would never look at his face again, that he shouldn't even bother saying hi again. ",

Aziz Yildirim: "Come tomorrow, let's talk then, okay",

Bülent İbrahim İşcen: "I told him that "you'll leave everything and go and stay there for 5 days and..... prevent everything".

The price can only be the amount of the bribe. The pressure from the "hamsi side" or Trazonspor can only mean players were being put under pressure (or more) to make sure that they beat Fenerbahçe SK.

This conversation was followed three minutes later by a call from Mr İşcen (intermediary) to Sivasspor executive Mr Ahmet Çelebi (Sivasspor board member):

The conversation in which Bülent İbrahim İşcen (intermediary) called Ahmet Çelebi (Sivasspor board member) at the date of 13.05.2011 at: 21.57

Bülent İbrahim İşcen: "Look. He called me and asked about it Ahmet... He asked whether I went and talked to you. I told him that we talked. I told him not to worry. I told him that you will go to there 3 days before our match and you'll stay in the camp. I told him that you will

be successful. I told him not to worry and not to listen anybody else other than you. I told him that you'll prevent everything, I told him all of these words on behalf of you Ahmet", Ahmet Çelebi: "Anyway, we'll talk later, okay?".(tape:3623)

The UEFA Disciplinary Inspector concluded that what Ahmet Çelebi (Sivasspor board member) was expected to be successful in doing was ensuring that Sivasspor did not beat Fenerbahçe SK. He sought to arrange a meeting with Mehmet Yildiz (Sivasspor player), but could not do so immediately as his wife was about to give birth (and did so on 16 May 2011).

Consequently, for the UEFA Disciplinary Inspector, Ahmet Çelebi (Sivasspor board member) reports to Bulent Iscen (intermediary) that he has set the ball rolling in relation to Mehmet Yildiz (Sivasspor player) and Bulent Iscen (intermediary):

Phone call to Ahmet Çelebi (Sivasspor board member) by Bülent İbrahim İşcen (intermediary) on 16.05.2011 at 13.53 (tape:2669)

Ahmet Çelebi: "... I mean, do we agree on the things we talked about?"

Bülent İbrahim İşcen: "Yes"

Ahmet Çelebi: "Okay I initiated the operation be informed"

Bülent İbrahim İşcen: "Good okay, let me know"

In this conversation Bulent Iscen (intermediary) also tells Ahmet Çelebi (Sivasspor board member) that he is annoyed by the involvement of other intermediaries in the other fronts.

Bülent İbrahim İşcen: "Now, I will go to Brother Aziz and tell him on, I will tell him that this one loves money too much, that he can't even keep his mouth shut."

There are also conversations about a parallel and separate acquisition of tickets from Sivasspor. In this context, there is some suggestion that a bag containing tickets was involved. In the light of the inconsistencies in the accounts exposed by the Criminal Court, any sale of tickets however appears to have been used as cover for simultaneous other discussions in relation to match-fixing.

The conversation in which Aziz Yıldırım called Mecnun Otyakmaz (Sivasspor President) at the date of 17.05.2011 at: 22.09:

Mecnun: "...somethings came to the door and I say that we are in such a state, we brought the remaining VIP tickets to you and look at the trouble it caused us." "

Aziz: "Of course, of course If something like that happens,..we talked about the tickets",

Mecnun: Be informed. I went there and left them to Ebru,... the VIP tickets,... I already gave the goal-line tickets to Bülent,he took them and when you wanted extra tickets, O brought those VIP tickets and left them to Ebru". (tape:2432)".

Ahmet Çelebi (Sivasspor board member) met with Mehmet Yildiz (Sivasspor player) on 20 May 2011.

On 21 May 2011 Abdullah Basak (intermediary) arranges for the transportation of another "bag" belonging to Mr Eksioglu (Fenerbahçe SK board member) to Ahmet Çelebi (Sivasspor board member).

The courier is exhorted:

The conversation in which Abdullah Başak (intermediary) called the person named Nüvit at the date of 21.05.2011 at:18.56;

Nüvit: "Yes sir?", Abdullah: "If you forget that bag, forget me for the rest of your life, It is both my and your future, It's İlhan Ekşioğlu's", Nüvit: "...you say that; but, wait, I'm trying to park the car. Why don't you close the door? Wait, I'm coming there Brother Apo." . (tape:3174)

The conversation in which Ahmet Çelebi (Sivasspor board member) called the person named Nüvit at the date of 21.05.2011 at: 23.35

Ahmet: "Where is my bag?", Nüvit: "It's in the car", Ahmet: "Bring it upstairs", (tape:2904)

The Criminal Court's decision then reports as series of meetings between the protagonists.

