



LEGAL DIVISION
DISCIPLINARY AND INTEGRITY UNIT

Case Law Control, Ethics and Disciplinary Body & Appeals Body

Season 2014/2015
January 2015 - June 2015

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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 January to June 2015.

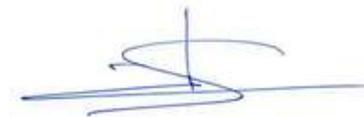
According to Article 45 of the UEFA Disciplinary Regulations: “The UEFA administration publishes decisions issued by the disciplinary bodies. Where such a decision contains confidential information, the UEFA administration may decide, ex officio or at the request of either one of the parties or the disciplinary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

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

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

Yours faithfully,

UEFA

A handwritten signature in blue ink, appearing to be 'Emilio García', with a stylized flourish at the end.

Emilio García
Head of Disciplinary and Integrity



Control, Ethics and Disciplinary Body

Decision of 5 February 2015

Liverpool F.C / Lazar Markovic

(Assault / red card)

Circumstances of the case

During the 2014/2015 UEFA Champions League match between Liverpool F.C. and F.C.Basel, in the 60th minute, the player 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)

Decision

The CEDB decided to suspend the Liverpool FC player Lazar Markovic for four (4) UEFA competition matches for which he would be otherwise eligible.

Chairman: Thomas Partl (AUT)

Vice-Chairman: Sandor Berzi (HUN)

Member: Tomàs Gea, (AND)

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 summarised 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

a) 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.

b) 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 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 behaviour.

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.

Decision of 19 March 2015

Malmö F.F.

(Pitch condition)

Circumstances of the case

After a home match on 27 August 2014, Malmö F.F. received a letter from UEFA's Stadium Unit, in which it was informed that its home pitch was not up to UCL standard. The club was reminded of its responsibility to make every reasonable effort to ensure that the pitch would be in the best condition possible ahead of its UCL Group stage matches. On 1 October 2014, Malmö F.F. played a home match against Olympiacos F.C. After this game, the UEFA Venue Director and the UEFA Match Delegate reported that the pitch was not in the best condition possible. The club was informed by the CRL about the major problems of the pitch. For the following matches, the pitch was still not in the best condition possible.

Legal framework

Art. 6.04 / Art. 13.06 UEFA Champions League Regulations

Decision

The CEDB fined Malmö F.F. € 100,000. € 50,000 are deferred for a probationary period of two years.

Ad-hoc Chairman: Jim Hansen (DEN)

Vice-Chairman: Jacques Antenen (SUI)

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

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.

On 16 December 2014 the Malmö FF was informed that a disciplinary investigation had been instigated in accordance with Article 48 DR, informing that a UEFA Ethics and Disciplinary report

had been submitted to the UEFA Control, Ethics and Disciplinary Body, which was forwarded to the Club as well, and providing the latter a deadline in order it to made any relevant statement.

In this regard, the UEFA Ethics and Disciplinary Inspector, Miguel Liétard Fernández-Palacios, submitted a report on the conditions of the Malmö FF pitch during the UEFA Champions League 2014/2015 group phase and requested Malmö FF to be fined €100'000, half of the above fine (50.000 EUR) to be suspended for a probationary period of two years as of the next season in which Malmö FC qualifies to participate in UEFA club competitions and to order to take the necessary measures to ensure that its home pitch will be up to UEFA standard conditions in its future home matches in UEFA competitions.

The facts referred in this case were reported in a summary manner by the UEFA Ethics and Disciplinary Inspector as follows:

On 27 August 2014, Malmö FC (hereinafter also referred to as the "Club") played a home match against FC Salzburg in the 2014/15 UEFA Champions League ("UCL") Playoff Round. Prior to the match, the UEFA Venue Director, Miry Doppman, reported the following (sic):

"Does the pitch condition present any risk to the MD-1 training sessions or the match? Yes. Goal area needs to be protected therefore the club will ask visiting club to avoid goal area.

*Is the pitch aesthetically in the best possible condition? No
Needs improvement for possible GS or UEL group stage."*

In view of the above report, UEFA's Stadium Unit sent a letter to the Club on 15 September 2014, in which it was informed that its home pitch was not up to UCL standard. The club was reminded of its responsibility to make every reasonable effort to ensure that the pitch would be in the best condition possible ahead of its UCL Group Stage matches, as stated in Art. 13.06 of the UEL Regulations ("UELR").

On 1 October 2014, Malmö FC played a home match against Olympiacos FC in the 2014/15 UCL Group Stage Prior to the Match, the UEFA Venue Director reported the following (sic):

*"Is the pitch aesthetically in the best possible condition? No
Bare patches all over the pitch most of them seeded. Goal area on the south stand under growing lamp. Corners at the south stand in a bad condition. the whole pitch bumpy and uneven."*

The UEFA Match Delegate, Mr. Graham Hover, also reported the following after the match against Olympiacos FC (sic):

“Pitch condition (playability). Unsatisfactory.

The playing service has many small areas which require attention. The home Club have been made aware that this should be addressed ahead of their next UCL group match.”

On 10 October 2014, the pitch expert company CRL performed an on-site inspection of the Club’s home pitch, and gave a presentation to the Club on the key issues of pitch maintenance. This site inspection was requested and paid for by the UEFA Stadium Unit, with the aim of supporting the Club for the pitch maintenance.

On 14 October 2014, CRL sent a report to the club in which it highlighted the major problems observed. In particular, this report noted the following issues:

- i. Invasion of the weed grass annual meadowgrass*
- ii. Thinning grass cover*
- iii. High sand content non-reinforced rootzone*
- iv. Levels issues.*

The CLR Report concluded that the pitch condition at the Club’s stadium constituted a level 2 UEFA Pitch Risk (i.e., high risk of pitch problems considering all factors: pressure applied from UEFA for serious improvement for (1) safety and welfare of players, (2) footballistic characteristics/performance effects on game, and (3) aesthetics for TV). In view of this, CLR made the following recommendations:

- i. Returfing of pitch edges where grass cover has been depleted*
- ii. Change from organic to synthetic fertilisers in short term; programme to be reviewed on a WEEK by WEEK basis and cross referenced with grass yield and grass vigour*
- iii. Change overseeding to Annual Ryegrass (Barenbrug SOS or similar)*
- iv. Full independent soil analysis to cross reference that analysis provided*
- v. Implement new pitch recording system (see attached in Appendix 1)*
- vi. Pitch management plan to be reviewed on a weekly basis until end November 2014.*
- vii. Training to start immediately and must include a trip to a basic level facility without lights to review quality. Training to be combined with pitch management.*
- viii. Planning to start for the medium term pitch renovation for pitch surface removal, stabilising pitch and re turfing. Should include (1) specification of works (2) bill of quantity (3) review of turf farm and securing of turf supply (4) emergency plan to be in place in case of*

weather permitting operation in December or in January.

- ix. *Investment in more specific machines to manage the new pitch such as pedestrian mowers; can happen over time rather than immediately.*

On 4 November 2014, Malmö FC played a home match against Club Atlético de Madrid in the 2014/15 UCL Group Stage. Prior to the Match, the UEFA Venue Director reported the following (sic):

*“Is the pitch aesthetically in the best possible condition? No
Pitch is as a playing surface and from aesthetically point of view not in a good condition at all. Pitch is very bumpy and there are even more of bare patches than last time. Further it was raining the whole last week so the pitch is very soft. Last league match was played last Monday (end of the season). Club was working with an UEFA expert on the maintenance since last MD. Goal areas were replaced and now under growing lights, therefore goals not placed. Pitch and goal measurements will only be done tomorrow. Additionally Club will ask both teams to avoid goal area for the trainings.”*

The UEFA Match Delegate, Mr. Tugomir Frajman reported the following after the match against Club Atlético de Madrid (sic):

*“Pitch condition (playability). Unsatisfactory.
Pitch was aesthetically and also as a playing surface really in poor condition. Grass on the pitch is also poor, playing surface is not flat. Maintainers from home team with the help of advisor tried to improve the pitch during the day but did not succeed completely because it was not possible anymore at this time of the season.
Also at previous delegate report problem with the pitch was already mentioned.*

*Pitch condition (aesthetically). Unsatisfactory
See comments above.”*

On 5 November 2014, the company CRL had a meeting with the Club, in which an action plan was discussed, that would focus on short term and medium term needs, and in which it was generally agreed that a total re-turfing of the pitch would be required once the issues were sorted.

On 19 November 2014, CRL sent a post-game report to both the Club and UEFA.

As had been the case since the UCL Playoffs, various communications were exchanged between Malmö FC and UEFA between the home match against Club Atlético de Madrid and

the home match against Juventus FC that was to be played on 26 November 2014, in relation to the condition of its home pitch.

On 26 November 2014, Malmö FC played its final home match against Juventus FC in the 2014/15 UCL Group Stage. After the Match, the UEFA Venue Director reported the following (sic):

*“Is the pitch aesthetically in the best possible condition? No
See all the email conversation between UEFA, CRL and Club beforehand the pitch will be cut again and rolled. This evening parts of it under growing lights. VD will send updated photos tomorrow.”*

The UEFA Match Delegate, Zoran Cvrk, reported the following after the match against Juventus FC (sic):

*“Pitch condition (playability). Unsatisfactory.
In general home team and stadium efforts was huge to bring pitch to better condition for this evening match but must say that Juventus FC representatives say at organisational meeting that they will respect referee decision about pitch condition for playing a match is under rule but as Juventus FC they said that do not agree with it because of poor condition to fare away from UCL standards.*

*Pitch condition (aesthetically). Unsatisfactory
Unfortunately turf was changed on plenty places and there is VD report with pictures during all last days. There was to much turf intervention to have better condition.”*

The Respondent’s position

The Club in its statements dated on 12 January 2015, argues that it made every reasonable effort to ensure that the pitch was in the best possible condition to play during the UEFA Champions League 2014. It denies the alleged breaches of Article 6.04, 13.06 of the UEFA Champions League Regulations.

Following the report from Malmö FF, UEFA Venue Director, Mr Miry Doppmann, on 27 August 2014 regarding the pitch conditions, Malmo FF has carefully considered every reasonable effort to improve the pitch conditions and observed and acted in accordance with UEFA's instructions in this regard, i.e limiting trainings/practice of the Club, move to other stadiums possible games and maintenance of the pitch in accordance with the care programme (spray fertilization and seeding).

In addition, the Club reached an agreement with Clive Richardson Limited (hereinafter also as “CLR”) to oversee the maintenance of the pitch and followed all the its recommendations i.e returving the pitch, change from organic to synthetic fertilizers, change overseeding to Annula

Ryegrass, analysis provided, implementation of a new pitch recording system, review of the pitch management plan on a weekly basis until end of November 2014, training which included a trip to a basic level facility without lights to review quality, planning of the start for the medium term pitch renovation for pitch surface removal, stabilizing pitch and re-turfing, and investments in more specific machines to manage the new pitch such as pedestrian mowers.

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 pitch condition

a) Applicable legal framework and general remarks

According to Article 6.04 UEFA Champions League Regulations:

"The club considered the home club must stage the relevant matches at the ground in accordance with the instructions of UEFA (or of a third party acting on UEFA's behalf) and in cooperation with the association concerned. However, the club is considered solely accountable for all of its obligations in this respect, unless the relevant body or bodies decide(s) otherwise."

According to Article 13.06 UEFA Champions League Regulations:

"The home club must make every reasonable effort to ensure that the pitch is in the best possible condition for play. If the climatic conditions so require, facilities such as pitch heating must be provided, to ensure that the field of play can be made available in a suitable condition on any match date. If the home club does not implement the appropriate measures and, as a consequence, the match cannot take place, the home club bears all the costs of the visiting team (travel, board and lodging expenses)."

According to Article 11 (1) DR, member associations 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

b) The responsibility of the club

It is undutiful that the condition of the pitch plays in football matches a relevant role insofar unsatisfactory ground conditions elevate the risk of getting seriously injured to players and everyone acting on a field of play at football matches.

Furthermore, UEFA recalls that UEFA Champions League is its flagship club competition and one, if not the most, relevant club competition world-wide. It is therefore the image of UEFA which is at stake every time matches referred to this competitions are played on poor ground conditions in which, here again, players, officials, etc. risk to get injured. It follows that standards to be applied as regards to host teams organizing UEFA competition matches are of the highest level.

In this regard, it is mandatory to maintain the pitch in the best possible condition by all participants of the above referred competition in accordance with Article 6.04 and 13.06 UEFA Champions League Regulations.

In the case in hand, Malmö FF attention was brought on several occasions on the unsatisfactory conditions of its pitch during the UEFA Champions League 2014/2015, being the pitch aesthetically as well as the playing conditions unsatisfactory. Reports stating the above poor conditions of the ground were repeatedly submitted by the UEFA officials after each home match of the Club during the group phase of the UEFA Champions League 2014/2015.

The Club in its statements basically argues that it made every possible and reasonable effort to ensure that the pitch was in the best possible condition and that it did not refrain from taking any measure recommended by either CLR or UEFA.

It shall be recalled that according to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

In this regard, this UEFA disciplinary body is comfortably satisfied with the description provided by the UEFA delegates in their reports, as well as it has not been disputed by the Club that the pitch conditions for the above referred matches were not satisfactory.

Bearing in mind the multiple warnings given to the Club, which may have taken measures to confront this issue, but in the light of the several reports were obviously not efficient to have a pitch that would comply with the given standards, as well as to the fact that no extraordinary conditions were faced by the Club which had, on top of that, the financial and material resources as to avoid that the ground would have been on unsatisfactory conditions at each home match of the group phase in an overall of four months (three from the first home match), this UEFA Control, Ethics and Disciplinary Body deems to its comfortable satisfaction that the Club did not ensure that the pitch was in the best possible conditions to play, not even at one sole home game of the group phase of the UEFA Champions League 2014/2015.

Malmö FF as the host and match organiser therefore violated the above-mentioned provisions and must 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 of the offence committed;
- the risk for players and all those acting on the field of play of getting injured as a consequence of the unsatisfactory pitch conditions;
- the fact that after each match played by Malmö FF as the host team the UEFA Delegate reported about unsatisfactory conditions of the pitch;
- the fact that during a three months period the pitch conditions did not experienced an improvement;
- the fact that the issue occurred at UEFA's flagship competition which provides participants with sufficient financial resources in order to resolve any possible issues concerning pitch;
- the poor image given of UEFA Champions League competition whilst broadcasting the Club's matches played in Sweden;
- the considerable resources gain by the Club for participating in the UEFA Champions League competition 2014/2015.

Decision of 19 March 2015

Paris Saint-Germain / Player Serge Aurier

(Insulting act)

Circumstances of the case

Paris Saint-Germain player Serge Aurier was not playing the match Chelsea F.C. vs. Paris Saint-Germain on 11 March 2015 as he was injured. After the match, the latter posted a video on a social media network, Facebook, with the comment: "This is Pariiiiiis I don't forget you, referee, cauliflower-head!". The video in question shows the player's joy for his team having qualified whilst addressing a message against the referee of the above mentioned match: "Yeah! This is Paris, big guy?! This is Paris, do you hear me?! This is Paris! Oh yes yes yes! Hey, referee, dirty son of a bi***".

Legal framework

Art. 11 (1) DR

Art. 15 (1) (d) DR

Decision

The CEDB decided to suspend the Paris Saint-Germain player Serge Aurier for three (3) UEFA competition matches for which he would otherwise be eligible.

Chairman: Thomas Partl (AUT)

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

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

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 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.

On 11 March 2015, Chelsea FC played against Paris Saint-Germain a match corresponding the UEFA Champions League 2014/2015 Round 16. Paris Saint-Germain qualified for the next round after having drawn against Chelsea FC.

Paris Saint-Germain player Serge Aurier was not playing the match as he was injured.

On 16 March 2015, the UEFA Ethics and Disciplinary Inspector, Miguel Liétard Fernandez-Palacios, lodged a report as regards a video posted by the above mentioned Paris Saint-Germain player Serge Aurier on a social media network, Facebook, with the comment: "This is Pariiiiiis I don't forget you, referee, cauliflower-head!".

The video in question shows the player's joy for his team having qualified whilst addressing a message against the referee of the above mentioned match: "Yeah! This is Paris, big guy?! This is Paris, do you hear me?! This is Paris! Oh yes yes yes! Hey, referee, dirty son of a bi****".

The UEFA Ethics and Disciplinary Inspector requested the relevant disciplinary body to suspend the Paris Saint-Germain player Serge Aurier for the next four (4) UEFA competition matches for which he would be otherwise eligible and to impose a fine.

The Respondent's position

The Club in its statements dated on 18 March 2015 points out that the UEFA disciplinary bodies have no competence to deal with this matter.

First, the Club stresses that the player did not play the match, he was not even in the match sheet, posted the video after the match, and, thus he was not under the jurisdiction of UEFA in accordance with Article 4 UEFA Disciplinary Regulations.

Second, the Club insists on the fact that Article 2 UEFA DR applies to every match and competition organized by UEFA. It relies on the argument that the comments of the player were given outdoors of his professional activity, as well as the location of the player was neither inside nor at the vicinity of the stadium. Consequently, so the Club, the UEFA disciplinary bodies must refrain from dealing with the referred conduct which was addressed after the match and outdoors of the latter.

Third, the Club draws the attention to the fact that the principles contemplated in Article 11 DR precise the general principles that conduct violations in disciplinary proceedings, which is not intended to be applied to civil life conducts. Briefly, the UEFA disciplinary bodies shall not substitute the state judiciary institutions which have exclusive competence to sanction insulting offences.

In the alternative, the Club requests this UEFA disciplinary body to take into consideration the apologies forwarded by the player as regards to this matter.

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.

The Club holds that UEFA disciplinary bodies are not competent to deal with this case, basing, mainly, on the fact that the player was injured, not included in the match sheet, not present at the match or at the vicinity and that he posted the video right after the match, having no link with the match and being, thus, not under the scope of material application in accordance with Article 2 and 4 UEFA DR.

Nevertheless, the Control, Ethics and Disciplinary Body recalls that Article 3 UEFA DR explicitly contemplates that players are subject to these regulations. Consequently, the player Serge Aurier is *prima facie* subdued to the UEFA DR. Further, the player has been registered by the Club for the UEFA Champions League 2014/2015, which supports the fact that the player is subdued to the jurisdiction of the UEFA disciplinary bodies as a consequence of his participation in the latter UEFA competition.

Regarding the link between the player's conduct and the match in question, the Control, Ethics and Disciplinary Body deems to its comfortable satisfaction that the requirements between the match and the infringement are widely established, amongst others, due to the fact that those comments were given envisaging the referee's conduct towards his team during a UEFA competition match between his club and Chelsea FC.

It is not reasonable as well as legally unfounded to conclude that the competence of UEFA disciplinary bodies over misconducts coming from a player, official and any other person linked to a club or association is precluded only to a spatial factor, see here the stadium or the vicinity of the latter, or a temporary condition, see here the match itself.

It is worth to note that the UEFA disciplinary bodies have taken actions against comments or misconducts contrary to the principle of fair play, loyalty and sportsmanship perpetrated at different moments before and after a match would have been played, see for instance the Control and Disciplinary decision of 12 July 2012 and 18 July 2012.

Moreover, the question about the jurisdiction of the French judiciary powers to deal with an insulting offence is solely to be posed before the referred judiciary instances in France in the extent in which they may be competent. However, this is not a question to be examined at the current proceedings as disciplinary proceedings are subdued to the UEFA Statutes, regulations, directives and subsidiary to Swiss law, having French law no place in this regard.

In addition, the Control, Ethics and Disciplinary Body notes that there is a large jurisprudence coming from the CAS and the Swiss Federal Tribunal that supports that disciplinary powers of sporting governing bodies are an expression of the freedom of associations to discipline those conducts perpetrated against the values, principles and rules deriving from their statutes and regulations.

Bearing the above in mind and 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.

The incident

Applicable legal framework and general remarks

In accordance with Article 11 (1) DR:

“Member associations 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.”

Pursuant Article 11 (2) DR:

“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;

[...]

d) whose conduct brings the sport of football, and UEFA in particular, into disrepute; [...]

k) who behaves in an unsporting manner.

[...]”

According to Article 15 (4) DR:

“The following suspensions apply for competition matches:

[...]

d) suspension for three competition matches or a specified period for insulting any match official;”

The responsibility of the player

UEFA disciplinary bodies wish to recall that due to the tasks fulfilled by referees at football matches which is normally subdued to extreme pressure as regards to the decisions and the impact of those for the development of the games, referees shall always be protected. If UEFA would allow that persons under its scope of jurisdiction proclaim insults and disrespect, hereby, the performance of the referee, these would be impeded in fulfilling freely their duty, exposing themselves every time they take a decision to withstand insults coming from players, coaches or anyone contemplated in Article 3 UEFA DR.

In the case in hand, it is undisputed that the Paris Saint-Germain player Serge Aurier posted a video on a social media network in which he insulted the referee of the above mentioned match.

The Control, Ethics and Disciplinary Body is not contrary to criticism, if those are given with the due respect. This is part of football itself. However, it cannot allow that an individual, participating in a UEFA competition and, thus, under the personal scope of the UEFA regulations, publicly expresses in an insulting manner his discrepancies with the referee's performance as in the above mentioned match, denigrating the referee and putting, hereby, the image of UEFA and football itself at stake.

Briefly, complaints addressed directly against the referee and his performance in the way the player did are completely unacceptable as they undermine the credibility and tarnish the image of the UEFA competition. In the eyes of the Control, Ethics and Disciplinary Body, these comments go beyond what can be considered a mere and reasonable criticism against the decisions taken by the referee on the field of play.

Furthermore, in accordance with Article 15 (1) DR, insulting a match official is contemplated as an infringement by the UEFA DR for which a three match suspension is contemplated.

Here again, the Control, Ethics and Disciplinary Body sustains that it is not reasonable to argue that such conduct is only punishable when performed exclusively during a football match directly and personally against the referee. This argument would lead to a situation in which reputed players, who are meant to be the image of football, are entitled to insult publicly any match official or UEFA representatives without being exposed to any sanction for such an evident disrespectful conduct.

Bearing the above in mind, the Control, Ethics and Disciplinary Body deems that the conduct undertaken by the player Serge Aurier is punishable in accordance with the UEFA DR, mainly on the basis of Article 11 (1) DR, as insulting entails all the elements of a lack of respect towards the referee's duty, UEFA itself, as well as the personal dignity of the addressee.

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 recalls that it seems even more despicable to insult from the safety of someone's home and post it afterwards on social media, than in the context and directly in the action of a football match. First, any possible reaction from the referee to defend himself has been completely eradicated, and, second, the sole aim chased with such

conduct was evidently to denigrate the referee insofar the title of the post and the content of the video do not lead to a different conclusion.

It shall also be beard in mind that the player had plenty of time to desist from his conduct between the moment he recorded the video and the occasion he posted it on internet. It follows, that this conduct was a mindful and a conscious action intended solely to insult and denigrate the referee of the match.

This UEFA disciplinary body follows the assertions given by the UEFA Ethics and Disciplinary Inspector in that top level footballers not only have the duty of abiding with the regulations of their sport; they must also set an example for the public, especially the younger supporters who are easily influenced by the behaviour of the players that they idolize.

Decision of 19 March 2015

Bayer 04 Leverkusen

(Improper conduct of the team / Illicit banner)

Circumstances of the case

A banner was brought up in the area of the Leverkusen fans. The banner was in Spanish. Translated to English it said: "bottle throwers", "murderers" and "sons of bitches". Five Bayer 04 Leverkusen players were cautioned by the referee.

Legal framework

Art. 15 (4) DR
Art. 16 (2) (e) DR

Decision

The CEDB decided to fine Bayer 04 Leverkusen € 20,000 for the illicit banner and € 10,000 for the improper conduct of the team.

<u>Chairman:</u>	Thomas Partl (AUT)
<u>Vice-Chairmen:</u>	Jim Hansen (DEN) Jacques Antenen (SUI)
<u>Members:</u>	Joël Wolff (LUX) Rudolf Repka (CZE) James Shaw (NIR) Tomàs Gea (AND)

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 summarised as follows:

A banner was brought up in the area of the Leverkusen fans. The banner was in Spanish. Translated to English it said: "bottle throwers", "murderers" and "sons of bitches". Five Bayer 04 Leverkusen players were cautioned by the referee.

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 displaying of illicit banners

Applicable legal framework and general remarks

According to Article 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: 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;

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

In the present case, a banner was brought up in the area of the Leverkusen fans. The banner was in Spanish. Translated to English it said: "bottle throwers", "murders" and "sons of bitches".

