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Foreword

Dear Sir or Madam,

I am pleased to provide you with the case law of the UEFA Control, Ethics and Disciplinary Body and the UEFA Appeals Body for the period July to December 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, Ethics 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,

UEFA

Emilio García
Head of Disciplinary and Integrity
Case Law. CEDB & Appeals Body. 2014/2015 (July – December)

Control, Ethics and Disciplinary Body
Decision of 14 August 2014

FC Dnipro Dnipropetrovsk

(Insufficient organization / Crowd disturbances / Field invasion)

Circumstances of the case
During the above mentioned match, just before the start of the second half, FC Dnipro Dnipropetrovsk supporters invaded sector 5 occupied by F.C. København supporters. Being under attack by this largely superior group of home supporters, the visiting supporters ran from their sector to seek shelter in the hall at the bottom of the staircase leading to the dressing rooms. This situation provoked that half time was delayed as the away supporters entered the tunnel area. The players were took out of the field of play in order to solve the issue and until the safety of the away supporters would have been guaranteed.

Finally, one FC Dnipro Dnipropetrovsk supporter tried to invade the pitch.

Legal framework
Art. 16(1) DR, Art. 16(2) DR

Decision
The CEDB ordered to play their next UEFA competition match as host club behind closed doors. This sanction is deferred for a probationary period of two years. The club was also fined € 50’000.-
Facts Of The Case

The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

During the above mentioned match, just before the start of the second half, FC Dnipro Dnipropetrovsk supporters invaded sector 5 occupied by F.C. København supporters. Being under attack by this largely superior group of home supporters, the visiting supporters ran from their sector to seek shelter in the hall at the bottom of the staircase leading to the dressing rooms. This situation provoked that half time was delayed as the away supporters entered the tunnel area. The players were took out of the field of play in order to solve the issue and until the safety of the away supporters would have been guaranteed.

Finally, one FC Dnipro Dnipropetrovsk supporter tried to invade the pitch.

Merits of the Case

UEFA’s competence.

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

In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

The insufficient organization: segregation of supporters

Applicable legal framework and general remarks

According to Article 10 (1) UEFA Safety and Security Regulations establishes that for a match where spectators are segregated, a segregation strategy must be drawn up by the match
organiser in conjunction with the chief police officer and/or stadium security officer. If necessary, this strategy will also include a parking strategy for the different groups of supporters. Furthermore, the second paragraph of this same provision provides that the end-of-match crowd dispersal strategy must be discussed at the organisational meeting on the morning of the match.

The responsibility of the club

Bearing the above in mind, and according to the UEFA Safety and Security Regulations, the match organiser must take measures to ensure that spectators cannot move from one sector to the other.

According to the UEFA official reports, just before the start of the second half, local supporters invaded sector 5 occupied by the away team’s supporters.

It shall be recalled that in accordance with Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided. Nonetheless, the Club has not brought forward any evidence that could breach the accuracy of UEFA delegate’s report.

Taking the above into account, the Control, Ethics and Disciplinary Body considers that the organization concerning the segregation of supporters was poor and inadequate. Arrangements concerning UEFA matches shall meet the highest standards of quality. In this regard, the UEFA Regulations establish a cast of mandatory dispositions to be applied before, during and after the match, see organizational meetings, coordination with public authorities, etc.

In this sense, the Control, Ethics and Disciplinary Body deems that the attitude of the Club organizing the match was completely inadequate, as outstanding failures regarding the segregation of supporters took place during the above mentioned match.

Bearing in mind the above, the Club violated the above provision and must be punished accordingly.

The crowd disturbance

Applicable legal framework and general remarks

According to Article 16 (2) DR:

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:

- the invasion or attempted invasion of the field of play;
- the throwing of objects;
the lighting of fireworks or any other objects;
the use of laser pointers or similar electronic devices;
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;
acts of damage;
the disruption of national or competition anthems;
any other lack of order or discipline observed inside or around the stadium.

According to Article 8 DR, a member association or club that is bound by a rule of conduct laid down in UEFA’s Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence.

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

The responsibility of the club

In the case in hand, after being under attack by a largely superior group of home supporters, the visiting supporters ran from their sector to seek shelter in the hall at the bottom of the staircase leading to the dressing rooms.

As described also by the UEFA official reports, half time was delayed as the away supporters entered the tunnel area. The players were taken out of the field of play in order to solve the issue and until the safety of the away supporters would have been guaranteed.

The above described incidents which involve an oblique attack against the away fans, as well provoking the entrance of those supporters in the tunnel area and, subsequently, the delay of the second half of the match have to be qualified as acts of hooliganism, which are considered as a particular serious offences. Such behaviour is all the more unacceptable as it tarnishes the image of football and UEFA.

The Control, Ethics 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.

Bearing the above in mind, FC Dnipro Dnipropetrovsk is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (h) DR and must be punished accordingly.
The improper conduct of supporters: field invasion

Applicable legal framework and general remarks

 According to Article 16 (2) DR:

   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:

   - the invasion or attempted invasion of the field of play;
   - the throwing of objects;
   - the lighting of fireworks or any other objects;
   - the use of laser pointers or similar electronic devices;
   - 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;
   - acts of damage;
   - the disruption of national or competition anthems;
   - any other lack of order or discipline observed inside or around the stadium.

 According to Article 8 DR, a member association or club that is bound by a rule of conduct laid down in UEFA’s Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence.

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

 The responsibility of the club

 Because of the potential risk of invasions for security reasons, as nobody is aware of the real intentions of the intruders at the time of the incident, as well as the possible disturbances that may be attached with such conducts, attempts and invasions are strictly forbidden.

 It is however not necessary that any person is injured or any further security issue may result from these actions, before a sanction can be taken. It shall be highlighted, here again, that both the attempt of field invasion as well as the field invasion in itself are under the scope of action of Article 16 (2) DR.

 In the case in hand, one FC Dnipro Dnipropetrovsk supporter tried to invade the pitch. As all the away supporters were deployed in a skybox, all leads to assume that the person attempting to invade the pitch was a local supporter.
The Club indeed does not contest the above mentioned facts.

Bearing in mind the above, as the attempt to invade the pitch has been established it violated the Article 16 (2) DR. Consequently, FC Dnipro Dnipropetrovsk shall be held responsible and be punished accordingly.

The determination of the appropriate disciplinary measure

Based on Article 17 DR the Control, Ethics 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, Ethics and Disciplinary Body identified and took into account the following concrete circumstances:
- the seriousness and multiplicity of the offences committed;
- the club’s previous record: FC Dnipro Dnipropetrovsk has already been punished for the improper conduct of its supporters;
- the club’s previous record: FC Dnipro Dnipropetrovsk has already been punished for the insufficient organization;
- the fact that local supporters entered the tunnel area as they were scared by the attack of the local supporters;
- the fact that the conduct of the FC Dnipro Dnipropetrovsk supporters was an act of hooliganism which tarnishes and damages the image of football and UEFA;
- the fact that the smooth running of the match was impacted, being the second half of the match delayed several minutes;

Bearing in mind all the above aggravating circumstances, the Control, Ethics and Disciplinary Body takes the opportunity to raise its concerns about the incidents occurred during this match. Disturbances and incidents as those witnessed during this game are the more pitiable. It raises serious doubts about security and safety in UEFA competition matches played by FC Dnipro Dnipropetrovsk as host organiser. Thus, this UEFA disciplinary deems that the adequate sanction shall at least give a serious warning to the Club’s negligent attitude towards the organization of the match and also to the deplorable supporter’s behaviour for which the Club is strictly liable in accordance with Article 8 DR.
Decision of 28 October 2014

Sporting Clube de Portugal

(Protest)

Circumstances of the case
On 21 October 2014 FC Schalke 04 played against Sporting Clube de Portugal an UEFA Champions League match 2014/2015. In the minute 90 +3 minute the referee awarded a penalty kick which was transformed by the FC Schalke 04. On 22 October 2014 Sporting Clube de Portugal lodged a protest against the decision of the referee whilst awarding the above mentioned penalty kick.

Legal framework
Art. 48 DR, Art. 49 DR, Art. 50 DR

Decision
The CEDB declared the protest inadmissible.
Facts of the Case

The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

Briefly, the most relevant facts of this case can be summarized as follows:


In the minute 90 +3 minute the referee awarded a penalty kick which was transformed by the FC Schalke 04.

On 22 October 2014 Sporting Clube de Portugal lodged a protest against the decision of the referee whilst awarding the above mentioned penalty kick.

The Protestant’s position

The Club in their statements dated on 22 October 2014, claims that there is an obvious error or violation of the Law 14 involving the referee’s decision and that violation of a rule was due to a significant incident that had a decisive influence on the final result of the match.

The interpretation made by the referee was not made in a free and conscious manner, but was actually affected by an abnormal set of circumstances: the suggestion by various Schalke players that foul had occurred and the subsequent convincing by the additional assistant referee of a reality which was not that which he had freely and consciously observed.

The Club relies on a Control and Disciplinary Body decision of 8 April 2013 in order to ground its claim that an obvious violation of the Laws of the Game, as no foul is to be awarded for blocking a head kick with the face, as well as the crowd of some Schalke players and several elements on the bench had a decisive influence on the interpretation made by the additional assistant referee and his subsequent erroneously communication to the referee.

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.
Merits of the Case

UEFA’s competence.

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

In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

The protest

Applicable legal framework and general remarks

According to Article 50 (1) (c) DR, a protest is admissible only if it is based on an obvious error by the referee as defined by Article 9 of these regulations, in which case the protest may be directed only at the disciplinary consequences of the referee's obvious error.

According to Article 9 (1) of the UEFA Disciplinary Regulations, decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies.

According to Article 9 (2) DR, 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.

According to Article 9 (3) DR, 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 merits

It shall be recalled that the 5th Law of the Game establishes that each match is controlled by a referee who has full authority to enforce the Laws of the Game in connection with the match to which he has been appointed.

Besides, the standing practice is clear concerning decisions taken by the referee during the course of a match. In this regard, the Control and Disciplinary Body in decisions rendered on 5 December 2005, 11 May 2009, 28 February 2011 and 8 April 2013, considered that the decisions taken by the referee are not subject to re-examination, prevailing by that the authority of match officials mainly over incidents of sporting nature that may occur during the match.

Nevertheless, only in cases where an obvious error may have arisen, the decision of the referee has been modified. Here, it would be necessary to analyse the notion of the existence of an obvious error involving the referee’s decision.
The Club refers to a Control and Disciplinary Body’s decision to ground its protest. In summary the Club holds that the assistant referee was influenced by the Schalke FC players, as well as obviously violated the Laws of the Game, as the decision to award a penalty kick resulted from the blocking a head kick with the face, which is fully permitted.

The Control, Ethics and Disciplinary Body, takes the opportunity to recall, as it did in the cited decision, that the definition of the notion of obvious error involves a strict and rigorous approach. The example of an obvious error provided by Article 9 (2) and (3) of the Disciplinary Regulations (i.e an error towards the identity of a person) must be understood as the minimum standard. Thus, the obvious error to be committed by the referee shall be understood as an extraordinary and undutiful error beyond any failure of interpretation regarding his decisions, active and passive, during the course of the game. In this sense, an obvious error is not referred to the interpretation of the referee, who in his discretion has the authority to decide on the actions occurred during a match.

Briefly, even in the case the referee may have committed an error of appreciation, it won’t be enough to modify his decision.

Bearing the above in mind, the Control, Ethics and Disciplinary Body cannot comply with the assertions of the Club because it is the duty of the referee based on his authority to interpret, active and passively, the different actions happening in the course of a match. The Club puts in the same balance to mistake the player’s identity with the legitimate interpretation done by the referee of a particular action occurred during the match. The latter is evidently not even close to the above required standard concerning the notion of obvious error.

Thus, the contested decision falls within the authority of the referee in accordance with the 5th Law of the game and with the standing practice of the disciplinary bodies.

In the light of the above mentioned considerations, the Control, Ethics and Disciplinary Body considers that the protest shall be declared inadmissible in accordance with Article 50 (1) (c) and 9 (1) and (2) DR.
Decision of 30 October 2014

AC Sparta Praha

(Crowd disturbance / Setting off/throwing of fireworks)

**Circumstances of the case**
The game was stopped in the 41th minute due to disorder in the sector B. About 20-25 AC Sparta Praha fans moved fences (pulling down segregation) and entered to home sector B. Home supporters were running from their sector, and jumped over fence to the athletic track to avoid the fight with AC Sparta Praha fans. The referees and both teams left the pitch and stayed under the VIP tribune for 36 minutes. In the meantime there was a liaison meeting and as the police declared that the situation in the tribune was solved, and after an official announcement that the game would be cancelled if disorder would be repeated, the decision was made to continue the game. The remaining 3 minutes were played of the first half time. Before the start of the second time, both captains made a short announcement to their supporters asking them for a correct behavior. Finally, five smoke bombs were ignited by AC Sparta Praha supporters, being two of them thrown to the athletic track.

**Legal framework**
Art. 16(2)(h) DR, Art. 16(2)(b)(c) DR

**Decision**
The CEDB ordered to play one (1) UEFA competition match as host club behind closed doors. This sanction is deferred for a probationary period of two (2) years. The club was also fined € 80’000.
Facts of the Case

The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

Briefly, the most relevant facts of this case can be summarized as follows:

The game was stopped in the 41st minute due to disorder in the sector B. About 20-25 AC Sparta Praha fans moved fences (pulling down segregation) and entered to home sector B. Home supporters were running from their sector, and jumped over fence to the athletic track to avoid the fight with AC Sparta Praha fans. The referees and both teams left the pitch and stayed under the VIP tribune for 36 minutes. In the meantime there was a liaison meeting and as the police declared that the situation in the tribune was solved, and after an official announcement that the game would be cancelled if disorder would be repeated, the decision was made to continue the game. The remaining 3 minutes were played of the first half time. Before the start of the second time, both captains made a short announcement to their supporters asking them for a correct behavior. Finally, five smoke bombs were ignited by AC Sparta Praha supporters, being two of them thrown to the athletic track.

The Respondent’s position

The Club in their statements dated on 29 October 2014 argues that due to historical rivalries between both teams the management of AC Sparta Praha took the security risks related to the match very seriously, i.e. employees of the club visited the stadium two weeks prior to the match and cooperated with police forces of both countries.

Regarding the above mentioned incidents, the Club considers that the provocation of ŠK Slovan Bratislava, i.e. the intrusion of a few ŠK Slovan Bratislava supporters through the safety zone into the sector, shaking the temporary fences and provoked the AC Sparta Praha supporters, and the intrusion of few dozen ŠK Slovan Bratislava supporters on the AC Sparta Praha supporters stand, throwing object at those supporters, triggered the improper attitude of its supporters.
Furthermore, the Club notes that the other supporters of AC Sparta Praha showed absolutely no interest in participating in the disturbances and remained in their sectors despite the fact that the fence had been already been broken.

The Club stresses that the fundamental lack of infrastructure, including the usage of a mobile fence instead of a regular built-in fence, which was not effectively secured against dismantling and breaking, appeared to be a crucial deficiency to prevent the contact between both home and away supporters.

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.

**Merits of the Case**

**UEFA’s competence.**

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

In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

**The improper conduct of supporters: crowd disturbances and setting off of fireworks**

**Applicable legal framework and general remarks**

According to Article 16 (2) DR:

*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:*

*the invasion or attempted invasion of the field of play;*
*the throwing of objects;*
*the lighting of fireworks or any other objects;*
*the use of laser pointers or similar electronic devices;*
*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;*
*acts of damage;*
*the disruption of national or competition anthems;*
*any other lack of order or discipline observed inside or around the stadium.*

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

The responsibility of the club

The crowd disturbances

In the case in hand, AC Sparta Praha fans moved fences and entered to home sector B. Home supporters were running from their sector, and jumped over fence to athletic track to avoid the fight with AC Sparta Praha fans. This situation caused that the referees and both teams needed to leave the pitch. They stayed under the VIP tribune for 36 minutes.

The Control, Ethics and Disciplinary Body deems that the above described incidents are obvious examples of a lack of discipline from the side of AC Sparta Praha supporters, as they infringed several provisions of the UEFA Regulations, putting, hereby, the integrity of players, staff members, referee’s team, etc in danger, as well as showing a complete disrespect towards any civic rules.

Hooliganism is in total contradiction with UEFA values and principles, as well as one of the most serious scourges to which sport is generally confronted. It attacks frontally the organizer of sports competitions, as it stands completely against all possible expectations linked to a fair, smooth, peaceful and joyful sport event, which intends primarily to approach different cultures around the world to unite by means of playing a common sport, as it is football.

The Control, Ethics 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.

The Club does not dispute the above mentioned facts and merely relies on the argument that its supporters were provoked by the attitude of ŠK Slovan Bratislava supporters who intruded beforehand and attacked its supporters. The Club basically notes that the attitude of its supporters was mainly a reaction to the threats of the home supporters.

Moreover, the Club draws the attention to the fact the system implemented for the segregation of supporters was not effective against dismantling and breaking the fences, enabling those supporters to commit the above mentioned infringements.

Nevertheless, the Control, Ethics and Disciplinary Body deems that the arguments put forward by the Club do not expel the responsibility of the Club towards its supporters misconducts. As stated above, clubs and associations are to be held responsible for the conduct of their supporters, even if they are themselves not at fault in accordance to the principle of strict liability contemplated in Article 8 DR. In this regard, neither the provocation of the home supporters nor the lack of organisation of the home team, are valid arguments to overcome this essential principle, specially looking at the specific circumstances of this case.
Bearing the above in mind, AC Sparta Praha is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (h) DR and must be punished accordingly.

The setting off of fireworks and throwing of objects

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.

It has long been established in case law that strict liability applies regardless of fault. As a matter of fact, the Club 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).

In the case at hand, five smoke bombs were ignited by AC Sparta Praha supporters, being two of them thrown to the athletic track.

The Control, Ethics and Disciplinary Body considers that the arguments forwarded by the Club are irrelevant as such conducts are expressly prohibited by the above mentioned provision, irrespective of the lack of fault of the Club in accordance to the above referred principle of strict liability contemplated in Article 8 DR.

Consequently, according to Article 16 (2) (c) DR above, AC Sparta Praha is to be held responsible for the misconduct of their supporters and must be penalised accordingly.

The determination of the appropriate disciplinary measure

Based on Article 17 DR the Control, Ethics 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.

The Control, Ethics and Disciplinary Body takes this opportunity to recall that infringements which have a direct impact on the smooth running of the competition and, hereby, hurt directly the core of organized sports, are the least most regretful and despicable infringements and, therefore, merit the most serious consequences onwards those liable for these transgressions. It tarnishes the image of UEFA, disrespects those attending the match as well as disregards those spectators watching the match by whatever means.

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

the seriousness and multiplicity of the offences committed;
the club’s previous record: AC Sparta Praha has already been punished for the improper conduct of its supporters and, in particular, for crowd behaviour and the setting off of fireworks.
the fact that the invasion of those sectors locating the home supporters by AC Sparta Praha supporters resulted in a field invasion by home supporters, provoking hereby the match to be stopped for at least 36 minutes;
the fact that this incident motivated the decision of the referee to leave the pitch;
the fact that the incident triggered other serious incidents between supporters and security forces;
the fact that the incident took place in a UEFA Europa League match, which is one of the flagship competitions of UEFA and one of the most important sports events world-wide.

As regards to the appropriate disciplinary measures, the Control, Ethics and Disciplinary Body deems that the extent of such measures need to fulfil two conditions: to punish the Club for being liable for the occurrence of such despicable incidents and to impose a punishment that may lead to deter such incidents from happening again.