In the evening after the match, Mr Mehmet Yildiz (Sivaspor player) telephoned an anonymous Person X to discuss his poor performance against Fenerbahçe S.K.:

Mehmet Yildiz:"What can I do? We made Fenerbahçe champion. I'm going",

X Person: "Why didn't you hit the ball with your head and score? Why did you hit with your foot? You cannot hit the ball with your foot."

Mehmet Yildiz:"why should I score? I didn't go there to score. I went there just to move around. Look at the coincidence... Santos's movement was in vain, I told the president that I'm leaving. Be informed."

X Person: "Well, get along well with our new sportive director there... Ümit Karan",

Mehmet Yildiz:"I'll talk to Ümit",

X Person: "He left the football...he'll be there and deal with everything",

Mehmet Yildiz: "With the transfer?",

X Person: "I told that Sezer made a deal with Fener, he might as well be champion, so he'll not be demoralized." (tape:3310)

The Club in their statements regarding the alleged first front refers to the CAS 2013/A/3258 Fenerbahçe which stated as follows:

"The Panel, on the basis of the submissions of the parties, the testimonies given at the hearing, and in light of the considerations of the TFF Ethics Committee, is not satisfied to Its comfortable satisfaction that this theory provides evidence for Fenerbahçe's attempt to fix the present match. As such, the panel finds that UEFA 's allegation in respect of the first front of match-fixing could not be proven to the comfortable satisfaction of the Panel. " (emphasis added)

Consequently, so the Club, it could not be proven to the comfortable satisfaction of the Panel that there is no factual and legal basis to the DI's implications against Mr. Mecnun Otyakmaz, Ahmet Çelebi and former player Mehmet Yildiz.

Second front: Sivasspor's goalkeeper

As per the UEFA Disciplinary Inspector's Report and the evidence provided by him, match fixing activities were carried out through intermediaries Abdullah Başak (intermediary) and Yusuf Turanlı (intermediary) to bribe Sivasspor goalkeeper Mr Korcan Çelikay (Sivasspor player). The Criminal Court's Decision records a degree of unease as to who at Fenerbahçe SK is giving the instructions, and about the involvement of other intermediaries.

Intermediary Mr Turanlı telephoned Sivasspor goalkeeper Mr. Korcan Çelikay in the week prior to the match, asking why he had been left out of the line-up in the previous match and making sure that he will play against Fenerbahçe SK:

The conversation in which Yusuf Turanlı called Korcan Çelikay (Sivasspor player) at the date of 15.05.2011 at:18.12

Korcan Çelikay: "I'm in İstanbul, I arrived yesterday",

Yusuf Turanlı: "Why didn't he let you play, Korcan?" ,

Korcan Çelikay: "He let the others play who normally cannot get a chance.",

Yusuf Turanlı: "Will he do the same in the Fener match?" ,

Korcan Çelikay: "No, We'll be as our full line-up in Fener match.",

Yusuf Turanlı: "Are you playing in the Fener match?" ,

Korcan Çelikay: "Yes, inşallah...I mean there is no problem",
Yusuf Turanlı: "When will you return back? Tomorrow?",
Korcan Çelikay: "Well, on Tuesday",
Yusuf Turanlı: "Okay, see you tomorrow then". (tape:3454)

Regarding the above conversation, the Club considers that contrary to the part of the conversation taken by the UEFA Disciplinary Inspector, the whole text of the conversation as provided by it demonstrates that Yusuf Turanlı was not focused on the Fenerbahçe game but rather on the reasons why Korcan did not play in the Konyaspor game. Based on this fact, the Club considers it a normal situation that Yusuf Turanlı, who acted as the agent of Korcan Çelikay at that time, asked about the reason for his not being fielded in the game against Konyaspor and, further, if he would be fielded in the last game of the season.

Mr Abdullah Başak (intermediary) called Mr Turanlı (intermediary) the following day to press on the arranging of the match and discuss the price:

The conversation in which Abdullah Başak (intermediary) called Yusuf Turanlı (intermediary) at the date of 16.05.2011 at:11.22

Abdullah Başak: "Ok, I left now,...İlhan says that,...20.000 Dollars to me,...he says that he will f. their life.. f.. k both of them,...I said to him whatever he liked, we would do,...He says that he didn't do anything ...he said that you should give 300 to that brother and take 200 to yourself,...he wants you to handle this without fail...".(tape:3165)

The Club stresses that the above conversation was not linked to Sivasspor, as the call between Abdullah Basak and İlhan Eksioğlu on 16.05.2011 at 14.30 is self-explanatory and also has connection to the conversation indicated in par. 65 (i.e. 16.5.2011 at 11 .22). In substance, Yusuf Turanlı was handling the negotiations between Fenerbahçe and Kayserispor regarding the transfer of two players.