The Control, Ethics and Disciplinary Body, after evaluating the information provided by the UEFA delegate concerning the banner in question, it deems that this is obviously not fit for a sport's event as it has a highly offensive nature.

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, page 12).

Consequently, such a message violates article 16 (2) (e) DR. The Club shall, therefore, be held responsible and punished accordingly.

Improper conduct of the team: five or more cautions during the match

Applicable legal framework

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

The responsibility of the club

In the present case, five Bayer 04 Leverkusen players were cautioned by the referee.

This UEFA Disciplinary Body recalls, here again, that according to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

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

The determination of the appropriate disciplinary measure

Regarding the illicit banner and 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 the opportunity to recall that football matches are conceived, amongst others, as events in which links between different cultures shall find their way to enable a peaceful and respectful sporting challenge between contenders, which shall rest on the spirit of fair play, sportsmanship and integrity. Messages as the one witnessed in this case can only but to provoke the opposite effect.

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

- the seriousness of the offence committed;
- the fact that the banner contained a highly offensive and provocative message towards the opponent supporters.

Regarding the improper conduct of the team, this UEFA disciplinary body has taken the club's previous record into consideration. It follows that Bayer 04 Leverkusen has already been punished for the improper conduct of the team.



Appeals Body

Decision of 2 February 2015

FC Zenit JSC

(Insufficient organisation / stairways blocked)

Circumstances of the case

The stairways were blocked in the sectors 4 and 11 by the home supporters during the match Zenit vs. AS Monaco played on 1 October 2014.

Legal framework

Art 38 Safety & Security regulations

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined FC Zenit JSC € 20,000.

AB:

The Appeals Body rejected the appeal lodged by FC Zenit JSC and upheld the CEDB's decision of 16 October 2014.

Chairman: Pedro Tomás, Spain

Members: Barry Bright, England

Yvaylo Ivkov, Bulgaria

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 16 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.

The stairways were blocked by the home supporters in the sectors 4 and 11 during the match Zenit vs. AS Monaco played on 1 October 2014.

On 16 October 2014, the UEFA Control, Ethics and Disciplinary Body (hereinafter: CEDB) issued a decision fining FC Zenit JSC € 20,000.

The decision with grounds was notified to FC Zenit JSC on 17 November 2014.

Summary of the proceedings before the Appeals Body

On 19 November 2014, FC Zenit submitted its grounds for appeal. The appellant considers that the Control, Ethics and Disciplinary Body erred in sanctioning FC Zenit JSC with a fine of €20,000 for the reasons which can be summarised as follows:

There is not enough evidence to establish the reported incident: the UEFA delegate did not attach any photos or video footage to support the blocking of the passageways as reported. The stadium was half-full, there was a lot of places for spectators, therefore, there was no reason for people to stand in the stairs. The appellant considers that on the balance of probability the incident in question did not take place;

If the Appeals Body holds that the incident did take place, the sanction imposed on FC Zenit is clearly disproportionate and must be decreased accordingly: the CEDB decision is inconsistent with UEFA case law, notably in its decision of 6 December 2012 taken against VfL Borussia Mönchengladbach for blocking of stairs, where the Appeals Body fined the club €5,000; In its decision of 29 August 2013 against the FC Juventus for blocking stairs and including other different offences, the Appeals Body fined the club €20,000. Juventus, who had previous record for the same offence of blockage of stairs was fined €10,000;

The CEDB failed to take into account mitigating circumstances: the stadium was half-full and there was plenty of room in each sector of the stadium. Accordingly, the alleged incident was not a serious one and could not lead even potentially to any grave circumstances. The appellant supports the insignificance of the incident by the notice of the delegate in his report which states. *"Spectators in sectors 4 and 11 were blocking the staircases. I discussed the issue with VD as well as home club security officer to pay more attention to this matter for the remaining matches, stewards must be more active and keep the staircases free during whole match"*. The appellant request the Appeals Body to consider this insignificance the incident as a mitigating factor.

The appellant request the Appeals Body to reduce the fine to €10,000.

On 6 January 2014, the UEFA Ethics and Disciplinary Inspector submitted his response to the appeal, requesting that it be rejected, the Control, Ethics and Disciplinary Body's decision confirmed and the costs of the appeal proceedings charged accordingly.

Hearing

No hearing was held as the appellant did not request one. The Appeals Body met on 2 February 2015 to examine 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 parties' arguments are set out and examined below, in so far as they are relevant to the decision.

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. FC Zenit 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 Articles 53 and 54 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 consideration 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.

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.

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 persons exercising a function at a match on their behalf. This rule also applies to 2014/15 UEFA Champions League matches, as expressly stated in paragraph 6.02 of the competition regulations. Article 8 of the UEFA Disciplinary Regulations forms the legal basis on which UEFA can ensure its objectives and the constraints imposed on its members are respected, not only its members by but also by third parties for whom they are answerable.

This principle is reproduced as follows in paragraph 6.02 of the Regulations of the UEFA Champions League 2014/15: *"The clubs are responsible for the behaviour of their players, officials, members, supporters and any person carrying out a function at a match on their behalf."*

Under Article 38 of the UEFA Safety and Security Regulations: *"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."*

Under Article 4.01(g) of the Regulations of the UEFA Champions League 2014/15, on entering the competition participating clubs agree inter alia *"to observe the UEFA Safety and Security Regulations (Ed 2006) for all matches in the competition"*.

Any breach of the Safety and Security Regulations may be punished in accordance with the UEFA Disciplinary Regulations (Article 49 of the Safety and Security Regulations).

Under Article 38 of the UEFA Disciplinary Regulations, facts contained in match officials' reports are presumed to be accurate. However, proof of the inaccuracy of the contents of these reports may be provided.

In the case at hand

The appellant claims that the incident as reported by the UEFA delegate was not sufficiently proven. It contests that some FC Zenit supporters were standing in the passageways. It emerges from this that the appellant disputes the delegate's report mentioning: "FC Zenit supporters standing *blocking the stairways*".

Consequently, the Appeal Body must re-examine whether during the above-mentioned match the FC Zenit supporters were standing or not in the passageways as reported by the UEFA delegate report. Then if this is the case constitutes a violation of Article 38 of the UEFA Safety and Security Regulations and whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles in place, in particular those of legality and proportionality, or abused its power of discretion by imposing a €20,000 fine for improper conduct by its supporters under Article 8 of the UEFA Disciplinary Regulations and Article 38 of the UEFA Safety and Security Regulations.

Safety and security in the stadium is a major priority for UEFA, as reflected in various UEFA circulars and regulations, in particular the UEFA Safety and Security Regulations. Keeping public passageways free of any and all obstructions constitutes one of the pillars of the UEFA stadium safety and security concept. Any breach in this regard therefore constitutes a serious violation.

Stadiums are among the most exciting, enjoyable and profitable places in the world. They have also been scene of some terrible disasters, not least the Heysel tragedy of 29 May 1985 and the Sheffield disaster of 1989.

The appellant argues that the UEFA delegate did not provide video footage or photos of the incident to support what in wrote in his report, i.e. that the FC Zenith's supporters in sectors 4 and 11 were blocking the staircases.

In this respect, the Appeals Body recalls the legal presumption which covers the match official report laid down in Article 38 of the UEFA Disciplinary Regulations: "*Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided*".

According to this provision, the match official reports do not need to be supported by other evidences to be considered accurate. They may be accompanied by photos or video footage but this is not mandatory.

The presumption of accuracy which covers official reports means, that it belongs to the party contesting their content to provide the proof of their inaccuracy.

In the present case, the appellant provides no evidence to counter the accuracy of the facts related in the UEFA delegate report (i.e. stairways were blocked in the sector 4 and 11 by the FC Zenit supporters during the above-mentioned match), but merely denies them.

Moreover, the delegate also shared with the Venue Director about the fact that stairs were blocked by FC Zenit supporters. His report was precise and clear.

It emerges from the above that, the Appeals Body has no reason to question the statements made by the UEFA delegate. As the facts contained in match officials' reports are presumed to be accurate (Article 38 of the UEFA Disciplinary Regulations and not counterevidence was brought, the Control, Ethics and Disciplinary Body was right to consider that the facts reported were duly established.

Contrary to what seems to claim the appellant, as a formal offence Article 38 of the UEFA Safety and Security Regulations does not require the free flow of spectators in the passageways to actually be jeopardised. The mere presence of unauthorised persons in passageways is a violation of this provision, due to UEFA's zero tolerance policy of anything that could endanger safety and security.

Safety and security are paramount. Without safety and security in stadiums there would be no spectators, and without spectators there would be no football.

In view of the above, the Control, Ethics and Disciplinary Body was right to consider the presence of some supporters standing in the stairways to be a serious breach of Article 38 of the UEFA Safety and Security Regulations and to hold FC Zenit responsible for the misconduct by its supporters.

Determination of the disciplinary measure

Regarding the sanction imposed for this offence, the appellant argues for the case a violation of Art. 38 of the UEFA Safety and Security Regulations, that the decision of the Control, Ethics and Discipline is inconsistent with UEFA case law. In this respect, it must be pointed out that comparing two punishments imposed by the UEFA disciplinary bodies is usually a fruitless exercise. It is very difficult to base a claim on the principle of equal treatment because of differences in circumstances and the number of both objective and subjective elements that are taken into account when determining punishments, which are therefore tailored to the individual case. In any case the observation of these cases do not allow to conclude that there is inconsistency in the UEFA Disciplinary bodies practice.

During the match VfL Borussia Mönchengladbach and FC Dynamo Kyiv, played on 21 August 2012, in the north stand, passageways were blocked by standing supporters. A large banner was also hung in front of all emergency exits. Borussia was fined €15,000 for obstructing the passageways and blockage of the emergency exit.

Borussia lodged an appeal and the Appeals Body considered that regarding the covering of emergency exits, the Appeals Body agreed with the appellant argument according to which the stadium evacuation plan accepted by the fire, police and security services did include a second evacuation route in accordance with Article 40 (2) of the Safety and Security Regulations. Therefore only the blockage of stairs was confirmed. As this was the first infringement of Borussia regarding blockage of the passageways, the amount of the fine was reduced.

In the Juventus case mentioned by the appellant, the Appeals Body impose a fine of €20,000 for the blockage of passageways and sale of alcohol and setting of two Bengal light and two smoke bombs.

Pursuant to Article 17(1) of the UEFA Disciplinary Regulations, the competent 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 both aggravating and mitigating circumstances.

According to Article 19(2) of the UEFA Disciplinary Regulations, recidivism is to be considered an aggravating circumstance. Recidivism occurs if two or more offences of a similar nature are committed in the space of five years (Article 19(1)(d) of the UEFA Disciplinary Regulations).

Article 53 of the UEFA Statutes and Article 6(1) of the UEFA Disciplinary Regulations contain a list of possible disciplinary measures, including a fine (c), the playing of matches behind closed doors (h), Full or partial 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 the minimum and maximum fines that can be imposed. These general provisions give the disciplinary bodies broad powers of discretion when it comes to determining disciplinary measures.

The appellant argues that the €20,000 fine imposed by the Control, Ethics and Disciplinary Body is too high, even if a breach of Article 38 of the UEFA Safety and Security Regulations is established.

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 to the seriousness of the charges, there is the track record of FC Zenit in this area. Over a period of five years, the club's record is poor: Since 26 July 2010, it has been punished twelve times, two of which were for offences of an identical nature to those at issue in this case (at the FC Zenit v Liverpool FC match played on 14 February 2013 and at FC Zenit v Shakhtar Donetsk played on 1 November 2011). This means the problem is a recurrent one and the club must take whatever measures is necessary to improve the situation or, in the event of another offence of this kind, risks a much more severe punishment. The above, fully justifies the sanction.

In accordance with Article 19 of the UEFA Disciplinary Regulations, the repetition of a similar offence constitutes an aggravating circumstance. Indeed, it seems that the appellant does not understand the importance of keeping stairways free of obstructions at important matches such as UEFA's. This is cause for concern.

The alleged mitigating circumstances, namely the fact that the stadium was half full and the fans on the stairs did not actually impede the free flow of spectators are no mitigating circumstance. Even if the stadium was half-full as, the appellant claims, this did not allow or

limit the seriousness of the offence, as 38 of the UEFA Safety and Security Regulations prohibits any obstruction of the passageway, irrespective of the concrete consequence this obstruction may have in the particular case (formal offence). Such an obstruction, as it can by definition impede the free flow is a severe offence event if, in a particular case, the free flow of spectators may not actually have been impeded.

Consequently, the Control, Ethics and Disciplinary Body correctly interpreted the applicable regulations and case law in this case and took account of all the facts in due proportion. The security breaches warranted disciplinary measures and in view of the above, the level of the fine appears more than proportionate. As a result, the Control and Disciplinary Body's decision of 16 October 2014 shall be upheld and the appeal is rejected.

Decision of 2 February 2015

Bulgarian Football Union

(Insufficient organisation / Crowd disturbances /

Setting off/throwing of fireworks & missiles)

Circumstances of the case

Before the game between Bulgaria and Croatia on 10 October 2014, the body searching was inadequate. Both groups of supporters located at north stand started to fight against each other and used a massive number of pyrotechnics. On two occasions, Bulgarian supporters started to fight among themselves, forcing the police and stewards to intervene. Bulgarian supporters from sector 39 and 40 lighted several firecrackers and Bengal lights. They were thrown in the direction of the Croatian supporters located in sector 44, causing a large amount of smoke and fire. Some Bengal lights were thrown into the air and fell onto the athletics track as well as the stand. Over a period of about four or five minutes, both groups of supporters threw firecrackers and around 30 Bengal lights at each other. The game was interrupted for three minutes because of the above incident. Furthermore, after a referring decision, the Bulgarian supporters chanted "Mafia Mafia Mafia". Finally, in around the 54th minute, a fight broke out between Bulgarian supporters in the south stand.

Legal framework

Art. 16 (1) DR

Art. 16 (2) (h) DR

Art. 16 (2) (b) & (c) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined the Bulgarian Football Union € 95,000.

AB:

The Appeals Body admitted partially the appeal lodged by the Bulgarian Football Union, in so far as the € 95,000 fine is reduced to € 35,000. The Appeals Body also admitted partially the appeal in so far as the Bulgarian Football Union is ordered to close sectors 17, 34, 39 and 40 of the Vasil Levski National Stadium for its next UEFA home match.

Chairman: Pedro Tomás, Spain

Members: António Mortágua, Portugal

Olga Zhukovska, Ukraine

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 13 November 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 match officials reported that the following incidents occurred during the 2014–16 UEFA European Football Championship match between Bulgaria and Croatia on 10 October 2014:

-Body searches were inadequate.

-Both groups of supporters located in the north stand were ready to fight each other and used a large number of pyrotechnic devices.

-On two occasions, Bulgarian supporters started to fight among themselves, forcing the police and stewards to intervene.

-Bulgarian supporters in sectors 39 and 40 lit several firecrackers and Bengal lights. They were thrown in the direction of the Croatian supporters located in sector 44. There was a large amount of smoke and fire.

-Some Bengal lights were thrown into the air and fell onto the athletics track as well as the stand.

-Over a period of about four or five minutes, both groups of supporters threw firecrackers and around 30 Bengal lights at each other.

-The match was interrupted for three minutes because of the above incident. Furthermore, after a refereeing decision, the Bulgarian supporters chanted “Mafia Mafia Mafia”.

-Finally, in around the 54th minute, a fight broke out between Bulgarian supporters in the south stand.

In its decision of 13 November 2014, the Control, Ethics and Disciplinary Body considered that the Bulgarian Football Union should be held responsible for its supporters’ improper behaviour and fined it €95,000.

The decision with grounds was notified to the Bulgarian Football Union on 4 December 2014 and to the Ethics and Disciplinary Inspector on 16 December 2014.

Summary of the proceedings before the Appeals Body

On 11 December 2014, the Bulgarian Football Union submitted the grounds for its appeal, arguing in substance that the Control, Ethics and Disciplinary Body had not taken the following mitigating circumstances into consideration:

The UEFA delegate approved the controls at the stadium entrances and did not issue any instructions to increase or step up the measures taken.

“At the stadium “Vasil Levski” was prevented any incident or event that could endanger the life or the health of attending football fans, players, referees, or officials”.

Since all the tickets sold to Croatian supporters had been sold by the Croatian Football Federation, only supporters “with impeccable reputation” were granted access to the stadium.

The Control, Ethics and Disciplinary Body took into account the same fact twice, i.e. the multiplicity of the infringements committed and the Bulgarian Football Union’s previous offences.

The incidents, in particular the fighting between Bulgarian supporters, did not affect the atmosphere and the smooth running of the match. Order was restored within a few minutes.

The Control, Ethics and Disciplinary Body was wrong to state that all the incidents were provoked by the conduct of Bulgarian supporters.

On 19 December 2014, the Ethics and Disciplinary Inspector submitted his reply to the appeal and called for the appeal to be rejected and for the costs of the proceedings to be charged to the appellant.

In parallel, the Ethics and Disciplinary Inspector submitted an appeal, requesting that, in view of all the circumstances, the Control, Ethics and Disciplinary Body’s decision of 13 November 2014 be amended and a heavier punishment imposed against the Bulgarian Football Union. He requested that the Bulgarian Football Union be ordered to play its national team’s next home match in a stadium with four sectors closed (in particular sectors 17, 34, 39 and 40 of the Vasil Levski stadium), and that the €95,000 fine be confirmed.

The Ethics and Disciplinary Inspector considered the sanction imposed against the Bulgarian Football Union, i.e. a fine of €95,000, too lenient in view of the seriousness of the incidents and all the circumstances. He provided a link to video footage of the incident and based his conclusion on the following circumstances:

The incidents forced the referee to interrupt the match. This was serious because the sporting aspect of the match could have been affected.

The video footage also showed how the pyrotechnic devices were directed at the opposition supporters, thus putting them in significant danger. It should be noted that the Control, Ethics and Disciplinary Body appeared not to have seen any video footage that would have enabled it to assess the seriousness of these incidents.

The multiplicity of the offences and the different forms of liability held by the Bulgarian Football Union, which was responsible not only as the host association, but also for the misconduct of its supporters (strict liability).

In addition to the aggravating circumstance of concurrent offences in the sense of Article 18 of the Disciplinary Regulations, it was necessary to take the Bulgarian Football Union's previous offences into consideration.

On 22 January 2015, the Bulgarian Football Union submitted its reply to the Ethics and Disciplinary Inspector's appeal. It concluded that the appeal should be dismissed and the fine reduced. It did not consider it necessary to hold a hearing and requested a written procedure.

Hearing

Despite the UEFA Ethics and Disciplinary Inspector's request, no hearing was held, as both the Bulgarian Football Union and the Appeals Body chairman deemed it unnecessary.

The Appeals Body met on 2 February 2015 to examine 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 parties' arguments are set out and examined below, in so far as they are relevant to the decision.

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. The Bulgarian Football Union 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 UEFA Ethics and Disciplinary Inspector also submitted his appeal by the deadline set and in the form required. Both appeals are 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 consideration 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, 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.

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 persons exercising a function at a match on their behalf. This rule also applies to 2014–16 UEFA

European Football Championship matches, as expressly stated in paragraph 6.01 of the competition's regulations.

Article 16 of the UEFA Disciplinary Regulations reads as follows:

- 1 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.
- 2 However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:
 - a) the invasion or attempted invasion of the field of play;
 - b) the throwing of objects;
 - c) the lighting of fireworks or any other objects;
 - d) the use of laser pointers or similar electronic devices;
 - e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;
 - f) acts of damage;
 - g) the disruption of national or competition anthems;
 - h) any other lack of order or discipline observed inside or around the stadium.

Article 32 of the UEFA Safety and Security Regulations reads as follows:

- 1 Turnstiles and entry or exit doors or gates must be operational and manned by properly trained security personnel.
- 2 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 stadium security officer.
- 3 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.
- 4 All security personnel should be familiar with the layout of the stadium and with its safety, emergency and evacuation procedures.

Article 33 of the UEFA Safety and Security Regulations states that:

- 1 Spectators will be screened initially by security personnel at the outer perimeter fence if there is one, or at the outer cordon created by security personnel in the case of venues which do not have an outer perimeter fence, to ensure that only ticket-holders approach the turnstiles, and to make the first checks to prevent the introduction of prohibited objects/substances into the stadium.
- 2 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.

- 3 Screening and searches must be carried out sensibly and effectively to ensure that spectators are not searched more than once and that the searches themselves do not become the cause of undue delay or create unnecessary tension.
- 4 Each spectator shall be screened and searched by a member of the security personnel of the same sex.

In the case at hand

It is uncontested that a large number of pyrotechnic devices were used, forcing the referee to interrupt the game. It is also uncontested that these pyrotechnic devices were launched horizontally towards other supporters, who threw them back to where they had come from. This created a huge mess in the stadium and forced the police to intervene. Finally, the fight between Bulgarian supporters is also undisputed. These are serious offences because they not only disrupted the smooth running of the match, but also endangered the physical integrity of spectators, officials and players in the stadium, and tarnished the image of football and UEFA.

The facts established by the Control, Ethics and Disciplinary Body are not contested by either the Bulgarian Football Union or the UEFA Ethics and Disciplinary Inspector, who only dispute the sanction imposed.

The video footage of the incident clearly shows the intense pyrotechnic battle between the Bulgarian and Croatian supporters and helps to explain the security officer's comment that it was impossible to count exactly how many pyrotechnic devices had been launched by each group of supporters.

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, and to decide whether this sanction was disproportionate, as the first appellant claims, or too lenient, as the second appellant argues.

The Appeals Body shall, in particular, examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of legality and proportionality, or abused its discretionary power by setting the fine at €95,000, which the second appellant claims was too lenient in view of the seriousness of the incidents and all the circumstances.

It is important to note that the Control, Ethics and Disciplinary Body was not in possession of the video footage of the incidents when it issued its decision.

This is understandable since, according to 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). The first-instance body is therefore invited to issue a decision as quickly as possible, following a rapid assessment of the evidence. It is up to the Appeals Body, where necessary, to introduce further investigative measures and to examine the evidence in more detail (Article 58(2) of the Disciplinary Regulations).

The video footage of the incident makes impressive viewing, showing pyrotechnic devices being launched horizontally and used as guns. It also shows home supporters fighting among themselves.

The ignition of fireworks by home supporters, some of which were launched horizontally at the stands occupied by visiting supporters, and the fighting 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. However, in this case, fireworks were used as guns, as they were launched horizontally.

The Appeals Body notes that the Control, Ethics and Disciplinary Body was right to hold the Bulgarian Football Union responsible for its supporters' numerous acts of serious misconduct and the lack of body searches.

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) 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), full or partial 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.

This is not the first time in the last five years that the Bulgarian Football Union has been punished for its supporters' improper behaviour. Indeed, it has been sanctioned six times for improper conduct by its supporters in the last five years.

The fireworks that were ignited and thrown endangered the safety of spectators, players and officials, forcing the referee to interrupt the game, which shows the seriousness of the incident. This is another aggravating circumstance.

Moreover, home supporters fought among themselves. The gravity and violence of these incidents, as demonstrated in the video footage, and which all fall under Article 16(2) of the Disciplinary Regulations, must be considered an additional aggravating circumstance.

Considering the number and seriousness of the other offences committed by Bulgarian supporters, the threat they posed to the physical integrity of opposition supporters and themselves, the fact that they caused the referee to interrupt the match, the harm they caused to the competition's reputation, and the Bulgarian Football Union's poor record in terms of its supporters' misconduct, the sanction imposed by the Control, Ethics and Disciplinary Body appears very lenient.

None of the mitigating circumstances claimed by the first appellant can be considered mitigating factors or used to offset the aggravating circumstances.

The fact that the UEFA delegate allegedly approved the controls at the stadium entrances and did not issue any instructions to increase or step up the measures taken is clearly not a mitigating circumstance. It is even a rash argument. Firstly, during the security meeting held the day before the match (MD-1), the security officer kindly asked and advised the host association to participate in the security operation and to conduct additional searches in order to demonstrate that all supporters, especially away supporters, would be rigorously searched ('deterrence theory'). However, on the day of the match, away supporters were only searched by police officers. Secondly, even though UEFA offers this logistical assistance, the implementation of safety and security regulations is not the responsibility of the UEFA delegate but solely of the host association.

Moreover, the Appeals Body agrees with the Ethics and Disciplinary Inspector's comment that the UEFA delegate's opinion alone does not prove that the searches were performed thoroughly, since he cannot have been at all the stadium entrances to ensure that spectators were properly searched.

The Bulgarian Football Union's claim that any incident or event that could endanger the life or health of fans, players, referees or officials was prevented is inaccurate. Even if it were true, it would not be a mitigating circumstance, since it is the duty of any host club or association to prevent such incidents.