In this regard, Article 6 (1) UEFA Disciplinary Regulations provides a list of disciplinary measures that may, furthermore, be combined in accordance with Article 6 (4) DR. Once examined the UEFA official reports, the Control, Ethics and Disciplinary Body is tempted to apply directly the sanction of playing a match behind closed doors in accordance with Article 6 (1) (h) DR. However, this UEFA disciplinary body deems that it shall offer the Club with the possibility of redeeming itself before ordering this extraordinary measure.

Bearing in mind the above, the Control, Ethics and Disciplinary Body decides to order the AC Sparta Praha to play one (1) UEFA competition match as host club behind closed doors, being this sanction deferred for a probationary period of two (2) years and to fine AC Sparta Praha €80’000.
# Decision of 5 February 2015

Liverpool FC / Lazar Markovic  

( Assault )

**Circumstances of the case**  
In the 60th minute, Lazar Markovic, who was in possession of the ball threw his arm backward, hitting the face of the Basel player with his hand. The Basel player went down as No.50 of Liverpool made contact with him. The referee stopped the game and sent Liverpool player Lazar Markovic off the field of play for violent conduct.

**Legal framework**  
Art. 15(1)(e) DR

**Decision**  
The CEDB suspended the player Lazar markovic for four (4) UEFA competition matches.
Facts of the Case

The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

Briefly, the most relevant facts of this case can be summarized as follows:

In the 60th minute, Lazar Markovic, who was in possession of the ball threw his arm backward, hitting the face of the Basel player with his hand. The Basel player went down as No.50 of Liverpool made contact with him. The referee stopped the game and sent Liverpool player Lazar Markovic off the field of play for violent conduct.

The Respondent’s position

The Club in its statements dated on 9 December 2014 does not contest the dismissal of the player but believes that facial contact was a total accident and that the Player Markovic was merely trying to feel for his opponent. The fact that the hand of Markovic went into the face of his opponent was, so the Club, an unfortunate accident and not a deliberate act of violent conduct by the Liverpool Player.

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.

Merits of the Case

UEFA’s competence.

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

In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

The red card

Applicable legal framework and general remarks
According to Article 15 (1) (e) DR, suspension for three competition matches or a specified period for assaulting another player or another person present at the match.

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

The responsibility of the player

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. Such an act would involve aggressive contact such as slapping, head butted, kicking, punching, shaking, pushing, pinching, hitting, spitting.

In the case in hand, Lazar Markovic, who was in possession of the ball threw his arm backward, hitting the face of the Basel player with his hand. The referee considered the action as a violent conduct.

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

The Club does not contest the above, as well as admits that the decision taken by the referee of sending the player off the field of play was correct. However, the Club insists on the fact that it was an unfortunate accident and not a deliberate act of violent conduct.

The Control, Ethics and Disciplinary Body is comfortably satisfied with the referee´s report in considering the conduct of the the Liverpool FC player Lazar Markovic as a violent conduct and shall therefore be contemplated as an assault in accordance with Article 15 (1) (e) DR. In this regard, the Club has not been able to prove the inaccuracy of the official´s report. The Panel deems as relevant the fact that neither the facts nor the decision of dismissing the player taken by the referee have been contested. Therefore, the Control, Ethics and Disciplinary Body finds no arguments in order to deviate from the approach given by the referee in his report, which is presumed to be accurate.

Consequently, the act of the Liverpool FC player Lazar Markovic as described by the referee above constitutes assault under the terms of Article 15 (1) (e) DR.
The determination of the appropriate disciplinary measure

As regards the fixing of the sanction, the existence of both aggravating and exonerating circumstances must be examined (article 17 DR).

Hitting an opponent in the face is an act of assault, which, as a matter of principle, does not allow a plea of mitigation.

By hitting his opponent in the face Liverpool FC player Lazar Markovic placed the physical well-being of his opponent in danger. It could have caused serious injuries and pain. It is to be considered a particular brutal behavior.

Particularly relevant is the fact that the player has previous record from the last five years. The Liverpool FC player Lazar Markovic was sent off the field of play during the UEFA Europa League match between Juventus Football Club vs. SL Benfica played on 1 May 2014, which according to Article 19 of the UEFA Disciplinary Regulations shall count as recidivism, and, thus, as an aggravating circumstance.

In view of the above considerations, a four-match suspension is therefore considered to be the appropriate sanction regarding the circumstances of this case and the previous records of the player.
Case Law. CEDB & Appeals Body. 2014/2015 (July – December)
Decision of 7 August 2014
Real Madrid CF / Xabi Alonso
(Improper conduct of Xabi Alonso)

Circumstances of the case
The player Xabi Alonso was not eligible to participate in the UEFA Champions League final against Club Atlético de Madrid played on 24 May 2014 as he had been sent off by the referee during the semi-final against Bayern Munich of 29 April 2014, for having received two yellow cards in the same match. According to the UEFA delegate assigned to the final on 24 May, in the 118th minute of the above-mentioned match, the player Alonso, who was sitting in the stands serving his suspension, “ran into the pitch and celebrate the goal together with his teammates [...]”.

Legal framework
Article 11(2)(b) DR

Decision
CEDB:
The CEDB suspended the player Xabi Alonso for one match.
AB:
The appeal of Real Madrid CF and Xabi Alonso was rejected, and the CEDB decision of 17 July 2014 was confirmed.
Ad Hoc Chairman: Michael Maessen; Netherland

Whereas:

In fact:

The player Xabi Alonso was not eligible to participate in the UEFA Champions League final against Club Atlético de Madrid played on 24 May 2014 as he had been sent off by the referee during the semi-final against Bayern Munich of 29 April 2014, for having received two yellow cards in the same match.

According to the UEFA delegate assigned to the final on 24 May, in the 118th minute of the above-mentioned match, the player Alonso, who was sitting in the stands serving his suspension, “ran into the pitch and celebrate the goal together with his teammates [...]”.

Based on this report, the UEFA Control, Ethics and Disciplinary Body decided in a decision dated 17 July 2014 to suspend Xabi Alonso for “the next (1) UEFA competition match for which he would be otherwise be eligible. This suspension is to be served during the UEFA Super Cup match between Real Madrid CF and Sevilla FC on 12 August 2014”.

The Control, Ethics and Disciplinary Body found the player guilty of “seriously improper conduct” in accordance with Article 11(2)(b) of the UEFA Disciplinary Regulations (DR) and deemed his action serious enough to suspend him for one match.

The first-instance decision without grounds was notified to the player via his club on 17 July 2014.

The decision with grounds was notified to the player via his club on 21 July 2014.

On 23 July 2014 The player and his club appealed against the Control, Ethics and Disciplinary Body’s decision of 17 July, contesting only the punishment imposed on the player Alonso (the decision also imposed a sanction on the club, which was not contested).

The appellants submitted their grounds for appeal on 28 July 2014.

In their written pleadings of 28 July 2014 the appellants request that Appeals Body reduce the sanction against the player Alonso, by transforming it into a fine. They do not dispute the facts reported but argue that the sanction is disproportionate due to the following:
the player just briefly crossed the pitch to celebrate with his team-mates in the other side;
the Appeals Body should consider the nature and intensity of the player’s feelings as he committed this childish error;
with reference to the Ribéry case taken before the CAS (CAS 2010/A/2114), which dealt with the question of proportionality, the appellants point to the level of discretion applied to determine the sanction;
with reference to Art. 27 of the Swiss Code of Obligations, they suggest that the player’s sanction should be re-examined to avoid a violation of substantive public policy, due to the obvious and serious violation of his personality rights;
finally, they request that the Appeals Body apply Art. 17(1) and (4) DR so as to apply natural justice and avoid the great damage that would be caused by forcing the player to miss the UEFA Super Cup.

The appellants support their claim that the suspension issued in the first instance is disproportionate with a number of references to previous decisions taken “in the world of sport” and with pieces of literature in connection with the proportionality principle.

They also contest the application of Article 11 DR, claiming that the facts admitted do not fit this provision.

Finally, they argue that the Control, Ethics and Disciplinary Body was wrong to apply the suspension to another competition against the general rule of Article 61 DR and without a valid explanation.

On 31 July 2014, the Ethics and Disciplinary Inspector submitted his response to the appeal, requesting that it be rejected and the costs charged accordingly.

Since the party charged requested a hearing, the ad hoc chairman of the Appeals Body deemed it appropriate to conduct the proceedings orally (Article 57 DR).

The ad hoc chairman of the Appeals Body opened the hearing. He noted the presence of the parties, reminded them of the procedure to be followed and explained why he was competent to sit alone. He told them that the debates would be recorded for the preservation of evidence (Articles 26 and 31(2) and (5) DR). The parties raised no objections.

The video footage provided by the appellants was shown.

Since no additional evidence was called, the parties were then given the floor. They reiterated and developed the arguments they had submitted in writing and maintained their requests.

The ad hoc chairman considered the arguments presented by the parties, which are included below insofar as they are relevant to the decision.

**In law:**
The Appeals Body’s jurisdiction in this matter is established by Articles 48 and 54 of the UEFA Disciplinary Regulations (DR). It is competent to examine the case in full, both factually and legally (Article 62(1) DR).

Under Article 24(3) DR, 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 case where the sanction imposed by the Control, Ethics and Disciplinary Body is fine of up to €25,000 or a suspension from playing or carrying out a function of up to two matches.
In the case at hand, the player has been suspended for one match. This combined with the clear factual and legal circumstances of the case, and the urgency caused by Real Madrid CF’s next match being scheduled for the Tuesday 14 August 2014, mean that it is appropriate for it to be dealt with by a single judge. Therefore, it is up to the ad hoc chairman of the Appeals Body to examine the merits of the case as a judge sitting alone.

The appeal meets the formal requirements and deadline laid down by Article 49 et seq. DR.

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

According to the general principles of conduct laid down in Article 11(1) DR, 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 ethical conduct, loyalty, integrity and sportsmanship.

The principle of proportionality requires that a restrictive measure be suitable to achieve its legitimate aim and that these cannot be achieved by a less severe measure. It forbids any limitation going beyond the legitimate aim and requires a reasonable link between the offence and the punishment.

Another principle of UEFA’s disciplinary system is that a person serving a match suspension is not allowed anywhere in the vicinity of the pitch during the match for which they are suspended.

In order to achieve the objectives assigned to it by its statutes, a sports governing body has to control the behaviour of its members and individuals engaged in its sport by means of various rules and regulations. The UEFA Statutes, the Laws of the Game and the UEFA Disciplinary Regulations facilitate football and protect the integrity of the game and all those involved in it.

In this respect, the disciplinary bodies have a great deal of discretion when it comes to punishing breaches of these rules and regulations. These large powers of discretion are counterbalanced by the principle of proportionality, as confirmed by Article 17 DR, which requires the competent disciplinary body to determine the type and extend 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 the present case, the key facts are not disputed: with no authorisation to do so, the suspended player Alonso left the stands and ran into the immediate vicinity of the pitch, possibly even onto the field of play itself, to join and celebrate with his teammates.

The boundaries of the field, as provided in FIFA’s Laws of the Game, Law 1, are marked by white lines: two longer ones called touch lines and two shorter ones called goal lines. For the sake of the safe and smooth running of the game and to prevent any disturbances, this area is protected and nobody can enter without due authorisation.
Player stated that he hardly touched the pitch. Also the referee in his report writes: he entered the pitch. The word pitch however is not used in the Laws of the Game, otherwise than in Law 6, regarding the assistant-referee. In UEFA’s Disciplinary Regulations the word pitch is not used, only “the field of play (and its immediate vicinity, i.e. art 16(2)(a) DR). A pitch is not the same as the field of play, as mentioned in FIFA’s rules of the game, nor the authorised area in the same rules. The pitch has to be considered as the field of play and its immediate vicinity. In this respect, a sustained player it is not allowed to be present within the restricted area (the pitch), especially during the game.

To protect the field of play it is obviously necessary to also protect its immediate vicinity. As a result, the immediate vicinity of the field of play enjoys the same protection as the field of play itself as far as order and security are concerned.

In view of the above, it clearly does not matter whether the player went onto the field of play itself or only its immediate vicinity: he entered a restricted area without authorisation.

The video footage clearly shows the player Alonso leaving his place in the stands, running over the advertising boards and going over to the field of play, near the corner flag to the left of the opponent’s goal.

Consequently, the ad hoc chairman of the Appeals Body is satisfied that the player Alonso entered a restrictive area without being allowed to do so and it does matter how many steps he took onto the pitch or whether he was actually on the field of play at all.

The ad hoc chairman agrees with the appellants that the principle of proportionality plays a key role in the disciplinary system. Indeed, the principle of proportionality is one of the peremptory norms of association law and as such can also be invoked in disciplinary law. In this respect, it is up to the person who wishes to invoke this principle to demonstrate that the decision rendered is unfair, i.e. violates the principle of proportionality. In reality this is all the principle means: the disciplinary measure imposed must not be clearly disproportionate to the offence committed.

In order to establish whether, in the present case, the contested decision is compatible with the principle of proportionality, it is necessary to examine whether the prohibition of conduct is of such importance that the player’s violation of such prohibition can be justified by a one-match suspension. In other words, it is necessary to weigh the protection of the interests of UEFA’s members, values and reputation against the restrictions the measure would place on the person concerned.

All references to the proportionality principle in the appellants’ written statements fit with the above and no further comment is therefore necessary.

The one-match suspension imposed on the player is suitable of persuading the player Alonso and other players no to behave in this way in future. It is also appropriate for the sanction to
be made visible to all those who witnessed – in the stadium or on television – a suspended player leaving the stands and entering the field to join his teammates, in total violation of his suspension and the basic rules of security. A fine would not be visible in this way.

In the present case the ad hoc chairman noted the seriousness of the act committed by the player, who was under suspension and for this reason could not play or sit on the substitutes’ bench, and who nevertheless deliberately entered the restricted area around the pitch and even went on to the field of play, an act witnessed by thousands of TV viewers and spectators in the stadium.

In such circumstances it cannot be said that the one-match suspension against Alonso is disproportionate in comparison with the offence he committed.

Article 27 of the Swiss statute on private international law (mistakenly referred to as the Code des obligations by the appellants)

The appellants suggest that the sanction imposed on the player violates his personality rights. According to Swiss law, public policy is violated when a decision unreasonably violates the spirit of justice as it is generally recognised in Switzerland and the fundamental principles of the Swiss legal system (see Swiss Federal Court decision ATF 111 la 14, para. 2a).

In the case at hand, UEFA’s competent disciplinary body imposed a disciplinary measure against a player of one of its members, who voluntarily submitted to its rules. The measure was imposed in accordance with the aforementioned rules and the general principles of law. Should the appellants wish contest this, the onus is on them to demonstrate that the challenged decision is an unacceptable contradiction of fairness and equity, or violates the fundamental principles of law.

The suspension imposed by the Control, Ethics and Disciplinary Body is provided for in the UEFA Statutes, the UEFA Disciplinary Regulations and the regulations of the competition concerned.

The fact that another sanction could have been imposed in other circumstances does not make the one chosen disproportionate (see CAS 2012/A/2824 Beşiktaş JK v UEFA). In other words, a decision does not unreasonably violate the spirit of justice just because an alternative decision could have been rendered.

In any case, the appellants fail to demonstrate how the challenged decision could be seen to violate the fundamental principles of Swiss public order, which is clearly not the case.

Alleged incorrect application of Article 11 DR

1 Members association and clubs, as well as their players, officials and members, and all persons assigned by UEFA to exercise a function, must respect the Laws of the Game, as well as UEFA’s Statutes, regulations, directives and decisions, and comply with the principles of ethical conduct, loyalty, integrity and sportsmanship.

2 For example, a breach of these principles is committed by anyone:

[...]
b) whose conduct is insulting or otherwise violates the basic rules of decent conduct.

The appellants suggest that the Control, Ethics and Disciplinary Body acted unlawfully by examining the case in relation to Article 11 DR. They base this argument on the fact that the Control, Ethics and Disciplinary Body emphasised the safety and security risks attached to the player’s behaviour and that this behaviour should therefore have been punished under the article dedicated to security and match organisation.

b) In this regard it must be recalled that the player was serving a suspension when he left the stands to join his team-mates on the pitch. His behaviour violated not only a security rule but also a previous Control, Ethics and Disciplinary Body decision against him. Such misconduct obviously falls under the general provisions of Article 11 DR.

On the basis of his experience, the ad hoc chairman of the Appeals Body considers such conduct by a player to be very dangerous as it could easily have provoked a mass brawl or degenerated into a much more serious pitch invasion by others who might feel liberated from the basic prohibition on leaving the stands to celebrate or express other less positive emotions on the pitch. This irresponsible and unprofessional behaviour by the player Alonso could have caused a serious safety and security problem in the stadium. Consequently, the Control, Ethics and Disciplinary Body was right to associate the player’s misconduct with a safety and security risk, but it was also right to apply Article 11(2)(b) DR.

Once again it must be underlined that the inviolability of the field of play and its immediate surroundings is absolute; due authorisation is required to enter this area for whatever reason.

Alleged incorrect application of Article 61 DR

Article 60 et seq. DR governs the carrying over of match suspensions.

Article 60

1 Unless the competent disciplinary body decides otherwise, a player sent off the field of play [...] is automatically suspended for the next match of the competition in which the expulsion occurred.

2 A player who receives cautions in different matches of the same competition is suspended for the next match of that competition, in accordance with the conditions laid down in the regulations of the competition concerned and any directives published in a circular letter.

Article 61

1 Unless the competent body decides otherwise [...], match suspensions and suspensions from carrying out a function must be served during the next match in the competition in which the offence in question was committed.

The appellants seem to have wrongly understood the subsidiary rule according to which match suspensions must be served in the competition in which the offence was committed.

This principle does not and cannot apply in all cases and the competent disciplinary body is free to decide, at its discretion, when a suspension shall be served.

In the contested decision, the Control, Ethics and Disciplinary Body clearly stipulated that one-match suspension imposed on the player Alonso had to be served during the UEFA Super Cup match Real Madrid CF v Sevilla FC on 12 August 2014.
The ad hoc chairman of the Appeals Body is of the opinion that this first-instance decision is in line not only with the above-mentioned provisions but also with common sense, as this was the next match in which the player would otherwise have been eligible to play. It is even more or less the same UEFA-competition, because is Super Cup is the result of winning one of the two major competitions. And in the case at hand it is the player’s next match. The public would not understand it if they saw a suspended player on the pitch, let alone a suspended player committing an(other) act that warrants a suspension.

Therefore, the appellants’ argument regarding the wrongful application of the above provision by the Control, Ethics and Disciplinary Body must also be ruled out.

It is the duty of the UEFA disciplinary bodies to discourage players at any level from acting in such a deplorable manner or attempting to reproduce what they saw on TV, Alonso’s conduct having been watched by thousands of viewers, including young footballers.

Players such as Alonso are seen as a role models and therefore have a duty to act professionally and in a responsible manner to set the highest example of good conduct and respect for the rules and regulations. Having failed to do so – and in such an important, high-profile match – the player Alonso deserves a visible sanction to counterbalance the negative image his misconduct gave to fans and young players. A fine cannot achieve this goal.

In view of the above, the ad hoc chairman of the Appeals Body is persuaded that the sanction imposed on the player by the Control, Ethics and Disciplinary Body in the challenged decision was in line with all the relevant principles of Swiss law, including the principle of proportionality. He is also persuaded that the alleged mitigating circumstances provided by the appellants are not of a nature to enable him to modify the sanction imposed by the Control, Ethics and Disciplinary Body as requested by the appellants. It is the nature of sports events to provoke strong feelings, positive and negative, and all those involved have control themselves for the safety of the whole stadium and in due consideration of the fact that the rules apply to everybody and in all cases. Accordingly, the appeal lodged by the player and his club shall be dismissed.

The costs of proceedings, which include all the 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) DR).