On 16 May 2011, Yusuf Turanlı (intermediary) met with Korcan Çelikay (Sivasspor player). The following day, Yusuf Turanlı refers to the "operation" agreed with Mr. Celikay:

The conversation in which Korcan Çelikay (Sivasspor player) called Yusuf Turanlı (intermediary) at the date of 17.05.2011 at:10.57

Korcan: "I didn't notice that you wrote me last night",

Yusuf: "I asked coach what he was thinking about it. He said that they bring after this Hakan business is more clear. just like I said (he laughs) be relaxed think about the operation...let's finish the operation first without any loss, then you can have your vacation",

Korcan: "Not so easy, I want raise",

Yusuf: "Raise? It is great there. you be relaxed.. leave out the rest ... money...who should I talk to here? (referring to İlhan Çelikay) your brother?",

Korcan: "You don't need to talk to anyone, why should you talk?...See you on the way back",

Yusuf: "Because I'll receive the present on Sunday afternoon, okay",

Korcan: "It doesn't matter, It is not important whether it stays on you or on me. ", (tape:3461)

Contrary to what has been concluded by the UEFA Disciplinary Inspector, the Club notes that neither the part of the conversation used by the UEFA Disciplinary Inspector nor the full conversation has any reference to a match-fixing aim for Sivasspor- Fenerbahçe match on 22 May 2011. Instead, the missing parts of the conversation clearly state, in the Club's view, that Yusuf Turanlı, as the agent of Korcan Çelikay, was telling the player that he is working on his return to Beşiktaş in the upcoming season.

Furthermore, the Club emphasizes that on this subject the word "operation" has been used completely out of context in the report of the UEFA Disciplinary Inspector, which is presented as a referral to a "match-fixing operation" and "an agreement" that he reached with Korcan Çelikay. This was, for the Club, another normal phone conversation between a player and his agent about planning the player's future. The context of the conversation is totally limited to the future, surgery and the expectation of a raise in his salary as a young player.

Following the above conversation, the UEFA Disciplinary Inspector concludes, that the day before the match, Mr Başak (intermediary) informed board member Mr Ekşioğlu that Sivasspor would start the goalkeeper that was bribed, Mr Korcan Çelikay (Sivasspor player), against the Fenerbahçe:

The conversation in which Abdullah Başak (intermediary) called İlhan Ekşioğlu (Fenerbahçe SK board member) at the date of 21.05.2011 at:12.01

Abdullah Başak: "They made the line-up public now,...goalkeeper Ramović,...no I said wrong goalkeeper Korcan",

İlhan Yüksel Ekşioğlu: "HUH?",

Abdullah Başak: "(he laughs) But he is using two attackers Eneramo and Pedriel,... Hayrettin and Kadir in the defence again... There is Sedat,... He said the others too, I called my Uncle now,... we'll beat them,... I'm very

relaxed, I don't know why but I'm really relaxed, I'm thinking about whether I should buy Mini Cooper or Peugeot 508 (he laughs)",

İlhan Yüksel Ekşioğlu: "Let's just win this game, the rest is",

Abdullah Başak: "I swear to God, İlhan, I'm saying this with all of my heart, I mean all the stress we had, only a few people including the president lived that stress,... we won honourably". (tape:3033)

The Club, contrary to what has been concluded by the UEFA Disciplinary Inspector above, raises the argument that in fact this was plainly a bad joke on Abdullah Basak's side, since Sead Ramovic was not playing at Sivasspor and not even in Turkey on the date concerned, due to the fact that he was transferred to Ukrainian club Metalurg on a loan basis starting from 1 February 2011.

Upon learning that Mr Çelikay would be the goalkeeper for Sivasspor in that match, Mr Ekşioğlu (Fenerbahçe SK board member) called board member Mr Aleaddin Yildirim (another Official and brother of President Aziz), who was with the footballers of Fenerbahçe SK, to tell the team that the tactic is to shoot as much as possible.