In the present case, this claim is inaccurate because the video footage shows very clearly that a huge number of pyrotechnic devices were used and launched in the direction of the stands occupied by opposition supporters, who were therefore put in serious danger. There is no need to reiterate how dangerous these devices are. In other words, the physical well-being of numerous supporters was gravely endangered. It is only by luck that nobody was seriously injured.

The argument that only Croatian supporters "with impeccable reputation" were granted access to the stadium is also irrelevant, in so far as it does not reduce in any way the Bulgarian Football Union's responsibility for conducting searches at the stadium entrances. Besides, the trouble was caused not only by Croatian supporters, but also by Bulgarian supporters.

The Bulgarian Football Union also argues that the Control, Ethics and Disciplinary Body took into account the same fact twice, i.e. the multiplicity of the infringements committed and its previous offences. With this argument, the Bulgarian Football Union is confusing concurrent

offences (Article 18 of the Disciplinary Regulations) committed during the same match with previous offences committed within the previous five years and already sanctioned, which have to be considered as a separate aggravating circumstance under Article 19 of the Disciplinary Regulations (recidivism). The Control, Ethics and Disciplinary Body was right to consider both as aggravating circumstances.

The Bulgarian Football Union also claims that the incidents, in particular those between Bulgarian supporters, did not affect the atmosphere and the smooth running of the match. This argument must be ruled out, since the appellant itself admitted that order was restored within a few minutes. This demonstrates that order had been disturbed in the first place. Moreover, the match had to be interrupted, which proves that the incidents were serious and affected the smooth running of the match.

Finally, the Bulgarian Football Union argues that the Control, Ethics and Disciplinary Body was wrong to state that all the incidents were provoked by the conduct of Bulgarian supporters.

This is clearly not a determining factor, since the Control, Ethics and Disciplinary Body also fined the Croatian Football Federation €60,000 for the offences committed by its supporters. However, the Croatian Football Federation was not liable as the host association.

In view of the above, the Appeals Body notes that there are no mitigating circumstances in favour of the Bulgarian Football Union. The alleged mitigating circumstances put forward by the appellant were rightly discounted.

On the contrary, the Appeals Body considers that the Control, Ethics and Disciplinary Body did not properly assess the seriousness of the incidents and all the circumstances, notably due to the fact that it had not seen the video footage of the incidents.

As mentioned above, the video images show that the pyrotechnic devices were launched horizontally, which increased the risk posed, and the match had to be interrupted due to the seriousness of the disturbances. The gravity of the situation is demonstrated by the fact that players of both teams appealed to the supporters to stop causing trouble.

Taking into account the multiplicity of the offences and the different forms of liability held by the Bulgarian Football Union, which is responsible not only as the host association (Article 16(1) of the Disciplinary Regulations), but also for the misconduct of its supporters (Articles 8 and 16(2) concerning strict liability), the massive and particularly dangerous use of pyrotechnic devices, and the fighting among its supporters, it appears necessary to impose a more severe and visible sanction from among those listed in Article 6 of the UEFA Disciplinary Regulations than that imposed by the Control, Ethics and Disciplinary Body in the first instance. The image of UEFA and of football has been seriously tarnished by the dangerous actions of irresponsible supporters and by their national association, which has also acted irresponsibly in the present procedure by denying the seriousness of their conduct and of its consequences on the match and on UEFA competitions in general. The sanction in such a case should fulfil the twin objectives of educating the supporters and the association and prompting the latter to implement safety and security rules according to UEFA standards.

The Appeals Body considers that these supporters committed acts of hooliganism and that hooliganism needs to be eradicated from football matches, since it has no place in football.

A sanction that is limited to a fine appears, in these circumstances, insufficient to fulfil the objective of eradicating hooliganism and to reach the people actually responsible for the offences committed. Closing the sectors of the stadium where the disorder took place, combined with an appropriate fine, appears to be a more suitable punishment.

In view of the seriousness of the trouble caused by home supporters housed in sectors 17, 34, 39 and 40 and the Bulgarian Football Union's failure to adequately implement safety and security rules, a strong message must be addressed to the first appellant and its supporters through the sanction imposed. In order to encourage them to take all possible and necessary steps to avoid the repetition of such dangerous incidents, it appears necessary to close the parts of the stadium where the disturbances occurred, i.e. sectors 17, 34, 39 and 40. These four sectors should therefore be closed for the Bulgarian national team's next home match. To this extent, the Ethics and Disciplinary Inspector's appeal is upheld.

Regarding the extent of the fine imposed in the first instance, the Appeals Body believes that, by imposing a €95,000 fine, the Control, Ethics and Disciplinary Body did not take due account of all the concrete circumstances. It should, in particular, have considered the obviously limited financial resources of the Bulgarian Football Union, in the light of which a €95,000 fine is disproportionate.

Given the financial situation in the appellant's home country and the appellant's limited financial resources, the Appeals Body deems a fine of €35,000 to be more appropriate and, combined with the partial stadium closure, sufficiently heavy to have the necessary deterrent effect. The Bulgarian Football Union's appeal is therefore upheld to this extent. Therefore, the appeals lodged by the Bulgarian Football Union and the Ethics and Disciplinary Inspector are both partially upheld.

Decision of 2 February 2015

Feyenoord Rotterdam N.V.

(Improper conduct of supporters / crowd disturbances / tear down a fence)

Circumstances of the case

The Feyenoord fans placed in the buffer zone removed a barrier. Police intervened immediately.

Legal framework

Art. 16 (2) (h) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined Feyenoord Rotterdam N.V. € 5,000.

AB:

The Appeals Body rejected the appeal lodged by Feyenoord Rotterdam N.V. and upheld the CEDB's decision of 13 November 2014.

Chairman: Pedro Tomás, Spain,
Members: Barry Bright, England
Yvaylo Ivkov, Bulgaria

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 13 November 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 reported that "120 Feyenoord fans placed in the buffer zone by the police removed the barrier end the buffer zone. Police intervened immediately".

The security officer stated in his report that other Feyenoord fans attempted "to tear down a cloth security fence near to half time. Police quickly intervened."

In its decision of 13 November 2014, the Control, Ethics and Disciplinary Body considered that the home supporters had behaved in an undisciplined manner and thus violated Article 16(2)(h) of the UEFA Disciplinary Regulations. Accordingly, Feyenoord was held responsible for the conduct of its supporters and fined €5,000.

The decision with grounds was notified to Feyenoord on 4 December 2014.

Summary of the proceedings before the Appeals Body

On 8 December 2014, Feyenoord submitted its declaration of intention to appeal against the Control, Ethics and Disciplinary Body's decision of 13 November 2014.

On 11 December 2014, Feyenoord then submitted its grounds for appeal, which can be summarised as follows:

Feyenoord denies that the fence was torn down by its fans. According to the appellant, the word "attempting" means that the fence was still in place and an attempt as such is not punishable.

The appellant requests that, in the unlikely event that the Appeals Body considers that the fence was torn down, the following mitigating circumstances be taken into consideration: there was no damage as the fence was still in place after the match; the security officer described the incident as minor; and supporters were placed in the buffer zone by the police contrary to the agreement previously made between the clubs, the police and UEFA.

Primarily, Feyenoord requests that the Appeals Body set aside the Control, Ethics and Disciplinary Body's decision. In the alternative, it requests that the Appeals Body "lower the sanction and determine a new sanction in good justice and in all fairness".

On 23 December 2014, the UEFA Ethics and Disciplinary Inspector submitted his response to the appeal, requesting that it be rejected, the Control, Ethics and Disciplinary Body's decision confirmed and the costs of the appeal proceedings charged accordingly.

Hearing

No hearing was held as the appellant did not request one.

The Appeals Body met on 2 February 2015 to examine 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 parties' arguments are set out and examined below, in so far as they are relevant to the decision.

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. 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 Articles 53 and 54 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 consideration 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, 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.

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 persons exercising a function at a match on their behalf. This rule also applies to 2014/15 UEFA Europa League matches, as expressly stated in paragraph 6.02 of the competition regulations. Article 8 of the UEFA Disciplinary Regulations forms the legal basis on which UEFA can ensure that its objectives and the constraints imposed on its members are respected not only by its members, but also by third parties for whom they are answerable.

This principle is reproduced as follows in paragraph 6.02 of the Regulations of the UEFA Europa League 2014/15:

"The clubs are responsible for the behaviour of their players, officials, members, supporters and any person carrying out a function at a match on their behalf."

Article 16(2) of the UEFA Disciplinary Regulations states the following:

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

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

Under Article 38 of the UEFA Disciplinary Regulations, facts contained in match officials' reports are presumed to be accurate. However, proof of the inaccuracy of the contents of these reports may be provided.

In the case at hand

Firstly, it is important to clarify the discrepancy between the two official reports, one of which states that the offence was committed and the other that it was merely attempted.

In this regard, UEFA has no specific provisions on how to deal with discrepancies between official reports and there is no way of deciding which version of the facts should prevail. For this reason, the version in which the offences are less serious must be taken into consideration. In this case, the panel will consider the content of the security officer's report, which states that other Feyenoord fans attempted "to tear down a cloth security fence near to half time. Police quickly intervened".

The appellant argues that Feyenoord should not be punished for its supporters' attempt to tear down a cloth security fence.

Consequently, the only points that the Appeals Body must re-examine are whether the Feyenoord supporters' behaviour during the above-mentioned match, i.e. attempting to tear down a cloth security fence, constitutes a violation of the UEFA Disciplinary Regulations and whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles in place, in particular those of legality and proportionality, or whether it abused its powers of discretion by imposing a €5,000 fine against Feyenoord for lack of discipline by its supporters under Articles 8 and 16(2)(h) of the UEFA Disciplinary Regulations.

Safety and security in the stadium is a major priority for UEFA, as reflected in various UEFA rules and regulations, in particular the UEFA Safety and Security Regulations. Temporary cloth security fences are used to mark out areas either to segregate crowds or to indicate where certain people are not allowed to go. In short, they help to control crowds and prevent disorder.

The appellant argues that an attempt to commit an offence is not punishable under the UEFA Disciplinary Regulations. However, this is a misinterpretation of the regulations, since an attempt could constitute improper conduct. For example, an attempt to kick someone on the ground could constitute an inappropriate act.

In the present case, the Feyenoord supporters' behaviour was inappropriate, since it caused the police to intervene. This intervention in itself shows, if need be, that these supporters created disorder.

Safety and security are paramount. Without safety and security in stadiums, there would be no spectators, and without spectators there would be no football.

The issue here is not, as the appellant argues, the fact that the fence was still in place and not torn down by its fans, but the fact that its supporters created disorder in the sense of Article 16(2)(h) of the Disciplinary Regulations, forcing the police to intervene. The Appeals Body agrees with the Ethics and Disciplinary Inspector's view that this provision does not merely sanction conduct that results in actual damage or has other consequences. Indeed, any form of indiscipline falls under the above provision, irrespective of its consequences.

The Appeals Body is comfortably satisfied and has no doubt that, by attempting to tear down the security fence, the Feyenoord supporters created disorder which, according to the official reports, required the intervention of the police and security forces.

In view of the above, the supporters' conduct falls under the scope of Article 16(2)(h) of the Disciplinary Regulations and justifies a sanction against the club. The first-instance body was therefore right to apply the aforementioned provision.

Determination of the disciplinary measure

Pursuant to Article 17(1) of the UEFA Disciplinary Regulations, the competent disciplinary body determines the type and extent of the disciplinary measures 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 UEFA Disciplinary Regulations, recidivism is to be considered an aggravating circumstance. Recidivism occurs if two or more offences of a similar nature are committed in the space of five years (Article 19(1)(d) of the UEFA Disciplinary Regulations).

Article 53 of the UEFA Statutes and Article 6(1) of the UEFA Disciplinary Regulations contain a list of possible disciplinary measures, including a fine (c), the playing of matches behind closed doors (h), a full or partial 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 the minimum and maximum fines that can be imposed. These general provisions give the disciplinary bodies broad powers of discretion when it comes to determining disciplinary measures.

The appellant requests that the €5,000 fine imposed by the Control, Ethics and Disciplinary Body be reduced. In this case, however, the Appeals Body considers that the nature of the incident and the fine imposed are in good proportion. There is no doubt that, if the Control, Ethics and Disciplinary Body had found the Feyenoord supporters guilty of destroying a security barrier, the sanction would have been greater than a €5,000 fine.

The appellant put forward a list of alleged mitigating circumstances that must be taken into consideration. The fact that the fence was not damaged or that only the cloth fence was torn down is not a mitigating circumstance. As explained above, the behaviour of the Feyenoord supporters falls under Article 16(2)(h) of the Disciplinary Regulations and constitutes an offence in itself, regardless of whether the fence was actually torn down. Neither is the fact that the police acted without consulting the club and UEFA a mitigating circumstance, since it is not UEFA's role to tell the police what to do. These factors cannot be considered mitigating circumstances.

In view of the above, the Appeals Body finds that the Control, Ethics and Disciplinary Body correctly interpreted the provisions and case law applicable to this case. It took into account all the facts in fair proportion when limiting the sanction to a €5,000 fine. Accordingly, the size of the fine appears more than proportionate. Therefore, the Control, Ethics and Disciplinary Body's decision of 13 November 2014 must be confirmed and the appeal, which is clearly unfounded, rejected.

Decision of 2 February 2015

FC Zürich

(Late kick off / Blocking of stairs / Setting off fireworks)

Circumstances of the case

The second half of the game between FC Zürich and VfL Borussia Mönchengladbach (1-1), played on 2 October 2014, started 1 minute 36 seconds late due to FC Zürich late leaving their dressing room. In addition, 25 Bengal lights and firecrackers were lit by FC Zürich fans in sector D during the handshake procedure. Due to the extreme amount of smoke created around the pitch by the flares from both ends of the ground the referee waited for some of the smoke to clear before commencing the game. Following a goal scored by FC Zürich, 20-25 Bengal lights were set alight, and 4 firecrackers let off by the FC Zürich fans in sector D. FC Zürich supporters in section D of the home sector blocked all stairways.

Legal framework

Art. 11 (2) (g) DR

Art. 16 (2) (c) DR

Art. 38 Safety and Security regulations

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined FC Zürich € 62,000, warned the club and the club official Urs Meier for the late kick-off.

AB:

The Appeals Body rejected the appeal lodged by FC Zürich and the CEDB's decision of 16 October 2014 is upheld.

Chairman: Pedro Tomás, Spain

Members: Barry Bright, England

Ivaylo Ivkov, Bulgaria

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 16 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 the course of these proceedings, it refers here only to the submissions and evidence it considers necessary to explain its decision.

In substance, the UEFA match officials at the 2014/15 UEFA Europa League match between FC Zürich and VfL Borussia Mönchengladbach played on 2 October 2014 reported the following incidents:

-The second half started 1 minute 36 seconds late because the FC Zürich players were late leaving their dressing room.

-Twenty-five Bengal lights and firecrackers were lit by FC Zürich fans in sector D while the players were shaking hands.

-After a large amount of smoke was created around the pitch by flares ignited at both ends of the stadium, the referee waited for some of it to clear before starting the match.

-Between 20 and 25 Bengal lights and four firecrackers were ignited by the FC Zürich fans in sector D.

-FC Zürich supporters blocked all the stairways in home sector D.

In its decision of 16 October 2014, the UEFA Control, Ethics and Disciplinary Body decided as follows:

1. To fine FC Zürich € 62,000.
2. To warn FC Zürich for the late kick-off.
3. To warn FC Zürich official Urs Meier for the late kick-off.
4. The club ensures the official is informed personally of this decision.
5. The above fine must be paid into the bank account indicated below within 90 days of communication of this decision.

The decision with grounds was notified to the appellant on 18 November 2014.

Summary of the proceedings before the Appeals Body

The appellant submitted its declaration of intention to appeal on 21 November 2014.

It submitted the grounds for appeal on 26 November 2014. These can be summarised as follows:

Regarding the fireworks, the appellant accepts its responsibility for its supporters' improper conduct but underlines that nobody was injured and that nobody's physical integrity was endangered.

The body searches and entry checks were performed correctly and the stadium design makes it very difficult to implement safety measures at football matches.

As regards the blocking of stairs, the situation was not critical, since nobody was in danger at any time. FC Zürich has faced the same situation in the past, but was not punished by UEFA.

The fine of €62,000 is excessive and disproportionate, since the fault of the appellant is minor and not related to any negligence or intent but to a lack of appropriate infrastructure.

During its UEFA Europa League qualifying match against R. Standard de Liège in 2011, FC Zürich was fined € 20,000 for similar incidents involving fireworks and supporter misconduct.

In the same vein, after the 2014/15 UEFA Champions League match between Borussia Dortmund and Galatasaray AŞ on 4 November 2014, during which both sets of supporters caused very serious incidents, Galatasaray AŞ was fined €70,000 and Borussia Dortmund €32,000. The situation in Zurich was less serious.

To conclude, the appellant asked the Appeals Body to reduce the fine to €25,000 and to confirm the warnings issued to FC Zürich and its official Urs Meier for the late kick-off.

The appellant did not request an oral hearing.

In his reply of 6 January 2015, the UEFA Ethics and Disciplinary Inspector concluded that the appeal should be rejected and all costs charged to the appellant.

Hearing

No oral hearing was held as the appellant did not request one.

The Appeals Body met on 2 February 2015 to examine 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 parties' arguments are set out and examined below, in so far as they are relevant to the decision.

Jurisdiction of the Appeals Body and admissibility of the appeal

The Appeals Body has jurisdiction to deal with the case in question under Articles 24(4) and 54 of the UEFA Disciplinary Regulations. FC Zürich 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 in this case is directed at the €62,000 fine imposed against FC Zürich by the Control, Ethics and Disciplinary Body on the basis of Article 16 of the Disciplinary Regulations for the ignition fireworks and Article 38 of the UEFA Safety and Security Regulations for the blocking of passageways (see paragraph 1 of the operative part of the contested decision).

Legal consideration 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.

According to 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.”

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 person exercising a function at a match on their behalf. This rule applies to 2014/15 UEFA Europa League matches, as expressly stated in paragraph 6.02 of the competition regulations.

This principle is reproduced as follows in paragraph 6.02 of the Regulations of the UEFA Europa League 2014/15: “The clubs are responsible for the behaviour of their players, officials, members, supporters and any person carrying out a function at a match on their behalf.”

According to Article 38 of the UEFA Safety and Security Regulations: “The match organizer 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.”

Under Article 4.01(g) of the Regulations of the UEFA Europa League 2014/15, on entering the competition, participating clubs agree, *inter alia*: “to observe the UEFA Safety and Security Regulations (2006 edition) for all matches in the competition”.

Any breach of the UEFA Safety and Security Regulations may be punished in accordance with the UEFA Disciplinary Regulations (Article 49 of the Safety and Security Regulations).

The case at hand

The appellant does not dispute the warning against FC Zürich and its official Urs Meier for the late kick-off. Neither does it contest the facts (misbehaviour of supporters and obstruction of stairs) reported by the UEFA delegate.

The uncontested sanctions (paragraphs 2 and 3 of the operative part of the contested decision) will therefore not be re-examined and remain in force. The appeal is limited to the size of the fine imposed for the supporters’ misconduct and obstruction of the stairs. The appellant claims that there are mitigating factors that justify a reduction of the fine.

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 €62,000 for improper conduct by the appellant’s supporters under Article 16(2) of the Disciplinary Regulations.

The use of pyrotechnic devices

The danger and inconvenience caused by the lighting and throwing of fireworks has already been discussed in various articles published by sports bodies, in particular UEFA. The Control, Ethics and Disciplinary Body has explained on many occasions why their use is strictly

forbidden. In its decision of 16 October 2014, it provided a concise but convincing circumstantial reminder. The Appeals Body agrees in full with the reasoning of the Control, Ethics and Disciplinary Body and refers to its decision for the details. The appellant also, rightly and fairly, recognized the danger posed by fireworks (see statement of appeal, page 3, paragraph 6, *in fine*).

The appellant admits that its supporters used a large number of pyrotechnic devices but points out that nobody was injured or endangered.

In this regard, it must be underlined that the formal offence under Article 16(2) of the UEFA Disciplinary Regulations does not require people to be injured or to have their physical integrity endangered. According to this provision, the mere use of a pyrotechnic device is an offence, due to UEFA's zero tolerance of anything that could endanger the safety and security of people attending a UEFA football match. The absence of any concrete danger or injury can therefore not be considered a mitigating circumstance.

In view of the above, the appellant's argument in this respect is unfounded.

The blocking of passageways (stairs)

The appellant reiterates its claim that nobody was in danger at any time and argues that FC Zürich has faced the same situation in the past without being sanctioned by UEFA.

However, the formal offence under Article 38 of the UEFA Safety and Security Regulations does not require the free flow of spectators in the passageways to actually be jeopardised. According to this provision and UEFA case law, the mere presence of unauthorized persons in passageways is an offence, due to UEFA's zero tolerance of anything that could endanger safety and security. Here again, and in presence of a formal offence, the fact that there were no actual consequences cannot count as a mitigating circumstance.

The argument that no sanction was imposed for a similar offence in the past is rash. Indeed, it is quite possible that clubs or associations commit offences that remain unpunished for the simple reason that they are never brought to the attention of the UEFA disciplinary bodies. The fact that a previous incident in which stairs were obstructed appears not to have been reported to UEFA obviously does not exonerate FC Zürich from a disciplinary measure for the violation committed in the present case. There is no such thing as a right to equal treatment in breach of the law.

Safety and security are paramount. Without safety and security in stadiums, there would be no spectators, and without spectators there would be no football.

Therefore, the appellant's arguments above are not acceptable and must be ruled out.

Determination of the disciplinary measure

Pursuant to Article 17(1) of the UEFA Disciplinary Regulations, the competent 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.

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

The appellant alleges that, during its UEFA Europa League qualifying match against R. Standard de Liège in 2011, it was fined €20,000 for similar incidents involving fireworks and supporter misconduct.

In the same vein, the appellant argues that, after the 2014/15 UEFA Champions League match between Borussia Dortmund and Galatasaray AŞ on 4 November 2014, during which both sets of supporters caused very serious incidents, Galatasaray AŞ was fined €70,000 and Borussia Dortmund €32,000. It claims that the situation in Zurich was less serious.

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.

Nevertheless, the Appeals Body notes that, during the match between FC Zürich and R. Standard de Liège on 3 August 2011, FC Zürich supporters set off five fireworks, whereas around 50 pyrotechnic devices were ignited at the match against VfL Borussia Mönchengladbach. Clearly, the seriousness of the offences was therefore not the same. Furthermore, public passageways were not obstructed at the 2011 match. It is public knowledge that the use of pyrotechnic devices constitutes a risk to safety and security in the stadium. Indeed, the ignition of such devices at football matches has too often resulted in serious injuries to spectators. Once ignited, a device usually reaches a temperature of approximately 1600° Celsius and is very difficult to extinguish with traditional solvents. Moreover, the smoke produced by such devices often leads to irritation of the skin, eyes and nose. All these effects could cause spectators in the immediate vicinity of the device to leave the area in a hurry, which could create panic.

In the present case, the appellant's supporters ignited around 50 pyrotechnic devices, which constitutes a very serious offence.

Regarding the other previous case mentioned by the appellant, i.e. that of Galatasaray AŞ, it is important to note that the UEFA Ethics and Disciplinary Inspector appealed against this decision and the club's sanction was increased in the second instance to the playing of one match behind closed doors, the enforcement of which was suspended for a probationary period of five years.

The appellant also claims that the €62,000 fine is excessive and disproportionate, since the fault of the appellant is minor and not related to any negligence or intent but to a lack of appropriate infrastructure.

If the design of the stadium really does make it difficult to implement safety and security measures, as the appellant suggests without backing up its claim with any evidence, this can neither exonerate FC Zürich from blame for its supporters' misbehaviour nor constitute a mitigating factor.

According to Article 16(2) of the UEFA Disciplinary Regulations, which expresses the principle of strict liability set out in Article 8 of the Disciplinary Regulations, UEFA members and clubs are held responsible for any acts that infringe UEFA rules, regardless of fault. This strict liability is imposed on member associations and clubs for the actions of clearly defined third parties. The application of this rule leaves the disciplinary bodies no room for manoeuvre. Even if they are not at fault themselves, member associations and clubs are answerable for any misconduct by their supporters. It suffices for misconduct to be established for the club to automatically be held liable and penalized accordingly.

Therefore, the appellant's argument that it only committed a minor fault is unfounded and irrelevant. Neither can it count as a mitigating circumstance justifying a reduction of the sanction.