In the present case, as the case was heard by a single judge, which significantly reduces the expenses, the costs of the proceedings are limited to €3,000 and shall be charged to Real Madrid CF (the Spanish Football Federation being jointly liable for any failure to pay).
Decision of 4 September 2014

Ferencvárosi TC

(Racist chants and gesture / Improper conduct of team)

Circumstances of the case
Away match:
FARE reported to UEFA that an altercation between the Ferencvárosi TC no. 5 and the Sliema Wanderers FC’s black no. 10 took place in the 78th minute of the 2014/15 Europa League match between Sliema Wanderers FC and Ferencvárosi TC on 1 July 2014. A few Ferencvárosi TC supporters directed monkey chants at the African player for a few seconds. During the same match, five Ferencvárosi TC players were cautioned by the referee.

Home match:
During the 2014/15 UEFA Europa League match between Ferencvárosi TC and Sliema Wanderers FC at the Ferenc Puskás stadium on 10 July 2014, the FARE observer saw a group of Ferencvárosi TC supporters perform Nazi salutes and display two nationalist banners widely used by the far right in Hungary.

Legal framework
Art. 14 DR, Art. 15(4) DR

Decision
CEDB:
The CEDB fined the club € 20'000.- and ordered the partial closure of the stadium during the next (1) UEFA competition match in which the club would play as a host team and in particular, the sector N of the stadium. The club was also fined € 4’500.- for the improper conduct of the team.

AB:
The appeal was partially admitted. Therefore, the partial stadium closure is confirmed. The fine € 4’500.- for the improper conduct of the team is also confirmed. The fine € 20’000.- imposed on the club is overturned.
Whereas:

In fact:

Away match
FARE reported to UEFA that an altercation between the Ferencvárosi TC no. 5 and the Sliema Wanderers FC’s black no. 10 took place in the 78th minute of the 2014/15 Europa League match between Sliema Wanderers FC and Ferencvárosi TC on 1 July 2014. A few Ferencvárosi TC supporters directed monkey chants at the African player for a few seconds.

During the same match, five Ferencvárosi TC players were cautioned by the referee.

Home match
During the 2014/15 UEFA Europa League match between Ferencvárosi TC and Sliema Wanderers FC at the Ferenc Puskás stadium on 10 July 2014, the FARE observer saw a group of Ferencvárosi TC supporters perform Nazi salutes and display two nationalist banners widely used by the far right in Hungary.

In a decision of 17 July 2014, the UEFA Control, Ethics and Disciplinary Body joined both cases and issued a single decision. It fined Ferencvárosi TC €4,500 for the improper conduct of its team, since five of its players had been cautioned during the first leg.

The Control, Ethics and Disciplinary Body also ordered the partial closure of the Ferencvárosi TC stadium for its next UEFA competition home match and, in particular, the closure of sector N of the stadium. It also fined the club €20,000 for its supporters’ racist behaviour at both the aforementioned matches.

Ferencvárosi TC has already complied with the partial stadium closure ordered by the Control, Ethics and Disciplinary Body.

On 25 July 2014, Ferencvárosi TC appealed against the Control, Ethics and Disciplinary Body's decision of 17 July 2014. Its grounds for appeal, submitted on 4 August 2014, can be summarised as follows:

2014/15 UEFA Europa League match between Sliema Wanderers FC and Ferencvárosi TC on 1 July 2014

Improper conduct of the team
The appellant and its counsel admitted that five of its players had been cautioned during the above-mentioned match. However, it stressed that the use of the verb “may” in Article 15(4) of the UEFA Disciplinary Regulations (DR) meant that the Control, Ethics and Disciplinary Body had broad discretion to decide whether a sanction should be imposed or not. To decide whether a sanction should be imposed, the appellant thought that the competent authority should take into consideration the team’s general conduct during the match and not only the fact that five players had been cautioned. Since, in his report, the UEFA delegate had described the Ferencvárosi TC team’s behaviour as satisfactory, the Appeals Body should not consider the team’s behaviour as improper in the sense of Article 15(4) DR and should refrain from applying any disciplinary measure.

Discriminatory conduct of supporters
The appellant also did not deny that its supporters had directed monkey chants at a black Sliema Wanderers FC player and that such behaviour was clearly unacceptable, since it insulted the player’s human dignity. However, the appellant referred to two previous decisions in which the application of the strict liability principle had been refused because the other party had failed to observe its own duties of diligence. In this respect, it mentioned that Sliema Wanderers FC had sold tickets to Hungarian nationals on the day of the match even though Ferencvárosi TC had warned the host club of potential security issues involving Hungarian supporters and had asked them not to sell tickets to Hungarian supporters. The supporters who had committed the racist offences had received their tickets from Sliema Wanderers FC, who had therefore violated Article 14 of the UEFA Safety and Security Regulations. It was also UEFA’s responsibility, as the competition organiser, to enforce the prohibition of uncontrolled ticket sales on a match day. Moreover, Sliema Wanderers FC had not been punished by the Control, Ethics and Disciplinary Body for this violation. Consequently, Ferencvárosi TC could not be held responsible for the behaviour of the supporters who had performed the monkey chants.

Finally, the appellant underlined the efforts made by the club to control its supporters by introducing a “supporter card” in 2007. Only holders of these cards were allowed to purchase match tickets.

2014/15 UEFA Europa League match between Ferencvárosi TC and Sliema Wanderers FC on 10 July 2014

The appellant referred to numerous initiatives against racism and discrimination that it had taken in the last couple of years, for which it had received an award from the Hungarian Olympic Committee.

The appellant said that the burden of proof was on UEFA to demonstrate that its regulations had been violated. In this respect, it contested the probative value of the FARE report, since it was not considered an official report in the sense of Article 38 DR.

The appellant added that the Disciplinary Regulations did not contain a provision on the standard of proof. Under Swiss law, by which the UEFA Appeals Body was bound according to Article 5 DR, the regular standard of proof was “full conviction beyond reasonable doubt”, which was a higher standard than “comfortable satisfaction”. The appellant considered that all
types of evidence used by the UEFA Appeals Body should be analysed under the standard of proof of “full conviction beyond reasonable doubt”.

The FARE report was not signed and contained no reference to its author. FARE observers who attended UEFA matches had an incentive to report incidents that might not have even taken place, since they had a pecuniary interest to report racist incidents. They therefore could not be considered independent. Consequently, the FARE report did not meet the required standard of proof of “full conviction beyond reasonable doubt”.

The appellant requested, in substance, the following:

Principally, that the appeal be admitted, the Control, Ethics and Disciplinary Body’s decision be overturned and the costs of the procedure not be charged to Ferencvárosi TC.

In the alternative, that the appeal be admitted, the Control, Ethics and Disciplinary Body’s decision be amended, the disciplinary measures imposed by the Control, Ethics and Disciplinary Body be reduced and the costs of the procedure not be charged to Ferencvárosi TC.

On 21 August 2014, the UEFA Ethics and Disciplinary Inspector submitted his response to the appeal, requesting that it be rejected and the costs charged accordingly.

At today’s hearing, the appellant was represented by its counsel and its board members Pál Orosz and Attila Berceviczi. UEFA was represented by its Ethics and Disciplinary Inspector.

The Appeals Body chairman confirmed the composition of the panel and informed the Ethics and Disciplinary Inspector and the appellant the procedure to be followed and of the fact that everything they and the panel said would be recorded.

The parties agreed to the procedure and raised no objections.

No additional evidence having been requested, the floor was given to the Ethics and Disciplinary Inspector and the appellant, who presented and expanded on the arguments set forth in their written statement and maintained their original request.

These arguments are set out and examined below, in so far as they are relevant.

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

In law:

The Appeals Body’s jurisdiction in this matter is established by Articles 53 and 54 of the UEFA Disciplinary Regulations (DR). It is competent to examine the case in full, both factually and legally (Article 58(2) DR).

The appeal meets the formal requirements and deadline laid down by Articles 53 et seq. DR.
Owing to the close links between the two cases, for reasons of procedural economy and in accordance with Article 34(6) DR, the Appeals Body will examine both cases together and issue a single decision.

However, the consequences of the Appeals Body’s factual and legal re-examination of each case will be presented separately.

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) 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 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. However, this fight must be conducted in full deference to the legal framework.

On entering the competition, the participating clubs and their respective national associations agree, inter alia, to stage all matches in the competition in accordance with the regulations of the UEFA Europa League and to respect the UEFA Safety and Security Regulations (para. 4.01(e) and (g) of the Europa League regulations). They therefore accept responsibility for the behaviour of their players, officials, members, supporters and any person carrying out a function at a match on their behalf (para. 6.02 of the Europa League regulations). The home club (or the host association) is responsible for order and security before, during and after the match. It may be called to account for incidents of any kind and may be disciplined (para. 6.03 of the Europa League regulations).

By entering the 2014/15 UEFA Europa League, Ferencvárosi TC agreed to assume its responsibilities under paragraph 4.01 of the aforementioned Europa League regulations. It was therefore aware of its responsibility not only for its own actions, but also for those of its players, officials, members and supporters.

Article 8 DR constitutes the legal basis on which UEFA, through its disciplinary bodies, can ensure that not only its members, but also third parties for whom they are responsible, respect its objectives and the obligations it imposes.

According to the same article, the content of which is repeated in paragraph 6.02 of the UEFA Europa League regulations, 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 member association or club. This rule also applies to clubs participating in the 2014/15 UEFA Europa League, in accordance with paragraph 4 of the competition regulations.
Under this rule, UEFA member associations and clubs are responsible for any violation of UEFA regulations committed by any of the people concerned, regardless of fault.

It is in the light of the above regulatory provisions and principles that this case must be examined.

2014/15 UEFA Europa League match between Sliema Wanderers FC and Ferencvárosi TC on 1 July 2014

Improper conduct of the team

Under Article 15(4) DR, if a team conducts itself improperly (for example, if individual disciplinary sanctions are imposed by the referee on five or more players), disciplinary measures may be taken against the club concerned.

In this connection, reference is made to the referee’s report, which clearly states that five players were cautioned. The facts are established and not contested by the appellant, who merely argued that the panel was not obliged to impose a sanction because of the use of the verb “may”.

In this respect, the appellant misinterpreted Article 15(4) DR and disregarded UEFA case law relating to this provision: although the use of the verb “may” gives the authority the option not to impose disciplinary measures, this only applies in exceptional circumstances (e.g. if one of the five players sanctioned was a victim of mistaken identity, see Article 9(2) DR), which are not fulfilled in the present case. Disciplinary measures correctly imposed against five players during the same match constitute improper conduct of the team and in no case should the authority refrain from imposing the usual sanction simply because the team’s conduct was otherwise acceptable. The appellant’s argument is therefore unfounded.

Discriminatory behaviour

Article 14(1) DR specifies that 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, will be suspended for at least 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) DR 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 and irrespective of the fault of the club or association in question (hence “strict liability”).

The appellant did not deny that monkey chants had been performed by its supporters during the away match against Sliema Wanderers FC but blamed the host club for ignoring its warning by selling tickets to the supporters who allegedly performed the monkey chants. These
arguments are unfounded. Irrespective of where they acquired their tickets, the supporters who performed the monkey chants were supporters of the appellant. In accordance with the constant practice of the UEFA disciplinary bodies, individuals whose behaviour would lead a reasonable and objective observer to conclude that they were supporters of a particular club, i.e. their encouragement of a certain team or their location in the stadium, are considered to be supporters of the team in question. As a result, the term “supporter” is not linked only to the race, nationality or place of residence of the individual, nor to a contract between an individual and the club from which a match ticket is purchased. This interpretation of the word “supporter” is confirmed in several previous UEFA disciplinary decisions (e.g. Football Federation of Bosnia and Herzegovinia v UEFA, UEFA Appeals Body, 23 May 2003) and Court of Arbitration for Sport awards (e.g. PSV Eindhoven v UEFA, CAS 2002/A/423; Feyenoord Rotterdam v. UEFA, CAS 2007/A/1217). In the Feyenoord case, the police had decided to escort Dutch supporters who had been causing trouble in Nancy city centre to the stadium. On arriving at the stadium, a few minutes before the match, the police had asked AS Nancy to sell tickets to these “disruptive” visiting supporters. These supporters had then caused serious trouble in the stadium. Even though Feyenoord had not sold them tickets and AS Nancy had been forced to do so, the UEFA Appeals Body considered them Feyenoord supporters and held the club responsible for their misbehaviour. This decision was confirmed in the aforementioned Court of Arbitration for Sport award.

Consequently, since the people who performed monkey chants during the above-mentioned match are Ferencvárosi TC supporters, this club must be held responsible for their misbehaviour (strict liability) and the only question to deal with is the level of sanction to impose in such a case.

Proof of guilty, strict liability and level of sanction

The purpose of Article 8 DR is to create a rule with a preventive and deterrent effect by ensuring that clubs that organise football matches assume responsibility for their supporters’ actions. The UEFA disciplinary bodies’ long-standing practice of applying this strict liability principle is confirmed by numerous Court of Arbitration for Sport awards (Feyenoord Rotterdam v UEFA, CAS 2006/A/1217; Club Atlético de Madrid v UEFA, CAS 2008/A/1688; PSV Eindhoven v UEFA, CAS 2002/A/423).

The alleged shortcoming on the part of the host club does not change the legal situation regarding the strict liability principle enshrined in Articles 8 and 14(2) DR and can in no case exonerate the visiting club of its responsibility for the improper conduct of its supporters. In the case of discriminatory offences, the sanction can only be reduced if the club charged provides exceptional circumstances (Article 17(3) DR), which were not demonstrated by the appellant in this case.

The legal theory cited by the appellant according to which proof of guilt on the part of a member of an association must, in principle, be provided before a sanction can be imposed, in contradiction of the principle of strict liability, is highly contested. Other authors hold that associations must ensure internal cohesion and pursue the objectives defined in its statutes, and so it is that Swiss law gives associations a high degree of freedom in their internal affairs,
so that they can defend themselves against harmful conduct by their members, even if they are not culpable.

According to this legal theory, a violation of an obligation can result in a sanction in the absence of culpability if this is established in the statutes of the association in question (see Hans-Michael Riemer in Berner Kommentar, No. 210, and Art. 70 of the Swiss Civil Code). UEFA has defended this position for years and has had it confirmed by numerous CAS awards, including those mentioned above.

Finally according to Article 14(2) DR, a minimum of a partial stadium closure is to be imposed if the supporters’ discriminatory conduct is established. In this case, the Control, Ethics and Disciplinary Body rightly considered it established that Ferencvárosi TC supporters had behaved in a discriminatory manner. This rule does not give the disciplinary body any room for manoeuvre regarding its application. Member associations and clubs, even if they have committed no fault, are responsible for the misconduct of their supporters. If such offences are established, the club is automatically held responsible and punished with a minimum of a partial stadium closure, unless the club or national association charged provides exceptional circumstances in its favour to cause the disciplinary body to impose a different sanction. That is not the case here. Therefore, the Control, Ethics and Disciplinary Body’s decision to partially close the stadium is in line with the minimum sanction set forth in Article 14(2) DR and cannot be questioned.

2014/15 UEFA Europa League match between Ferencvárosi TC and Sliema Wanderers FC on 10 July 2014

Discriminatory behaviour

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 across Europe. This includes supporters of various clubs, including Ferencváros.

Before each season, FARE presents to UEFA a work programme detailing the activities it has planned throughout the forthcoming season. UEFA is aware of the activities of FARE and of the fact that it monitors UEFA matches, using neutral observers who obviously cannot have any interest in either of the clubs involved in the match they have to observe. FARE has been a UEFA partner for about 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.

FARE reports are not presumed to be accurate in the same way as UEFA match officials’ reports (Article 38 DR). However, they are to be considered serious and credible denunciations in the sense of Article 48(c) DR.
The burden of proving the charge rests with UEFA. In this respect, the disciplinary bodies not only can but must take into account evidence other than the match officials’ reports when an offence is reported. They can use video recordings; examine witnesses, etc. if this helps to establish the facts.

The fight against racism is a high priority for UEFA, which has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. However, this fight must be conducted in full deference to the legal framework. In the present case, the only question that the Appeals Body must address is whether it has enough evidence to prove that Ferencvárosi TC supporters performed Nazi salutes and displayed a political banner during the match between Ferencvárosi TC and Sliema Wanderers FC on 10 July 2014.

During the hearing, it was demonstrated that the gesture performed during the match was, in fact, not a Nazi salute. Indeed, the Ferencvárosi TC representative at the hearing imitated the gesture performed by the club’s supporters during the match and asked the Ethics and Disciplinary Inspector whether it constituted a Nazi salute. The Ethics and Disciplinary Inspector replied that it did not. The picture in the FARE report is also not sufficiently clear to prove that the banner displayed was illicit.

Consequently, since UEFA did not bring any other substantial evidence to prove that the gesture observed by FARE was actually a Nazi salute and that the displayed banner was illicit, the Appeals Body must consider these two offences insufficiently established and admit this part of the appeal.

In view of the above, the appeal lodged by Ferencvárosi TC is partially admitted to the extent that it should not be punished in connection with the away match played on 10 July 2014. The decision issued by the Control, Ethics and Disciplinary Body on 17 July 2014 is therefore amended accordingly.

The costs of proceedings, including all the expenses of the Appeals Body, are to be shared between the parties in an equitable manner, in accordance with the outcome of the proceedings (Article 63 DR).

In this case, the costs of the proceedings (€8,000 in total) will be shared equally by both parties: €4,000 minus the appeal fee will be charged to the appellant, Ferencvárosi TC, and the remaining €4,000 to UEFA.

According to Art.59(2) DR, as guarantee of enforcement, member associations are jointly and severally liable for fines, confiscation of pecuniary benefits and procedural costs imposed on their clubs, players, officials or members; clubs bear the same liability in relation to their players, officials and members.

In the instant case, the Hungarian Football Association is jointly liable for the payment of the fine (€4,500) and the proceedings costs (€4,000 minus the appeals fee).
Decision of 10 October 2014

MFK Košice

(Improper conduct of supporters / insufficient organization)

Circumstances of the case
Improper conduct by its supporters under the terms of Article 16 (2) of the UEFA Disciplinary Regulations (hereinafter referred as to: “DR”) for displaying a banner that read: “Kosovo Je Serbia”.

Absence of safety and security personnel to protect the field of play and absence of turnstile.

Legal framework
Art. 16(2) DR, Art. 33 Safety & Security Regulations, Art. 38 Safety & Security Regulations

Decision
CEDB:
The CEDB fined MFK Košice € 15’000.-.
AB:
The appeal was rejected and the CEDB’s decision of 14 August 2014 is upheld.
Facts of the Case

The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 14 August 2014 (the “Decision”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

In his decision of 14 August 2014, the chairman of the UEFA Control, Ethics and Disciplinary Body fined MFK Košice (hereinafter: Košice / or the appellant club) EUR 15,000 having held it responsible for the following misconduct on the part of its supporters / and a lack of organisation at the 2014/2015 UEFA Europa League match MFK Košice vs. FC Slovan Liberec, played on 17.07.2014:

Improper conduct by its supporters under the terms of Article 16 (2) of the UEFA Disciplinary Regulations (hereinafter referred as to: “DR”) for displaying a banner that read: “Kosovo Je Serbia”.

Absence of safety and security personnel to protect the field of play and absence of turnstile.

Summary of the Proceedings Before The Appeals Body

On 7 September 2014, Košice appealed against the CEDB’s decision of 14 August 2014. The grounds of appeal were sent on 11 September 2014 which can be summarised as follows:

Concerning the lack of safety and security: The appellant considered that the UEFA delegate committed a mistake, as the delegate took the picture of the gate 4 (entrance leading to the checkpoint 3) as the tickets are not checked in this point but at the checkpoint 3 where all security measures had been implemented including ticket controls and security personal checking all spectators entering the stadium through this checkpoint. The delegate missed to visit this checkpoint 3. The delegate made his inspection without being accompanied by an official from the club and saw the entrance 4 without realising that 35m ahead, the ticket and security controls are performed fully in compliance with the standards and UEFA regulations.