In this regard, the Panel needs to amend the development of the facts as reported by the UEFA Disciplinary Inspector and agree on the Club's comments referred to the person realizing the call. In this regard, the Appeals Body complies that it was Alaeddin Yildirim who called İlhan Ekşioğlu. However, it shall also be remarked that this is only an incidental issue.

The conversation in which Alaeddin Yildirim (Fenerbahçe SK board member) called İlhan Ekşioğlu (Fenerbahçe SK board member) at the date of 22.05.2011 at:18.55

İlhan Yüksel Ekşioğlu: "Brother...You are at the downstairs, right?",

Alaeddin Yildirim: "What is up?",

İlhan Yüksel Ekşioğlu: "I don't want to disturb game plan; but shots as many as possible",

Alaeddin Yildirim: "Okay, we'll talk later okay", (tape:3636)

The UEFA Disciplinary Inspector considers that there was no reason for such a communication to have been made between two officials who were not members of the coaching staff, unless the goalkeeper had been bribed. This tactic worked, as the Sivasspor goalkeeper who had been bribed allowed at least two goals on shots from outside the penalty area.

The Club, on the contrary, considers that it is not acceptable that the Mr Ekşioğlu waited 30 hours to tell Mr Yildirim that the goalkeeper Mr Korcan Çelikay had been bribed. In addition, the Club points out that Fenerbahçe side will in any case learn the roster of Sivasspor, five minutes after the conversation between Mr. Aleaddin Yildirim and Mr. İlhan Ekşioğlu. This is also a clear fact that this phone call was not made to inform the team about Korcan Çelikay, but only to inform the team

that the field was slippery due to the recent rain and that it would be useful to build the tactics on taking more shots.

Additionally, a conversation recorded during the match between a person called Ibrahim and Mr Ahmet Ateş of Besiktas, unconnected with the alleged match-fixers, confirmed, for the UEFA Disciplinary Inspector, that the player performed very poorly:

The conversation in which the person named İbrahim called Ahmet Ateş (Besiktas member) at the date of 22.05.2011 at:20.42

İbrahim: "Ask Korcan how much money he took.",
Ahmet Ateş: "I don't know, at all...he is our player, he is with Sivas for another year",
İbrahim: "Check it. he gave away two stupid goals...he didn't even raise his hand to the ball in both positions",
Ahmet Ateş: "Yeah, right?",
İbrahim: "Keep it in my brother let's call each other later." (tape:3497)

The Club stresses that it is unclear why the UEFA Disciplinary Inspector would have found it necessary to include this conversation in the report as it was between two completely irrelevant individuals to Sivasspor.

Further, Sivasspor raises that this approach is contrary to the evidence and jurisprudence relied upon the UEFA Disciplinary Inspector as CAS established that a bad performance of Mr. Celikay in itself can be no proof of his involvement in the match-fixing scheme.

However the UEFA Disciplinary Inspector considered that the poor performance by the Sivasspor goalkeeper was further confirmed in a telephone conversation recorded at half-time of the match between Mr Turanlı and Mr Başak (both intermediaries), who had arranged the bribe:

The conversation in which Yusuf Turanlı called Abdullah Başak at the date of 22.05.2011 at:20.53

Yusuf Turanlı: "Did you see how that kid gave away the goal?",
Abdullah: "Let's hope that it ends well"
Yusuf Turanlı: "What else is going to happen?. Fener will win. There is nothing else about it. Fener does not go to the goal... But after all...we gave away the goal really badly, I'm sorry about that kid.",(tape:3473)

The UEFA Disciplinary Inspector suggests that after the match, the goalkeeper's brother Mr İlhan Çelikay telephoned Mr Turanli (intermediary) to discuss his brother's performance and how it helped Fenerbahçe SK obtain the desired result:

The conversation in which İlhan Çelikay (brother of Sivasspor goalkeeper) called Yusuf Turanlı (intermediary) at the date of 22.05.2011 at:23.39 (tape:3474)

İlhan Çelikay: "We have been talking from 10 minutes...It's good. Nothing to worry about. ",
Yusuf Turanlı: "Good okay well! I'm relaxed I couldn't reach him, I sent a message to him and then I called him but his phone is turned off...everyone gave away such goals since the beginning of the league. As if every goal scored is a normal goal",
İlhan Çelikay: "Of course, it can be like that...I wish he would not save Stoch's shot at least",
Yusuf Turanlı: "There, he saves the goal, but he gives away the goal in another position, this is just unfortunate....everything, every goal keeper",
İlhan Çelikay: "For example, he made a move to save the goal in Niyang's goal ... yet, he couldn't save it",
Yusuf Turanlı: "Even if he give away normal, flawless goal, he would say it",

Nonetheless, the interpretation of the Club is based on the fact that the above phone call is made by the brother of Korcan Çelikay to Yusuf Turanlı after the match because Yusuf Turanlı is trying to reach Korcan as he is concerned about the Player's morale after the mistake in the match.