Considering the number and seriousness of the offences committed by FC Zürich supporters and their consequences for the smooth running of the match (the smoke forced the referee to delay the kick-off) and the competition's reputation, and taking into account the club's disciplinary record (FC Zürich has committed more than 15 disciplinary offences related to supporter misconduct over a period of five years) and the absence of any mitigating factors, the Appeals Body does not consider the fine imposed in the first instance excessive.

This disciplinary measure is not only repressive, since it also has a preventive and educational objective, i.e. to prevent people's physical integrity being endangered at UEFA football matches and to force FC Zürich to improve its internal organisation so as to have more control over its supporters and improve the design of its stadium, if this is part of the problem.

In the light of the above, the Appeals Body concludes that the challenged disciplinary decision was legally justified and that the Control, Ethics and Disciplinary Body did not abuse its power of discretion by fining FC Zürich €62,000. The Appeals Body considers this sanction an appropriate means of preventing the repetition of such offences. Consequently, FC Zürich's appeal is rejected and the challenged decision upheld.

Decision of 3 February 2015

Galatasaray A.S.

(Crowd disturbances / Setting off/throwing of fireworks & missiles)

Circumstances of the case

At the 35th minute and the 52nd minute of the game against Arsenal London, some plastic bottles were thrown onto the pitch by Galatasaray A.S. supporters. At the 37th minute the referee stopped the game due to flares which were thrown onto the pitch by Galatasaray supporters. Galatasaray A.S. supporters damaged approximately 120 seats.

Legal framework

Art. 16 (2) (f) DR

Art. 16 (2) (b) & (c) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined Galatasaray A.S. € 50,000.

AB:

The Appeals Body rejected the appeal lodged by Galatasaray A.S. and upheld the CEDB's decision of 16 October 2014.

Chairman: Pedro Tomás, Spain

Members: Olga Zhukoska, Ukraine

António Mortágua, Portugal

Facts of the case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 16 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.

At the 35th minute and the 52nd minute of the game against Arsenal London, some plastic bottles were thrown onto the pitch by Galatasaray A.S. supporters. At the 37th minute the referee stopped the game due to flares which were thrown onto the pitch by Galatasaray supporters. Galatasaray A.S. supporters damaged approximately 120 seats

On 16 October 2014, the UEFA Control, Ethics and Disciplinary Body (hereinafter: CEDB) issued a decision fining Galatasaray A.S. € 50,000.

This decision with grounds was notified to Galatasaray A.S. on 17 November 2014.

Summary of the proceedings before the Appeals Body

On 19 November 2015, Galatasaray A.S. informed UEFA of its intention to appeal the CEDB's decision and on 24 November 2015, it submitted its appeal pleadings, which can be summarised in substance as follows:

The incidents that occurred were related to order and security at the match, of which Galatasaray A.S. was not the host club. Therefore, according to Article 16(1) of the Disciplinary Regulations, Arsenal FC was responsible for order and safety in the stadium.

Article 33 of the UEFA Safety and Security Regulations prohibits supporters from bringing into the stadium any objects that are likely to be used in acts of violence. However, according to the UEFA match officials' reports, Galatasaray A.S. supporters threw flares and fireworks onto the pitch. As the visiting club, Galatasaray A.S. is not responsible for the fact that its supporters brought fireworks into the stadium, since the host club is responsible for order and security inside and outside the stadium.

If proper body searches had been conducted, such objects would not have been brought into the stadium.

Such incidents never occur at the stadium of Galatasaray A.S., which has a 52,600 capacity.

The damaged seats were not thrown. Besides, slight damage to 120 seats in a stadium with a 60,000 capacity should not be considered a violation under the UEFA Disciplinary Regulations. Since the Control, Ethics and Disciplinary Body has already ordered Galatasaray A.S. to contact Arsenal FC to settle the damage, the club has already been sanctioned by being ordered to compensate the home club. By imposing another sanction against Galatasaray A.S., the Control, Ethics and Disciplinary Body punished it twice for the same incident, which is illegal.

Finally, the appellant argues that the fine of €50,000 imposed against Galatasaray A.S. is excessive and disproportionate, since the incidents that occurred were not serious enough to merit such a heavy sanction, bearing in mind that Galatasaray A.S. was not the home club, i.e. not in charge of order and security at the match.

The fact that Galatasaray A.S. was not entitled to take security measures in order to prevent its supporters bringing prohibited objects into the stadium must be considered a mitigating factor.

The appellant requests, in principal, that the Appeals Body overturn and rescind the Control, Ethics and Disciplinary Body's decision to fine it €50,000. In the alternative, it requests that the fine be reduced.

Hearing

No hearing was held as the appellant requested the proceedings be conducted in writing only and the chairman of the Appeals Body did not raise any objection to this request.

The Appeals Body examined the entire case file, in particular the challenged decision, the grounds for appeal and the Ethics and Disciplinary Inspector's reply to the appeal, on 3 February 2015.

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

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, 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, 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.

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 persons exercising a function at a match on their behalf. This rule also applies to 2014/15 UEFA Champions League matches, as expressly stated in paragraph 6.02 of the competition's regulations.

Article 16 of the UEFA Disciplinary Regulations reads as follows:

¹ 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.

² However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

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

h) any other lack of order or discipline observed inside or around the stadium.

Under Article 38 of the UEFA Disciplinary Regulations, facts contained in match officials' reports are presumed to be accurate. However, proof of the inaccuracy of the contents of these reports may be provided.

In the case in hand

In this case, the Appeals Body has no reason to question the reports of the delegate or security officer. They are not even disputed by the appellant as far as the misconduct of the visiting supporters is concerned (see paragraph 6.1 above). It is therefore established to the Appeals Body's satisfaction that Galatasaray AŞ supporters set off pyrotechnic devices, some of which were thrown onto the field of play, that other missiles were also thrown, causing the referee to stop the game, and that visiting supporters broke 120 seats.

The danger and inconvenience caused by the lighting and throwing of fireworks has already been discussed in various articles published by sports bodies, in particular UEFA. The Control, Ethics and Disciplinary Body has explained on many occasions why their use is strictly forbidden. In its decision of 13 November 2014, it provided a concise but convincing circumstantial reminder. The Appeals Body agrees in full with the reasoning of the Control, Ethics and Disciplinary Body and refers to its decision for the details.

In view of the UEFA delegate's report and the above-mentioned regulatory provisions, the Control, Ethics and Disciplinary Body was therefore right to hold Galatasaray A.S. responsible for its spectators' behaviour under the principle of strict liability established in Articles 8 and 16(2) of the UEFA Disciplinary Regulations.

The appellant's main grievance seems to be that Galatasaray A.S. was playing away from home and was not in charge of safety and security. This kind of defence is being from case to case by the same club. It is about time to stress once and for all that ignorance of strict liability for behaviour of a club's fans and attempts to shift responsibility on the home club is futile and demonstrates lack of respect on part of Appellant to rather simple Disciplinary regulations and massive and consistent practice of the UEFA judicial bodies, which had in great number of cases given extensive explanations to this end.

Regarding the fireworks ignited and missiles thrown by the appellant's supporters, the appellant tries to deny its responsibility by claiming that it was not in charge of safety and security at the match in question and therefore could not prevent its supporters bringing pyrotechnic devices into the stadium. Galatasaray A.S. tries in vain to shift responsibility to the host club, blaming it for a lack of control. Possible organisational shortcomings on the part of the host club do not change the legal situation regarding strict liability based on Article 8 and, in particular, Article 16(2) of the Disciplinary Regulations. In particular, they cannot exonerate the visiting club of its responsibility for its supporters' improper conduct, since all associations and clubs are liable for the inappropriate behaviour of their supporters (Article 16(2) of the Disciplinary Regulations). No other interpretation of this provision or UEFA case law is possible (see cases of Italy v Serbia, 14th UEFA European Football Championship, 12 October 2010, d_23528_b and AS Roma v PFC CSKA Moskva, 17 September 2014, AB_27849_b_CSKA Moscow).

Regarding the lack of body searches, it is worth mentioning that Arsenal FC, as the host club, was punished for violating the UEFA Safety and Security Regulations under Article 16(1) of the Disciplinary Regulations.

Regarding the 120 damaged seats, the appellant considers that the order to contact Arsenal FC to settle the damage, with which the club has already complied, is already a punishment in itself.

However, acts of damage always have two separate consequences: not only are they punished under Article 16(2)(f) of the Disciplinary Regulations, but the disciplinary body can also, under Article 7 of the Disciplinary Regulations, order the perpetrator or his club to pay compensation for the damage caused. This order is not a sanction but a measure designed to speed up the civil settlement of the financial consequences of the offence. The same applies when a driver causes an accident by violating traffic rules, for example.

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 €50,000 for improper conduct by its supporters in violation of Article 16(2) of the UEFA Disciplinary Regulations.

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) 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 full or partial 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.

The appellant also claims that the sanction imposed against Galatasaray A.S. is excessive and disproportionate as the incident at the match was not serious enough to merit such a heavy sanction.

Not only is the ignition of fireworks in a stadium a serious offence, since it creates real danger, but in the present case, a number of fireworks were thrown, along with other missiles.

According to the long-established practice of the UEFA disciplinary bodies, the fact that fireworks were thrown constitutes an aggravating circumstance under Article 17 of the Disciplinary Regulations, given that the risk is thereby increased.

In addition, the incidents caused the referee to interrupt the game, which is another aggravating circumstance.

Finally, this is not the first time in the last five years that Galatasaray A.S. has been punished for its supporters' misbehaviour (it has already been sanctioned three times during the current season). In conformity with Article 19(2) of the Disciplinary Regulations, the recidivism counts as an additional aggravating circumstance.

Considering the number and seriousness of the other offences committed by Galatasaray A.S. supporters, 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), the sanction imposed by the Control, Ethics and Disciplinary Body is clearly justified.

The appellant requests that the fact that its home matches have passed without incident be considered a mitigating factor. This argument is irrelevant and inadmissible. If they were to consider this argument, the disciplinary bodies would have to make a distinction between supporters' conduct at home and away matches, limiting the effects of the strict liability principle at away matches. This is not admissible under the UEFA Disciplinary Regulations. Moreover it demonstrates sort of discriminatory approach of the Appellant towards importance of proper behaviour of its supporters at its home matches and away matches.

The fact that Galatasaray A.S. was the away club definitely does not constitute a mitigating circumstance. Otherwise, clubs playing away from home would not be held responsible for their supporters' improper conduct, which would hinder some of UEFA's objectives.

Moreover, the appellant's claim is untrue, since it has been punished 17 times in the last five years for improper conduct by its supporters and organisational failings. It has been fined a total of €205,000 in that time as result of misconduct by its supporters at home matches alone.

It must also be remembered that Galatasaray A.S. has so far received €12.5 million from UEFA for its participation in the 2014/15 UEFA Champions League.

In view of the above, the Appeals Body finds that the Control and Disciplinary Body correctly interpreted the provisions and case law applicable to this case. It took into account all the facts in fair proportion. Therefore, the Control, Ethics and Disciplinary Body's decision of 16 October 2014 is confirmed and the appeal, which is clearly unfounded, rejected.

Decision of 3 February 2015

Ferencvárosi T.C.

(Racist behaviour: Nazi salute / Banner)

Circumstances of the case

During the match, about a dozen Ferencvárosi T.C. gave a Nazi salute. Furthermore a Totenkopf Skull and a Celtic Cross symbols were located in front of the Ferencvárosi T.C. fans sector.

Legal framework

Art. 14 DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body ordered to the Ferencvárosi T.C. to play their UEFA competition match as host club behind closed doors and fined the club € 50,000.

AB:

The Appeals Body rejected the appeal lodged by the club and upheld the CEDB's decision of 14 August 2014.

Chairman: Pedro Tomás, Spain

Members: Olga Zhukovska, Ukraine

António Mortágua, Portugal

Facts of the Case

Below is a summary of the main 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 substance, it emerges from the UEFA match delegate's report that the following incidents occurred during the 2014/15 UEFA Europa League match between HNK Rijeka and Ferencvárosi TC on 17 July 2014:

In the first half, from his position in the main stand, the UEFA delegate noticed a number of salutes, which he thought might have been of a racist nature. In the second half, he positioned himself at pitch side, about 20 meters from the Ferencvárosi TC fans and, in the 60th minute, saw about a dozen of them perform a Nazi salute lasting no more than ten seconds.

At the end of the match, the delegate contacted the home club's security officer to see if he had witnessed the incident noted above. The security officer confirmed that he had witnessed the salute and considered it racist in nature.

Two banners, one depicting a Totenkopf skull and one a Celtic cross, were displayed by the Ferencvárosi TC supporters.

In its decision dated 14 August 2014, the Control, Ethics and Disciplinary Body decided to order Ferencvárosi TC to play its next UEFA competition match as host club behind closed doors and to fine the club €50,000 for its supporters' racist behaviour.

The decision with grounds was notified to the appellant on 18 November 2014.

Summary of the proceedings before the Appeals Body

On 19 November 2014, Ferencvárosi TC submitted its declaration of appeal.

On 25 November 2014, the appellant submitted the grounds for appeal, which can be summarised as follows:

The appellant explained that it had launched numerous initiatives against racism and discrimination in the previous couple of years. Moreover, it had improved safety and security, notably by installing new technology used to identify individuals from the pattern of veins on the palms of their hands in order to prevent troublemakers entering the stadium.

The appellant also underlined that, for away matches, the club invested in preventive and repressive measures in order to ensure that its fans behaved correctly. A specialised, high-resolution camera system was used to identify troublemakers.

Discriminatory conduct

The appellant argued that the UEFA delegate himself had been unsure whether the gesture performed by the Ferencvárosi TC supporters had been a Nazi salute.

The appellant suggested that only the fact that a gesture had been made by its supporters could be considered a fact under Article 38 of the UEFA Disciplinary Regulations. Its classification as a Nazi salute could not be considered a fact that should be presumed accurate in the sense of Article 38.

The appellant argued that the UEFA Disciplinary Regulations did not contain a provision on the standard of proof. According to Swiss law, by which the UEFA Appeals Body was bound according to Article 5 of the Disciplinary Regulations, the regular standard of proof was "full conviction beyond reasonable doubt" ("Regelbeweismass der vollen Überzeugung"), as established by the Swiss Federal Supreme Court and applied by the Court of Arbitration for Sport. This standard of proof was higher than "to the comfortable satisfaction of the hearing panel", which the Court of Arbitration for Sport applied in doping or match-fixing cases. Therefore, the appellant suggested that the question of whether the gestures by the

Ferencvárosi TC supporters had been Nazi salutes should be analysed by the Appeals Body under the standard of proof of “full conviction beyond reasonable doubt”.

The appellant claimed that the gesture performed by the Ferencvárosi TC supporters had been part of a choreographic display called “From the heart to the sky”, in which fans made various movements with their arms and shouted the club’s nickname “Fradi, Fradi, Fradi”.

The appellant also argued that, in its decision AB_27262 issued against the same club on 4 September 2014, the Appeals Body had decided that the gestures performed by the Ferencvárosi TC supporters during the match between Ferencvárosi TC and Sliema Wanderers FC on 10 July 2014 had not been Nazi salutes.

Banners

The appellant argued that the sector in which the banners depicting a skull and a Celtic cross had been displayed had not been occupied exclusively by Ferencvárosi TC supporters since, due to inadequate security checks, Croatian fans had been able to enter the sector without tickets.

In the appellant’s view, the Control, Ethics and Disciplinary Body had automatically concluded that these banners had been displayed by Ferencvárosi TC supporters. It claimed that this was wrong, since unknown fans had been in the same sector as the Ferencvárosi TC supporters. The appellant therefore suggested that it was not established under the standard of proof of “full conviction beyond reasonable doubt” that Ferencvárosi TC supporters had displayed these banners. Consequently, Ferencvárosi TC could not be held responsible for them.

In the alternative, the appellant claimed that, even if the Appeals Body thought that Ferencvárosi TC supporters had displayed the banners, the Control, Ethics and Disciplinary Body had wrongly applied Article 14 of the Disciplinary Regulations. It claimed that banners depicting a skull and a Celtic cross did not fall not under Article 14 since they were political and ideological statements or messages.

The appellant also argued that the scope of application of Articles 14 and 16 of the Disciplinary Regulations varied where political and ideological messages were concerned, in so far as Article 14 only applied if the political, ideological, religious, offensive or provocative message reached the level of “propaganda”. Article 16, under which any message not fit for a sports event was prohibited, applied in all other cases, including the present one.

The symbols of a skull and Celtic cross were not propaganda since they did not contain a misleading or biased element, as required under the definition of propaganda.

Finally, the appellant considered that the sanction imposed against Ferencvárosi TC was excessive and that the Control, Ethics and Disciplinary Body had not sufficiently taken into account its efforts to identify troublemakers and ban them from its stadium, its numerous anti-racism and anti-discrimination campaigns and initiatives, and the good job done by its stewards at the above-mentioned match.

The appellant asked the Appeals Body, principally, to admit the appeal and overturn the Control, Ethics and Disciplinary Body's decision or, in the alternative, to declare the appeal admissible and reduce the disciplinary measures by suspending the sanction of one match to be played behind closed doors for a probationary period in accordance with Article 20 of the Disciplinary Regulations.

On 18 December 2014, the UEFA Ethics and Disciplinary Inspector submitted her reply to the appeal, requesting that it be rejected and the costs charged accordingly.

Hearing

The chairman opened the appeal hearing, held at UEFA's headquarters on 3 February 2015, 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.

The chairman then gave the floor to the parties in accordance with Article 57 of the Disciplinary Regulations.

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. Ferencvárosi TC 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 consideration 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 persons exercising a function at a match on behalf of the association or club. This rule also applies to 2014/15 UEFA Europa 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.
- ² If one or more of a member association or club's supporters engage in the behaviour described in paragraph 1, the member association or club responsible is punished with a minimum of a partial stadium closure.
- ³ The following disciplinary measures apply in the event of recidivism:
- a) a second offence is punished with one match played behind closed doors and a fine of €50,000;
 - b) any subsequent offence is punished with more than one match behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.
- ⁴ If the circumstances of the case require it, the competent disciplinary body may impose additional disciplinary measures on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.
- ⁵ If the match is suspended by the referee because of racist and/or discriminatory conduct, the match may be declared forfeit.
- ⁶ The above disciplinary measures may be combined with specific directives aimed at tackling such conduct.
- ⁷ All forms of ideological, political and religious propaganda are forbidden. If this provision is breached, paragraphs 1 to 6 above apply by analogy.

This provision on strict liability is a special rule reflecting the principle enshrined in Article 8 of the Disciplinary Regulations, i.e. that member associations and clubs are responsible for the conduct of their supporters. This responsibility applies to offences committed by any person supporting the team before, during or after the match, irrespective of the fault of the club or association in question.

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 one 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.

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.

In the case at hand

The appellant does not deny the gestures made by its supporters. Neither does it contest that illicit banners were displayed in a part of the stadium reserved for its fans, arguing that a lack of supporter segregation means it is impossible to identify the fans who displayed the banner as Ferencvárosi TC supporters. In any case, it considers the sanction imposed excessive.

Therefore, the Appeals Body has to examine whether the Control, Ethics and Disciplinary Body correctly applied the UEFA regulations and legal principles, in particular those of legality and proportionality, or whether it abused its discretionary power by finding the appellant liable under Article 14(3) of the Disciplinary Regulations, fining it €50,000 and ordering it to play its next home match behind closed doors.

Before going any further, the Appeals Body would like to clarify the issue of the standard of proof once and for all, as the appellant repeatedly puts this argument forward in UEFA disciplinary procedures.

UEFA is an association under the terms of Articles 60 et seq. of the Swiss Civil Code. Its competence to establish rules and to exercise its disciplinary authority on its direct or indirect members is not based on public authority law or criminal law but on civil law.

The Swiss Federal Supreme Court has stressed that evidence should not be examined against the principles applied in criminal procedures, stating that problems related “to the duty of proof and assessment of evidence [are] problems which cannot be regulated, in private law cases, on the basis of concepts specific to criminal law” (judgment of the Swiss Federal Supreme Court of 31 March 1999, N., J. Y. W. v FINA, rec. 3d, reproduced in Digest of CAS Awards II, p. 775; judgment of the Swiss Federal Supreme Court of 15 March 1993, Gundel v FEI, rec. 8b, *ibidem*).

The standard of proof in criminal law cases is “beyond reasonable doubt”, but such a high degree of certainty is not required in civil trials. In UEFA disciplinary matters, “comfortable satisfaction” is the standard to be used. Contrary to what the appellant claims by referring to decision BGE 132 III 715 E 3.1, the Swiss Federal Supreme Court did not state that, in sports disciplinary matters, the standard of proof to be applied is “full conviction beyond reasonable doubt”.

In the case at hand, however, the question is irrelevant, as objective proof was provided by the UEFA delegate and supported with video and photos, showing that salutes identical to Nazi salutes, with the right arm in the air with a straightened hand, were performed and that banners depicting a Celtic cross and a skull were displayed.

Having said this, the panel will assess the relevant grievances made by the appellant, as reproduced in substance in paragraph 6 above.

According to Article 38 of the UEFA Disciplinary Regulations, “Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided”. The delegate reported: “I positioned myself about twenty meters pitch side from the

Ferencvárosi fans and in the 60th minute I observed about a dozen fans carrying out a Nazi salute". The appellant agrees with the fact contained in this report, as it stated in paragraph 16 of its grounds for appeal that "the gestures with hands may be considered as a 'fact' reported by an official in the sense of article 38 DR".

As the appellant with rightly observes, the presumption of accuracy enshrined in Article 38 of the Disciplinary Regulations is limited to the facts themselves. The legal classification of the gestures is the responsibility of the disciplinary bodies, who are not bound by the opinions contained in the official match reports, such as the classification of the gestures as "Nazi salutes" and "racist" in the present case. Therefore, the legal classification of the gestures is not covered by Article 38 of the Disciplinary Regulations but can be perceive as a relevant guide.

The gesture performed by these supporters can clearly be considered a "Nazi salute". The appellant's claim that it was part of a choreographic display called "From the heart to the sky" is not convincing. Moreover, this does not change the fact that this element of the so-called choreographic display is generally understood and perceived as a Nazi salute. The UEFA delegate had no doubt in this regard as soon as he moved near enough to the people performing it to perceive its exact appearance.

The fact that the UEFA delegate was initially too far away to determine the exact nature of the gesture in question and had to move closer to gain a clear perception of the facts cannot seriously be used by the appellant to prove that the gesture performed by Ferencvárosi TC supporters was not a Nazi salute.

The appellant alleges that, in decision AB_27262 imposed against it on 4 September 2014, the Appeals Body decided not to consider the gestures performed by its supporters during its 2014/15 UEFA Europa League match against Sliema Wanderers FC on 10 July 2014 as Nazi salutes. In that case, however, the Ferencvárosi TC representative demonstrated the so-called "From the heart to the sky" choreographic display (with both hands first on the chest then up in the air) during the Appeals Body hearing. When the panel asked the ethics disciplinary inspector for his views on the Ferencvárosi TC representative's demonstration, he admitted that it could not be considered a Nazi salute. In the absence of any clear video footage of the incident, the panel had serious doubts, from which the club benefited.

On the other hand, in the present case, however, photos and video footage clearly show that, during the above-mentioned match, the Ferencvárosi TC supporters extended their right arm with a straightened hand in the air. The Appeals Body notes that the Control, Ethics and Disciplinary Body was right to conclude that these supporters performed a gesture that can be considered a Nazi salute. The appellant's argument about choreography is irrelevant, since any gesture that is likely to be understood by a large number of reasonable spectators as a reference to extremist and discriminatory ideologies is forbidden at UEFA matches.

The Nazi salute is a gesture that was used as a greeting in Nazi Germany. It was a sign of adhesion to the Nazi regime's ideology, according to which Aryan Germans were physically stronger, intellectually advanced and more cultured than other European races. The Nazis considered races like the Jews, Blacks, Slavs and Roma to be sub-humans (*Untermenschen*). Therefore, the use of the Nazi salute was and remains a reference to a discriminatory concept

of society and is not only generally “unfit for a sports event”, but also discriminatory under Article 14(2) of the Disciplinary Regulations. Since the Nazi salute is a symbol widely recognised as a reference to the Nazi era and white supremacy, it has no place at UEFA football matches.

It is worth pointing out that the use of this salute is currently a criminal offence in Germany, the Czech Republic, Slovakia and Austria. In Switzerland and Sweden, it is illegal if used to spread Nazi ideology. This demonstrates, if need be, that not only UEFA, but also some countries prohibit the Nazi salute as a vehicle of racist ideology.