Concerning the displaying of illicit banners: The club admitted that its supporters displayed the banner with the slogan “Kosovo Je Serbia” but underlined that MFK Košice did intensive security checks at the entrance points so that no fire work or other prohibited devices and
things can enter the stadium. Finally the club requested the appeals body to consider the limited financial capacity of the club.

On 30 September 2014, UEFA submitted its response to the appeal via its UEFA Ethics and Disciplinary Inspector, requesting that the appeal be rejected and the procedural costs charged accordingly.

Hearing

No hearing was held as the appellant requested the proceedings conduct in writing only.

Appeals Body Competence and Admissibility of the Appeal

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).

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

Legal Considerations Of The Appeals Body

The legal framework

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.

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.

Article 32 of UEFA Safety and Security Regulations 2006, states that:
“Turnstiles and entry or exit doors or gates must be operational and manned by properly trained security personnel.
Adequate security personnel must be available at all approaches to the stadium, at the turnstiles, and throughout the interior of the stadium, at the discretion of the chief police officer and/or or stadium security officer.
Sufficient and properly trained stewards must be on duty within the stadium to ensure that spectators are directed to their seats efficiently and smoothly without delay and confusion.
All security personnel should be familiar with the layout of the stadium and with its safety, emergency and evacuation procedures.”

Under Article 33 of UEFA Safety and Security Regulations:
“1.Spectators will be screened initially by the security personnel at the outer perimeter fence (...)”.

Case Law. CEDB & Appeals Body. 2014/2015 (July – December)
Final screening and searches must be carried out by security personnel outside the turnstile entrances to ensure that:

a) spectators enter the correct part of the stadium;
b) spectators do not bring any objects/substances into the stadium that are likely to be used in acts of violence, or alcohol or fireworks of any kind;
c) access is forbidden to known or potential troublemakers, or persons who are under the influence of alcohol or drugs."

According to Art. 16(2) (e) DR:
“(…) 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) (…)  
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; (…)"

In the case in hand

Grievance related to the Safety and security

For having no security or boundary that could prevent persons entering right through to the pitch and the absence of turnstiles at the gate of the stadium and the fact that the host did not put in place any other security arrangement were implemented, the host club, Košice is in breach of the above-mentioned provisions. In the other hand, the club has the possibility to escape its responsibility if it provides a substantial evidence that no negligence on its part cause the incident relating to safety and security for which it is blamed (Article 16 (1) DR in fine).

The appellants argued that the ticket and security controls were done at the checkpoint 3. At this checkpoint 3, all security measure has been implemented, including ticket controls and security personal checking all spectators entering the stadium at this point. The delegate picture of the entrance 4 where no security or ticket controls were done is the normal procedure in the stadium at this point.

To support this argument the appellant provides a map of the stadium and some photos of a gate with turnstile. According to the Appellant after the gate 4 there was a turnstile leading to the grounds which the delegate missed. The appellant admitted that at the entrance 4 which is according to the stadium map the outer perimeter gate (in the sense of Art. 33 of the UEFA Safety and Security Regulations) there was no control and anyone can just walk right in.

In this point, the Appeals Body is of the opinion that the appellant did not provide the substantial evidence to counter the UEFA delegate report (Art. 38 DR). Moreover, even if the argument of the appellant is to be followed, it must be remembered that Art. 33 of the UEFA Safety and Security, above quoted requires spectators to be screened initial by security personnel at the outer perimeter fence if there is one. In this case the entrance 4 was an outer
gate and there was any single control, as the appellant itself admitted. Therefore, the argument of the appellant in this point must be ruled out.

On the basis of the foregoing considerations, it is clear that the host club did not-at least negligently-do its utmost to implement preventive safety and security measures impose in UEFA Regulations when a match takes place. Therefore, the CEDB rightly consider the appellant failure on safety and security measures to be taken and punished them accordingly.

Grievance related to the illicit banners

It is neither disputed that the supporters of MFK Košice have displayed a banner with the wording “Kosovo Je Serbia” nor its content is a political one.

In its appeals statement, MFK Košice however points out that intensive security checks have been carried out and that no fireworks and missiles had been thrown to the pitch. This was made possible thanks to specific security efforts and the hiring of lots of security staff.

Since it is established that illicit banner was displayed, Art. 16 (2) (e) DR automatically applies, irrespective of the preventive measures that were taken by the appellant. By holding MFK Košice accountable for its supporters’ conduct, this provision is designed to punish the supporters for their misbehaviour, but through the intermediary of their club. Consequently, the CEDB was fully justified in imposing a sanction against the appellant. In light of the above, the appellant’s argument in this respect must be dismissed.

Determination of the disciplinary measure

The only question remaining is whether or not the CEDB abused its discretionary powers by finning the MFK Košice €15,000.

According to Article 17(1) DR, the competent disciplinary body decides on the type and extent of the disciplinary measures to be imposed based on the objective and subjective elements of the offence, taking into account any aggravating and/or mitigating circumstances. If the defendant has committed multiple disciplinary offences, measures are imposed for the most serious offence and increased accordingly (Article 17 (3) DR).

The disciplinary measures which may be imposed on clubs are listed in Article 6(1) DR. Fines may be between €100 and €1,000,000 (Article 6(3) DR). The disciplinary bodies have complete discretionary authority in this area. They must nevertheless take account of the fact that a repeat offence is an aggravating circumstance (Article 19(2) DR). According to Article 19(1)(d) DR, a repeat offence has been committed if disciplinary measures have to be imposed within five years of a previous offence.

The disciplinary bodies must also respect the principles of ordinary law, which apply equally to sports disciplinary law. They must therefore take account of the particular circumstances of the case and the seriousness of the offence, and respect the principles of legality, equal treatment and proportionality. Finally, they must neither exceed nor abuse their discretionary powers.
It is important to recall that safety and order in the stadium has always been a prime concern of UEFA. This is reflected in different UEFA regulations, notably the afore-mentioned and the UEFA Safety and Security Regulations. Without security in the stadium, there will be no spectators, and no spectators means no football.

Displaying such a banner, while it is public knowledge that the politic situation in the Balkan regarding the independence of Kosovo still is a very sensitive issue not only expresses a political opinion that is not fit for football, but it is also dangerous as it could blaze up the stadium. It is not necessary to explain the dramatic consequences such situation could have in case of trouble by supporters with different politic opinion on this subject. In addition, the supporters were not checked properly, which impeded from implementing a reliable safety and security concept as expected from an UEFA match organiser.

It emerges from the above that the CEDB rightly considered the multiplicity and gravity of the offences committed and after having taken all the circumstances into account in conformity with Art. 17 DR. The Appeals Body considers the fine of €15,000 imposed on the appellant proportionate and the analysis of the first instance beyond criticism.

In view of the above considerations, the Appeals Body concluded that the challenged disciplinary decision was legally justified and that the CEDB had not abused its power of discretion in fining MFK Košice €15,000. The Appeals Body considers this sanction appropriate to avoid such cases reoccurring. Consequently, the appeal of MFK Košice is rejected and the challenged decision upheld.

**Costs**

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) minus the appeal fee already pad will be charged to MFK Košice (the Slovak Football Association is jointly liable for any failure to pay these costs, as well as the fine).
Decision of 10 October 2014
Dundalk FC
(Illicit banner / insufficient organization)

Circumstances of the case
During the above mentioned match, Palestinian flags were waived by the Dundalk FC supporters. Furthermore, several Dundalk FC supporters stood behind the HNK Hajduk Split’s goal during the second half of the match.

Legal framework
Art. 16(2) DR, Art. 45 UEFA Stadium Infrastructure

Decision
CEDB:
The CEDB fined Dundalk FC € 18’000.-.
AB:
The appeal is partially admitted. Dundalk FC is fined € 15’000.-.
Chairman: Pedro Tomás, Spain

Members: Björn Ahlberg, Sweden
Levent Biçakci, Turkey

Facts of the Case

The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 14 August 2014 (the “Decision”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

In its decision of 14 August 2014, the UEFA Control, Ethics and Disciplinary Body (hereinafter: CEDB) fined Dundalk FC (hereinafter: the appellant / or the club) €18,000 having held it responsible for the following misconduct on the part of its supporters at the 2014/2015 UEFA Europa League match Dundalk FC vs. HNK Hajduk Split played on 17.07.2014: Displaying of illicit banner (the Palestinian flag was waived by the local supporters) and Insufficient organisation (supporters were standing behind the goal).

The decision with ground was notified to the appellant on 8 September 2014.

Summary of the Proceedings Before The Appeals Body

On 11 September 2014, the club addressed its intention to appeal against the decision of the CEDB.

The day after, i.e. on 12 September 2014, the club submitted its grounds for appeal which can be summarised in substance as follows:

The appellant first of all offered UEFA its sincerest apologies for the two reported incidents having occurred. The appellant did not contest these incidents but only the fine that it considered too severe and it is the severity of the financial sanction that the club wish to appeal. Regarding the Palestinian flag: On each occasion the stewards acted as quickly as possible in removing such flags. Such confiscation of the flags was done quickly and occurred without incident.

Regarding the Insufficient organisation: The appellant admitted the incident but underlined that a small number of spectators stood behind the goals during the second half. Out of a crowd of 3100, only 7 spectators (0.22% of the entire attendance) stood behind the goal and they were there for no more than five minutes. As soon as the club’s Security Team became aware that spectators were standing behind the goal they were immediately approached by stewards and Gardaí (police) and they moved back to their seats without question. Moreover, the appellant deny having acted by negligent in relation to the organisation of the match which
is a requirement under Article 16(1) of the DR. There will always be unexpected occurrences on the day of a match that cannot be dealt with in advance however, “we believe that as soon as the occurrence happened during the match that Dundalk FC dealt with it swiftly and efficiently without any escalation or misconduct. We therefore feel that no sanction should be imposed as regards this incident as there was no negligence on the part of Dundalk FC on this occasion”.

The appellant requested the Appeals Body to take into consideration the implications on their club of a financial sanction of this magnitude; Dundalk FC are a small club with an overall membership of 252 people, Dundalk FC compete in the SSE Airtricity League with an average attendance at their matches over the last 4 years of approximately 666 spectators per game.

A fine in the sum of €18,000 will impact greatly on their ability to invest in the future development of both their club and players. This in turn would have an impact on their ability to compete at a European level which is evidenced by the fact that it has taken them four years to qualify for a European competition.

As conclusion the appellant requested the fine imposed on the club relating to the illicit banners be reduced by the maximum amount permitted; and the sanction imposed in terms of insufficient organisation be removed as no negligence occurred.

On 30 September 2014, the UEFA Ethics and Disciplinary Inspector submitted its response to the appeals. It requested the Appeal Body to declared the appeal of Dundalk FC partially admitted and the sanction reduced to €15,000. The UEFA Ethics and Disciplinary Inspector considered that whilst both offences shall therefore be confirmed, the appeals statement produced by the club provides additional elements that the Control, Ethics and Disciplinary Body was not able to take into account as not presented beforehand. In particular, efforts mentioned by Dundalk FC to guarantee match day security and to ensure the development of the club shall be taken into account.

**Hearing**

No hearing was held as the appellant requested the proceedings conduct in writing only.

**Appeals Body Competence and Admissibility of the Appeal**

The Appeals Body has jurisdiction to hear the case in question under Articles 24(4) and 54 of the UEFA Disciplinary Regulations (hereinafter also referred to: “DR”). Dundalk FC 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.
Legal Considerations Of The Appeals Body

The legal framework

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.

Article 8 of the UEFA Disciplinary Regulations forms the legal basis that enables UEFA, through its disciplinary bodies, 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 members are responsible.

Article 16 (1) DR states that “Host associations and clubs are responsible for order and security both inside and around the stadium before, during and after matches. They are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organisation of the match”. This rule also applies to 2014/15 UEFA Europa League matches, as expressly stated in paragraph 6.02 of the competition’s regulations.

According to this provision there is an obligation for the match organiser (UEFA member association or club) to do all it can to guarantee order and security in and around the stadium. However, contrary to the situation mentioned in paragraph 2 of Art. 16 DR quoted below, the simple fact that an incident occurs does not automatically lead to the sanctioning of the host association or club. In other words, if the host association or club is able to establish that it took all measures that it could reasonably be expected to take and that it did not commit any fault in terms of the organisation and maintenance of order and security at the match, it cannot be held responsible for the incidents and cannot therefore be punished for them.

Paragraph 2 of the above referenced Article reads 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) (…);

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 (…)”;

On the other hand, this clause means that UEFA member associations and clubs are liable for any breach of the regulations by any person listed, even if the associations/clubs commit no fault themselves. This strict liability (objective or causal responsibility) is imposed on member associations and clubs for the actions of third parties who are, however, clearly identified. This rule leaves the UEFA Disciplinary Bodies absolutely no room for manoeuvre as far as its
application is concerned. Member associations and clubs are answerable, even if they are not at fault, for the misconduct of their supporters. Clubs are automatically held responsible and can be punished once such misconduct has been established.

Under Art. 45 of the UEFA Stadium Infrastructure Regulations sectors for standing spectators or terraces without seats is strictly prohibited.

**In the case in hand**

The incidents that occurred during the above-mentioned match are not disputed by the appellant; it is either disputed its responsibility. The appellant considered not being negligent regarding safety and security in relation to the supporters who stand behind the goal, and requested the fine to be reduced considerably.

Consequently, the only question which the Appeals Body must address is whether, in this case, the Control, Ethics and Disciplinary Body properly assessed the evidence before concluding that Dundalk FC had negligently implemented UEFA regulation in relation with safety and security on the occasion of the above match and in the second stage assess whether the CEDB has taken into consideration all the factors of the cases to fine Dundalk FC €18,000.

Regarding the safety and security incident, the appellant contested the fact that this incident occurred because it was negligent. It support it argument by the fact that the area behind the goal had been identified to the club by UEFA as an area that could not be used during UEFA club matches and the club closed it. In addition, with an attendance of 3100 supporters the club put in place 80 stewards and 15 Gardai, so there was a sufficient number of security personal; and there were only 7 supporters who stood behind the goal and this incident lasted 5 minute before the club’s security team became aware of it and removed them from there.

According to Paragraph 1 of Art. 16 DR above quoted, responsibility for the safety of spectators at UEFA matches grounds lies at all times with the match organiser. Indeed, Dundalk was the organisation that owes safety and security, in this respect had the obligation imposed by Art. 45 of the UEFA Stadium Infrastructure Regulations that standing accommodation was not permitted; the club considered that this incident was unexpected occurrence as the area was closed. It must be remembered that it is not enough to have a sufficient number of stewards and guards to ensure safety and security if the guidance of safety and security imposed by UEFA are not fully implemented and understood by these security personal. Dundalk FC should have secured the place in question.

A lack of foresight is culpable when the person in question fails to take the precautions required by the circumstances and his personal situation. Dundalk FC organised many matches in its domestic championship and accustomed with safety and security matters, in this respect the club should have put sufficient security personal behind the goal because the risks were known (that why the area was closed). Consequently, there was a safety breach and the panel considers that Dundalk FC acted negligently by not preventing these supporters to attend inappropriate place to follow the game as the place in question was obviously not closed efficiently.
Therefore, the appellant’s argument that Article 16(1) DR is not applicable to Dundalk is unfounded.

As neither the incident of the Palestinian flag nor its illicit nature and club’s responsibility were disputed, therefore it is not necessary to comment further in this respect. Consequently, the breach of Art. 16(2)(e) DR is established.

Regarding the UEFA Ethics and Disciplinary Inspector argument according to wish the efforts mentioned by Dundalk FC to guarantee match day security and to ensure the development of the club shall be taken into account in order to reduce the fine imposed by the CEDB. In this respect, the Appeals Body considers that efforts mentioned by Dundalk FC to guarantee match day security cannot to be considered as mitigating factor as they are inherent to any UEFA match organiser. Therefore this argument must be ruled out.

On the other hand, according to the Appeals Body member’s experience of the world, it is in the ordinary course of the things that a club in such level that have the attendance of 600 supporters for its domestic championship match must be considers to have a very limited financial capacity. This could be taken into consideration when it comes to decide on the sanction to be imposed, mostly if the sanction is a fine.

**Determination of the disciplinary measure**

According to Article 17(1) DR, the competent disciplinary body decides on the type and extent of the disciplinary measures to be imposed based on the objective and subjective elements of the offence, taking into account any aggravating and/or mitigating circumstances.

When applying the above provision, the disciplinary body must also respect the standard principles of ordinary law and, therefore, take account of the particular circumstances of the case and the seriousness of the offence. Finally, it must respect the principles of legality, equal treatment and proportionality and neither exceed nor abuse its discretionary powers.

In this case, the Appeals Body believes that by sanctioning Dundalk with a fine of €18,000, the CEDB did not take in good proportion the situation of the appellant. Indeed, as explained above, the Appeals Body is of the opinion that the fine imposed on the club is quite high considering the specific circumstances of this case. Therefore, a fine of €15,000 would be appropriate.

On the basis of the above, the appeal is partially admitted and the first-instance decision modified as above.

**Costs**

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) DR).
After taking into consideration all the relevant circumstances of the case and using its discretionary power in this respect, the Appeals Body, despite the outcome of the case, refrains from charging the costs of the appeals proceedings to the appellant.
## Decision of 2 December 2014

Diósgyőr FC Kft

(Improper conduct of supporters / illicit banner)

<table>
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<th>Circumstances of the case</th>
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<td>Diósgyőr FC Kft supporters broke some parts of the fences and toilets of the stadium. In addition, Diósgyőr FC Kft supporters displayed a banner featuring the map of &quot;Greater Hungary&quot;.</td>
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<td>The CEDB fined Diósgyőr FC Kft € 20’000.-.</td>
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<td>AB:</td>
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<td>The appeal was rejected and the CEDB’s decision of 14 August 2014 was upheld.</td>
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Facts of the Case

Below is a summary of the most relevant facts as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body’s decision of 14 August 2014, the official reports, the parties’ written submissions, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

According to the UEFA delegate’s report, some Diósgyőri VTK supporters displayed a banner showing a map of Greater Hungary on the fence in front of their sector before the match, and visiting supporters also damaged parts of the fence and toilets in the stadium, as shown in the photographs attached to delegate’s report. A match report submitted by an observer from the non-governmental organisation FARE also states that Diósgyőri VTK supporters attached a banner showing a map of Greater Hungary and the image of a soldier to the fence before the match and displayed it again in their sector during the second half. This is shown in the photographs attached to FARE report.

On 14 August 2014 the UEFA Control, Ethics and Disciplinary Body fined the appellant, Diósgyőri VTK, €20,000 on the grounds that both the damage and the banner were contrary to the spirit and objectives of UEFA and in breach of Article 16(2)(e) and (f) of the UEFA Disciplinary Regulations.

Regarding the banner, the UEFA Control, Ethics and Disciplinary Body ruled that, by displaying the map of Greater Hungary, the supporters had transmitted a political message that was not fit for a sports event. Although the images on the banner were associated with far-right and Nazi groups in Hungary, in view of the circumstances of the case the Control, Ethics and Disciplinary Body did not impose disciplinary measures for racism or other discriminatory conduct, but for transmitting a political message not fit for a sports event, in application of Article 16(2)(e) of the Disciplinary Regulations. The Control, Ethics and Disciplinary Body considered the fact that this was a case of recidivism under Article 19 of the Disciplinary Regulations as an aggravating circumstance.

The Control, Ethics and Disciplinary Body’s decision with grounds was notified to the appellant on 9 October 2014.