Abdullah Basak (intermediary) is then rewarded, in the UEFA Disciplinary Inspector's view, for his part in the scheme with the present of a car by Mr Eksioğlu (Fenerbahçe SK board member). Reference is made to the Criminal Decision pages 70 and 510 to 513 and 517 to 522.

The Club relies on the fact that Abdullah Basak is alleged to have had conversations in relation to more than one football match, there being no direct or indirect implication in the alleged act that this car had been given to Mr. Basak for his role in the alleged match-fixing of the match between Sivasspor and Fenerbahçe.

On 29 May 2011, Yusuf Turanlı (intermediary) met with Korcan Çelikay (Sivasspor player) and İlhan Celikay (Korcan's brother). There was then a subsequent meeting on 31 May 2011. Before going to that meeting Yusuf Turanlı and Abdullah Basak (both intermediaries) went to Mr Eksioğlu's (Fenerbahçe SK board member) office and then came out with Yusuf Turanlı carrying an envelope. Yusuf Turanlı then met with the goalkeeper.

In this regard the Club puts forward that comparing the abovementioned findings of the CAS Panel and the ones at stake in the present matter create a clear contradiction since the actions of the

individuals is clearly contrary to their expected actions if they had really been transferring a money related to a crime.

Notwithstanding the fact that, for the Club, there is no evidence of the presence of money or of an exchange of money, the illogical side of the assumptions should also be the sole reason to reject these allegations. The allegations are solely based on (wrong) assumptions rather than on actual evidence and must be rejected in whole.

Third front: attempt to fix the match through Mr Fatih Akbaba (intermediary on behalf of Sivasspor)

The third front, as reported by the UEFA Disciplinary Inspector, was an attempt to fix the match through Mr Fatih Akbaba (intermediary on behalf of Sivasspor). This was performed Ali Kiratli (intermediary) and Mr Ekşioğlu (Fenerbahçe SK board member). It is dealt with from page 522 of the Criminal Decision.

Mr Eksioglu (Fenerbahçe SK board member) arranged for money to be provided to Ali Kiratli (intermediary):

The conversation in which İlhan Ekşioğlu (Fenerbahçe SK board member) called Halil Köntek (intermediary) at the date of 18.05.2011 at: 13.55

İlhan: "Halil, did you go to the other part?",

Halil: "I did, Mr. İlhan, there was some business on the other part, I delivered it, I'm coming back",

İlhan: "I left a package to Fatma,... Ali will call you, Ali Kiratli..... He'll come to front of the office, you'll give it to him, there 300 in it.". (tape:3021)

Ali Kiratli (intermediary) makes arrangements through Fatih Akbaba (intermediary on behalf of Sivasspor).

The conversation in which Fatih Akbaba called Ali Kıratlı at the date of 20.05.2011 at:12.30:

Ali: Good, okay my brother. How are you doing? I hope there is no problem.",

Fatih: "No no Everything is good, okay",

Ali: "Okay, if you buy shoe, bring it to me,...okay 2-3 pieces,...Don't worry, as soon as I hear anything, I'll call you. Did the tickets come to me?,...okay I'll take, there is no problem, right?",

Fatih: "No no I talked to him. Everything is okay,...when he received it, he loosened up",

Ali: "Okay, I kiss you my brother you ... save the shoes too, come one 2-3 pieces.", (tape:2568)

On 29 May 2011, Ali Kiratli (intermediary) handed over a bag to Fatih Akbaba (intermediary on behalf of Sivasspor).

The UEFA Disciplinary Inspector stresses that, as set out in the paragraphs above describing the conversations between İlhan Yüksel Ekşioğlu (Fenerbahçe SK board member) and an intermediary, Faruk Yaşar, and between Mr Ekşioğlu and President Mr Aziz Yıldırım, Fenerbahçe SK had indeed used three mechanisms to attempt to corrupt Sivasspor players: one in respect of Mr Mehmet Yıldız (Sivasspor player), one in respect of Mr Korcan Çelikay (Sivasspor player) and one through Mr Fatih Akbaba (intermediary on behalf of Sivasspor) in relation to other players of the Club.