Regarding the banners displayed on the fence of the stand where the Ferencvárosi TC supporters were located, the appellant alleges that, due to a lack of segregation on the part of the organiser, not everyone in the sector where the banners were displayed was a Ferencvárosi TC supporter. This creates doubt as to whether the appellant’s supporters are responsible for these banners. Moreover, the appellant considers that the skull and Celtic cross are used in various contexts and do not necessarily have a discriminatory meaning.

The Appeals Body shares the Ethics and Disciplinary Inspector’s view that it is very unlikely that Ferencvárosi TC fans would have allowed supporters of the opposing team to display banners in their sector. Moreover, the UEFA delegate stated in his additional report that “all fans entering the stadium were searched in a very professional manner by the Security Services”. This shows that the host club, in this case HNK Rijeka, was not responsible for any shortcomings in terms of order or security either inside or around the stadium before, during or after the match in question that could fall under Article 16(1) of the Disciplinary Regulations or Article 33 of the UEFA Safety and Security Regulations relating to the searching and screening of spectators. In other words, the prove of the alleged shortcomings on the part of the host club was not provided.

Regarding the contested discriminatory nature of these banners, this has already been confirmed in previous decisions (Appeals Body decision d_25941 against FC Steaua București of 29 August 2013 / Appeals Body decision d_25801 against FC Zenit of 26 June 2013). A simple internet search of the words “Totenkopf skull” shows that this symbol was used as the unit insignia of the Nazi Panzer forces and by the Panzer units of the Luftwaffe, including those of the elite Fallschirm-Panzer Division 1 Hermann Göring. Both the 3rd SS Panzer Division of the Waffen-SS, and the World War II era Luftwaffe's 54th Bomber Wing Kampfgeschwader 54 were given the unit name "Totenkopf", and used a skull and crossbones insignia similar to that of the SS units of the same name. More recently, neo-Nazis and other white supremacists have resurrected the Totenkopf skull as a hate symbol because of its importance to the SS and it has become a common hate symbol. Therefore, UEFA, whose objective is to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics (Article 2 of the UEFA Statutes), has already considered that displaying this symbol during a UEFA match constitutes a serious violation of the UEFA Statutes and of Article 14 of the Disciplinary Regulations.

Meanwhile, the Celtic cross, which basically has a Christian meaning, was knowingly hijacked and used by the Nazis for something it was not intended to convey. In other words, they diverted its original meaning and it is now linked to their philosophy. Indeed, it is common

knowledge that the Celtic cross and the Totenkopf skull are among the most popular symbols for neo-Nazis and white supremacists. As a consequence, UEFA cannot allow them at its matches and considers them discriminatory under Article 14 of the Disciplinary Regulations.

Finally, the appellant claims that the sanction imposed is excessive. 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 perpetrators, campaigning against racism and making sure stewards perform as they are required to under the UEFA Safety and Security Regulations 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 will be taken into account when it comes to determining the level of the sanction.

For the reasons given above, the Appeals Body holds that it has been established to its satisfaction that Ferencvárosi TC supporters behaved in a discriminatory manner in breach of Article 14(2) of the Disciplinary Regulations by performing discriminatory gestures and displaying banners depicting a Totenkopf skull and a Celtic cross. The Control, Ethics and Disciplinary Body was therefore right to punish the club on this count in application of Articles 8 and 14(2) of the Disciplinary Regulations.

Determination of the disciplinary measure

As far as the discriminatory offence is concerned, Articles 14 and 17(3) 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 of the Disciplinary Regulations.

In the present case, the appellant has failed to provide any evidence of exceptional circumstances, as the argument it provided cannot be considered a mitigating circumstance in the sense of Article 17(3) of the Disciplinary Regulations. In the absence of such exceptional circumstances, Article 17(3) does not apply and the sanction set forth in Article 14(3)(a) applies in full.

In this case, the Appeals Body believes that, by ordering Ferencvárosi TC to play its next match

Case Law. CEDB & Appeals Body. 2014/2015 (January – June)

behind closed doors and fining the club €50,000, 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 confirmed.

Decision of 3 February 2015

Hungarian Football Federation

(Racist behaviour / Improper conduct of the team /
Setting off/throwing of fireworks and missiles)

Circumstances of the case

During the match between the Hungarian Football Federation and the Bulgarian Football Union, the Hungarian Football Federation supporters chanted 'Gypsies' to the Romanian Football Federation supporters. Also, during the match, a massive number of fireworks, i.e. firecrackers, flares and general pyrotechnics, were ignited by the Hungarian Football Federation supporters. Furthermore, several objects, i.e. lighters and flares across the void area at each other with some in the direction of the pitch, were thrown by these same supporters. Approximately 40 seats were broken within the Hungarian sector and parts were regularly thrown during the game normally in the direction of the Romanians adjacent.

Legal framework

Art. 14 DR

Art. 15 (4) DR

Art. 16 (2) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body ordered the partial closure of the Hungarian Football Federation Stadium during the next (1) UEFA competition in which the Hungarian Football Federation would play as the host association. The CEDB also fined the association € 30,000. The CEDB also warned the Hungarian Football Federation for the improper conduct of the team.

AB:

The Appeals Body admitted partially the appeal lodged by the Hungarian Football Federation, in so far as the € 30,000 fine is reduced to € 20,000. For the rest, the CEDB's decision of 31 October 2014 was upheld.

Chairman: Pedro Tomás, Spain

Members: Olga Zhukovska, Ukraine
António Mortágua, Portugal

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 31 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, it emerges from the UEFA match officials' reports that the following incidents occurred during the 2014–16 UEFA European Football Championship match between Romania and Hungary on 11 October 2014:

At half-time, the FARE observer informed the UEFA delegate by text message that Romanian supporters had chanted 'Out with the Hungarians from Romania' in the 4th, 24th and 40th minutes.

It was also reported to the UEFA delegate that Hungarian fans had chanted 'Romanians Gypsies' in the 19th minute. All the chants had lasted 15 seconds. The UEFA delegate pointed out that he had heard chanting, but had not understood its meaning.

In the 69th and 90th minutes, Hungarian fans chanted 'Gypsies' for almost 1 minute each time. The delegate heard this chant once.

A laser pen was used and a large number of pyrotechnic devices (Bengal lights, firecrackers, flares) were ignited in the Hungarian sector, some of which were thrown and landed in the empty sector of the stand and on the field of play.

Approximately 40 seats were broken in the Hungarian sector. Some of them were thrown during the game in the direction of the Romanian supporters' adjacent sector and others were thrown towards the pitch. One landed on the pitch in the 23rd minute.

In its decision dated 31 October 2014, the Control, Ethics and Disciplinary Body issued the following decision:

- To order the partial closure of the Hungarian Football Federation Stadium during the next (1) UEFA competition match in which Hungarian Football Federation would play as the host association. The Hungarian Football Federation shall inform on Monday 3 November 2014 at the latest, the sector(s) to be closed, which shall at least comprehend 2500 seats.

- To fine Hungarian Football Federation 30,000€.

- To warn Hungarian Football Federation for the improper conduct of the team.

Hungarian Football Federation is ordered to contact Romanian Football Federation within 30 days for the settlement of the damages caused by its supporters.

- The above fine must be paid into the bank account indicated below within 90 days of communication of this decision.

The decision with grounds was notified to the appellant on 10 November 2014.

Summary of the proceedings before the Appeals Body

On 11 November 2014, the appellant submitted its declaration of appeal.

On 18 November 2014, the appellant submitted the grounds for appeal, which can be summarised as follows:

The information regarding the discriminatory chanting had been reported to the UEFA delegate by a third party. As a result, this information should not be presumed to be accurate under Article 38 of the UEFA Disciplinary Regulations. As the UEFA delegate had not heard the chants himself, the Control, Ethics and Disciplinary Body had been wrong to state in the challenged decision that “according to the UEFA Delegate, the Hungarian Football Federation supporters chanted “Gypsies” to the Romanian Football Federation supporters”.

Since a FARE observer was not an official in the sense of the UEFA Statutes, there was no official report in the sense of Article 38 of the Disciplinary Regulations to establish that Hungarian supporters had chanted “Gypsies”.

The appellant argued that the UEFA Disciplinary Regulations did not contain a provision on the standard of proof. According to Swiss law, by which the UEFA Appeals Body was bound according to Article 5 of the Disciplinary Regulations, the regular standard of proof was “full conviction beyond reasonable doubt” (“Regelbeweismass der vollen Überzeugung”), as established by the Swiss Federal Supreme Court and applied by the Court of Arbitration for Sport. This standard of proof was higher than “to the comfortable satisfaction of the hearing panel”, which the Court of Arbitration for Sport applied in doping or match-fixing cases.

The appellant claimed that all evidence considered by the UEFA Appeals Body should be analysed under the standard of proof of “full conviction beyond reasonable doubt”.

The appellant suggested that the text message from the FARE observer was not a credible piece of evidence, as its author was unknown and the text message in question was not part of the case file.

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.

The Hungarian Football Federation had never admitted that Hungarian supporters had chanted “Gypsies” towards Romanian supporters. It had only acknowledged the delegate’s report.

The appellant underlined that two different versions of the chants had been reported: according to the UEFA security officer, the FARE observer had heard the chant “Gypsies, Gypsies” while, according to the delegate’s statement, the FARE observer had heard the chant “Romanians Gypsies”. It was not clear which report had formed the basis of the Control, Ethics and Disciplinary Body’s decision.

The appellant considered that, in view of the above, it was not established that Hungarian supporters had behaved in a racist manner at the match in question.

In the alternative, the appellant suggested that, even if the Hungarian supporters had chanted “Gypsies”, this word, which was the name of a population, was neither racist nor insulting. Consequently, the Hungarian supporters’ behaviour would not fall under Article 14 of the Disciplinary Regulations.

The appellant did not contest the use of pyrotechnic devices, but disputed the Control, Ethics and Disciplinary Body's reference to a "massive number of fireworks". In its eyes, this was an exaggeration, since the UEFA security officer had reported that only 15 fireworks had been set off.

The appellant did not dispute the fact that some seats had been destroyed and indicated that it had already contacted the Romanian Football Federation and settled the issue.

The Hungarian supporters had not caused any crowd disturbances as indicated by the Control, Ethics and Disciplinary Body.

Regarding the seven players who had been cautioned by the referee, the appellant argued that the match had not been played fairly by either team. The tension in the stadium had probably caused the referee to issue more yellow cards than would normally be the case.

Finally, the appellant argued that the sanctions imposed against both federations were not well balanced, since the Romanian supporters had used more pyrotechnic devices (21) and caused trouble that had forced security personnel to intervene. Both groups of supporters had thrown objects at each other. The sanction imposed against the Hungarian Football Federation was not proportionate to either the facts or the sanction imposed against the Romanian Football Federation.

On 18 December 2014, the UEFA Ethics and Disciplinary Inspector submitted her reply to the appeal, requesting that it be rejected and the costs charged accordingly.

Hearing

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 Hungarian Football Federation representative or the Ethics and Disciplinary Inspector had any preliminary questions. Neither had any preliminary questions or issues.

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.

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.

The Hungarian Football Federation 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 consideration 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, 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.

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 persons exercising a function at a match on their behalf. This rule also applies to 2014–16 UEFA European Football Championship matches, as expressly stated in paragraph 6.01 of the competition 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.

² If one or more of a member association or club's supporters engage in the behaviour described in paragraph 1, the member association or club responsible is punished with a minimum of a partial stadium closure.

³ The following disciplinary measures apply in the event of recidivism:

a) a second offence is punished with one match played behind closed doors and a fine of €50,000;

b) any subsequent offence is punished with more than one match behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.

⁴ If the circumstances of the case require it, the competent disciplinary body may impose additional disciplinary measures on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.

⁵ If the match is suspended by the referee because of racist and/or discriminatory conduct, the match may be declared forfeit.

⁶ The above disciplinary measures may be combined with specific directives aimed at tackling such conduct.

⁷ All forms of ideological, political and religious propaganda are forbidden. If this provision is breached, paragraphs 1 to 6 above apply by analogy.

This provision on strict liability is a special rule reflecting the principle enshrined in Article 8 of the Disciplinary Regulations, i.e. that member associations and clubs are responsible for the misconduct of their supporters (any person supporting the team) before, during or after the match, irrespective of the fault of the club or association in question.

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.

In the case at hand

The appeal is directed primarily against the sanction imposed by the Control, Ethics and Disciplinary Body against the Hungarian Football Federation for its supporters' alleged discriminatory conduct and, secondly, against the sanction imposed for the alleged massive use of pyrotechnic devices by its supporters.

The Hungarian Football Federation contests neither the order to contact the Romanian Football Federation to pay for the damage caused by its supporters – which it appears to have done already – nor the warning issued to its team, on which it only commented. As a result, the Appeals Body will consider only the measure imposed on the basis of Article 14 of the Disciplinary Regulations relating to discriminatory behaviour by the Hungarian supporters and the disciplinary sanction imposed for the violation of Article 16(2)(c) of the Disciplinary Regulations.

Regarding the sanctioned discriminatory chants, it is worth recalling that FARE (Football Against Racism in Europe) 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 and national teams, including Hungarian supporters.

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.

The first argument set out by the Hungarian Football Federation in its appeal pleadings was that the text message informing the UEFA delegate that the Hungarian supporters had chanted "Gypsies" had been sent by a third party and therefore should not be presumed to be accurate under Article 38 of the Disciplinary Regulations. It suggested that the Control, Ethics and

Disciplinary Body had violated this provision and should not have taken this text message into consideration.

It is true that a FARE observer's report is not considered an official report in the sense of Article 38 of the Disciplinary Regulations. The text message sent by the FARE observer, which the UEFA delegate mentioned in his report, should not therefore be presumed to be accurate under Article 38.

However, this text message should be considered a serious and credible denunciation ("reported offence") within the scope of Article 48(c) of the Disciplinary Regulations. Under this provision, disciplinary proceedings can be opened not only on the basis of official reports or if a protest has been lodged, but also if violations of UEFA's statutes, regulations and decisions are reported. In this case, the text message sent by the FARE observer reported facts falling within the scope of Article 14 of the UEFA Disciplinary Regulations.

Moreover, the appellant omitted to mention that, in his report, the delegate had added, concerning the chant reported by the FARE observer: "I did hear what I believed was this chant on one occasion". This confirmed the facts contained in the text message sent by the FARE observer.

The Control, Ethics and Disciplinary Body does not have to rely solely on the referee's or delegate's report and, as the appellant seems to think, refrain, for example, 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.

Article 37(1) of the UEFA Disciplinary Regulations also 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, means that all necessary and useful steps must be taken to gather or consider evidence in order to establish the facts and justify the decision.

In the present case, the UEFA delegate was informed by a text message from a FARE observer confirming that what he had heard on one occasion was actually a chant of the word "Gypsies". Both pieces of evidence suggest that discriminatory chants were performed by Hungarian supporters.

The appellant tries to deny this by claiming that, according to Swiss law (BGE 132 III 715 E.3.1), all types of evidence used by the UEFA Appeals Body must be analysed under the standard of proof of "full conviction beyond reasonable doubt". This interpretation is incorrect and leads the Appeals Body to recall the following basic principles.

The burden of proof: 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, refer to messages contained in electronic devices, or take into account personal

confessions if this helps to establish the facts. This means that UEFA cannot sanction an offence in the absence of sufficient evidence.

The standard of proof: the standard of proof is the standard applied by the decision-making body when weighing the evidence in order to decide whether or not sufficient evidence is at hand to admit the offence or other relevant facts.

As an association under the terms for Article 60 et seq. of the Swiss Civil Code, its competence to establish rules and to exercise its disciplinary authority on its direct or indirect members is not based on public authority law or criminal law but on civil law.

With regard to the procedure governing sports disciplinary sanctions, the case law of the Swiss Federal Supreme Court consistently stresses that problems related to “to the duty of proof and assessment of evidence [are] problems which cannot be regulated, in private law cases, on the basis of concepts specific to criminal law, [...] and related guarantees found in the European Convention on Human Rights.” (judgment of the Swiss Federal Supreme Court of 31 March 1999, N., J. Y. W. v FINA, rec. 3d, reproduced in Digest of CAS Awards II, p. 775; judgment of the Swiss Federal Supreme Court of 15 March 1993, Gundel v FEI, rec. 8b, *ibidem*).

The standard of proof in criminal law cases is “beyond reasonable doubt”, but such a degree of certainty is not required in civil trials. Consequently, it shall be recalled that these proceedings are civil in nature and, thus, in accordance with a long lasting CAS jurisprudence, the standard of proof is the comfortable satisfaction of the Panel, if not a lower one like the “balance of probabilities” (see, amongst others, CAS 2010/A/226, CAS 2008/A/1370 & 1376, CAS 2008/A/1583 and 1584, CAS 2007/A/1411 and CAS 2004/A/602).

In its decision mentioned by the appellant (BGE 132 III 715 E 3.1), the Swiss Federal Supreme Court did not question this principle. It explained different standards of proof in civil law, but did not state, as the appellant claims, that the standard to be applied in sports-related cases is “full conviction beyond reasonable doubt”.

In the present case, however, this question is irrelevant. The Hungarian Football Federation itself admitted it implicitly by stating, in its statements submitted to the first-instance disciplinary body of UEFA on 20 October 2014, that “Hungarian Football Association acknowledges that the infringements reported by the delegates occurred before and after the match (e.g. racist chants, use of pyrotechnics, ...” or “NOT ONLY Hungarian fans used racist expressions...”.

In other words, the text message sent to the UEFA delegate by the FARE observer reporting discriminatory chants that the UEFA delegate heard on one occasion has been actually corroborated by the Hungarian Football Federation itself. The appellant’s argument, put forward during the hearing, that it admitted the facts as an emotional response after the match is not convincing. Such an argument appears to be in bad faith, which is surprising on the part of such a reputable federation.

In view of the above, the Appeals Body deems that the Control, Ethics and Disciplinary Body was right to consider it satisfactorily established and proven that Hungarian supporters chanted the word “Gypsies”.

The appellant also tries to deny the discriminatory nature of the “Gypsies” chant performed by its supporters, arguing that the word “Gypsy” is the name of a population and not racist. This argument is clearly unfounded, if not rash. Again, the appellant itself admitted in its letter of 20 October 2014 that “NOT ONLY Hungarian fans used racist expressions”.

More precisely, UEFA’s notion of discrimination is broader than that used in criminal law. According to UEFA, which does not protect the same interests as state law, any practice that stigmatises an ethnic group or stresses that opponents belong to particular ethnic group without positive context is discriminatory and runs counter to its statutory objectives.

Shouts of “Gypsies”, which demonstrate a deliberately derogatory and racist attitude since they denigrate the ethnic group of the Roma people, cannot be accepted by UEFA in organised football. Even if some individuals do not view this word as discriminatory, it is mostly considered as such for mainly historical reasons. Therefore, it is contrary to one of UEFA’s objectives, which 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 (see Article 2(b) of the UEFA Statutes and the aforementioned Article 14 of the Disciplinary Regulations). This question has already been dealt with by the sports authorities and the Court of Arbitration for Sport confirmed this interpretation in its award 2013/A/3324 GNK Dinamo v. UEFA.

For the reasons given above, the Appeals Body holds that it has been established to its comfortable satisfaction that Hungarian supporters behaved in a discriminatory manner in breach of Article 14(2) of the UEFA Disciplinary Regulations by conveying discriminatory messages through songs. The Control, Ethics and Disciplinary Body was therefore right to punish the club on this count.

The appellant also argued that the number of pyrotechnic devices described by the Control, Ethics and Disciplinary Body in paragraph 26 of its decision, i.e. “a massive number of fireworks (...) were ignited by the Hungarian Football Federation supporters”, was inaccurate because the security officer’s report mentioned only 15 fireworks. The security officer also reported that, before kick-off, “Several cannon crackers, Bengal lights (...) were thrown”. The word “several” in this context is quite imprecise, as the exact number of pyrotechnic devices used is not clear. Therefore, as the extent of the fine was based on a “massive number of fireworks”, the sanction in this respect must be amended.

Finally, the appellant argued that the sanction imposed against the Hungarian Football Federation by the Control, Ethics and Disciplinary Body was not proportionate to the facts and to the sanction imposed against the Romanian Football Federation.

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, proportionality

and equal treatment, or whether it abused its discretionary power by setting the fine at €30,000 and ordering the partial closure of the stadium for Hungary's next UEFA competition home match for discriminatory conduct under Article 14(4) and a serious violation of Article 16(2) of the UEFA Disciplinary Regulations.

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) DR provides for a severe minimum sanction for this type of offence: "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), which constitutes a *lex specialis*, 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." (Appeals Body's own emphasis.)

This provision requires the competent body to assess whether there are exceptional circumstances that justify a departure from the standard disciplinary measure laid down in Article 14(2) of the Disciplinary Regulations.

In the present case, none of the arguments or evidence provided by the appellant can be considered an exceptional mitigating circumstance in the sense of Article 17(3) of the Disciplinary Regulations. The Appeals Body therefore has no more reason than the Control, Ethics and Disciplinary Body to depart from the standard sanction of a partial stadium closure, as laid down in Article 14(2) of the Disciplinary Regulations. Article 17(3) of the Disciplinary Regulations does not apply.

The attitude of the home supporters in particular, even though it can be considered reprehensible, is not an exceptional mitigating circumstance in the sense of Article 17(3) of the Disciplinary Regulations.

Consequently, 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.

The Appeals Body deems it proportionate to reduce the fine imposed by the Control, Ethics and Disciplinary Body for the other offences committed at the same match by Hungarian fans. Indeed, the number of pyrotechnic devices reported by the security officer (15) cannot be considered "massive", as the Control, Ethics and Disciplinary Body suggested. It is nevertheless true that setting off any pyrotechnic devices, whether one or fifteen, during a football match poses a serious danger to players, officials and even to the person igniting such devices.

However, contrary to the appellant's claim, Hungarian supporters were also responsible for serious crowd disturbances, in which 40 seats were destroyed and some were thrown. These constitute even acts of hooliganism.

Taking into account the above-mentioned circumstances, the €30,000 fine imposed by the Control, Ethics and Disciplinary Body under Articles 17 and 18 of the Disciplinary Regulations for the ignition and throwing of objects, crowd disturbances and acts of damage is reduced to €20,000 in accordance with the proportionality principle.

Since the Appeals Body's decision amends the contested decision of the Control, Ethics and Disciplinary Body, the appeal lodged by the Hungarian Football Federation is partially admitted.

Decision of 3 February 2015

F.C. Porto

(Late kick off / Insufficient organisation / Stairways blocked /

Setting off/throwing of fireworks & missiles)

Circumstances of the case

During the 2014/2015 UEFA Champions League match on 21 October 2014 between F.C. Porto and Athletic Club, two firecrackers were used by the home fans on the South tribune. The visiting sectors 50, 49, 48, 47 and 46 seemed overcrowded as stairways were blocked by away supporters. Furthermore, the home team came late from their dressing room delaying, hereby, the kick off.

Legal framework

Art. 11 (2) (g) DR

Art. 16 (2) DR

Art. 38 Safety & Security Regulations

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined F.C. Porto € 10,000 for the late kick off infringement. The CEDB also fined F.C. Porto € 8,000 for the setting off of fireworks and the insufficient organisation. F.C. Porto coach Julian Lopetegui Agote was warned for the late kick off infringement.

AB:

The Appeals Body partially admitted the appeal lodged by F.C. Porto. The CEDB's decision was modified as follows:

- F.C. Porto was warned for the late kick off of its team
- the € 8,000 fine is reduced to € 4,000
- for the rest, the CEDB's decision of 13 November 2014 was confirmed.

Ad hoc Chairman:

Olga Zhukovska, Ukraine (as judge sitting alone)

Facts of the case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 13 November 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 the course of these proceedings, it refers here only to the submissions and evidence it considers necessary to explain its decision.

In substance, the UEFA match officials at the 2014/15 UEFA Europa League match between FC Porto vs. Athletic Club of 21.10.2014, reported the following incidents:

2.1 Two firecrackers were used by the home fans on the South tribune;

2.2 The visiting sectors 50, 49, 48, 47 and 46 seemed overcrowded as stairways were blocked by away supporters;

2.3 *"Lateness of kick off: 1 Minute 35 seconds. The home Team came late from their Dressing room (35 seconds) and then both Teams grouped together for the Team Photo".*

In its decision of 13 November 2014, the UEFA Control, Ethics and Disciplinary Body decided as follows:

- To fine FC Porto € 10'000 for the late kick off infringement.
- To fine FC Porto € 8'000 for the setting off of fireworks and the insufficient organisation.
- To warn FC Porto coach Julian Lopetegui Agote for the late kick off infringement.
- The club ensures the official is informed personally of this decision.
- The above fine must be paid into the bank account indicated below within 90 days of communication of this decision.