Summary of the proceedings before the Appeals Body

On 13 October 2014, Diósgyőri VTK lodged an appeal against this decision before the deadline, and paid the €1,000 appeal fee.
The appellant’s statement of appeal can be summarised as follows:

In the grounds for its appeal, the appellant argued that the sanctions were disproportionately high. Diósgyőri VTK’s success on the pitch meant that its supporters had no reason whatsoever to damage the stadium, it said. Moreover, the club had voluntarily taken 20 stewards and a supporter liaison officer to the match.

The fence had been damaged when Diósgyőri VTK supporters had climbed on it during their goal celebrations. The club’s own stewards had immediately put a stop to this. In any case, the fence had been of poor quality. The fence had therefore not been damaged deliberately, nor due to negligence on the part of Diósgyőri VTK.

There was also no proof that Diósgyőri VTK supporters had damaged the toilets. The facilities had been in very poor condition from the outset. The visiting supporters had not even been able to access the toilets concerned. Furthermore, although one door had been taken off its hinges and one washbasin had been removed, neither had actually been damaged. It was therefore questionable whether this was a case of deliberate damage or, rather, a consequence of the poor state of the toilet facilities.

As regards the banner, the appellant argued that it had not displayed a political message, but that the map of Greater Hungary had been the symbol of a particular fan club for decades. It was not a far-right symbol, and nor was it on the list of prohibited symbols published by UEFA. The banner had been removed immediately at the UEFA delegate’s request. It had been put up before kick-off, before the club’s stewards and supporter liaison officer had arrived in the away sector. They had therefore been unable to prevent it from being displayed.

Finally, the appellant pointed out that, in another case, nobody had objected to maps of Greater Romania being displayed at a UEFA EURO 2016 qualifier between Romania and Hungary on 11 October 2014.

Despite claims to the contrary in its written submissions, the appellant included no additional evidence.

The appellant requested that the appeal proceedings be conducted in writing.

On 19 November 2014, the UEFA Ethics and Disciplinary Inspector submitted his reply to the appeal, requesting that it be rejected and the costs charged accordingly.

Hearing

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

In its letter dated 26 November 2014, UEFA’s disciplinary services unit informed the appellant about the composition of the panel that would deal with its appeal.

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

**Legal considerations of the Appeals Body**

**The legal framework**

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 or race, or any other reason.

Under Article 52 of the UEFA Statutes unsportsmanlike conduct, violations of the Laws of the Game and contravention of UEFA’s Statutes, regulations, decisions and directives are sanctioned by disciplinary means.

Under Article 8 of the Disciplinary Regulations, 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 also applies to 2014/15 UEFA Champions League matches, as expressly stated in paragraph 6.02 of the competition’s regulations.

According to Article 16(2) of the Disciplinary Regulation:
“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 attempt invasion of the field of play;

[...]

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;

[...]”

Under Article 38 of the Disciplinary Regulations: “Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.”

**The case at hand**

The appellant admits to the incident relating to the fence and the displaying of the banner but denies that the damage to the toilet was caused by its supporters.
It remains for the Appeals Body to examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of assessment of evidence, legality and proportionality, or whether it abused its discretionary power by setting the fine at €20,000 for improper conduct by the appellant club’s supporters under Article 16(2) of the Disciplinary Regulations.

The appellant admitted that fence had been damaged by its supporters but did not consider itself liable for the simple reason that the fence had been of poor quality and had not been damaged deliberately or due to negligence on the part of Diósgyőri LFK. These arguments must be rejected.

First of all, there is no evidence to support the claim that the fence was of poor quality. Moreover, even if the poor quality of the fence could be proven, this could only be taken into consideration if the fence had been damaged in the course of its intended use, i.e. if it were being used in the proper way. Supporters destroying part of a fence because their club scores a goal is similar to an act of hooliganism. For this reason, the damage caused by Diósgyőri LFK supporters constitutes improper conduct in the sense of Article 16(2)(f) of the Disciplinary Regulations. Consequently, this act must be punished, irrespective of whether the supporters had meant to damage the fence or not.

As regards the banner, the appellant argued that it had not displayed a political message, but that the map of Greater Hungary had been a symbol of a particular fan club for decades. It also claimed it was not a far-right symbol and not on the list of prohibited symbols published by UEFA. This argument must also be rejected.

The banner displayed showed the map of Greater Hungary or the Kingdom of Hungary. Composing parts of Eastern Slovakia, Southwest Ukraine, West Romania, Northern Serbia and Eastern Croatia, Greater Hungary was disbanded by the Treaty of Trianon, which redefined the borders of Hungary. Nowadays, revisionists in Hungary wish to restore a Greater Hungary.

It is obvious that a banner depicting Greater Hungary would be seen as a call to restore a Greater Hungary. It would therefore be legitimate to consider this an act of provocation towards Croatians, Romanians, Slovaks and Ukrainians. Thus, the banner showing a map of Greater Hungary at the match in question is considered a political banner which falls under Article 16(2)(e) of the Disciplinary Regulations.

The argument that that no sanction was imposed when maps of Greater Hungary were displayed at another match does not change the analysis of the present case, since the principle of equality in breach of the law is fundamentally inapplicable. Therefore, UEFA is not bound by this alleged precedent case. On the contrary, UEFA is bound by its own statutory objects, one of which is to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination as to politics, gender, religion or race, in accordance with Article 2(b) of the UEFA Statutes. Contrary to the appellant’s argument, Diósgyőri VFK is responsible for the incidents that occurred and must therefore be punished for violating the UEFA Statutes.
and Disciplinary Regulations in application of Articles 2 and 52 of the UEFA Statutes and Articles 4, 6 and 8 of the Disciplinary Regulations.

Regarding the charge of damage to stadium facilities, the Appeals Body considers it appropriate to deal first with the observations made by the appellant in its submissions regarding evidence in the disciplinary procedure.

According to Article 51 of the Disciplinary Regulations, as a rule the Control, Ethics and Disciplinary Body clarifies the facts of the case in a summary manner, on the basis of the official reports. It can summon further evidence, provided that doing so will not delay the proceedings unduly (para. 1).

In the present case, the main evidence takes the form of the official match report. According to the Article 38 of the Disciplinary Regulations, the facts contained in match officials’ reports are presumed to be accurate. This presumption can be rebutted, but the appellant only contested the fact, without providing any substantial evidence to counter the delegate’s report, according to which supporters of Diósgyőri VFK damaged a stadium toilet and door at the above-mentioned match.

In view of the above, the Appeals Body is of the same opinion as the Control, Ethics and Disciplinary Body that the alleged damage has been sufficiently established. Diósgyőri VFK must be held responsible for the damage caused to the stadium facilities and be sanctioned accordingly.

**Disciplinary measures**

Pursuant to Article 17(1) of the Disciplinary Regulations, the disciplinary body determines the type and extent of the disciplinary sanction according to the objective and subjective elements of the case, taking account of both aggravating and mitigating circumstances.

According to Article 19(2) of the Disciplinary Regulations, recidivism is to be considered an aggravating circumstance. Recidivism occurs if a disciplinary measure has already been imposed for an offence of a similar nature in the previous five years (Article 19(1)(d) of the Disciplinary Regulations).

Article 53 of the UEFA Statutes and Article 6(1) of the Disciplinary Regulations contain a list of possible disciplinary measures, including a fine (c), the playing of matches behind closed doors (h), a stadium closure (i), the playing of matches in a neutral country (j), and disqualification from competitions in progress and/or exclusion from future competitions (n). Article 6(3) fixes minimum and maximum fines that can be imposed. These general provisions give the disciplinary body broad powers of discretion when it comes to determining the disciplinary measures to impose.

The appellant argues that the fact that the map of Greater Hungary displayed in the course of the above-mentioned match did not include any of the prohibited symbols listed in the manual issued by UEFA, so the Control, Ethics and Disciplinary Body could not punish it.
This argument is completely wrong and cannot help the appellant. The list the appellant refers to is the list drafted by FARE, a UEFA partner campaigning against racism and discrimination in football. As the map of Greater Hungary is not in itself discriminatory, it cannot be included in this list. Second, the fact that a symbol is not listed in this document is not a decisive factor in determining whether it should be considered unfit for a sports event or not. The appellant’s argument in this respect must be rejected.

The appellant also invited the panel to take into consideration the fact that the banner was removed. However, it is not necessary for a banner to be displayed for a whole match before a sanction can be imposed. The mere fact that this banner was displayed is sufficient for the supporters’ conduct to fall under Article 16(2)(e) of the Disciplinary Regulations.

It is important to stress that the fact that the appellant was the visiting club does not constitute an exonerator factor of strict liability.

Considering the improper conduct by supporters of Diósgyőri VTK, who caused damage to the stadium facilities, and the club’s poor record in terms of its supporters’ misconduct in general (it has been punished more than three times for offences related to supporter misconduct over a period of five years), this clearly constitutes case of recidivism (Article 19 of the Disciplinary Regulations), which is an aggravating factor to be considered by the Appeal Body.

In view of the above, the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion. Its decision complies with the principles of legality and proportionality. Consequently, the Appeals Body deems that the €20,000 fine imposed on Diósgyőri VTK is entirely justified. Accordingly, the sanction must be upheld and the appeal rejected.

Costs

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 fact that the proceedings were conducted in writing minimised the costs. Therefore, the costs of the proceedings (€2,000 minus the appeal fee) will be charged to Diósgyőr FC Kft, with the Hungarian Football Federation jointly and severally liable for any failure to pay these costs, as well as the fine.
Decision of 18 August 2014
Football Club Zenit / Axel Witsel
(Assault)

Circumstances of the case
During the match, Football Club Zenit player Axel Witsel struck with his hand against his opponent

Legal framework
Art. 15(1)(a)(2) DR

Decision
CEDB:
The CEDB suspended the player Axel Witsel for the next two (2) UEFA competition matches.
AB:
The appeal of the player and club was rejected and the CEDB’s decision of 7 August 2015 was upheld.
Whereas:

In fact:

In his decision of 7 August 2014, the chairman of the UEFA Control, Ethics and Disciplinary Body suspended the FC Zenit player Axel Witsel from two UEFA competition matches for rough play during the first leg of the 2014/15 UEFA Champions League third qualifying round match between AEL Limassol FC and FC Zenit on 30 July 2014 in Larnaca.

The chairman of the Control, Ethics and Disciplinary Body found that the player’s previous one-match suspension, received in November 2013, constituted an aggravating factor that justified an increase in the standard sanction foreseen in Article 15(1)(a)(2) DR from a one to a two-match suspension.

The player Witsel did not participate in the second leg of the 2014/15 UEFA Champions League third qualifying round match against AEL Limassol FC played on 6 August 2014 as a consequence of the automatic suspension resulting from his dismissal during the first leg.

The parties were notified of the grounds for the decision of the Control, Ethics and Disciplinary Body on 13 August 2014.

On 15 August 2014 the appellants submitted the grounds for their appeal and a request for a stay of execution. The appellants’ grounds for appeal can be summarised, in substance, as follows.

The appellants do not dispute the legal qualification of the player’s action as a rough play. Neither do they dispute the fact that recidivism constitutes an aggravating factor. They dispute the decision to impose a two-match suspension. Indeed, the appellants argue that the chairman of the Control, Ethics and Disciplinary Body took into account only the aggravating factor (previous infringement) and failed to consider the mitigating circumstances, namely the provocation by the player’s opponent. The club claims that the player Witsel was provoked by his opponent, who twice struck Witsel’s leg from behind. In the appellants’ opinion, when the conduct of the player’s opponent is taken into consideration, the two-match sanction must be reduced. The appellants requested that no hearing be held for this case.

On 18 August 2014, UEFA submitted its response to the appeal via its Ethics and Disciplinary Inspector, requesting that the appeal be rejected and the costs charged accordingly.

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 Ethics and Disciplinary Inspector’s reply to the appeal, the 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:**

The Appeals Body’s jurisdiction in this matter is established by Articles 24(4) et seq. of the UEFA Disciplinary Regulations (DR). It is competent to examine the case in full, both factually and legally (Article 62(1) DR).

Under Article 24(3) DR, 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 cases where the sanction imposed by the Control, Ethics and Disciplinary Body is limited to a fine of up to €35,000 or a suspension from playing or carrying out a function of up to three matches.

In the case at hand, the player was suspended for two matches. This combined with the clear factual and legal circumstances of the case, and the urgency caused by FC Zenit’s next match being scheduled for Tuesday 20 August 2014, mean that it is appropriate for the appeal to be dealt with by a single judge. Therefore, it is up to the chairman of the Appeals Body to examine the merits of the case as a judge sitting alone.

The appeal meets the formal requirements and deadline laid down by Article 53 et seq. DR.

Under Article 52 of the UEFA Statutes, unsporting conduct, breaches of the Laws of the Game and infringements of the UEFA Statutes, regulations, decisions and directives are punished by disciplinary means.

According to Article 17 DR, action taken by the referee (in this case sending the player off) does not prevent the Control, Ethics and Disciplinary Body from imposing additional sanctions if these are warranted by the circumstances.

According to Article 19(1)(a) DR, “recidivism occurs if another offence of a similar nature is committed within one year of the previous offence if that offence was punished with a one-match suspension”. According to paragraph 2 of this article, “recidivism counts as an aggravating circumstance”.

In the present case, the facts are not disputed. The club and the player admit that the offence constituted rough play under Article 15(1)(a)(2) DR. The appellants essentially dispute the punishment imposed on the player Witsel, i.e. the additional one-match suspension. Therefore, the only question is whether the Control, Ethics and Disciplinary Body abused its discretionary powers in imposing this additional one-match suspension on top of the automatic one-match suspension resulting from the player’s dismissal by the referee.

It should be noted that Article 15(1)(a)(2) DR provides for a one-match suspension in cases of rough play. As specified in Article 17(4) DR, the disciplinary measures listed in Article 15 DR are standard sanctions that “can be reduced or increased by the competent disciplinary body on the
basis of the circumstances of the specific case”. It suffices to determine the circumstances of this specific case.

The chairman of the Control, Ethics and Disciplinary Body held that the player’s action constituted rough play and that it was justified in increasing the standard sanction of a one-match suspension as this was a repeat offence in the sense of Article 19(1)(a) DR. The player Witsel’s previous one-match suspension was incurred in November 2013. Rightly, the chairman of the Control, Ethics and Disciplinary Body took account of this previous offence, which is not disputed by the appellants, and increased the standard one-match suspension accordingly.

The appellants dispute the fact that the chairman of the Control, Ethics and Disciplinary Body did not take into account the provocation to which the player Witsel was subjected as a mitigating factor that would prevent it from imposing the additional one-match suspension.

The video footage clearly shows the context of the incident. Indeed, the Zenit player’s opponent was marking him quite aggressively. In a spontaneous move, Witsel used his arms to free himself from his opponent, whom he struck in the process. The chairman of the Control, Ethics and Disciplinary Body rightly qualified the player Witsel’s action as rough play.

The question of whether the Limassol player’s action could be qualified as provocative, as the appellants claim, must be left open, even though it undoubtedly caused the player Witsel to react as he did. Even if the behaviour of the opponent was reprehensible, as the appellants claim, this does not give the player Witsel the right to take justice into his own hands.

Moreover, regarding claims of provocation, the Court of Arbitration for Sport has specified the following: “The panel is keen to stress, in this regard, that the fact that a player has objectively been fouled cannot and should not, in itself, constitute mitigating circumstances. When a player is fouled, that player is obliged to exercise restraint and allow the referee – and only the referee – to punish that behaviour. The principle of ‘an eye for an eye’ has no place in stadiums – even indirectly in the form of excessive recognition of mitigating circumstances.” (TAS 2004/A/553 Cissé and the FFF v UEFA, page 13, paragraph 63)

Thus, the provocation cannot be considered as a mitigating factor in this particular case and the appellants argument in this respect must be ruled out.

On the basis of the above, the chairman of the Control, Ethics and Disciplinary Body decided that the nature of the offence and the fact that it was a repeat offence justified an increase in the standard one-match suspension. A two-match suspension appears to have been the appropriate punishment. Therefore, the appeal lodged by the club and the player is rejected and the decision of the chairman of the Control, Ethics and Disciplinary Body confirmed.

As the player already missed the return leg of the match in which he received the dismissal, the remaining one-match suspension shall be served during the 2014/15 UEFA Champions League first leg play-off match against R. Standard de Liège on 20 August 2014.
Costs

The costs of these proceedings, which include all the 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) DR).

In the present case, the costs of the proceedings (€2,000 in total) are charged to appellants minus the appeal fee, with the Football Federation of Russia jointly liable for any failure to pay.
Decision of 27 October 2014

Feyenoord

(Racist behavior / Crowd disturbance / setting off/throwing of fireworks and missiles / insufficient organization)

Circumstances of the case
During the above mentioned match, a large group of Feyenoord supporters chanted religious abusive chants towards Besiktas supporters. Feyenoord supporters chanted “Allah je moeder is een hoer”.

Furthermore, several fireworks were ignited by the Feyenoord supporters.

Shortly before half time, fans of Besiktas and Feyenoord started to provoke each other. Missiles (cups, lighters, coins) were thrown from both fan groups. Stewards alone were not able to get the situation under control. A high number of Bengals were passed from hand to hand and “wandered” through the stands.

This disturbance lasted for 17 minutes before the riot police was deployed in the area forming a barrier between the fans, the police succeeded in moving both sets of fans further away from each other and they also removed the fans which were congregated in the corner. There were at least 8 fans arrested during the game.

Finally, fans blocked exit and entry points with the exception of two sectors. Feyenoord supporters stood throughout the game. Stewards were slow to react to some incidents and lacked guidance.

Legal framework
Art. 14(2) DR, Art. 16 DR

Decision
CEDB:
The CEDB ordered the partial closure of the stadium during the next (1) UEFA competition match in which the club would play as the host team, and, in particular, the sector E of the stadium.
AB:
The appeal is rejected. The CEDB’s decision of 14 August 2014 was upheld.
Case Law. CEDB & Appeals Body. 2014/2015 (July – December)

Chairman: Pedro Tomás, Spain

Members: Björn Ahlberg, Sweden
Antonio Mortagua, Portugal

Fact of the Case

Below is a summary of the main relevant facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body’s decision of 14 August 2014, the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

In its decision of 14 August 2014, the UEFA Control, Ethics and Disciplinary Body decided Feyenoord Rotterdam N.V (hereinafter: “Feyenoord”) to order the partial closure Feijenoord Stadion, during the next (1) UEFA competition match in which Feyenoord would play as the host club, and a fine €45,000 for the following misconduct by its supporters at its UEFA Champions League match against Beşiktaş JK on 30 July 2014:
- Discriminatory conduct under the terms of Article 14(2) of the UEFA Disciplinary Regulations for chanting “Allah je moeder is een hoer” (English translation: “Allah, your mother is a whore”);
- Improper conduct of supporters, crowd disturbance, lighting of fireworks, lack of organisation (blocked stairs) and repeated use of laser pens, in contravention of Article 16 of the UEFA Disciplinary Regulations.

Football Against Racism in Europe (FARE) reported the above-mentioned discriminatory incident to UEFA. 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 the activities of FARE and of the fact that it monitors UEFA matches, using neutral observers, who obviously cannot have any interest in either of the clubs playing the match they have to observe. FARE has been a UEFA partner for about 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. Exceptionally, FARE also reports to UEFA information collected through its hotline.

The decision with grounds was notified to the appellant on 27 August 2014.
Summary of The Proceedings Before The Appeals Body

On 29 August 2014, Feyenoord announced its intention to appeal against the Control, Ethics and Disciplinary Body's decision of 14 August 2014.

On 8 September 2014, Feyenoord submitted the grounds for appeal and stressed that it was only appealing against the part of the decision concerning its supporters’ alleged racist behaviour.