The Club in this regard emphasizes that the different usage of the word "attempt" by Turkish Criminal Court and Supreme Court should not be used against Sivasspor by the Disciplinary Inspector. There is no evidence that proves that these individuals had reached or even tried to reach any official, player, etc. within Sivasspor.

Finally, the Club stresses that this front was not addressed in the CAS Award 2013/A/3256 since the CAS Panel had reached certain findings regarding the second front. However, the fact that the CAS Panel has refrained itself from addressing this point does not justify any motive for UEFA to create a false reasoning regarding the alleged activities of two individuals who have no ties to Sivasspor officials or members, since there is no evidence that establish a link or agreement between the two parties.

Conclusion

After having carefully examined the evidence provided by both parties, the Appeals Body is comfortably satisfied with the conclusion that the Sivasspor club officials Mecnun Otyakmaz and Ahmet Çelebi and the Sivasspor goalkeeper Korcan Çelikay were implicated in activities aimed at arranging and/or influence the outcome of the above-mentioned matches.

It results from the fact that the arguments brought forward by the Sivasspor do not contradict the statements made by the UEFA Disciplinary Inspector as they merely bring up different interpretations of the reasons linked to the contacts established by the Sivasspor officials and the player with the criminal organisation under the leadership of Aziz Yıldırım (Fenerbahçe SK President).

In this regard, the Appeals Body recalls that Sivasspor club officials Mecnun Otyakmaz and Ahmet Çelebi and the player Korcan Çelikay were convicted by the Professional Football Disciplinary Committee of the TFF and two Criminal Courts, i.e the 16th High Criminal Court and the 5th Chamber of the Supreme Court. The evidence submitted by the UEFA Disciplinary Inspector is *per*

se strong enough to raise some doubts over the implications of the above mentioned individuals which, added to the well-grounded UEFA Disciplinary Inspector's report that has not been sufficiently countered by Sivasspor, to the current CAS jurisprudence concerning the Fenerbahçe case (CAS 2013/3258) and to the confirmation of the Turkish first instance decision by the Turkish Supreme Court towards the conviction of the above-mentioned individuals, solidifies the Appeals Body's strong conviction that the Sivasspor officials and the player undertook activities at arranging and/or influencing the outcome of the Turkish Championship match Sivasspor v Fenerbahçe SK match played on 22 May 2011.

In particular, the case regarding the Sivasspor goalkeeper Korcan Çelikay is even more concerning due to the fact that this individual, who, it shall be reminded, has been convicted, is currently playing on behalf of Sivasspor.

Moreover, with the evidence assessed, the parties' arguments put in balance, and, especially, on the basis of CAS 2013/A/3258 Fenerbahçe, which expressly established the implication of the goalkeeper in match fixing activities, the Panel is convinced with regards to the Sivasspor goalkeeper Korcan Çelikay that he undertook activities at arranging and/or influencing the outcome of the match. It shall be noted that CAS relied mainly on the same evidence as in this proceedings, apart from the 5th Criminal Chamber of the Supreme Court, which was not available to it and indeed strengthens the outcome of this award even more.

Finally, the fact that the club officials Mecnun Otyakmaz and Ahmet Çelebi were convicted, as stated above, by several tribunals, and also the fact that Sivasspor decided to keep the goalkeeper Korcan Celikan under contract give more than enough evidence so as to consolidate the well-established and grounded facts assessed by the UEFA Disciplinary Inspector and establish at least to the comfortable satisfaction of the Panel that the above-mentioned officials played a decisive role in the match-fixing activities regarding the Turkish Championship match Sivasspor v Fenerbahçe SK match played on 22 May 2011, or are at least abettors of the match fixing activities undertaken by Mr Korcan Çelikay .

It is important to recall that the decision of the Turkish Supreme Court that confirmed that the club officials were guilty of match-fixing was rendered after the CAS decision that acquitted the club officials Mecnun Otyakmaz and Ahmet Çelebi .

The Appeals Body recalls in this regard that when taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court in accordance with Article 2.08 UELR. This shall be taken into consideration as with regards to the above-mentioned CAS decision, as well as this new piece of evidence referred to the 5th Criminal Chamber of the Turkish Supreme Court.

This having been said, the Panel considers that it can rely on but is not bound by the CAS award.

Bearing the above in mind and contrary to what was intended to be portrayed by the Club in its statements, the Panel considers that the Turkish Supreme Court rejected the appeal lodged by the club's officials and returned the case to the lower instance only regarding the extent of the sanction imposed. The verdict of the Istanbul 16th High criminal Court regarding the match-fixing activities by club officials Mecnun Otyakmaz and Ahmet Çelebi remains.