The decision with grounds was notified to the appellant on 4 December 2014.

Summary of the proceedings before the Appeals Body

The appellant submitted its declaration of intention to appeal on 7 December 2014.

It submitted the grounds for appeal on 15 December 2014. These can be summarised as follows:

Firecrackers

The Appellant draws attention to small number (2) and rather unarmful nature of the devices used, although does not deny responsibility for this violation.

Late kick-off offence

The appellant argues that the team was late only 35 seconds not 1.35 minute, which can be seen from the delegate report. This delay was caused by the photo shout procedure for UEFA's campaign "Say no to racism" held for the first time in the FC Porto stadium. This amount of time nearly 1/3 inferior and almost imperceptible.

Insufficient organisation (blocking of stairways)

The appellant rejected the argument of the Control, Ethics and Disciplinary Body according to which the stand reserved to the visiting supporters was overcrowded. It refers to photos that demonstrate a great number of empty seats. The away supporters who were blocking the stairways by means of their personal choice and not because there were not sufficient places to seat.

The away supporters were addressed by security and ordered to seat in available seats but refused. The security together with police made the decision not to apply force not to

aggravate situation which was peaceful at the moment, as the risk of clearing the stairways were higher than the estimate benefits.

The appellant claims that the responsibility of the host club for the blocking of stairs by Athletic supporters cannot be perceived as a matter of strict liability, as long as if the host club can prove according to Article 16(1) of the UEFA Disciplinary Regulations its absence of negligence to the organisation of the match it shall not be disciplinary punished.

The appellant argues that it has committed no fault in relation to the organisation and maintenance of order and security at the match in connection with the blocking of stairways.

In view of the above, the appellant request the substitution of the fine of €10,000 for the late kick-off to a warning; the proportional reduction for the fine of €8,000 related to setting off fireworks and insufficient organisation.

The appellant did not request an oral hearing.

In his reply of 16 January 2015, the UEFA Ethics and Disciplinary Inspector concluded that the appeal should be rejected and all costs charged to the appellant.

Hearing

No hearing was held as the appellant did not request one.

The ad hoc chairman examine the entire case file on 3 February 2015, in particular the challenged decision, the grounds for appeal and the Ethics and Disciplinary Inspector's reply to the appeal.

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

Jurisdiction of the Appeals Body and admissibility of the appeal

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

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 fine imposed on the FC Porto and the warning against the coach of the FC Porto are met the conditions required by the above provision to allow the case to be dealt

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

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: *"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 [...]."*

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 person exercising a function at a match on their behalf. This rule applies to 2014/15 UEFA Europa League matches, as expressly stated in paragraph 6.02 of the competition regulations.

Article 16 of the UEFA Disciplinary Regulations reads as follows:

1 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.

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

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

Article 11 DR states:

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

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

Under Article 38 of the UEFA Safety and Security Regulations: *"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."*

Under Article 4.01(g) of the Regulations of the UEFA Europa League 2014/15, on entering the competition participating clubs agree inter alia *"to observe the UEFA Safety and Security Regulations (Ed 2006) for all matches in the competition"*.

Any breach of the Safety and Security Regulations may be punished in accordance with the UEFA Disciplinary Regulations (Article 49 of the Safety and Security Regulations).

The case at hand

As regards the two pyrotechnic devices the Appellant does not contest the fact as such, but claims that *"there were used just two small firecrackers, which are very small explosive devices primarily designed to produce a large amount of noise in the form of loud bang"*. Still those qualify as pyrotechnic devices. It is thus legitimate to understand that this fact is admitted.

The appellant admitted that its team was delayed, but by 35 second rather ten 1,35 minutes and due to action targeted at campaign against racism.

It also contested having failed to implement UEFA Safety and Security Regulations as the visiting sectors were not overcrowded, there were a lot of empty seats, the visiting fans just in the heat of the game stood on their own will and would not comply with requests of the security officers to move to the empty seats available. Then under the advice of the police the Club refrain from clearing stairs as the intervention of the security service would under the circumstances likely result in security breach in the visiting sector, which was peaceful at the moment.

The kick-off is the way to start or restart the play. The kick-off of the above-mentioned match was fixed by the competition regulations.

Accordingly, it remains for the ad hoc chairman of 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 by fining Porto €10,000 for the late kick-off, €8,000 for setting off of fireworks and insufficient organisation and finally warning the coach of the club.

Late kick-off

Regarding the abovementioned match, the kick-off time had been fixed by Article 12.02 of the 2014/15 UEFA Champions League regulations, which stipulates: *"As a rule, the play-offs, group matches, round of 16 matches, quarter-finals, semi-finals and final kick off at 20.45 CET. Exceptions to this rule can be set by the UEFA administration."*

More broadly speaking, the main goal of Article 11(2) (g) DR is to guarantee the proper running of matches organised by UEFA by avoiding delays (first or second half), as these can undermine the relationship between UEFA and its commercial partners, as well as violating the principle

of equality of treatment as compared with teams who start on time and respect the regulations. As a result, the proper implementation of Article 11(2)(g) DR requires the disciplinary bodies to be able to punish both the club and the coach.

This provision does not require that the time of delay is substantial. So in principle, the fact that the kick-off was delayed by the team by 35 seconds rather than 1.35 minutes does not in itself exonerate the club from sanctioning.

Therefore, the ad hoc chairman is comfortably satisfied that the FC Porto was delayed as for the kick-off of the above-mentioned match. However the reasons for such was extraordinary and met the one of the key targets of the UEFA – fight against racism. It was the pre-planned action of picture taking of the teams with the relevant slogans. Balancing the harm done and the aim achieved, the ad hoc chairman finds that it would be disproportional to attribute high significance to the violation in question in the context of campaign against racism which is by far more important than 35 sec. violation of TV rights and other commercial considerations above.

Insufficient organisation (blocking of stairways)

Safety and security in the stadium is a major priority for UEFA, as reflected in various UEFA circulars and regulations, in particular the UEFA Safety and Security Regulations. In principle keeping public passageways free of any and all obstructions is an integral part of the UEFA stadium safety and security concept. Any breach in this regard therefore constitutes violation, which is a formal one, that is does not require the negative consequences to occur.

The appellant argued and proved this by photos to the comfortable satisfaction of the judge that the visiting sectors were not overcrowded, there were a lot of empty seats. In the UEFA Delegate's Report in the section "organisation of security" this problem is described somewhat controversially: on one hand there is a reference that visiting sectors «seemed overcrowded» (the word "seemed" reflecting lack of certainty); on the other hand there is an indication of number of fans 2977 lesser than number of seats in those sectors -3321.

Also there are no grounds to not to believe the appellant that the visiting fans would not comply with requests of the security officers to move to the empty seats available and that the police forces instructed the club not to intervene as the risk of clearing the stairways were higher than the estimate benefit, because the Delegate's report does not rebut those statements.

There is no indication in the Delegate's report, that there was any single one disturbance (commotion between fans, etc.) related to the discussed facts. In the section "security incidents" the delegate had marked "no". Therefore it seems that decision not to apply force was correct one under the circumstances. It should also be noted that in Delegate's report in the section "Organisation: Match preparation (home team) it is assessed as excellent, so in all probability number of stewards was found to be adequate.

However the blocking of staircases to certain extend did take place.

The appellant also argues that the responsibility of the host club for the blocking of stairs by Athletic supporters cannot be perceived as a matter of strict liability, as if the host can prove according to Article 16(1) of the UEFA Disciplinary Regulations its absence of negligence to the organisation of the match it shall not be disciplinary punished.

It is true, that unlike violations, described in Art 16(2) the violation under Article 16(1) of the UEFA Disciplinary Regulations is not subject to strict liability and for this reason is structurally separated in different part from the ones enlisted in part 2 of the same article.

It is also true, that in the UEFA delegates report in the section "ORGANISATION" (Match preparation home team) the preparation is assessed as "excellent".

Having weight all those factors it is rather difficult to establish with absolute level of certainty that the Appellant acted guiltily. However negligence is rather broad concept and the conclusion can be made based on probability standard that some measures could be taken to clear the passageways by not applying force, and that therefore there is certain fault of the Club.

Determination of the disciplinary measure

Pursuant to Article 17(1) of the UEFA Disciplinary Regulations, the competent 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.

In practice of UEFA disciplinary bodies, the principle of proportionality of sanctions is considered as paramount.

Article 53 of the UEFA Statutes and Article 6(1) of the UEFA Disciplinary Regulations contain a list of possible disciplinary measures, including a fine (c), the playing of matches behind closed doors (h), Full or partial 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 the minimum and maximum fines that can be imposed. These general provisions give the disciplinary bodies broad powers of discretion when it comes to determining disciplinary measures.

The appellant argues that the €10,000 fine imposed by the Control, Ethics and Disciplinary Body for late kick-off is too high, it also request to reduce the fine of €8,000 for setting of firework and the insufficiency of organisation.

The ad hoc chairman of the Appeals Body considers, that the nature of the incidents and the circumstances surrounding them, a number of mitigating circumstances (committing one of violation due to participation in the campaign against racism, excellent preparation of the game, absence of any commotion or harm to anyone present, good spirit of the game, comparatively not grave scope of violations, etc.) based on the principle of proportionality justifies a warning against the appellant for the late kick-off to be applied instead of fine and the reduction of the fine of €8,000 to €4,000 appropriate. Therefore, the CEDB's decision of 16 October 2014 is amended and the appeal lodged by FC Porto is partially admitted.

Decision of 3 February 2015

Legia Warszawa S.A.

(Racist behaviour / Setting off/throwing of objects /

Crowd disturbances / Acts of damage)

Circumstances of the case

In the 2014/2015 UEFA Europa League match between KSC Lokeren OV and Legia Warszawa on 27 November 2014, ten fireworks and two firecrackers were lit, two of which were thrown onto the pitch by Legia supporters. In 78th minute, Legia supporters directed monkey chants at the KSC Lokeren goalkeeper. The referee stopped the match for about 2 minutes while an announcement was made over the PA system, after which play was resumed. About 150 Legia supporters opened the gate behind stand B1, forcing the police to intervene to get them back to their initial positions and close the gate. Legia supporters threw a large number of objects, including stones. A bin attached to a wall was set alight and a canteen door was burnt and damaged.

Legal framework

Art. 14 DR

Art 16 (2) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body ordered Legia Warszawa S.A. to play its next two UEFA competition matches as host club behind closed doors for the racist behaviour of its supporters. Also, Legia Warszawa S.A. was fined € 80,000 for the crowd disturbances, € 20,000 for the setting off and throwing of objects and € 5'000 for the acts of damages. Furthermore, Legia Warszawa was banned from selling tickets to its supporters for the next UEFA Europa League season 2014/2015 competition matches which the club will play as the visiting team. Finally, Warszawa was ordered to contact KSC Lokeren OV within 30 days for the settlement of the damages caused by its supporters.

AB:

The Appeals Body rejected the appeal lodged by Legia Warszawa and the CEDB's decision of 2 December 2014 was upheld.

Chairman: Pedro Tomás, Spain

Members: Olga Zhukovska, Ukraine

António Mortágua, Portugal

Facts of the case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 2 December 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 the course of these proceedings, it refers here only to the submissions and evidence it considers necessary to explain its decision.

In substance, the UEFA match officials at the 2014/15 UEFA Europa League match between KSC Lokeren OV and Legia Warszawa on 27 November 2014 reported the following incidents:

- Ten fireworks and two firecrackers were lit, two of which were thrown onto the pitch by Legia supporters.
- In 78th minute, Legia supporters directed monkey chants at the KSC Lokeren goalkeeper. The referee stopped the match for about 2 minutes while an announcement was made over the PA system, after which play was resumed.
- About 150 Legia supporters opened the gate behind stand B1, forcing the police to intervene to get them back to their initial positions and close the gate.
- Legia supporters threw a large number of objects, including stones.
- A bin attached to a wall was set alight and a canteen door was burnt and damaged.

In its decision of 2 December 2014, the UEFA Control, Ethics and Disciplinary Body decided as follows:

1. *To order Legia Warszawa SA to play its next two (2) UEFA competition matches as host club behind closed doors for the racist behaviour of its supporters.*
2. *To fine Legia Warszawa SA €80,000 for the crowd disturbances.*
3. *To fine Legia Warszawa SA €20,000 for setting off fireworks and throwing objects.*
4. *To fine Legia Warszawa SA €5,000 for the act of damages.*
5. *To ban Legia Warszawa SA from selling tickets to its supporters for the next two UEFA Europa League season 2014/2015 competition matches which the club will play as the visiting team.*
6. *Legia Warszawa SA is ordered to contact KSC Lokeren OV within 30 days for the settlement of the damages caused by its supporters.*
7. *The above fine must be paid into the bank account indicated below within 90 days of communication of this decision.*

The decision with grounds was notified to the appellant on 9 December 2014.

Summary of the proceedings before the Appeals Body

The appellant submitted its declaration of intention to appeal on 12 December 2014.

It submitted the grounds for appeal on 17 December 2014. These can be summarised as follows:

The appellant does not question or challenge the findings of the Control, Ethics and Disciplinary Body or the merits of the case as presented in its decision of 2 December 2014; it is appealing only against the level of punishment imposed, which it would like to have reduced. The appellant lists the mitigating circumstances that it requests the Appeals Body take into

consideration as it decides whether or not to amend the disciplinary measures imposed in accordance with Article 17(3) of the UEFA Disciplinary Regulations.

The appellant argues that UEFA Legia Warszawa's games in the 2013/14 season have been free of racist incidents and related offences, thereby demonstrating the efficiency of the preventive measures the club has put in place to fight such behaviour, in particular its No to Racism campaigns and meetings with supporters.

Most of the fans were not aware of the meaning of the symbols printed on the fan items, so measures are needed to educate them.

Legia Warszawa, in cooperation with KSC Lokeren OV and the public authorities, has already taken all action possible to punish those fans who behaved in a racist or other inappropriate manner during the match, imposing the toughest measures possible, including stadiums bans.

Body searches were not conducted properly as a number of supporters entered the stadium without any ID check or body search whatsoever. This confirms Legia Warszawa's suspicions that some individuals who should not have been admitted to the stadium were and Legia Warszawa could therefore not be held responsible for them.

Playing its round of 32 home match behind closed doors would affect the image and promotion of the competition as a whole, since the final is being staged in Warsaw. *"We strongly believe that Legia fans, players, as well as management may and shall contribute to the promotion, atmosphere and overall success of this extraordinary event even if Legia won't progress to its further stages,"* the club argues.

The Control, Ethics and Disciplinary Body's decision to order two matches to be played behind closed doors, without deferring any part of the sanction for a probationary period or at least postponing it, should be treated as slightly disproportionate and unfair.

The appellant requests that the Appeals Body re-examine the nature and extent of the disciplinary measures imposed on Legia Warszawa in light of the concrete circumstances of the case, and to amend the challenged decision as follows:

- Enforcement of the second of the two matches behind closed doors is suspended for a probationary period of five years; or in the alternative:
- The second of the two matches behind closed doors shall be the club's first UEFA competition home match in the 2015/16 season; or
- Another proportionate measure that complies with the spirit and letter of the UEFA Disciplinary Regulations and would enable the Legia Warszawa round of 32 home match not to be behind closed doors."

The appellant did not request an oral hearing.

In his reply of 16 January 2015, the UEFA Ethics and Disciplinary Inspector concluded that the appeal should be rejected and all costs charged to the appellant.

Hearing

No hearing was held as the appellant did not request one.

The Appeals Body met on 3 February 2015 to examine 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 parties' arguments are set out and examined below, in so far as they are relevant to the decision.

Jurisdiction of the Appeals Body and admissibility of the appeal

The Appeals Body has jurisdiction to deal with the case in question under Articles 24(4) and 54 of the UEFA Disciplinary Regulations. Legia Warszawa 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 in this case is directed exclusively at the sanction imposed by the Control, Ethics and Disciplinary Body on the basis of Article 14 of the Disciplinary Regulations for discriminatory conduct by Legia supporters (Legia Warszawa ordered to play its next two (2) UEFA competition matches as host club behind closed doors for the racist behaviour of its supporters -see point 1 of the appealed decision-).

The appellant does not contest the fines or the punishment for other supporter misconduct, in violation of Article 16(2) of the Disciplinary Regulations, as no relief is sought on these counts. The uncontested sanctions (points 2 to 7 of the appealed decision) will therefore not be re-examined and remain in force (€80,000 fine for the crowd disturbances, €20,000 fine for setting off fireworks and throwing objects, €5,000 fine for damages, ban from selling tickets to own supporters for the next 2014/15 UEFA Europa League away matches, and order to contact KSC Lokeren OV within 30 days to arrange a settlement for the damages caused by Legia supporters).

Legal consideration 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: *"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 [...]."*

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 person exercising a function at a match on their behalf. This rule applies to 2014/15 UEFA Europa League matches, as expressly stated in paragraph 6.02 of the competition regulations.

The fight against all forms 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.

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.

² If one or more of a member association or club's supporters engage in the behaviour described in paragraph 1, the member association or club responsible is punished with a minimum of a partial stadium closure.

³ The following disciplinary measures apply in the event of recidivism:

a) a second offence is punished with one match played behind closed doors and a fine of €50,000;

b) any subsequent offence is punished with more than one match behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.

⁴ If the circumstances of the case require it, the competent disciplinary body may impose additional disciplinary measures on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.

⁵ If the match is suspended by the referee because of racist and/or discriminatory conduct, the match may be declared forfeit.

⁶ The above disciplinary measures may be combined with specific directives aimed at tackling such conduct.

⁷ All forms of ideological, political and religious propaganda are forbidden. If this provision is breached, paragraphs 1 to 6 above apply by analogy.

Fair play and tolerance are among the values that UEFA promotes through its competitions. In this respect, UEFA in particular and football in general cannot accept racist or discriminatory behaviour. It should not be seen anywhere in football, or sport in general.

In its efforts to achieve this goal, UEFA applies a principle of zero tolerance of discriminatory behaviour on the pitch and in the stands.

Article 14(2) and (3) of the UEFA Disciplinary Regulations establish a *lex specialis* in relation to Articles 19 and 6(1) of the same regulations, providing a clear system of escalation of sanctions for discriminatory offences:

-partial closure of the stand for a first violation;

-one match behind closed doors and a fine for a second offence;

- more than one match behind closed doors, stadium closure, forfeiting of a match, the deduction of points or disqualification from the competition for any subsequent offence.

When discriminatory behaviour occurs, possible mitigating circumstances must be assessed in the restrictive framework of Article 17(3) of the UEFA Disciplinary Regulations: in order for the standard sanctions of Article 14 to be reduced, the mitigating circumstances must be "exceptional".

The case at hand

Monkey chants are known to be and recognised as an expression of racism: they equate the person at which the chants are directed with a monkey, suggesting they are inherently inferior. The monkey chants directed at the KSC Lokeren goalkeeper, a black player, were therefore an obvious expression of racism on the part of Legia supporters.

Such behaviour not only constitutes a serious violation of UEFA's statutory objectives; it also offends the human dignity of a group of people. Therefore, UEFA, through its disciplinary bodies, must ensure that such incidents do not happen again.

Since the people who performed monkey chants at the above-mentioned match were Legia supporters in the sense of the UEFA regulations, Legia Warszawa must be held responsible for their misbehaviour (strict liability principle). The only question to answer is how heavy a sanction to impose in such a case.

Indeed, the appellant does not deny that in the 78th minute of the above-mentioned match, Legia supporters directed monkey chants at the KSC Lokeren goalkeeper. Only the nature and level of the sanction pronounced is contested.

Accordingly, 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 power of discretion by ordering Legia to play its next two home matches behind closed doors for discriminatory conduct under Article 14(3) of the UEFA Disciplinary Regulations.

Determination of the disciplinary measure

Pursuant to Article 17(1) of the UEFA Disciplinary Regulations, the competent 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.

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

Article 14 of the Disciplinary Regulations is a specific provision designed to help implement UEFA's zero tolerance approach to racist and discriminatory offences. The harsh minimum sanctions contained in this article, and the escalation system indicated above, indicate the seriousness of such offences.

The appellant alleges mitigating circumstances, which the Appeals Body will consider in its evaluation of the sanction imposed by the Control, Ethics and Disciplinary Body.

The appellant first argues that its own campaign to tackle racism had been successful as no racist behaviour had been observed among its supporters during the 2013/14 season. This is not entirely true, however. The appellant has been punished twice for discriminatory conduct on the part of its supporters during the 2013/14 season, once at the match The New Saints FC v Legia Warszawa on 17 July 2013 and again at the match Molde FK v Legia Warszawa on 31 July 2013. It is matter of concern if the appellant does not even remember previous sanctions received for offences of this nature. They obviously had an insufficient preventive and deterrent effect.

Moreover, the measures allegedly taken by the appellant as part of its campaign to combat racism constitute general duties of any club participating in UEFA competitions. Identifying perpetrators and holding meetings with supporters cannot be considered exceptional measures. That said, any extra effort to combat violence in stadiums must be encouraged and any legal action taken by the club against troublemakers must be taken into account when it comes to determining the level of the sanction.

The appellant also suggests shortcomings in the organisation of the match, i.e. that the body searches were not conducted properly, thereby allowing undesirable individuals – for which Legia could not be held responsible – to enter the stadium.

Alleged shortcomings on the part of the host club, for which no evidence has been produced, do not alter the strict liability principle enshrined in Articles 8 and 14(2) of the UEFA Disciplinary Regulations and can in no way 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 evidence of exceptional circumstances (Article 17(3) DR), which has not been done by the appellant in this case.

In the case at hand, neither the match delegate nor the security officer pointed to any lack of control over supporters entering the ground. For want of any evidence of this kind, no exceptional security failings can be admitted as exceptional circumstances justifying a reduction in the sanction imposed on the appellant for the discriminatory conduct of individuals supporting its team. Moreover, the appellant provides no evidence that the monkey chants were performed, as it suggests, by these undesirable supporters who should not have been admitted.

The appellant finally considers the Control, Ethics and Disciplinary Body's decision to order two matches to be played behind closed doors, without any suspension or postponing of the

sanction, as slightly disproportionate and unfair. The Appeals Body believes, however, that by using the word “slightly”, the appellant itself betrays a lack of conviction in this argument.

In the case at hand, the appellant has been found guilty of discriminatory conduct on the part of its supporters for the third time within five years, which calls for a minimal sanction of more than one match behind closed doors, according to Article 14(3)(b) of the UEFA Disciplinary Regulations. Considering the latest discriminatory offences committed, the harm they have caused to the reputation of the competition, and the club’s poor record in terms of its supporters’ discriminatory conduct over a period of five years, the application of Article 14(3)(b) was appropriate and the sanction entirely proportionate.

The appellant also requests that the enforcement of part of the sanction be postponed. The Appeals Body believes, however, that given the nature of the sanction as part of both a policy of zero tolerance and a warning system of escalating sanctions, if its enforcement were postponed without exceptionally good reason, it would have no effect – especially as, in this particular case, the appellant cannot even remember the previous sanctions imposed for discriminatory behaviour by its supporters-.

Regarding the request not to enforce the sanction at the club’s next match this season, it is also worth noting that the purpose of immediately enforcing sanctions is to ensure sporting fairness and to send a message to all clubs participating in UEFA competitions and their supporters, as a deterrent. To allow a club to continue without punishment after being found guilty in absence of any exceptional mitigating circumstances would create confusion for any reasonable supporter and encourage others clubs to accept the same misconduct.

After taking into account the above-mentioned circumstances and legal considerations, the Appeals Body considers that two home matches behind closed doors is the appropriate sanction and, as such, is beyond criticism.

In view of the above, the appeal lodged by Legia Warszawa is rejected and the decision of the Control, Ethics and Disciplinary Body is confirmed.

Decision of 3 February 2015

Galatasaray A.S. Youth

(Illicit banner / Setting off/throwing of fireworks and objects / Match abandoned)

Circumstances of the case

At the beginning of the match, nearly one minute after kick off, fireworks were thrown on the pitch from the sector of the Turkish fans; the referee stopped the match, and all together, referee, observer, representatives of the stadium, security, representatives of the clubs, and the UEFA delegate, tried to give the match a chance to be played. An official announcement was made. Before the match continued, after an interruption of 17 minutes, the captain of Galatasaray explained to the fans that the players wanted to play the match. During the first half time, there were two fireworks cracking in the sector itself, nothing was thrown on the pitch. After the second goal of Anderlecht, 90+4, the match was interrupted due to five or six other fireworks thrown on the pitch. There were banners from Galatasaray fans, but in Turkish; one banner in English with the inscription: Istanbul has always been your grave.