The appellant’s submissions can be summarised as follows:

Feyenoord did not hear the abusive chants during the match, and nor did the UEFA delegate, as he confirmed on page 4 of his report. Feyenoord only became aware of these chants when footage of them was posted on the internet. Since the evidence was not provided by a representative of either UEFA or Feyenoord, Feyenoord is unable to check the integrity, impartiality and trustworthiness of the person who filmed the incident and therefore considers it inadmissible.

FARE found the footage on the internet and submitted a report on it, on which UEFA simply put its stamp. The UEFA delegate reported, for his part, that the behaviour of the Feyenoord supporters was generally good, except for the fireworks and crowd disturbance, and that he did not hear the chants in question. Referring to Article 38 of the Disciplinary Regulations, Feyenoord assumes that the delegate’s report should prevail over unauthorised footage posted on the internet.

In the footage provided by FARE through a website link, it is very difficult to identify any abusive chants. Although some fans can be heard shouting and singing in the background, racist chants cannot be heard. It is also impossible to determine where the chants came from. The evidence submitted is insufficient to incriminate Feyenoord.

By ordering the closure of sector E, where the away supporters were located, the Control, Ethics and Disciplinary Body imposed a random sanction that shows, indirectly, that the evidence provided is insufficient.

The appellant concludes by asking the Appeals Body to set aside the part of the Control, Ethics and Disciplinary Body’s decision concerning discrimination.

The ethics and disciplinary inspector replied on 1 October 2014. He concluded that the appeal should be rejected, the Control, Ethics and Disciplinary Body’s decision of 14 August 2014 confirmed and the costs of the proceedings charged to the appellant.

Hearing

No hearing was held, as the appellant did not request it; therefore, the proceedings will be conducted in writing only.
When examining the case file at its session on 10 October 2014, the Appeals Body noted that, in his reply to the appeal, the ethics and disciplinary inspector had added new video footage of the incident, concerning which the appellant, most likely, did not note. In order to guarantee all the procedural rights of Feyenoord, the Appeals Body decided to postpone the case until the appellant had commented on the video footage provided by the ethics and disciplinary inspector.

On 17 October 2014, the appellant submitted its comments on the video that had been included in the ethics and disciplinary inspector’s reply to the appeal. The appellant, in substance, repeats its previous comments, i.e. that it does not know who filmed the footage and is unable to check the person’s integrity, impartiality and trustworthiness. The club also argues that, even if the Appeals Body admits the second video, it must value the UEFA delegate’s report, which states that no racist behaviour took place at the match, and the UEFA security officer’s report more highly than footage from an unknown source. To sum up, the appellant considers it unlawful to take this video footage into consideration. Therefore, it requests that, as far as the sanction for racism is concerned, the Control, Ethics and Disciplinary Body's decision of 14 August 2014 be dismissed.

Appeals Body Competence and Admissibility of the Appeal

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

The appeal therefore has the effect of transferring jurisdiction to a higher court, which reviews all the factual and legal elements on which the first-instance decision was based. The higher court may therefore reconsider and examine the case on the merits for a second time and issue a new decision. In accordance with legal doctrine and case law (G. PIQUEREZ, Traité de procédure pénale suisse, 2nd ed., 2006 p. 754/755 and quoted case law), the transfer of jurisdiction may be limited by the appellant, who may, if he wishes, only dispute certain parts of the judgment.

In the present case, the appellant only wishes to appeal against the part of the sanction concerning its supporters’ discriminatory conduct. Consequently, the Appeals Body will only deal with this part of the decision.

Legal Considerations Of The Appeals Body

The legal framework
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.

Under Article 52 of the UEFA Statutes, unsporting conduct, breaches of the Laws of the Game and infringements of the statutes, regulations, decisions and directives of UEFA warrant disciplinary measures.

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.

Article 14(2) of the Disciplinary Regulations 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, whereby member associations and clubs are responsible for the conduct of their supporters, irrespective of their own fault.

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.

According to Article 37 of the Disciplinary Regulations: “1. Any type of evidence may be used during disciplinary investigations and proceedings, provided that human dignity is not violated. Valid forms of evidence in disciplinary investigations and proceedings include official reports and records, the examination of witnesses, the examination of parties and ethics and disciplinary inspectors, on-site inspections, expert opinions, television and video recordings, personal confessions, and other records and documents. 2 The disciplinary bodies can request further evidence at any time.”

In the case at hand

The appellant’s main claim concerns the legal nature and the quality of the evidence provided. Consequently, the only question the Appeals Body must address is whether, in this case, the Control, Ethics and Disciplinary Body properly assessed the evidence before finding Feyenoord supporters guilty of discriminatory behaviour or whether, on the contrary, the evidence is insufficient to punish the appellant for such an offence.

The appellant criticises FARE and the way in which it provided UEFA with the video footage of the incident.

However, according to Article 48 of the Disciplinary Regulations, disciplinary proceedings can be opened on the basis of official reports, if a protest has been lodged, for reported violations of UEFA’s statutes, regulations and decisions or at the request of the UEFA president or general secretary.
In this case, the FARE report is obviously to be considered a report of a violation of UEFA regulations in the sense of Article 48 of the Disciplinary Regulations, as the offence reported falls within the scope of Article 14 of the UEFA Disciplinary Regulations. Therefore, the Control, Ethics and Disciplinary Body was right to consider the FARE report.

In its first argument, the appellant accuses the first-instance body of violating Article 38 of the Disciplinary Regulations by basing its decision on footage provided by an unknown person, even though neither the UEFA delegate nor the security officer present at the stadium noticed this alleged discriminatory behaviour. It adds that, on page 4 of his report, the delegate indicated that there was no racist behaviour.

Under Article 51 of the Disciplinary Regulations, the Control, Ethics and Disciplinary Body, as a rule, clarifies the facts of the case in a summary manner on the basis of the official reports. It can summon further evidence, provided that doing so will not delay the proceedings unduly (para. 1). Exceptionally, the Control, Ethics and Disciplinary Body can hear the accused (para. 2).

However, this does not mean that the Control, Ethics and Disciplinary Body has to rely solely on the referee’s or delegate’s report and, as the appellant seems to think, refrain from taking any action if the referee fails to mention in his post-match report a contentious situation or an incident that he missed but that subsequently comes to light. The competent body is responsible for establishing the facts as thoroughly as possible. If it could only take the referee’s report into account, it would not be able to punish offences that the referee, for example, had omitted from his report or not observed himself.

However, the regulations state otherwise, since under the terms of Article 9(4) of the Disciplinary Regulations, disciplinary action may be taken even if the referee did not see a player’s unsporting conduct and therefore did not deal with it either during the match or in his post-match report.

Therefore, contrary to the appellant’s claim, the disciplinary bodies not only can but must take into account evidence other than the referee’s report when an offence is reported. They can use video recordings, examine witnesses, etc. if this helps to establish the facts, especially in serious cases like the case at hand.

Article 37(1) of the Disciplinary Regulations states that: “Any type of evidence may be used during disciplinary investigations and proceedings (...).” This provision, as well as Article 51(1) of the Disciplinary Regulations, establishes the principle of freedom of evidence, which means that cases may be judged on the basis of more than just the official reports. The disciplinary bodies are obliged to take all necessary and useful steps to gather evidence in order to establish the facts and justify their decision.

The only limit on the principle of the freedom of evidence is when the evidence violates human dignity or clearly does not help to establish relevant facts. In this case, the appellant rightly
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does not claim that the video footage in question violates human dignity or does not help to establish the reported facts.

In view of the above, the Appeals Body is of the opinion that both video clips should be taken into account and included in the case file, especially since the video footage submitted by the ethics and disciplinary inspector was provided within the deadline fixed in Article 53(3) of the Disciplinary Regulations. Having considered the concrete circumstances of the case, the Appeals Body accepts the probative value of the video provided by the ethics and disciplinary inspector.

Upon examination of the video footage of the incident provided by the ethics and disciplinary inspector, which was even clearer than the video previously submitted, the Appeals Body undoubtedly heard the home supporters chant “Allah je moeder is een hoer” (English translation: “Allah, your mother is a whore”). It is thus established, at the comfortable satisfaction of this disciplinary body, that Feyenoord supporters performed this chant and the Appeals Body considers that, by doing so, they discriminated against Muslims, who believe in Allah. This clearly falls under Article 14(1) of the Disciplinary Regulations. Bearing in mind the evidences of this case, the fact that the match officials did not notice the discriminatory behaviour is irrelevant.

Determination of the disciplinary measure

Articles 14 and 17 of the Disciplinary Regulations govern the system of sanctions to be imposed for discriminatory conduct.

Article 14(2) provides for a very specific type of sanction: “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.”

Article 17(3) states that: “The disciplinary measures enumerated in Article 14 of these regulations are standard measures and can be reduced or increased by the competent disciplinary body only under exceptional circumstances.”

This provision requires the competent body to assess whether there are mitigating factors that justify a departure from the standard disciplinary measure laid down in Article 14.

The appellant fails to provide any evidence of exceptional circumstances. This is understandable, since its line of defence is to deny the evidence provided. It cannot deny the facts on the one hand and claim exceptional circumstances on the other. Since the Appeals Body therefore does not find any exceptional circumstances in the case at hand, Article 17(3) of the Disciplinary Regulations does not apply.

The appellant, however, argues that the part of the stadium that the Control, Ethics and Disciplinary Body decided to close as a sanction for this discriminatory misbehaviour, i.e. sector E, was not the correct one, since the Turkish supporters were located in this sector during the match in question. This is surprising, since the disciplinary bodies in principle close the part of
the stadium where the incidents took place, but it does not constitute, in itself, a reason to admit the appeal. The competent body is free to decide which sector of the stadium should be closed once the racist conduct is established and the Appeals Body has no reason to question this choice.

In this case, the Appeals Body believes that, by ordering a partial stadium closure, the Control, Ethics and Disciplinary Body correctly interpreted the applicable regulations and case law. Its analysis is beyond criticism of any kind and must be upheld.

**Costs**

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) will be borne in full by the appellant, Feyenoord. The Royal Netherlands Football Association is jointly liable for any failure to pay these costs and the original fine.
Decision of 10 October 2015

KKS Lech Poznan
(Field invasion)

Circumstances of the case
When a ball boy unlocked the gate to collect the ball, one person who was outside took this opportunity and entered the field of play during 30 seconds. The intruder was wearing the Polish flag on his shoulders, and after research, it appears that he lives in Iceland but is a supporter of Lech Poznań team.

Legal framework
Art. 16(2) DR

Decision
CEDB:
The CEDB fined KKS Lech Poznan € 8’000.-.
AB:
The appeal was rejected and the CEDB’s decision of 14 August 2014 was upheld.
Facts of the Case

The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 14 August 2014 (the “Decision”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

According to the UEFA delegate’s report, in the 92nd minute of the 2014/15 UEFA Europa League qualifying match Stjarnan vs KKS Lech Poznań played on 31.07.2014, when a ball boy unlocked the gate to collect the ball, one person who was outside took this opportunity and entered the field of play during 30 seconds. The intruder was wearing the Polish flag on his shoulders, and after research, it appears that he lives in Iceland but is a supporter of Lech Poznań team.

By decision of 14 August 2014, the UEFA Control, Ethics and Disciplinary Body (hereinafter: CEDB) fined KKS Lech Poznań €8,000, holding it responsible for the above mentioned misconduct of its supporter during the above-mentioned match and admitting a violation of Art 16(2) of the UEFA Disciplinary Regulations (hereinafter DR).

Summary of The Proceedings Before The Appeals Body.

The decision with grounds was notified to the Appellant on 12 September 2014.

On 15 September 2014, Lech Poznań informed UEFA of its intention to appeal the CEDB’s decision and on 20 September 2014, it submitted its appeal pleadings, which can be summarised in substance as follows:

The appellant points out that both clubs met before the match to discuss about the tickets allocation and Poznan ordered 30 tickets and there were a total of 17 authorised supporters of Poznan.

Stjarnan decided to sell the rest in open sale for this reason to a group of 160 Polish living in Gardabaer and not authorised by the club. Lech Poznań informed the host club about it. Despite this, the UEFA delegate reported that the behaviour of both authorised group of Lech Poznań supporters and non-authorised group of polish fans was excellent.

The appellant quoted the CAS award 2007/A/1217 and concluded that the intruder in question cannot be considered as a KKS Lech Poznań supporter and the club cannot be held responsible.
for his conduct for the following reasons: the intruder ID was not checked (neither by the host club nor by the police) and his nationality was not established; he was neither among the 17 authorised supporters nor among the other 160 supporters living in Gardabaer. As he was outside of the stadium and did not buy a ticket, he should not be treated as a spectator.

The person in question was not wearing a Polish flag but an advertising flag of a Polish beer producer, which is also popular in Iceland. This is no reliable assumption to make this person a supporter of Lech Poznań.

The responsibility of the incident rests with the host club, that acted negligently in the organisation the match. The appellant underlined the shortcoming on the part of the host club as it left the gate opened through which the intruder entered.

The incident did not create any danger to anyone.

On 1 October 2014, the UEFA Ethics and Disciplinary Inspector submitted its response to the appeal, requesting that the appeal be rejected and the procedural costs charged accordingly.

**Hearing**

No hearing was held as the appellant requested the proceedings conduct in writing only.

**Appeals Body Competence and Admissibility of the Appeal**

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

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

KKS Lech Poznań 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.

It follows that appeal is therefore admissible under the terms of Article 53 of the Disciplinary Regulations.

**Legal Consideration of The Appeals Body**

**Legal framework**

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.

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.
In this respect it is important to recall that safety and order in the stadium has always been a prime concern of UEFA. This is reflected in different UEFA regulations, notably the aforementioned and the UEFA Safety and Security Regulations. Without security in the stadium, there will be no spectators, and no spectators means no football. In this regard and according to Article 16 (2) (a) DR the invasion of the field of play is considered as a disciplinary offence.

It is also important to recall that the report of a UEFA official, such as the referee or match delegate, is considered as being truthful and reliable, unless it is proved otherwise, clearly and beyond doubt (Art. 38 DR).

In the Case in hand

It is not disputed, that one person entered the field of play, which caused the referee to stop the match. The appellant only contests that the perpetrator of this act would be a supporter of KKS Lech Poznań and that it would not be answerable for his misbehaviour under Art. 16 (2) DR.

As regard the qualification of the person who entered the field of play from outside of the stadium, the Appeals Body holds that the CEDB correctly interpreted the notion of supporters as indicated in UEFA jurisprudence, which was confirmed by the Court of Arbitration for Sport.

Indeed, the notion of supporters mentioned particularly in Art. 8(1) and 16 DR is not specifically defined in the UEFA regulations. In particular, it makes no reference to the nationality, race, religion or place of residence of the person who "supports" a team. Neither is this notion connected to the contract that is entered into – or not - with the federation or club. Finally, the UEFA regulations make no distinction between "official" supporters, who are recognised by the association or club and obtain their tickets through the latter and "non-official" supporters, who obtain their tickets via other channels, such as the Internet or at the stadium on the day of the match. This notion of supporters was confirmed by CAS Awards

It emerges from the above that it is irrelevant, whether the person who entered the field of play on this match held a ticket or not, whether he came from the outside of the stadium or not or is living in Iceland or not. It is also irrelevant, whether the host club sold openly tickets. Moreover, the fact that the intruder would not belong to the 17 "authorised 'clubs' supporters or to the 160 Polish supporters living in Iceland who have bought their tickets through the host club is irrelevant as well.

The relevant elements evidenced in the official report are, that the intruder behaved as a polish supporter by wearing a Polish flag on his shoulder and that an investigation has confirmed that he was a Poznan supporter. Nothing in the appellant arguments casts any doubt over the official reports in this respect. Indeed, even if the flag this unauthorised supporter was wearing was not the official Polish flag, as the appellant pretends without evidencing it, the flag in question was a reference to Poland and so a clear signal of the team this person meant to support.
In light of the above, in conformity with the established precedents of UEFA, as the appellant did not provide a substantial evidence to counter the content of the delegate report (Art. 38 DR) or provided other convincing explanation, the Appeals Body is satisfied that the spectator who entered the field of play in violation of Art. 16(2)(a) DR during the match in question and who caused the disputed incident must be considered as supporters of the KKS Lech Poznań. The appellant was therefore rightly held responsible for this misbehaviour by one of its supporters under the terms of Art. 16 (2) DR.

Pitch intrusion 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 players, officials in the grounds as nobody knows in advance the intention of the intruder. For this reason, pitch intrusion is strictly forbidden. In other words, it is a “formal offence” and no proof of consequence (e.g. people being injured or the game being disrupted) is required for disciplinary action to be taken. This offence is committed by the mere fact that an unauthorised person enters the field of play, irrespective of the concrete consequences.

The appellant cannot deny its responsibility on the pretext that the host club was jointly responsible due to a lack of organisation. Indeed, the possible lack of organisation from part of the host club does not change the legal situation regarding the objective responsibility based on Article 8 and 16 (2) DR and can in no case exonerate the visiting club’s responsibility for the improper conduct of its supporter.

Possible shortcomings in the organisation of the match could, at the most, be considered as mitigating circumstances in deciding on the level of sanction to pronounce against the visiting club. The CEDB has already considered this element when reaching its decision. It can be underlined that the host club has been sanctioned on its side for lack of safety and security by the CEDB during this match.

Determination of the disciplinary measure

Regarding the sanction imposed in the appealed decision, the Appeals Body has to see whether the Control, Ethics and Disciplinary Body abused its power of discretion by imposing a fine of €8,000 on the club.

Pursuant to Article 17(1) DR, the disciplinary body determines the type and extent of the disciplinary sanction according to the objective and subjective elements, under consideration of incriminating and exonerating factors.

Article 53 of the UEFA Statutes, as well as Article 6 DR, contain a list of possible disciplinary measures, including a fine (c), the playing of matches behind closed doors (h), a stadium ban (i). the disciplinary body has a large power of discretion when it comes to the fixing of a penalty.

Nevertheless, it must take its decision also in compliance with the general principles of law (equal treatment, proportionality), the disciplinary sanction must be fixed in accordance with the circumstances, in conformity with the gravity of disciplinary offences, their consequences
and the individual situation of the party concerned. In addition, the sanction must also be directed at a preventive and educational objective.

Pitch invasion constitutes a violation of the UEFA regulations. The appellants conduct gives the impression that the club has opted to shift responsibility to the host club before the match by asking only 17 tickets to be later used as evidence in their favour.

Considering the seriousness of the pitch intrusion committed by this supporter, which forced the referee to interrupt the game and considering also the club’s past record (FK Lech Poznań was responsible for more than ten disciplinary offences related to fans’ misconduct over a period of five years), the decision to fine Lech Poznań €8,000 appears proportionate and not arbitrary to the Appeals Body, which considers the general sanction almost too lenient.

In the light of the above considerations, the Appeals Body concluded that the challenged disciplinary decision was legally justified and that the CEDB had not abused its power of discretion in fining it €8,000. Consequently, the appeal of KKS Lech Poznań is rejected and the challenged decision upheld.

**Costs**

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).

After taking into consideration all the relevant circumstances of the case and using its discretionary power in this respect, the Appeals Body, despite the outcome of the case, refrains from charging the costs of the appeals proceedings to the appellant.
Decision of 10 October 2014

Saint Johnstone FC
(Illcit banner / insufficient organization)

Circumstances of the case
The supporters of Saint Johnstone FC waved a Palestinian flag.
The stairways and gates were blocked in Sector F.
No body-checks were performed before or after entering the turnstiles though police was
monitoring each entrance/turnstile.
On several occasions, photographers left their positions behind a goal during the match and
went to the tunnel.