6.

With regard to liability, it is important to clarify Art. 6(1) DR (2008) and its current equivalent, Art. 8 DR (2013), as this has been misunderstood by Sivasspor. It must be recalled that numerous UEFA decisions have applied the strict liability principle laid down in these provisions and that the CAS has also confirmed the principle in many awards. To understand the strict liability of Art.6(1) DR it is necessary to read this provision in conjunction with Art. 17(1) DR (2008), which states: *"The disciplinary body shall determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, taking account of both aggravating and mitigating circumstances. Subject to Article 6(1) of the present regulations, no disciplinary measures may be imposed in cases where the party charged bears no fault or negligence"*. This means that when Art. 6(1) DR is concerned, a sanction can be imposed on a party without requiring fault or negligence on their part.

Sivasspor argues that in this case only one player was involved, with no power to influence or act on behalf of the club. It claims that, according to CAS jurisprudence, the interests of individuals such as club presidents and board members are the same as the club's, but that is not the situation in this case, where a single player is considered to have been involved in match-fixing solely for personal gain. This argument has to be linked to the strict liability principle, which will be discussed below.

Sivasspor also claims that the strict liability principle laid down in Art. 6(1) DR (2008) applies only in relation to supporters' misconduct, and that in fact the whole principle of strict liability – included in the current regulations, was missing from Art. 6(1) DR (2008).

On the contrary, the principle of strict liability is established by Art. 6(1) DR (2008), which forms the legal basis that enables UEFA to ensure that its objectives and the rules governing its members are respected not only by the latter, but also by third parties for which they are responsible. According to this first paragraph of Art. 6 DR, member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the association or club. This rule is also expressly reproduced in Art. 6.02 UCLR.

As a result of this rule, the responsibility of UEFA members and clubs depends only on the commission by such a person of an act that infringes UEFA rules, regardless of fault. This strict liability is imposed on the member associations and clubs for the acts of specifically defined third parties. Member associations and clubs, even if they have committed no fault, are responsible for the misconduct of their officials and players. If such offences are established, the club is automatically held responsible and punished accordingly.

This principle is also confirmed by many CAS awards, not only relating to supporters but also to club officials, including CAS 2002/A/23 and CAS 2007/A/1217.

Even if the principle of strict liability is most commonly applied in cases of misconduct by supporters, the Club is wrong to suggest that it is reserved solely for such cases. A club or national association can also be held responsible for improper conduct of its players in accordance with Art. 6(1) DR, thus the strict liability principle applies also to a single player's conduct. The club also seems to have forgotten that its officials (the president of the club and a former board member) were also found guilty of match-fixing by the Supreme Court, even if the sanction may yet be reduced by the lower court to which the Supreme Court returned the case for re-assessment of the punishment.

7.

The Appeals Body considers that before reaching a conclusion concerning the application of Article 2.08 UELR, the concept of "involvement in activities aimed at arranging and/or influencing the outcome of a match" must be clarified.

The concept of "involvement" used in Article 2.08 UELR 2014/2015 may be understood as covering a situation in which a Club is linked to match-fixing activities and such involvement is established to a level of "comfortable satisfaction".

The Appeals Body recalls, here again, that the above-mentioned principle of strict liability, when put in parallel with Article 2.08 UELR, means that the actions of these persons are attributable to the clubs in the context of the eligibility of such clubs to take part in the 2014/2015 UEL. This was also confirmed by CAS (See para. 133; CAS 2013/A/3258).

The Panel considers the above statements in line with the "zero tolerance to match fixing" policy which, according to CAS jurisprudence (CAS 2010/A/2267) presents one of the most important values and principles of behavior in football (CAS 2009/A/1920, CAS 2010/A/2267 and CAS 2013/A/3258).

In view of the above, the Panel is comfortably satisfied that that the Sivasspor club officials Mecnun Otyakmaz and Ahmet Çelebi and the Sivasspor goalkeeper Korcan Çelikay were implicated in

match-fixing activities aimed at arranging and/or influencing the outcome of the match, i.e. the match Sivasspor v Fenerbahçe of 22 May 2011.

Furthermore, Mr Mecnun Otyakmaz and Mr Ahmet Çelebi are persons of the club who act on behalf of the club. They are officials in the sense of Art. 6(1) DR. As these individuals have been found guilty by the Turkish Supreme Court of trying to influence the outcome of a match at national level, the Appeals Body is comfortably satisfied that these individuals were implicated in match-fixing activities.