Legal framework

Art. 16 (2) (e) DR

Art. 16 (2) (b) & (c) DR

Art. 21 (1) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body declared the UEFA Youth League 2014/2015 match RSC Anderlecht Youth vs. Galatasaray A.S. Youth played on 25 November 2014 as forfeit. Galatasaray was deemed to have lost the match 3:0. Also, Galatasaray was fined € 25,000.

AB:

The Appeals Body lodged by Galatasaray was rejected and the CEDB's decision of 4 December 2014 is upheld.

Chairman: Pedro Tomás, Spain

Members: Olga Zhukovska, Ukraine

António Mortágua, Portugal

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 4 December 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, it emerges from the UEFA match officials' reports that the following incidents occurred during the 2014/15 UEFA Youth League match between RSC Anderlecht Youth and Galatasaray AŞ Youth (2-0) on 25 November 2014:

Less than a minute after kick-off, fireworks and cigarette lighters were thrown onto the pitch from the sector occupied by the Turkish fans. The referee interrupted the match and, together with the referee observer, the UEFA delegate and representatives of the stadium, security services and clubs, took steps to ensure the match could be resumed. Both clubs and the spectators were informed that, if such an incident happened again, the match would be abandoned.

The match was resumed after an interruption of 17 minutes, during which an official announcement was made in Turkish and English and the Galatasaray AŞ captain explained to the fans that the players wanted to play the match.

During the first half, two fireworks were ignited in the stand, but nothing was thrown onto the pitch.

After the second RSC Anderlecht goal, in the 90+4th minute, the match was abandoned because five or six more fireworks had been thrown onto the pitch.

The Galatasaray AŞ supporters displayed some banners in Turkish and one in English, which read: "Istanbul has always been your grave".

On the basis of the aforementioned match officials' reports, the Control, Ethics and Disciplinary Body decided as follows on 4 December 2014:

-To declare the UEFA Youth League 2014/2015 match RSC Anderlecht Youth vs. Galatasaray A.Ş. Youth played on 25 November 2014 as forfeit. Galatasaray A.Ş. Youth is deemed to have lost the match 3:0.

-To fine Galatasaray A.Ş. Youth € 25'000.

-The above fine must be paid into the bank account indicated below within 90 days of communication of this decision.

The decision with grounds was notified to the appellant on 12 December 2014.

Summary of the proceedings before the Appeals Body

The appellant submitted its declaration of appeal on 15 December 2014.

On 19 December 2014, it submitted its grounds for appeal, which can be summarised as follows:

The referee's decision to abandon the match in the 90+5th minute is not acceptable from either a sporting or legal perspective, since the incident that occurred in the 90+5th minute was not serious enough for the referee to abandon or even interrupt the match.

Although fireworks were ignited and objects were thrown, nothing happened after the incident which had caused the referee to interrupt the match for 17 minutes. Near the end of normal time, the referee added five minutes of stoppage time, during which RSC Anderlecht scored. This disappointed some of the spectators, who threw a few objects onto the pitch. These objects were thrown in disappointment but did not hit or endanger anybody.

The decision to abandon the match only 20 seconds before the end of stoppage time was unnecessary and did not benefit anyone. The referee is only entitled to abandon the match if there is no possibility of continuing; his powers of discretion are not unlimited or unquestionable.

RSC Anderlecht was the home team and, under Article 16(1) of the UEFA Disciplinary Regulations, must be held responsible for order and security both inside and around the stadium before, during and after the match. Therefore, Galatasaray AŞ cannot be held responsible for an incident that it had no authority to prevent.

The appellant asks the Appeals Body to consider the banner, which was only displayed by a few people, as an isolated incident that cannot be attributed to all Galatasaray AŞ fans.

Finally, the appellant asks the Appeal Body to overturn and rescind the Control, Ethics and Disciplinary Body's decision or, in the alternative, to reduce the fine imposed. It also requests that the appeal proceedings be conducted in writing only.

On 19 January 2015, the UEFA Ethics and Disciplinary Inspector submitted her reply to the appeal. She concluded that the appeal should be rejected, with all the costs charged to the appellant.

Hearing

No hearing was held, since the appellant requested that the proceedings be conducted in writing only and neither the chairman of the Appeals Body nor the Ethics and Disciplinary Inspector raised any objection.

The Appeals Body examined the entire case file, in particular the challenged decision, the grounds for appeal and the Ethics and Disciplinary Inspector's reply and cross-appeal.

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

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. Galatasaray AŞ 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 consideration 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 and Article 8 of the UEFA Disciplinary Regulations, 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.

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 persons exercising a function at a match on their behalf. This rule also applies to 2014/15 UEFA Youth League matches, as expressly stated in paragraph 4.01 of the competition regulations.

Article 16(1) of the UEFA Disciplinary Regulations reads as follows:

¹ 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.

² However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

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

By listing examples of unauthorised behaviour, this provision lays down principles of conduct that supporters must observe inside a stadium. It gives concrete expression to the general principle of strict liability laid down in Article 8 of the Disciplinary Regulations, according to which 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 accordingly.

According to Law 5 of the Laws of the Game ("Powers and duties"), the referee is entitled to stop, suspend or abandon a match because of outside interference of any kind.

Under Article 21 of the UEFA Disciplinary Regulations, if a match cannot take place or cannot be played in full, the member association or club responsible forfeits the match.

Under Article 38 of the UEFA Disciplinary Regulations, the match delegate's and referee's reports must be considered truthful and reliable unless they can be proved otherwise, clearly and beyond doubt.

The case at hand

In this case, the Appeals Body has no reason to question the match officials' reports. They are not even disputed by the appellant as far as the misconduct of the visiting supporters is concerned (see paragraph 8, above). It is therefore established to the Appeals Body's satisfaction that Galatasaray AŞ supporters threw cigarette lighters and set off pyrotechnic devices, some of which were thrown onto the field of play and caused the referee to interrupt and subsequently abandon the match. The fact that an illicit banner was displayed by Galatasaray AŞ fans is also not contested.

The appellant merely contests the sanction imposed for these incidents, which it believes should not have caused the referee to abandon the match.

Law 5 of the Laws of the Game empowers the referee, as the person in charge of the match, to exercise discretion on the field of play in certain circumstances and, in particular, to abandon the match unilaterally if he deems it appropriate. These powers of discretion are, of course, limited by the principle that rights should not be abused.

Powers of discretion are abused when a decision is not sustainable because it is logically unsound, arbitrary and clearly not supported by the facts at hand, or explicitly prohibited by the regulations.

According to the case law of the Swiss Federal Supreme Court, a decision is arbitrary if it seriously disregards a clear and undisputed law or legal principle and blatantly violates the sense of justice or fairness. To consider a decision null and void because it is arbitrary, it is not enough that the grounds for it are unsustainable. It must also result in an outrageous violation of the sense of sporting justice and fairness (ATF 125 I 166 rec. 2a p. 168; 125 II 10 rec. 3a p. 15, 129 rec. 5b p. 134; 124 V 137 rec. 2b p. 139; 124 IV 86 rec. 2a p. 88 and the quoted judgments).

Consequently, the only points that the Appeals Body must re-examine are, firstly, whether the referee abused his powers of discretion established by Law 5 of the Laws of the Game by deciding to abandon the match and, secondly, whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles in place, in particular those of legality and proportionality, or also abused its powers of discretion by declaring the match forfeit by Galatasaray AŞ (3-0) and fining the appellant €25,000 for its supporters' improper conduct under Articles 8 and 16(2) of the Disciplinary Regulations.

Visiting supporters set off numerous pyrotechnic devices, most of which were thrown onto the field of play, and threw cigarette lighters onto the pitch, which obviously constituted a serious danger to anyone taking part in the match. Setting off fireworks is a serious offence, since it can not only disrupt the orderly running of the match but also, and more importantly, endanger the physical integrity of those who light them, other spectators, officials and, in some cases,

even the players on the pitch. Throwing such devices constitutes an aggravating circumstance (Article 17 of the Disciplinary Regulations), given the increased risk posed.

In the present case, the fact that missiles and fireworks were thrown and caused the match to be interrupted constitutes an aggravating circumstance.

During the interruption caused by the throwing of fireworks and missiles by the Galatasaray AŞ supporters, the delegate and referee informed both clubs and spectators that the match would be abandoned if such an incident happened again.

In view of the above, and considering that the referee had given a warning, the Appeals Body does not consider that the referee exceeded his broad powers of discretion. His decision to abandon the match was not taken rashly, since it was preceded by a warning, which the Galatasaray AŞ fans should have heeded. Therefore, the referee neither abused nor exceeded his powers of discretion by deciding to abandon the match in question, since he had said he would do so if such incidents were repeated.

Law 5 of the Laws of the Game does not place any time limit on the referee's right to abandon a match at his own discretion. No matter how much time remains, the referee is entitled to abandon the match if he deems it appropriate to do so. Although the Appeals Body understands the appellant's frustration in this particular case, it can only rule out its argument that the match was almost over.

As the incidents that led the referee to abandon the match were caused by Galatasaray AŞ fans, the Control, Ethics and Disciplinary Body was therefore right to hold Galatasaray AŞ responsible for its supporters' behaviour under the principle of strict liability established in Articles 8 and 16(2) of the Disciplinary Regulations and for the match being abandoned.

The appellant's argument that it cannot be held responsible for its supporters' improper conduct because it was the away club is clearly based on a misinterpretation of Article 16(1) and 16(2) of the Disciplinary Regulations.

Under Article 16(1) of the Disciplinary Regulations, the host association or club is responsible for order and security both inside and around the stadium before, during and after the match. It is liable for incidents of any kind and may be subject to disciplinary measures and directives. Match organisers (UEFA member associations and clubs) must do all they can to ensure that order and security are maintained in and around the stadium. Under this provision, there is no strict liability.

On the other hand, according to Article 16(2) of the Disciplinary Regulations, all member associations or clubs, whether home or away, are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on their behalf. This is the principle of strict liability, as stipulated in Article 8 of the Disciplinary Regulations. This responsibility applies alongside that held by the host club or association under Article 16(1).

This rule also applies to teams participating in the 2014/15 UEFA Youth League, in accordance with paragraph 4.01 of the competition regulations.

Consequently, the fact that Galatasaray AŞ was playing away from home does not exempt it from the possibility of sanctions for improper conduct by its supporters under Article 16(2) of the Disciplinary Regulations. No such interpretation is provided for in either this provision or UEFA case law (see *AS Roma v PFC CSKA Moskva* of 17 September 2014, case no. AB_27849_b_CSKA Moscow).

As explained above, fault is irrelevant to the question of responsibility under Article 16(2) of the UEFA Disciplinary Regulations.

The appellant argues that the objects thrown did not hit anybody or endanger anyone on the pitch. This is irrelevant and does not even count as a mitigating circumstance. As a formal offence, the ignition of pyrotechnic devices and throwing of objects does not require anyone to be endangered or injured for disciplinary action to be taken. The mere throwing of an object or ignition of fireworks justifies disciplinary action and an appropriate sanction, since it is likely to endanger people in the stadium. The fact that nobody was actually endangered or hurt does not make the offence any less serious.

In this case, however, the throwing of fireworks actually endangered the players' safety, which is why the referee decided to interrupt the match. His decision is beyond criticism and the appellant's attempt to contest it with a view to limiting the disciplinary consequences of its supporters' misconduct demonstrates genuine bad faith.

The appellant is also responsible for another type of misbehaviour on the part of its supporters, who displayed a banner containing a message that was obviously "not fit for a football event" in the sense of Article 16(2)(e) of the Disciplinary Regulations ("Istanbul has always been your grave"). UEFA does not tolerate people using its sporting events to display provocative or insulting messages. This offence is in addition to the other supporter misconduct for which the appellant must be sanctioned.

The appellant's argument that the displaying of the illicit banner was an isolated incident of which the club was unaware must be ruled out and requires no further comment.

In this respect also, contrary to the appellant's claim, a banner does not need to be displayed (or any offence committed) by a large number of people for Article 16(2)(c) of the Disciplinary Regulations to be breached, since the ignition of one firework or throwing of one object by a single individual is sufficient to establish a breach of this provision.

Considering the above, the Control, Ethics and Disciplinary Body was right to hold Galatasaray AŞ responsible for its supporters' multiple acts of misconduct.

Determination of the disciplinary measures

The appellant requests that the sanction imposed in the contested decision, i.e. the declaration of the match forfeit with a 3-0 scoreline and the €25,000 fine, be overturned or, in the alternative, the fine be reduced.

As the incidents that led to the abandonment of the match were caused by Galatasaray AŞ supporters, their club must be held responsible according to Article 8 and 16(2) of the Disciplinary Regulations. The consequences of the abandonment of a match for which a club or association is responsible are governed by Article 21 of the Disciplinary Regulations (especially paragraphs 1 and 4) and the disciplinary bodies have no room for manoeuvre in this respect:

If a match cannot take place or cannot be played in full, the member association or club responsible forfeits the match.

(...)

The consequences of a match being declared forfeit are as follows:

a) the team forfeiting the match is deemed to have lost 3-0 (5-0 in futsal competitions), unless the actual result is less favourable to the member association or club at fault, in which case that result stands

Consequently, the Control, Ethics and Disciplinary Body had no choice but to declare the match forfeit by Galatasaray AŞ with a 3-0 scoreline.

Pursuant to Article 17(1) of the UEFA Disciplinary Regulations, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the case, taking account of both aggravating and mitigating circumstances. Cases involving multiple offences are governed by Article 18 of the UEFA Disciplinary Regulations.

Article 53 of the UEFA Statutes and Article 6(1) of the UEFA Disciplinary Regulations contain a list of possible disciplinary measures, including a fine (c), the playing of matches behind closed doors (h), a full or a partial 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 the minimum and maximum fines that can be imposed. These general provisions give the competent disciplinary body broad powers of discretion when it comes to determining what disciplinary measures to impose.

The objective and subjective elements of the offences appear particularly unfavourable in this case, especially the attitude of Galatasaray AŞ which, in all disciplinary cases relating to improper conduct by its supporters, has tried to absolve itself of all responsibility rather than undertake to deal with its difficult supporters.

Other associations and clubs with similar problems have managed to take measures to improve the situation. These have proven to be effective and Galatasaray AŞ must follow suit.

The Appeals Body notes that the Control, Ethics and Disciplinary Body has taken account of all the concrete circumstances, in particular the club's previous record, the seriousness of the incidents and the fact that the game had to be abandoned. It has also taken into account the fact that pyrotechnic devices were thrown onto the pitch, causing the referee, with full justification, to interrupt the match.

Under these circumstances, the Control, Ethics and Disciplinary Body's decision is beyond reproach because it conforms with the principle of legality and the declaration of the match forfeit by Galatasaray AŞ with a 3-0 scoreline and the fine imposed were proportionate to the gravity of the offence committed.

Consequently, the appeal lodged by Galatasaray AŞ is rejected.

Decision of 17 February 2015

Qarabağ F.K.

(Protest)

Circumstances of the case

On 11 December 2014 Qarabağ F.K. played an UEFA Europa League match 2014/2015 against Internazionale Milano. The final result was a draw (0:0). On 12 December 2014 Qarabağ F.K. lodged a protest on the basis of alleged obvious errors committed by the referee as defined by Article 9 DR in accordance to Article 50 (1) (c) DR. Qarabağ FK holds that the match was terminated earlier than the additional time announced by the fourth official, which is against the Law 7 of the FIFA Laws of the Game concerning the duration of the match. In addition, the Club stresses that the referee made a malicious mistake regarding the rules related to offside contemplated in Law 11 of the FIFA Laws of the Game

Legal framework

Art. 9 DR

Art. 50 DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body declared the protest inadmissible.

AB:

The Appeals Body rejected the appeal lodged by Qarabağ F.K. and upheld the CEDB's decision of 5 February 2015.

Ad hoc Chairman: Michel Wuilleret, Switzerland (as judge sitting alone)

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 5 February 2015, 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 to these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

On 11 December 2014, Qarabağ FK played FC Internazionale Milano in the 2014/15 UEFA Europa League. The final score was 0-0.

On 12 December 2014, Qarabağ FK lodged a protest on the basis of alleged obvious errors committed by the referee. According to the club, the referee violated Law 11 of the Laws of the Game when he disallowed a Qarabağ goal which was, in fact, scored by an Internazionale Milano player (own goal) and not by the Qarabağ player who was offside. Qarabağ FK also

claims that the referee violated Law 7 of the Laws of the Game by not executing the full four minutes of additional time.

On 5 February 2015, the UEFA Control, Ethics and Disciplinary Body declared the protest inadmissible on the grounds that the contested decision by the referee not to allow the goal was a decision about facts of play and as such cannot be protested against, even if the video footage shows the ball coming off an Internazionale Milano player. The Control, Ethics and Disciplinary Body also rejected the claim that Law 7 of the Laws of the Game had been violated.

The club was notified of the Control, Ethics and Disciplinary Body's decision with grounds on 9 February 2015.

Summary of the proceedings before the Appeals Body

On 12 February 2015, Qarabağ FK lodged an appeal against the Control, Ethics and Disciplinary Body's decision of 5 February 2015.

The appellant's statement of appeal can be summarised as follows:

Procedural issues

The appellant claims that its right to be heard was not respected as its request for the Control, Ethics and Disciplinary Body to hold a hearing was refused.

In addition, the first Instance rejected the club's request to have the referee observer's report put on file to prove the referee's mistake.

Obvious violation of the offside rule (Law 11 of the Laws of the Game)

The appellant argues that at 90 + 3 minutes and 12 seconds, the referee made an irreparable mistake in declaring a Qarabağ player offside instead of awarding the goal. As well as being subject to Articles 5, 9 and 50 of the UEFA Disciplinary Regulations, his decision constituted an obvious violation of Law 11 of the laws of the game as the goal was in fact scored by Internazionale Milano.

According to the appellant, the conduct of the assistant referee (who initially called the offside), who went straight to the referees' dressing room after the match without joining the other match officials on the pitch, shows that he knew he had caused the referee to make the wrong decision.

The video footage confirms that after a Qarabağ goal kick, the ball came off an Internazionale Milano player. For the appellant, the referee either made an irreparable mistake with regard to the identity of the person at fault, or applied the 2013 offside rules instead of the 2014 ones.

The appellant quotes Article 77(b) of the FIFA Disciplinary Code, according to which "[t]he Disciplinary Committee is responsible for [...] rectifying obvious errors in the referee's disciplinary decisions". As the Control, Ethics and Disciplinary Body did not rectify this mistake, the club filed a protest.

Violation of Law 7 of the Laws of the Game regarding the duration of the match

The referee whistled for offside at 90 + 3 minutes and 12 seconds, and blew the final whistle immediately afterwards for no apparent reason. Based on Law 7 of the Laws of the Game, the appellant argues that once the referee has decided at his own discretion how much additional time to allow, he then has no right to reduce it.

By not letting the game continue beyond the 94th minute, the referee violated Law 7 of the Laws of the Game, according to the appellant.

Conclusion

The appellant requests that the Appeals Body award a rematch or correct the incorrect decision to award a free kick for offside instead of a goal at 90 + 3 minutes and 12 seconds.

On 13 February 2015, the UEFA Ethics and Disciplinary Inspector submitted his reply to the appeal, requesting that it be rejected and the costs charged accordingly.

Hearing

The ad hoc chairman of the Appeals Body opened the hearing and noted the presence of both the UEFA Ethics and Disciplinary Inspector and the appellant's representative.

The ad hoc chairman informed the appellant and the Ethics and Disciplinary Inspector of the procedure to be followed (Article 57 of the UEFA Disciplinary Regulations) and told them that the hearing would be recorded for the preservation of evidence (Article 34(3) of the UEFA Disciplinary Regulations).

He explained that he would hear the case as a judge sitting alone based on Article 24 of the UEFA Disciplinary Regulations.

He asked the appellant and the Ethics and Disciplinary Inspector if they had any objections. Both agreed with the proposed procedure and raised no objections.

The video footage of the incidents provided by the appellant was viewed several times, as was that of the official UEFA broadcaster.

The appellant then asked to view the footage in which the first assistant referee appears.

The ad hoc chairman decided not to grant the appellant's request as the question to be answered was simply whether the protest was admissible or not.

The ad hoc chairman gave the floor to the Ethics and Disciplinary Inspector and then to the appellant. Both confirmed their requests and presented broadly the same arguments as contained in their written submissions.

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. Qarabağ FK lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the €1,000 appeal fee paid on time. The appeal is therefore admissible under Articles 53 and 54 of the Disciplinary Regulations.

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

The case at hand concerns a protest filed by Qarabağ FK, which is appealing against the Control, Ethics and Disciplinary Body's decision to declare that protest inadmissible. Therefore, it is legitimate for the ad hoc chairman of the Appeals Body to examine the merits of the case as a judge sitting alone.

According to Article 58(2) of the UEFA Disciplinary Regulations, the Appeals Body re-examines cases in full, both factually and legally.

Legal consideration of the Appeals Body

The appellant claims that its right to be heard has been violated because it was not given access to the referee observer's report. It claims that this document would have enabled it to prove the errors committed by the referee.

According to Article 34(2) of the UEFA Disciplinary Regulations, the parties are entitled to, among other things, examine the case file and request copies before submitting statements.

Under Article 51(1) of the UEFA Disciplinary Regulations, as a rule the Control, Ethics and Disciplinary Body clarifies the facts of a case in a summary manner. It does so on the basis of the official reports and any other pertinent documents in its possession, and can summon further evidence provided that doing so will not delay the proceedings unduly.

As the Ethics and Disciplinary Inspector rightly points out, the right to consult internal reports and documents is not unlimited or absolute. As with any other evidence called, and indeed any other investigatory measure, it must appear relevant to the questions posed.

In this case, the Control, Ethics and Disciplinary Body rightly judged it unnecessary to request the referee observer's report from the unit responsible, it being unlikely to contain anything that would have a decisive influence on the outcome of this case. The referee observer's report is an internal document designed to assess the performance of referees. It is not shared with clubs or players, and it is only in truly exceptional cases that it may be produced in the course of disciplinary proceedings, in particular if the referee is the subject of those proceedings. The video footage shown is sufficient to establish the facts of the case and the referee's performance assessment is of no relevance to this case.

The appellant also complains that it was not given the opportunity to make an oral statement, and in particular comment on the video footage, before the Control, Ethics and Disciplinary Body.

According to Article 51(2) of the UEFA Disciplinary Regulations, in principle the Control, Ethics and Disciplinary Body conducts its proceedings in writing. However, it may, in exceptional circumstances, decide to hold a hearing.

In this case, the first-instance body found nothing to justify holding a hearing. Nor does the appellant indicate why it considered such a hearing indispensable. Simply giving it the opportunity to comment on the video footage, which presents no issues of interpretation, is not legitimate as exceptional circumstances. Moreover, it has had every opportunity to comment on the footage at today's hearing.

At today's hearing, the appellant asked to play the footage showing, in full and without interruption, the incidents that punctuated the end of the match, right up to the final whistle. It felt that these images, shown non-stop, were indispensable as evidence of its statements.

The ad hoc judge rejected this request on the grounds that the facts had been sufficiently well established: no party contested the fact that the referee had mistakenly whistled for offside and, consequently, disallowed the Qarabağ goal. Moreover, all the evidence on which the Control, Ethics and Disciplinary Body based its decision suggests that the referee neither extended or reduced the additional time as detailed below (see points 43 and 44).

On the basis of all the above, the appellant's claim that its right to be heard was violated is clearly unfounded.

This leaves us with the main question, i.e. whether the Control, Ethics and Disciplinary Body was right to declare the appellant's protest inadmissible or whether, as the appellant claims, it should have declared the protest admissible and, consequently, considered the merits of the case on the grounds that the referee violated the Laws of the Game.

The ad hoc judge is entirely free to examine this question. In accordance with Article 58(2) of the UEFA Disciplinary Regulations, he may in fact re-examine the entire case, from both a factual and a legal perspective. In other words, he is not tied by the grounds put forward by the parties, nor by the reasoning of the Control, Ethics and Disciplinary Body, whose decision he may uphold, amend or overturn (Article 58(3) of the Disciplinary Regulations).

Article 50 of the UEFA Disciplinary Regulations lists the circumstances in which protests are admissible. In this case, only Article 50(1)(d) or (c) could be invoked.

Pursuant to Article 50(1)(c), a protest is admissible 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".

Thus, in spite of Article 50(2), a protest may be lodged against a factual decision taken by the referee on the basis of an obvious error by the referee as provided by Article 9(2) (see also points 47 and 48 below).