Legal framework
Art. 16(2)(e) DR, Art. 16(1) DR, Art. 6 of Annex III and Annex IV UEL Regulations

Decision
CEDB:
The CEDB fine Saint Johnstone € 18'000.- and warned also warned the club for the media
incident.
AB:
The appeal was rejected and the CEDB’s decision of 14 August was upheld.
Facts of the Case

The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 14 August 2014 (the “Decision”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

According to the UEFA match officials, the following incidents occurred during the 2014/2015 UEFA Europa League match Saint Johnstone FC vs. FC Spartak Trnava played on 31.07.2014:

- The supporters of Saint Johnstone FC waved a Palestinian flag.
- The stairways and gates were blocked in Sector F.
- No body-checks were performed before or after entering the turnstiles though police was monitoring each entrance/turnstile.
- On several occasions, photographers left their positions behind a goal during the match and went to the tunnel.

In its decision of 14 August 2014, the UEFA Control, Ethics and Disciplinary Body (hereinafter: CEDB) fined Saint Johnstone FC €18,000 having held it responsible for the above-mentioned misconduct on the part of its supporters.

The decision with grounds has been notified to the appellant on 12 September 2014.

Summary of The Proceedings Before The Appeals Body

On 22 September 2014, Saint Johnstone FC submitted its grounds for appeal, which can be summarised in substance as follows:

Concerning the illicit banner: They did not understand why these supporters displayed a Palestinian flag. They also assure that prior to the next UEFA matches at their stadium, they will issue a strongly worded statement to spectators requesting that they must refrain from any showing of banners, flags or utterance which could be considered political.

Concerning the Photographers moving around the pitch: The appellant explained that whilst this action would be acceptable in a domestic game, they appreciate that it is not acceptable in a UEFA match and prior to any future UEFA match at the stadium they shall re-enforce this message with a direct communication with all photographers.
Concerning the lack of searching: The club undertook to review its searching policy with the police of Scotland and stewards for the next UEFA fixture.

Concerning the block stairs: The shortcomings did not impact on the match itself and caused no injuries to any spectators as a result of the failure to keep the stairways clear. The appellant welcomes the Delegate’s report and as the club is still relatively inexperienced in UEFA matches, they will now make stringent efforts to ensure that there is no reoccurrence of these issues at any future UEFA match.

On 1 October 2014, the UEFA Ethics and Disciplinary Inspector submitted its response to the appeal, requesting that it be rejected and the costs charged accordingly.

**Hearing**

No hearing was held as the appellant requested the proceedings conduct in writing only.

**Appeals Body Competence and Admissibility of the Appeal**

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

**Legal Considerations Of The Appeals Body**

**The legal framework**

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.

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.

Article 16(2)(e) DR prohibits the use of gesture, words, objects or any other means to transmit any message that is not fit for a sports event, particular messages that are of a political, ideological, religious, offensive or provocative nature. UEFA matches, and the vast audiences they attract, should not be used as a platform for displaying personal opinions or pursuing agendas unrelated to football. UEFA is a neutral football institution whose one of the objectives is in particular to promote football in Europe in a spirit of peace, understanding and fair play.
This is why UEFA does not accept the symbols or messages in the stadium, which have nothing to do with football during the matches it organises.

Article 1(3) of the UEFA Safety and Security Regulations and Article 16(1) DR impose the organiser to take appropriate measures to ensure safety and security in and around the stadium during, before and after every UEFA competition match. Match organisers must carry out a range of duties to guarantee safety and security in the stadium, such as by conducting proper and adequate searches and assisting the visiting supporters and delegation, through efficient cooperation with the public authorities. This obligation is also confirmed by Article 33 of the same Regulations.

Article 33 of the UEFA Safety and Security Regulations requires the organiser to carry out screening and searching in order to prevent supporters to bring objects or substance into the stadium that are likely to be used in acts of violence.

Art. 38 of the UEFA Safety and Security Regulations also requires the organiser to take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstruction, which could impede the free flow of spectators.

Safety and order in the stadium has always been a prime concern of UEFA. This is reflected in different UEFA regulations, notably the afore-mentioned and the UEFA Safety and Security Regulations. Without security in the stadium, there will be no spectators, and no spectators mean no football.

In the Case in hand

The appellant did not dispute the grievances retained against it. The explanations it gives regarding the incidents and its promise to take measures for the next fixtures do not exclude the appellant’s responsibility. Indeed, as a host of the match here in question, St Johnstone FC had the duty to secure the stadium in accordance with Art. 16 (1) DR and Art. 33 and 38 of the UEFA Safety and Security Regulations and was responsible for the improper behaviour of its supporters, irrespective of its own fault (Art. 8 DR)

Misconduct of supporters (illicit banner) and shortcoming in the organisation (lack of searching)

It is uncontested, that supporters of St Johnstone displayed a Palestinian flag. Considering the political situation in the Middle East, it cannot be contested, that this gesture expresses a political opinion. The Palestinian flag also is a symbol, which had nothing to do with the fixture in question. For this reason, it contravenes the provision of Art. 16(2)(e)DR. Irrespective of the reason why this flag has been displayed, the club is responsible for this illicit behaviour from part of its supporters according to Art. 16 (2)(e) DR.

According to Art. 16 (1) DR, the existence of shortcomings in the organisation is presumed when incidents relating to security occur inside or around the stadium before, during and after an UEFA match it organises. This presumption can be rebutted - i.e. the club can deny its responsibility - only if it proves that it has not been negligent in any way as it has complied
with all its organisational duties and taken all measures that can reasonably be expected from an organiser. This was not the case here. As the club itself admitted, it is therefore to be considered evidenced, that the appellant did not provide effective and efficient controls to ensure that spectators did not bring illicit or dangerous objects, such as the banner here in question. This constitutes a violation of Article 33 of the UEFA Safety and Security Regulations. Aware of the situation, the appellant undertook to improve the situation with the cooperation of the public authority. UEFA can only encourage the appellant to do so, but the club must be held responsible for its shortcomings during this match and sanctioned accordingly.

Obstructed stairs and irregular moves of photographers

As quoted above, Article 38 of the UEFA Safety and Security Regulations states that “the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators.” Indeed, to keep public passageways free of obstruction constitutes one of the pillars of UEFA safety and security strategy. In allowing supporters to obstruct the passageways, which it did not deny, the host club violated the above regulation and must be penalised accordingly.

The same must be admitted for the irregular moves of the photographers. Under Article 6 Annex III UEFA Europa League Regulations imposes photographers to change position or to move only during the half–time or, if applicable, during the interval before the start of extra time. This is to prevent movements around the field of play when the game is playing which is likely to disturb officials, supporters or viewers who following the game. Indeed, this also meant to guarantee an appropriate control of all the people present around the ground for safety and security reasons.

In view of the above, the CEDB was right to consider that St Johnstone FC grossly violated several of its security-related duties and obligations. As the host club, it cannot be exonerated on the grounds that it has no big experience in UEFA matches, as the appellant suggests. The CEDB was therefore right to hold St Johnstone responsible for its safety and security shortcomings (Articles 33 and 38 of the UEFA Safety and Security Regulations and Article 6 Annex III UEFA Europa League Regulations) and the improper conduct by its supporters according to the principle of strict liability under Articles 8 and Art. 16(2)(e) DR.

Determination of the disciplinary measure

The only question remaining is whether or not the CEDB abused its discretionary powers by fining the Scottish club €18,000.

According to Article 17(1) DR, the competent disciplinary body decides on the type and extent of the disciplinary measures to be imposed based on the objective and subjective elements of the offence, taking into account any aggravating and/or mitigating circumstances. If the defendant has committed multiple disciplinary offences, measures are imposed for the most serious offence and increased accordingly (Article 18 DR).
The disciplinary measures which may be imposed on clubs are listed in Article 6(1) DR. Fines may be between €100 and €1,000,000 (Article 6(3) DR). The disciplinary bodies have complete discretionary authority in this area. They must nevertheless take account of the fact that a repeat offence is an aggravating circumstance (Article 19(2) DR). According to Article 19(1)(d) DR, a repeat offence has been committed if disciplinary measures have to be imposed within five years of a previous offence.

The disciplinary bodies must also respect the principles of ordinary law, which apply equally to sports disciplinary law. They must therefore take account of the particular circumstances of the case and the seriousness of the offence, and respect the principles of legality, equal treatment and proportionality. Finally, they must neither exceed nor abuse their discretionary powers.

Tolerating spectators obstructing passageways constitutes a serious, objective violation of security norms. It is not necessary to explain the dramatic consequences such laxity could have in case of trouble or an accident requiring a rapid evacuation of the stands. In addition, the supporters were not checked properly, which impeded from implementing a reliable safety and security concept that is expecting from an UEFA match organiser. The Appeals Body take due note that the appellant undertook to correct these safety and security shortcomings for the UEFA next fixtures.

It emerges from the above that the CEDB rightly considered the multiplicity and gravity of the offences committed and after having taken all the circumstances into account, including the fact that the illicit banner was quickly removed and the fact, that it is not the first time the club is sanctioned for organisational shortcomings. The Appeals Body considers the fine of €18,000 imposed on the appellant proportionate and the analysis of the first instance beyond criticism. The sanction shall therefore be upheld.

**Costs**

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 to the proceedings (€1,000 in total) will be borne in full by the appellant, St Johnstone FC. The Scottish Football Association is jointly liable for any failure to pay these costs and the original fine.
Decision of 2 October 2014

FC Krasnodar / Ramos Dos Santos Joao Natailton

(Assault / improper conduct after dismissal)

Circumstances of the case
During the above mentioned match, the FC Krasnodar player Ramos Dos Santos Joao Natailton was sent off for violent conduct. He hit the opponent with his head when the play was stopped. After being the FC Krasnodar player Ramos Dos Santos Joao Natailton and one Real Sociedad player sent off, when the game was still in progress, an incident between both players and the Spanish team’s doctor occurred inside the stadium facilities. Briefly, the player Ramos Dos Santos from Krasnodar tried to kick the player no.5 from Real Sociedad. In addition, there was physical contact with the doctor of the Spanish team. The incident was witnessed by the UEFA doping control officer.

Legal framework
Art. 15(1)(e) DR

Decision
CEDB:
The CEDB suspended the player for the next four (4) UEFA matches.
AB:
The appeal was rejected and the CEDB’s decision of 18 September 2014 was upheld.
Facts of the Case

The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 18 September 2014 (the “Decision”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

On 18 September 2014 the UEFA Control, Ethics and Disciplinary Body (hereinafter: CEDB), issued a decision suspending the FC Krasnodar player Ramos Dos Santos João Natailton (hereinafter: Natailton) for four UEFA club competition matches for an assault and violent conduct committed during the 2014/15 UEFA Europa League match FC Krasnodar v Real Sociedad played on 28 August 2014.

The decision with grounds was notified to the appellants on 24 September 2014.

Summary of The Proceedings Before The Appeals Body

On 29 September 2014, the FC Krasnodar and its player appealed against the decision of the CEDB and submitted their grounds of appeal.

They conclude, primarily to amend the decision of the CEDB and to replace the 4-match suspension by a fine, alternatively to have four-match suspension on probationary for a period of one year. In support of their appeal, they state in substance that:

The player had been provoked by the opponent, he hit, the player no 5 of Real Sociedad.

Regarding the incident that occurred out of the field of play, involving the same players near the dressing room, they explain it was an unfortunate incident following the intervention of the doctor of Real Sociedad, who abruptly came between them aiming to prevent a new conflict. Natailton did not try to hit the doctor and the simple contact between them was due to the fact, that he voluntarily approached him.

UEFA, through its disciplinary inspector, submitted its reply to the appeal on 1 October 2014. It called for the appeal to be rejected and for the costs of the proceedings to be charged to the appellant.

Hearing

No hearing was held as the appellant requested the proceedings conduct in writing only.
Case Law. CEDB & Appeals Body. 2014/2015 (July – December)

Appeal Body Competence and Admissibility

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

Under Article 24(3) DR, 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 or protest cases, case where the sanction imposed by the Control, Ethics and Disciplinary Body is fine of up to €35,000 or a suspension from playing or carrying out a function of up to three matches.

In the case at hand, the case is to be considered urgent as FC Krasnodar’s next match is scheduled for the Thursday 2 October 2014 so that the club and the player shall have a decision by then. It is therefore appropriate for the player and the club that this case is dealt with by a single judge. The ad hoc chairman of the Appeals Body is legitimate to examine the merits of the case as a judge sitting alone.

Legal Consideration of the Appeals Body

The legal framework

Under the terms of Article 52 of the UEFA Statutes, unsporting conduct, breaches of the Laws of the Game, as well as infringements of UEFA’s Statutes, regulations, decisions and directives, are penalized by means of disciplinary measures.

Under the terms of Article 15 (1)(e) of the DR, a player who assaults another player or another person present at the match should be suspended for 3 competition matches or for a definite period.

Notion of assault and the impact of provocation in the UEFA Disciplinary law

The term assault covers any act by which the physical wellbeing of an individual is deliberately attacked. This includes fights, head-butts, face slaps, kicks, stamping, spitting, jostling, pinching etc. As a rule physical contacts threatening the wellbeing of an opponent player are not considered assaults if they occur when trying to win the ball, as they are mostly not deliberate. An assault has nothing to do with the game.

This view of the UEFA Disciplinary Bodies has been confirmed several times by the CAS, notably in its award 2000/A/290, Abel Xavier & Everton FC v UEFA of 2 February 2001. In this award, the CAS confirmed that assault is taken to mean “any act that threatens the physical integrity of the [victim], whether intentionally or recklessly, regardless of whether or not the act actually injures the victim. This includes any physical contact in excess of that which is accepted in competition”.
Regarding the provocation, the CAS underlined that the fact of a player being objectively fouled cannot and should not in itself constitute mitigating circumstances. When a player is fouled, his duty is to control himself and allow the referee, and only the referee, to take action. There is no place for retaliation in stadiums, even indirectly through too broad an interpretation of mitigating circumstances (TAS 2004/A/553 Cissé & FFF v UEFA).

In the Case in hand

In the present case, the ad hoc chairman had no reason whatsoever to question the accuracy of the referee’s report. The facts as established by the CEDB were thus the basis for further examination of the case. Moreover, the facts related to the head but are not disputed. It is thus acknowledged that by deliberately head-butting an opponent the player Natailton behaved in a manner open to criticism and subject to punishment. It is beyond any doubt that the conduct of the player Natailton was an assault, as whoever head butts commits assault. In the other hand, the appellant contested the incident involving the doctor of Real Sociedad that occurred near the changing room.

The appellant’s attempt to present Natailton’s act as a reaction to a provocation does not change its legal qualification. Even if the behaviour of the opposing player with the task of marking him was reprehensible, this still did not give Natailton the liberty of taking justice into his own hands. He had to submit to the authority of the referee on the field of play and to respect it under all circumstances, as it was underlined above.

It is also established that the offending player attempted to kick the doctor of the Real Sociedad with the risk of injuring his opponent. In this respect, the appellant’s argument according to which it was only a simple contact and the player Natailton had no intention to hit both the doctor and the player of Real Sociedad does not change the fact that his behaviour towards the doctor of Real Sociedad was inappropriate.

Consequently, the CEDB was right to admit, that Natailton committed a second offence, assault attempt, which is to be punished less than an accomplishment act of assault.

Determination of the disciplinary measure

The facts and the legal qualification of the offences committed having been confirmed; the only question to be examined is whether the CEDB abused its power of discretion by pronouncing a 4-match suspension on the player Natailton.

Article 15 DR lists the types of misconduct by a player that can lead to suspension and how long the suspension can last in case of player misconduct. Art. 15(1)(e) DR provides for a three-match suspension in case of assault. This constitutes a standard sanction, which can be reduced or increased depending on possible aggravating or mitigating circumstances or in case of multiple offences (Article 17 DR).

In the concrete circumstances, the assault committed, namely head-butting, is a very serious one.
Given the arguments of the appellants, the panel deems it necessary to comment on the following alleged mitigating circumstance they put forward, namely provocation.

Indeed in the “Cissé award” rendered in 2004 quoted above, CAS denied that provocation could be considered a mitigating circumstance. CAS stressed that the application of “an eye for an eye” Lex Talionis is not acceptable in the field of football, even indirectly by admitting it as mitigating circumstance.

In line with the case law, the ad hoc chairman considers in the present case, that even if the behaviour of the opposing player with the task of marking Natailton was reprehensible, this does not mitigate the gravity of the reaction of the player, who could not take justice into his own hands. He had to submit to the sole authority of the referee on the field of play and to respect it under all circumstances. Therefore, the argument of provocation can be considered neither as a factor excluding its responsibility, nor as a mitigating circumstance justifying a reduction of the sanction.

Moreover, this assault was followed by another violent conduct committed, when the player has tried to kick the doctor of the club Real Sociedad. Such signs of violence in football are unacceptable. Even if the way the doctor intervened to avoid both players (Natailton and his opponent) to enter into a second clash may be questionable, this, again, did not give the player the right to behave in a violent manner and is in any case in violation of the fundamental principles of fair play and respect.

In view of the above, it appears not only, that no mitigating circumstance can be admitted in favour of the player, but that the gravity of his assault and the additional act of violence he committed during the same match are clear aggravating circumstances. For the ad hoc chairman, a 4-match suspension for a player who head buts an opponent and tries to kick an official of the opponent team is even a very lenient sanction. In the absence of a cross appeal of UEFA, the sanction pronounced in the first instance cannot be increased.

With regard to the appellants conclusion tending to convert the suspension into a fine, the ad hoc chairman can only state, that failing a legal basis such a conversion would violate the principle of legality. An assault must be sanctioned with a suspension. Moreover, the ad hoc chairman did not see any factor that could allow him to suspend the sanction according to Art. 20 DR.

In view of the above, the ad hoc chairman concludes that a 4-match suspension was an appropriate sanction, bearing in mind the particular circumstances of the case and the gravity of the offence. Therefore, the CEDB has neither abused nor exceeded its power of discretion. On the contrary, its decision respects the principles of legality and proportionality. The disciplinary sanction imposed also allows reaching its objectives that are to amend the player and to avoid cases of repetition. Consequently, the challenged decision must be confirmed.
Costs

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) will be charged to appellants (the Football Association of Russia is jointly liable for any failure to pay these costs).
Decision of 27 October 2014
PFC CSKA Moskva
(Key word offence)

Circumstances of the case
As the game started, the PFC CSKA Moskva supporters in Sector 50/51/52 rushed against the stewards making it to the glass panel. These supporters proceeded to throw coins at the AS Roma fans. At half time, the PFC CSKA Moskva supporters posed for photographs giving the Nazi Salute. The PFC CSKA Moskva supporters ignited 14 Bengal Lights and held them over their heads in what was a choreographic movement. Two Bengal Lights were thrown to the running track while the remain ones were thrown towards the sector in which the AS Roma fans were located.

The AS Roma threw some of those Bengal lights back to the PFC CSKA Moskva sector who again reverted those to the AS Roma sector. This went on for a few minutes, being the stewards in the middle of the line of fire. In addition, PFC CSKA Moskva supporters started to fight the stewards. The situation became tense. At this stage, the referee decided to stop the game for a period of time.

As the situation was evolving, the police took control and removed the stewards from their position, deploying the riot police who succeeded in containing the PFC CSKA Moskva supporters, and moved them back to their original area.

Finally, the PFC CSKA Moskva supporters chanted “Sieg Heil CSKA” several times, as well as showed the Nazi Salute. In addition, a banner containing what recalls to be the SS Totenkopf was displayed by PFC CSKA Moskva supporters.

Legal framework
Art. 14 DR, Art. 16(2)(b)(c) DR, Art. 16 (2)(h) DR,

Decision
CEDB:
The CEDB ordered the PFC CSKA Moskva to play their next three (3) UEFA competition matches as host club behind closed doors. The club was also fined € 200’000.- and was banned from selling tickets to its supporters for the next UEFA Champions League 2014/2015 group stage competition matches which the club will play as the visiting team.