Such conduct by these officials and players is likely to cause untold damage and it is UEFA's duty to restore football's battered image. UEFA and its members have zero tolerance for match-fixing, and it is the duty of the disciplinary bodies to enforce this policy and to discourage players, referees and club officials at all levels from doing anything or attempting to do anything that could unduly influence the uncertainty or outcome of a match.

The conduct of the Sivasspor's players and officials in this case is likely to damage the image of football matches organised not only by UEFA but throughout the world. It serves to undermine the integrity and the reputation of the sport as a whole.

Consequently, and according to the principle of strict liability, the implication of both Sivasspor club officials Mecnun Otyakmaz and Ahmet Çelebi, its player Mehmet Yildiz and the Sivasspor goalkeeper Korcan Çelikay triggers the responsibility of the Club which is, thus, to be considered as having been involved directly and/or indirectly in activities at arranging and/or influencing the outcome of these matches in the sense of Art. 2.08 UELR quoted above.

As stated above, UEFA applies a principle of zero tolerance towards match-fixing activities. It results that, as the one year exclusion from UEFA competitions is deemed as a minimum (CAS 2013/A/3256) and the involvement of the club is at stake even if it bears no fault, according to the above mentioned principle of strict liability, the arguments raised by the Sivasspor, even if the Panel feels some sympathy for it, are irrelevant as to the establishment of its involvement and the imposition of the minimum sanction foreseen in Art. 2.08 UELR.

The Appeals Body deems, therefore, that the Club shall be excluded from participating in the next UEFA Europa League competition 2014/2015 in accordance with Article 2.08 UELR.

8.

Regarding the additional disciplinary measures contemplated in Article 2.09 UELR, the Appeals Body recalls that the CAS, in its award CAS 2013/A/3256, examined the "two stage process" implemented by UEFA by means of Article 2.05 and 2.06, UEFA Champions League Regulations, and per analogy, in Articles 2.08 and 2.09 UELR.

In particular the CAS stated as follows:

“The Panel is satisfied to accept that the introduction of article 50(3) in the UEFA Statutes and Article 2.05 and 2.06 in the UCLR, UEFA created a "two-stage process". The first stage (Article 2.05) being an "administrative measure", pursuant to which a minimum sanction would have to be imposed on the offender, by excluding it from European competitions for one season. The second stage (article 2.06) being a "disciplinary measure", which sanction would have to be imposed subsequent to the "administrative measure" and is not restricted by a maximum length. The Panel finds that this "two stage process" can be understood from article 50(3) of the UEFA Statutes in conjunction with article 2.06 of the UCLR, particularly because in the latter provision reference is made to "administrative measure" and "disciplinary measure", which, in the opinion of the Panel, one can only understand as to reveal UEFA's intention to differentiate between these two types of measures. Also the words "in addition to" seem to create a distinction between the two types of measures. Nevertheless, and for the avoidance of doubt, the Panel wishes to clarify that irrespective of the wording used, proceedings initiated by UEFA on the basis of article 2.05 of the UCLR are disciplinary in nature, because the subject matter in such proceedings is the imposition of a sanction” (See paragraph 162 CAS 2013/A/3256) .

Consequently, once the so-called “administrative measure” of one year exclusion of UEFA competitions in accordance with Article 2.08 UCLR is applied, which in CAS’ view shall be deemed as a minimum sanction, the competent disciplinary body, in this case the UEFA Appeals Body, still has the competence to impose additional disciplinary measures.

Nevertheless, the Appeals Body is comfortably satisfied with the conclusion that in the present case, and in the light of all factual and legal circumstances, the conditions to apply further disciplinary measures are not fulfilled.

Therefore, the Appeals Body rejects the request made by the UEFA Disciplinary Inspector to impose an additional sanction against Sivasspor of one additional season of exclusion from any future UEFA Competitions as well as a EUR 300.000 fine (three hundred thousand euro).

The Appeals Body, after having carefully listened to the arguments of Sivasspor and of the UEFA Disciplinary Inspector, is indeed satisfied that the minimum sanction of one year exclusion is appropriate, and that no further sanctions shall be imposed on Sivasspor. The Appeals Body doesn’t share the analogy between doping and match-fixing offences.

9.

According to Article 44 DR (2013), the costs of proceedings before the Control and Disciplinary Body are borne by UEFA, except in cases of protests. In this case, as the Appeals Body is acting as the sole authority, this provision is applied by analogy and UEFA shall cover the costs.



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