AB:
The appeal is partially admitted. Consequently the CEDB’s decision of 3 October 2014 is modified as follows.
To order PFC CSKA Moskva to play it next three (3) UEFA competition matches as host club behind closed doors. The third match is suspended for a probationary period of five (5) years.
To fine the club € 100’000.-.
The ban from selling tickets to its supporters for the next UEFA Champions League 2014/2015 group stage competition matches which the club will play as the visiting team is upheld.
Facts of the Case

Below is a summary of the main relevant facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body’s decision of 3 October 2014, the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

In substance, the UEFA delegate’s report states that the following incidents occurred during the 2014/15 UEFA Champions League match between AS Roma and PFC CSKA Moskva on 17 September 2014:

When the game started, the PFC CSKA Moskva supporters in sectors 50, 51 and 52 rushed towards the stewards, reaching the glass panel. These supporters proceeded to throw coins at the AS Roma fans.

At half time, the PFC CSKA Moskva supporters posed for photographs while giving the Nazi salute.

The PFC CSKA Moskva supporters ignited 14 Bengal lights and held them over their heads in a choreographic display. Two of the Bengal lights were thrown onto the running track while the others were thrown towards the sector in which the AS Roma fans were located. The AS Roma supporters threw some of these Bengal lights back into the PFC CSKA Moskva sector. The PFC CSKA Moskva supporters then threw them back into the AS Roma sector. This went on for a few minutes, with the stewards in the line of fire.

In addition, PFC CSKA Moskva supporters started to fight with the stewards. The situation became tense. At this stage, the referee decided to stop the game for a period of time.

As the situation was evolving, the police took control and removed the stewards from their positions. Riot police succeeded in containing the PFC CSKA Moskva supporters and moved them back to their original area.

The away supporters also chanted “Sieg Heil CSKA” several times and showed the Nazi salute. In addition, they displayed a banner depicting the SS Totenkopf.

In its report, received by UEFA on 23 September 2014, Football Against Racism in Europe (FARE) indicated that “CSKA Moskva visiting fans displayed a banner of a far-right supporters group “Red-Blue Warriors” featuring two neo-Nazi symbols: SS Totenkopf skull and the Celtic cross.”
In its decision dated 3 October 2014, the Control, Ethics and Disciplinary Body decided the following:

“1. To order the PFC CSKA Moskva to play their next three (3) UEFA competition matches as host club behind closed doors.
2. To fine PFC CSKA Moskva € 200'000.
3. PFC CSKA Moskva is banned from selling tickets to its supporters for the next UEFA Champions League 2014/2015 group stage competition matches which the club will play as the visiting team.”

The decision with grounds was notified to the appellant on 7 October 2014.

Summary of The Proceedings Before The Appeals Body

On 10 October 2014, the appellant submitted its declaration of appeal.

On 15 October 2014, the appellant submitted the grounds for appeal, which can be summarised as follows:

The appellant begins by pointing out that the offences were committed by only around 100 of its 1,065 supporters inside the stadium. The Control, Ethics and Disciplinary Body’s decision of 3 October 2014 is unlawful (as regards the fine based on Article 14(4) of the Disciplinary Regulations), disproportionate and unfair (as regards the fine based on Article 14(4) and the stadium closure based on Articles 14(3)(b) and 16(2) of the Disciplinary Regulations).

The sanction of three matches to be played behind closed doors will punish the appellant rather than the violent ultras.

In order to restore order in the stands at its forthcoming UEFA matches, the appellant has imposed several measures against the far-right supporters usually situated in sector B of the Khimki Arena, regardless of UEFA’s decision. These measures are to close the sectors usually occupied by the supporters concerned, i.e. sectors B1 to B3, for the club’s remaining UEFA competition home matches, to cancel the season tickets of seven supporters and ban them from buying tickets for the 2015/16 season, to exercise very strict control on ticket sales for all its home matches in the 2014/15 UEFA Champions League and to hold special meetings with its supporters in order to explain the UEFA rules.

The appellant also lists the following mitigating circumstances some of which the Control, Ethics and Disciplinary Body failed to take into consideration: the fact that, contrary to paragraph 47 of the Control, Ethics and Disciplinary Body’s decision, it has not been sanctioned by UEFA for crowd disturbances (Article 16(2)(h) of the Disciplinary Regulations) in the last five years and, regarding the fireworks set off and missiles thrown during the above-mentioned match, the fact that it was obviously possible to enter the Stadio Olimpico with Bengal lights, fireworks and other prohibited items. In addition, the appellant does not appeal against
paragraph 3 of the operative part of the challenged decision, although it points out that thousands of the club's supporters have never been involved in any misconduct at all.

The appellant finds the sanction imposed disproportionate and argues that the Control, Ethics and Disciplinary Body violated Article 18 of the Disciplinary Regulations. It claims that the entire sequence of events is a single set of facts and that each offence should be assessed with reference to its broader context. In this respect, it argues that the Control, Ethics and Disciplinary Body did not clearly distinguish which offences (i.e. the breaches of Articles 14 or 16(2) of the Disciplinary Regulations) were to be considered the most serious under Article 18 of the Disciplinary Regulations. Applying the principle of accumulated offences instead of the principle of concurrent offences and imposing distinct sanctions (such as the playing of matches behind closed doors and a €200,000 fine) is unfair and contrary to Article 18 of the Disciplinary Regulations.

The closure of the stadium for a third home match would cause financial damage to the club.

Since Article 14(4) of the Disciplinary Regulations does not entitle the UEFA disciplinary bodies to impose fines, the €200,000 fine imposed under this provision must be annulled as there are no exceptional or aggravating circumstances that could justify an additional sanction under this article. Furthermore, the ethics and disciplinary inspector did not ask for PFC CSKA Moskva to be fined under Article 14(4) of the Disciplinary Regulations.

The appellant argues that, according to UEFA case law regarding the application of Article 14 of the Disciplinary Regulations to cases of recidivism, in particular when a third infringement is concerned, the club responsible is always ordered to play two home matches behind closed doors, with the second deferred for a probationary period of five years, and no additional fine imposed. The appellant mentions the Control, Ethics and Disciplinary Body's decisions of 12 September 2013 against Legia Warszawa and GNK Dinamo Zagreb. The sanction to be imposed against PFC CSKA Moskva should therefore not be harsher than those imposed against Legia Warszawa and GNK Dinamo Zagreb, given the small number of perpetrators (around 100) and the fact that the incidents occurred at an away match.

The fact that PFC CSKA Moskva was the away team must be taken into consideration, since the Control, Ethics and Disciplinary Body pointed out that "at away matches (...) the scope of action as regards to the organization of security is limited" (see para. 50 of the challenged decision).

In view of the above, the appellant asks the Appeals Body to order PFC CSKA Moskva to play two matches behind closed doors, one of which is suspended for a probationary period of five years, and to fine the club €100,000 minus the €1,000 appeal fee already paid.

On 21 October 2014, the UEFA ethics and disciplinary inspector submitted his reply to the appeal, requesting that it be rejected and the costs charged accordingly.

**Hearing**

The hearing was held at UEFA's headquarters on 27 October 2014.
The chairman opened the appeal hearing and noted the presence of the appellant and the Ethics and Disciplinary Inspector. He informed the parties of the procedure to be followed (Articles 66 et seq. of the UEFA Disciplinary Regulations) and reminded them of the composition of the Appeals Body. He also informed them that everything they and the Appeals Body members said would be recorded. No objection was raised.

The chairman asked whether the PFC CSKA Moskva representative or the ethics and disciplinary inspector had any preliminary questions.

The PFC CSKA Moskva representative asked that newspaper cuttings and an article from the FARE network be added to the file. The ethics and disciplinary inspector had no objection but left it to the panel to decide.

Despite Article 53 of the Disciplinary Regulations, the panel allowed the documents submitted by PFC CSKA Moskva to be added to the case file, since they were not crucial to the outcome of the case.

The chairman then gave the floor to the parties in accordance with Article 57 of the Disciplinary Regulations. They presented and expanded on the arguments set forth in their respective written statements and maintained their original requests.

**Appeals Body Competence and Admissibility of the Appeal**

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

**Legal Considerations Of The Appeals Body**

The legal framework

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 or race, or any other reason.

Under Article 52 of the UEFA Statutes and Article 8 of the UEFA Disciplinary Regulations, unsportsmanlike conduct, violations of the Laws of the Game and contravention of UEFA’s Statutes, regulations, decisions and directives are sanctioned by disciplinary means.

Under Article 8 of the UEFA Disciplinary Regulations, member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other
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persons exercising a function at a match on behalf of the association or club. This rule also applies to 2014/15 UEFA Champions League matches, as expressly stated in paragraph 6.02 of the competition’s regulations.

Article 14 of the UEFA Disciplinary Regulations reads as follows:

"1 Any person under the scope of Article 3 who insults the human dignity of a person or group of persons on whatever grounds, including 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.
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.
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.
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.
If the match is suspended by the referee because of racist and/or discriminatory conduct, the match may be declared forfeit.
The above disciplinary measures may be combined with specific directives aimed at tackling such conduct.
All forms of ideological, political and religious propaganda are forbidden. If this provision is breached, paragraphs 1 to 6 above apply by analogy."

Article 16 (2) of the UEFA Disciplinary Regulations reads as follows:

“(…) 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.”
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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. Symbols that commemorate the Nazi era or the supremacy of a particular race over another have no place in a football stadium. In this respect, it is worth noting that 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 General Policy Recommendation of the Council of Europe of 25 June 2004.

It is therefore clear that symbols extolling hatred, fascism or the Nazi era are prohibited at football matches held under UEFA’s jurisdiction.

In the case at hand

The offensive and discriminatory nature of the Nazi salute and of the other improper conduct of the PFC CSKA Moskva supporters described in the official match report is not disputed by the appellant. There is no doubt whatsoever that the Nazi salute falls under Article 14 of the Disciplinary Regulations, as it clearly praises the Nazi regime, while the other offences fall under Article 16(2).

It is not contested that PFC CSKA Moskva supporters performed a Nazi salute, attacked stewards and ignited fireworks, thus violating Articles 14 and 16(2) of the Disciplinary Regulations respectively, and that their club is responsible under the principle of strict liability (Articles 8 and 14(2) of the Disciplinary Regulations). Consequently, the only point that the Appeals Body must re-examine is the nature and extent of the disciplinary measure imposed by the Control, Ethics and Disciplinary Body for these offences in view of all the concrete circumstances.

It remains for the Appeals Body to examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of legality and proportionality, or whether it abused its discretionary power by setting the fine at €200,000 and ordering PFC CSKA Moskva to play its next three home matches behind closed doors for discriminatory conduct under Article 14(4) and violating Article 16(2) of the UEFA Disciplinary Regulations.

Regarding the fireworks ignited and missiles thrown by its supporters, the appellant tries to deny its responsibility by claiming that “it was obviously possible to access Stadio Olimpico with Bengal lights, fireworks and other forbidden items”. In the case at hand, PFC CSKA Moskva tries to shift responsibility to the host club, blaming it for a lack of control. However, any organisational shortcomings do not change the legal situation regarding strict liability based on Article 8 and, in particular, Article 14(2) and/or Article 16(2) of the Disciplinary Regulations and can in no case exonerate the visiting club of its responsibility for its supporters’ improper conduct. Neither is the fact that about 100 supporters committed the offences a mitigating factor. All crowd disturbances are started by one person or a small group of people, which is why a club can be held responsible for the misbehaviour of “one or more” of its supporters (see Article 14(2) of the Disciplinary Regulations).
Regarding the measures allegedly taken by the appellant to combat its supporters’ improper behaviour, the Appeals Body is of the opinion that, even if they are laudable, they belong to the general duties of any club participating in UEFA competitions. Identifying the perpetrators, exercising strict control on ticket sales and holding meetings with supporters can therefore not be considered mitigating factors.

However, any extra effort on the part of the club to combat violence in stadiums must be encouraged. In this case, any legal action taken by the club against the troublemakers must be taken into account when it comes to determining the level of the sanction.

Except for this element, no mitigating factor can be admitted in the present case, especially the fact that the appellant decided, of its own accord, not to challenge paragraph 3 of the operative part of the appealed decision, which the club surprisingly suggests is a mitigating factor.

The appellant challenges the non-application of Article 18 of the Disciplinary Regulations, which governs the case of multiple offences. It is not disputed that, in the present case, various offences were committed one after the other by PFC CSKA Moskva supporters. This case is therefore subject to Article 18 of the Disciplinary Regulations.

Regarding the consequences of multiple offences, Article 18 of the Disciplinary Regulations requires the disciplinary body to take the disciplinary measure to be imposed for the most serious of the offences and increase it accordingly. The wording of this provision is clear in that the accumulation of sanctions is prohibited.

In the case at hand, by issuing separate sanctions in the challenged decision, the Control, Ethics and Disciplinary Body has added together the sanctions set forth in Articles 14 and 16 of the Disciplinary Regulations. This is not in conformity with Article 18, under which the disciplinary measure to be imposed for the most serious offence should be taken first and then increased in due proportion.

The opening words of Article 14(4) of the Disciplinary Regulations do not prevent the competent disciplinary body from imposing a fine as an additional disciplinary measure if the circumstances so require.

The ignition of fireworks by PFC CSKA Moskva supporters, some of which were thrown into the stands occupied by home supporters, and the throwing of other missiles constitute a clear violation of Article 16(2) of the Disciplinary Regulations. Moreover, according to the long-established practice of the UEFA disciplinary bodies, the fact that fireworks were thrown constitutes an aggravating circumstance (Article 17 of the Disciplinary Regulations), given that the risk is thereby increased.

Visiting supporters ignited more than 14 Bengal lights, some of which were thrown onto the pitch and at rival fans. They also threw missiles onto the pitch, thus endangering the safety and security of players, officials and supporters. This was confirmed in the official match reports.
The fireworks used and missiles thrown endangered the safety of spectators, players and officials, forcing the referee to interrupt the game, which is another aggravating circumstance.

Moreover, visiting supporters fought with stewards and sought confrontation with the police. The gravity and violence of these incidents, which all fall under Article 16(2) of the Disciplinary Regulations, must be considered additional aggravating circumstances.

The Appeals Body notes that the Control, Ethics and Disciplinary Body was right to hold PFC CSKA Moskva responsible for its supporters’ numerous acts of serious misconduct.

Determination of the disciplinary measure

Pursuant to Article 17(1) of the Disciplinary Regulations, the disciplinary body determines the type and extent of the disciplinary sanction according to the objective and subjective elements, taking account of both aggravating and mitigating circumstances.

Cases involving multiple offences are governed by Article 18 of the Disciplinary Regulations. According to Article 19(2) of the Disciplinary Regulations, recidivism is to be considered an aggravating circumstance. Recidivism occurs if a disciplinary measure has already been imposed for an offence of a similar nature in the previous five years (Article 19(1)(d) DR).

Article 53 of the UEFA Statutes and Article 6(1) of the Disciplinary Regulations contain a list of possible disciplinary measures, including a fine (c), the playing of matches behind closed doors (h), a stadium closure (i), the playing of matches in a neutral country (j), and disqualification from competitions in progress and/or exclusion from future competitions (n). Article 6(3) fixes minimum and maximum fines that can be imposed. These general provisions give the disciplinary body broad powers of discretion when it comes to determining the disciplinary measure.

Article 14 of the Disciplinary Regulations is a specific provision designed to implement UEFA’s zero tolerance policy regarding racist and discriminatory offences. The harsh minimum sanctions contained in this article indicate the gravity of such offences. Therefore, it can be concluded that, of the multiple offences committed by PFC CSKA Moskva supporters during the match in question, those falling under Article 14 of the Disciplinary Regulations (performing a Nazi salute, chanting Sieg Heil and displaying the SS Totenkopf) are the most serious in the sense of Article 18 of the Disciplinary Regulations.

Contrary to what the Control, Ethics and Disciplinary Body did by adding together the sanctions for each offence, the Appeals Body must, therefore, in accordance with Article 18 of the Disciplinary Regulations, decide on the appropriate sanction for the offences committed under Article 14 of the Disciplinary Regulations and increase it in due proportion, taking account of the circumstances and the fact that the sanction also has a preventive and educational aim.

This is not the first time in the last five years that PFC CSKA Moskva has been punished for its supporters’ discriminatory behaviour (it has already been sanctioned twice, in decision 26921 relating to the match between PFC CSKA Moskva and Manchester City FC played on 23 October
2013 and decision 26726 concerning the match between FC Viktoria Plzeň and PFC CSKA Moskva played on 10 December 2013). In conformity with Article 14(3)(b) of the Disciplinary Regulations, the disciplinary body can therefore base its sanction on a minimum of more than one match behind closed doors and increase it according to the concrete circumstances.

Regarding the discriminatory offence and the sanction of three matches to be played behind closed doors imposed by the Control, Ethics and Disciplinary Body, the appellant, referring to previous cases dealt with by the same authority, requests that the ban should be 2 matches with the second deferred for a probationary period of five years. The appellant claims that the principle of equal treatment, under which similar situations should be treated equally, has been violated. It points out, in particular, that in these previous identical cases, the final sanction for a second infringement under Article 14(4) of the Disciplinary Regulations was suspended for a probationary period of five years.

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.

In the second Legia Warszawa case of 12 September 2013 the appellant refers to the Control, Ethics and Disciplinary Body actually sanctioned the club with two-matches to be played behind closed doors, one of which was suspended for a probationary period of five years. The circumstances in the Legia Warszawa case were however different than those in the present case for the following reasons and did not allow the disciplinary body in accordance with Art, 63 DR to consider that it was a case or repetition (recidivism):

First decision of 12 August 2014: the first discriminatory offence was committed at a first-leg tie, away to The New Saints FC, on 17 July 2013. Before the Control, Ethics and Disciplinary Body had time to render its decision on this incident, a second discriminatory offence occurred during the second leg against The New Saints, at home on 24 July 2013. Therefore, when the Control, Ethics and Disciplinary Body decided on 12 August 2013 to deal with both cases jointly, it could not consider the initial offence a previous offence (Art. 63 DR): Legia Warszawa's supporters had indeed committed a first offence, but the sanction for it had not been notified to the club when the second offence was committed. Due to this particular circumstance, the CEDB had no choice in accordance with Art. 63 DR to declare a partial stadium closure of Legia Warszawa in conformity with Article 14(2) DR.

Second decision of 12 September 2013: The same circumstance occurred during the away match of Legia to Molde FK, on 31 July 2013: before the Control, Ethics and Disciplinary Body had rendered its decision on this incident committed during the first leg match, a second discriminatory offence occurred during the second leg against Molde FK, at home on 7 August 2013.

Therefore, the present case and Legia Warszawa one are not comparable. This is just one example of the point made in paragraph 47 above.
Considering the number and seriousness of the other offences committed by PFC CSKA Moskva supporters, the threat they posed to the physical integrity of stewards, the fact that they caused the referee to interrupt the match, the harm they caused to the reputation of the competition, and the club’s poor record in terms of its supporters’ misconduct in general (it has been punished more than 15 times for offences related to supporter misconduct over a period of five years), an additional sanction is clearly justified under Article 14(4) of the Disciplinary Regulations. This sanction can be a fine, since the wording of this provision does not state otherwise.

After taking into account the above-mentioned circumstances of the case, the Appeals Body considers that to order PFC CSKA Moskva to play three home matches behind closed doors, the third of which is suspended for a probationary period of five years, combined with a fine of €100,000 in due application of Article 18 of the Disciplinary Regulations, and to encourage the club’s efforts to prevent the repetition of such incidents (by identifying and prosecuting the perpetrators) to be the appropriate sanction.

Since the Appeals Body’s decision amended the decision of the Control, Ethics and Disciplinary Body, the appeal lodged by CSKA Moskva is partially admitted.

Costs

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, and in due consideration of the outcome of the proceedings, the costs of the proceedings (€6,000 in total) will be charged as follows, €4,000 minus the appeals fee to CSKA Moskva and the rest to UEFA.