Pursuant to Article 50 (1)(d), a protest is also admissible if it is based on “an obvious violation of a rule by the referee that had a decisive influence on the final result of the match”.

Qarabağ goal disallowed for offside

In support of its protest, the appellant argues that by mistakenly whistling for offside and disallowing the resultant goal, the referee violated Law 11 of the Laws of the Game.

This argument is unfounded for the following reasons.

In accordance with Law 5 of the Laws of the Game, 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.

In this case, evidently in error (as illustrated by the video footage produced and watched during the hearing), the referee and assistant referee misinterpreted the sequence of events in concluding, wrongly, that there had been an offside when the ball had obviously come off an Italian defender.

That being said, and as the Ethics and Disciplinary Inspector rightly points out, that was purely an interpretation of the facts and not a misapplication of a regulatory provision. In fact, based on his (albeit mistaken) assessment of the situation, the referee correctly applied Law 11 of the Laws of the Game, according to which, in the event of an offside offence, an indirect free kick is awarded to the opposing team, to be taken from the place where the infringement occurred. He was also right to disallow the goal because he considered that it involved an offside offence.

In other words, the referee did not see what really happened; there were discrepancies between what happened and what he thought he saw. However, on the basis of what he thought he saw, he correctly applied the offside rule.

Contrary to the appellant's claims, Article 50(1)(d) of the UEFA Disciplinary Regulations does not apply as no rule was violated. No protest can therefore be admitted on this count.

Length of the match and additional time

Qarabağ FK claims that the referee also violated Law 7 of the Laws of the Game by prematurely ending the match before the four minutes of additional time had elapsed. It alleges that in doing so he reduced the additional time, which is forbidden by the Laws of the Game.

In accordance with Law 7, the allowance for time lost is at the discretion of the referee. Moreover, the announcement of the additional time does not indicate the exact amount of time left in the match. The time may be increased if the referee considers it appropriate, but never reduced.

In this case, the referee's match report states that he ended the match after 4 minutes and 25 seconds of additional time. There is no reason to question the accuracy of this official report (see Article 38 of the UEFA Disciplinary Regulations). On the contrary, the video footage confirms that after having whistled for offside and disallowed the goal at 93 minutes 12 seconds, many seconds passed, 30 according to the appellant, before play was resumed (see 'Explanations' on p1 of the protest).

It is therefore established to the satisfaction of the Appeals Body that the referee neither added any time to the additional time because of the Qarabağ players' celebrations, nor reduced the length of the additional time, which he had set at four minutes. In these circumstances, he cannot be accused of violating Law 11.

Contrary to the appellant's claims, Article 50(1)(d) of the UEFA Disciplinary Regulations does not apply as no rule was violated. No protest can therefore be admitted on this count either.

All that remains is to examine whether the protest is admissible under Article 50(1)(c) of the UEFA Disciplinary Regulations.

According to Article 50(2) of the Disciplinary Regulations, protests may not be lodged against factual decisions taken by the referee. This pre-emptive provision is balanced by Article 50(1)(c) of the Disciplinary Regulations, which explicitly allows for a protest in the event of an obvious error by the referee within the meaning of Article 9.

Likewise, there is a paradox in that Article 9(1) of the Disciplinary Regulations stipulates that decisions taken by the referee on the field are final and may not be reviewed by the UEFA disciplinary bodies, but according to Article 9(2): "in cases where a decision by the referee involves an obvious error (such as mistaking the identity of the person penalised), only the disciplinary consequences of that decision may be reviewed by the disciplinary bodies".

Thus, contrary to the supposedly sacred principle laid down in Articles 50(2) and 9(1) of the Disciplinary Regulations, according to which factual decisions taken by the referee on the field are final and may not be protested against or reviewed, factual decisions can be called into question under Article 9(2) of the Disciplinary Regulations if two cumulative conditions are met: first, the referees decision must have involved an obvious error and second, it must have had disciplinary consequences (see also point 34 above).

In this case, the referee's decision to (mistakenly) whistle for offside and disallow the resulting goal had no disciplinary consequences on the club or any individual. Only the result of the match was affected.

The protest filed by the appellant is therefore inadmissible under Article 50(1)(c) of the Disciplinary Regulations, for want of disciplinary consequences.

As regards the referee's decision to not add time to the additional time and end the match instead, there was no error here, as explained above. Even if the referee had committed an error, the disciplinary consequences would again have been lacking.

Consequently, no protest can be admitted on this count, once again for want of disciplinary consequences.

To summarise and conclude, the decisions taken by the referee in whistling for offside and ending the match in no way violated the Laws of the Game (Article 50(1)(d) of the Disciplinary Regulations) or had any disciplinary consequences within the meaning of Article 9(2) of the Disciplinary Regulations, in conjunction with Article 50(1)(c). As a result, no protests can be admitted against these decisions and they cannot be reviewed by the disciplinary bodies. Finally, it is in vain that the appellant claims its right to be heard has been violated.

Consequently, the Appeals Body must reject the appeal and confirm the Control, Ethics and Disciplinary Body's decision, according to which the protest filed by Qarabağ FK is inadmissible.

Decision of 10 March 2015

FC Dynamo Kyiv / Players Iarmolenko Andrii, Belhanda Younès

(Violent conduct of the players)

Circumstances of the case

In 39 minute, the Dynamo Kyiv player Andrii Iarmolenko kicked the opponent from behind when the ball was not in a playing distance. In 45 minute, the Dynamo Kyiv player Belhanda Younès kicked the opponent from behind when the ball was not in a playing distance.

Legal framework

Art. 5 (1) (e) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body suspended the player Iarmolenko Andrii for three UEFA competition matches for which he would be otherwise eligible.

The CEDB also suspended the player Belhanda Younès for three UEFA competition matches for which he would be otherwise eligible.

AB:

The Appeals Body admitted the appeal lodged by the player Andrii Iarmolenko and F.C. Dynamo Kyiv. Consequently, the CEDB's decision of 25 February 2015 was upheld and modified as follows:

The player Andrii Iarmolenko was suspended for one UEFA club competition match.

The Appeals Body rejected the appeal lodged by the player Younès Belhanda and the F.C. Dynamo Kyiv and confirmed the CEDB's decision of 25 February 2015.

Ad hoc Chairman: Pedro Tomás, Spain (as judge sitting alone)

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 25 February 2015 (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 the present proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

According to the official match report issued by the referee, in the 39th minute of the 2014/15 UEFA Champions League match between Guinguan and FC Dynamo Kyiv on 11 December 2013, the player number 10, Iarmolenko Andrii FC Dynamo Kyiv was sent off for violent conduct, as he had kicked the opponent from behind when the ball was not in the playing distance.

In the 45th minute, the player number 90 from FC Dynamo Kyiv, Belhanda Younès was sent off for violent conduct, as he had kicked the opponent from behind when the ball was not in the playing distance.

On 25 February 2015, the Chairman of UEFA Control, Ethic and Disciplinary Body acting as judged sitting alone, decided to suspend each player for three UEFA club competition matches.

He concluded that the observations made by the referee were accurate and therefore considered the player's act as an assault in the sense of Article 15(1)(a) of the UEFA Disciplinary Regulations (the "DR").

The Decision with its grounds was notified to the Appellant on 27 February 2015.

Summary of the proceedings before the Appeals Body

On 2 March 2015, Dynamo Kyiv filed the declaration of the intention to appeal against the decision rendered by the chairman of the Control, Ethics and Disciplinary Body of 26 February.

On 4 March 2015, Dynamo Kyiv submitted the grounds of appeal which can summarised in substance as follows:

Dynamo Kyiv contests the facts as reported by the UEFA referee of the above-mentioned match and the first-instance body's application of the principle whereby official reports are presumed to be accurate (Art. Of the UEFA Disciplinary Regulations):

Regarding the player Andrii Yarmolenko, the appellant argues that the player had intended to kick the ball out of play in order to stop the game and enable one of his team-mates to receive medical treatment. As regards the player Younès Belhanda, the appellant claims that the player was trying to free and defend himself.

The appellant also argues that specific circumstances were not taken into consideration by the chairman of the Control, Ethics and Disciplinary notably, the stress suffered by the players, the importance of the match, the state of the pitch and the weather conditions, as well as the injury to team-mate Serhiy Sydorchuk, the lack of violent intention, the provocation by an opponent and the lack of player safety.

On 5 March 2015 the UEFA Disciplinary Inspector submitted its reply to the appeal in accordance with Article 56.1 DR. In summary, the UEFA Disciplinary Inspector stated that was no doubt that the player's act constituted an assault in the sense of Article 15(1)(e) of the DR and warranted a three-match suspension. He mainly requested the Appeal Body to declare inadmissible the appeal lodged by Dynamo Kyiv, as it was not filed in the name of the players involved. Alternatively, he requested both players to attend the hearing and the appeal to be rejected and the appeal fee and cost charged accordingly.

Hearing

On 10 March 2015, a hearing was held.

The chairman opened the appeal hearing, noted the presence of the parties and explained the procedure to be followed. He reminded the parties of the composition of the Appeals Body and told them that everything they and the Appeals Body said during the hearing would be recorded. No objection was raised.

Preliminary issues

The Ethics and Disciplinary Inspector objected that the appeal of the players were not filed in their name but by the club directly, which is not a party in the sense of Article 31 of the UEFA Disciplinary Regulations.

The single judge considered it is common - in the football family - that clubs saving their interest with those of their players forget to precise, that there are not acting for themselves. The fact that, the players first concerned are present at the hearing heals this formal mistake and refusing to consider the appeal at this stage and for this reason would constitute an act of excessive formalism.

After the witness had been cross-examined, the floor was given to the parties, who, in substance, reiterated the arguments given in their written pleadings and developed and maintained their requests.

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. Dynamo Kyiv lodged its appeal by the deadline set and in the form required, except for the formal mistake mentioned under number 10 above, which has however been healed at the hearing. 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.

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

The case at hand concerns the suspension from playing for three matches imposed to players Iarmolenko Andrii and Belhanda Younès by the CEDB. Therefore, it is legitimate for the chairman of the Appeals Body to examine as the merits of the case as a judge sitting alone. He can re-examine the case in full, both factually and legally (Article 58.2 DR).

Legal consideration of the Appeals Body

The legal framework.

Under the terms of Article 52 of the UEFA Statutes, disciplinary measures may be imposed for unsportsmanlike conduct, breaches of the Laws of the Game and contravention of UEFA's Statutes, regulations, decisions and directives.

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

Under the terms of Article 15(1)(e) of the DR, a suspension for one competition match or a specified period is imposed for rough play. According to Article 15(1)(e) of the DR, a suspension for three competition matches or a specified period is imposed for assaulting another player or another person present at the match.

The distinction between rough play and assault

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

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

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

In the case in hand

The video footage submitted by the appellants regarding the player Belhanda Younès does not contradict the referee's description of the incident. It even clearly confirms that the player kicked his opponent from behind when the ball was not in the playing distance.

In the absence of other evidence, the truthfulness of the referee's report regarding the gesture of player Younès must be admitted.

The appellant's argument according to which his gesture was intended to free himself does not convince as the footage of the incident confirms a blatant kick of his opponent blatantly, while the ball was not in the challenging situation.

With regard to player Andrii however, the chairman of the Appeals Body is not satisfied by the description given in the referee's report. After having reviewed several times the footage of the

incident involving the player Iarmolenko Andrii he does not admit, that Andrii Iarmolenko has kicked his opponent from behind when the ball was not in the playing distance.

In his eyes, the ball was playable. Consequently, the gesture of player Iarmolenko Andrii to challenge the ball was clumsy, but it cannot be qualified as an assault in the sense of Article 15(1)(e) DR. This act constitutes a rough play in the sense of paragraph 15 (1) (a) DR.

Determination of the disciplinary measure

The determination of sanction is governed by Article 17 of the UEFA Disciplinary Regulations.

Pursuant to this provision:

- “1 The competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances.
- 2 If the competent disciplinary body is of the opinion that information provided by the party charged has been decisive in uncovering or establishing a breach of UEFA’s rules and regulations, it may exercise its discretionary powers and scale down its disciplinary measures or even dispense with them entirely.
- 3 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.
- 4 The disciplinary measures enumerated in Article 15 of these regulations are standard measures. Unless stipulated otherwise in these regulations, disciplinary measures can be reduced or increased by the competent disciplinary body on the basis of the circumstances of the specific case”

Player Iarmolenko Andrii

As mentioned above, the single judge considers that the clumsy act of this player cannot be qualified as an assault as it is a rough play. Rough play calls for a one match suspension according to Article 15(1) of the UEFA Disciplinary Regulations.

The single judge did not find any circumstances that would allow him to consider increasing the standard sanction. Therefore, the player shall be suspended for one match.

As the player Iarmolenko Andrii did not participate in the match FC Dynamo Kyiv vs EA Guingamp played on 26.02.2015, he is now free from disciplinary measures

Player Belhanda Younès

As the act of this player constitutes an assault as explained above the standard of three-match suspension applies in accordance with Article 15(1)(2) DR.

However, according to paragraph 4 of the Article 17 DR, the competent body must assess whether there are circumstances that would allow to increase or decrease the standard sanction of three-match suspension.

Here also, the single judge did not find any mitigating or aggravating factor in the particular case, justifying to depart from the standard sanction.

The alleged mitigating circumstances the appellant put forward in particular cannot be considered as such:

- The stress of the players is or can be part of any game and they have to cope with this “normal” and not “mitigating” element;
- Both teams played on the same pitch which was playable as it had not been declared unfit for football match; the various pitch conditions within the conditions “fit for a football match” also belong to the factors which, as a rule, cannot be brought as mitigating factors for an disciplinary offence;
- The alleged absence of violent intention cannot count as a mitigating circumstance either as an assault can also be committed recklessly (or *dolus eventualis*); in addition, the player Belhanda has obviously deliberately kicked his opponent without playing the ball;
- Regarding the alleged but no evidenced provocation, and even if the behaviour of the opposing player with the task of marking him was reprehensible, as Belhanda claims, this did not give him 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 respect it under all circumstances. This argument also must be ruled out;
- The fact that his teammate was injured does not justify the conduct of Belhanda at his opponent. The judge sees in particular no reason why kicking his opponent would have been necessary to allow his teammate to be taken care of.

In view of the above, the single judge notes that there are no mitigating circumstances in favour of the player Belhanda. All alleged mitigating circumstances put forward by the appellant were rightly discounted by the Control, Ethics and Disciplinary Body.

As far as the act of the player Belhanda is concerned, the single judge is of the opinion that 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. On the basis of the above, the judge has no option but to uphold the initial decision and reject the appeal.

Regarding the player Iarmolenko Andrii, whose act is to qualify as “rough play” and not “assault”, as the Control, Ethics and Disciplinary Body did, the appeal filed by this player is admitted and the decision of the CEDB shall be overturned as to limit the sanction to a one-match suspension.

Decision of 12 May 2015

Paris Saint-Germain / Player Hamraoui Kheira

(Violent conduct)

Circumstances of the case

Two players were positioned close to the midline just in front of the assistant referee number 2. The ball came from a distance and the defending player from Wolfsburg came close to the attackers' back slightly contacting in a fair manner. Then player number 14, Kheira Hamraoui, of Paris Saint-Germain stroke the opponent with her elbow in the defenders face.

Legal framework

Art. 15 (1) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body suspended the Paris Saint-Germain player Hamraoui Kheira for three UEFA competition matches for which she would be otherwise eligible.

AB:

The Appeals Body rejected the appeal lodged by the player Hamraoui Kheira and the CEDB's decision of 28 April 2015 was upheld.

Ad hoc Chairman:

Michel Wuilleret, Switzerland (as judge sitting alone)

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 summarised as follows:

Two players were positioned close to the midline just in front of the assistant referee number 2. The ball came from a distance and the defending player from Wolfsburg came close to the attacker's back slightly contacting in a fair manner. Then player number 14, Kheira Hamraoui, of Paris Saint-Germain stroke the opponent with her elbow in the defenders face.

On 20 April 2015, UEFA's disciplinary services informed Paris Saint-Germain FC that disciplinary proceedings were being opened before the UEFA Control, Ethics and Disciplinary Body and gave it an opportunity to respond.

On 23 April 2015, Paris Saint-Germain FC submitted its observations. It argued that the Control, Ethics and Disciplinary Body should not punish Kheira Hamraoui. The club denied, on the basis of video images, that Kheira Hamraoui's elbow had made contact with the opposing player's face. It claimed that the significant difference in height and size between the two players had resulted in the Paris Saint-Germain FC player's forearm accidentally touching her opponent's face, and that the opposing player seemed to have pretended to be struck violently in the face in order to get Kheira Hamraoui penalised. As regards the classification of the offence, the club denied that it constituted violent conduct within the meaning of FIFA's circular of 12 July 2012 on Law 12, given the absence of excessive force and the fact that the players were challenging for the ball.

The Control, Ethics and Disciplinary Body ruled on the matter on 28 April 2015, suspending Kheira Hamraoui for three UEFA competition matches. It found the player guilty of assault within the meaning of Article 15(1)(e) of the UEFA Disciplinary Regulations. It essentially took the view that the three images/photos produced by Paris Saint-Germain FC were not sufficient to overturn the presumption laid down in Article 38 of the Disciplinary Regulations, which provides that facts contained in official UEFA reports are presumed to be accurate. As regards the punishment, it considered that the player's lack of previous offences did not constitute a mitigating circumstance capable of reducing the standard three-match suspension laid down in Article 15(1)(e) of the Disciplinary Regulations.

Following a request by the club, the Control, Ethics and Disciplinary Body's decision with grounds was communicated to Paris Saint-Germain FC on 30 April 2015.

On 6 May 2015, Kheira Hamraoui and the company Paris Saint-Germain Football (hereinafter 'the appellants') appealed against the decision of 28 April 2015. They concluded that the punishment imposed on Kheira Hamraoui should be reduced. Their claims in support of that appeal can be summarised as follows:

- Error in the assessment of the facts by the referee and the Control, Ethics and Disciplinary Body: The appellant did not strike her opponent in the face with her elbow. Her right forearm and elbow passed beneath her opponent's chin, without making contact. There was no intent; her actions were merely clumsy. Her opponent was completely unharmed.
- Error in the classification of the offence: Under Law 12 of the Laws of the Game, violent conduct involves the use of excessive force or brutality against an opponent while not challenging for the ball. In this case, the player did not demonstrate excessive or brutal aggression and was challenging her opponent for the ball.

The appellants criticise the Control, Ethics and Disciplinary Body for using, as the legal basis for its decision, a definition that is completely different from that laid down in Law 12 of the Laws of the Game. That interpretation is extremely harsh on the appellant, if not prejudicial to players' legal certainty, as it has the damaging effect of encompassing in its scope other disciplinary offences provided for by the Disciplinary Regulations and defined by Law 12 of the Laws of the Game.

- Unequal punishment: In the alternative, in the event that the appellant's actions are classified as violent conduct, various mitigating circumstances should be taken into account, namely

the absence of intent on the part of Kheira Hamraoui, the fact that her opponent did not sustain a violent blow and the appellant's previously unblemished disciplinary record.

By way of comparison, the appellants cite the punishment that The Football Association's disciplinary bodies imposed on Karen Bardsley, who was suspended for three matches for a deliberate elbow and punch.

On 11 May 2015, the UEFA ethics and disciplinary inspector submitted his reply to the appeal within the deadline set. He concluded that the appeal should be rejected, with the costs of the proceedings borne by the appellants. He also asked that the video images of the incident be added to the appeal file.

In law

The UEFA Appeals Body is competent to hear the appeal under Articles 24(4) and 54(1) of the Disciplinary Regulations.

Under Article 24(3) of the Disciplinary Regulations, the chairman of the Appeals Body, one of its vice-chairmen or one of its members acting as ad hoc chairman may take a decision as a judge sitting alone, particularly in urgent cases (as provided for by Article 24(3)(a)) and cases where the Control, Ethics and Disciplinary Body imposes a suspension from playing for up to three matches (as provided for by Article 24(3)(b)).

Both of those conditions are met in this instance, as the punishment imposed on the appellant was a three-match suspension and her team is scheduled to play on 14 May 2015.

Under Article 57 of the Disciplinary Regulations, proceedings before the Appeals Body may be conducted either orally or in writing (as provided for by Article 57(1)). Where requested by a party or the ethics and disciplinary inspector, or where the chairman of the Appeals Body considers it necessary, the chairman may order that a hearing be held (as provided for by Article 57(2)).

In this case, the parties have not requested a hearing, and the ad hoc chairman considers it possible to reach a decision without hearing the parties, ruling on the basis of their written submissions, the referee's report and the video images that have been added to the case file.

Moreover, as the appeal was lodged by the deadline set and in the form required by parties directly affected by the contested decision and the appeal fee has been paid (pursuant to Article 53 of the Disciplinary Regulations), the appeal is admissible from a procedural perspective.

Consequently, it falls to the ad hoc chairman to examine the case on its merits and take a decision as a judge sitting alone. He will re-examine the case from both a factual and a legal perspective, pursuant to Article 58(2) of the Disciplinary Regulations.

The appellants are essentially disputing the fact that the actions of Kheira Hamraoui can be classified as 'violent conduct' within the meaning of Law 12 of the Laws of the Game and, as a result, as 'assault' within the meaning of Article 15(1)(e) of the Disciplinary Regulations.

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 5 of the Disciplinary Regulations specifies that the disciplinary bodies base their decisions on UEFA's Statutes, regulations, directives and decisions, as well as the Laws of the Game and Swiss law and any other law that the competent disciplinary body considers applicable.

Article 15 of the Disciplinary Regulations lists the various actions that constitute misconduct on the part of players (and officials) and sets out the disciplinary measures that apply in such instances. These are standard measures, which may be reduced or increased under Article 17(3) of the Disciplinary Regulations.

Thus, in the case of 'rough play', the standard punishment is a one-match suspension (as provided for by Article 15(1)(a)(2)). A player who is guilty of assault is suspended for three competition matches (as provided for by Article 15(1)(e)), and if the assault is considered to be 'serious', the player is, as a rule, suspended for five competition matches (as provided for by Article 15(1)(e)).

According to the settled case law of UEFA's disciplinary bodies, situations where a player challenging for the ball tackles his/her opponent recklessly, thereby accepting the risk that he/she will fail to win the ball and injure or endanger the safety of his/her opponent, constitute 'rough play' or 'dangerous play' (*jeu grossier/dangereux; grobes Spiel*) within the meaning of Article 15(1)(a)(2) of the Disciplinary Regulations.

Similarly, Law 12 of the Laws of the Game provides as follows: "A player is guilty of serious foul play if he uses excessive force or brutality against an opponent when challenging for the ball when it is in play. A tackle that endangers the safety of an opponent must be sanctioned as serious foul play." (Interpretation of the Laws of the Game and Guidelines for Referees, Law 12: Fouls and Misconduct, Serious Foul Play, page 126)

According to the case law of UEFA's disciplinary bodies, any action, whether intentional or reckless, which affects or endangers the physical or mental integrity of a player or any other person present at a match, whether before, during or after the match, constitutes misconduct falling within the general category of 'assault' (see Article 15(1)(e) of the Disciplinary Regulations) and should be punished as such. Punching, headbutting, slapping, grabbing and biting an opponent all constitute assault, but so do actions not involving physical contact which affect a person's mental integrity or honour, such as the act of spitting at a player, the referee or any other person present at the match. Where the damage to a person's physical or mental integrity is particularly serious, it represents 'serious assault' within the meaning of Article 15(1)(g) of the Disciplinary Regulations.

Assault constitutes violent conduct within the meaning of Law 12 of the Laws of the Game: “A player is guilty of violent conduct if he uses excessive force or brutality against an opponent when not challenging for the ball. He is also guilty of violent conduct if he uses excessive force or brutality against a team-mate, spectator, match official or any other person.”

While the distinction between ‘rough play’ and ‘assault’ is sometimes a fine one, particularly where a player is penalised for seriously threatening the physical integrity of an opposing player while challenging for the ball (see the Appeals Body’s decision of 5 May 2010 in FC Bayern München and Franck Ribéry v UEFA, point 3, *in fine*), the difference between the concept of ‘rough play’ or ‘serious foul play’ and that of ‘assault’ or ‘violent conduct’ essentially relates to the question of whether or not the players involved are challenging for the ball.

The referee’s report in this case states that while the ball was on its way (“ball comes from a distance”), the VfL Wolfsburg player positioned herself behind the Paris Saint-Germain FC forward in a fair manner. The forward then struck her in the face with her elbow.

The video images added to the appeal file support this description of the incident. The ball was indeed in the air, some distance away and at a reasonable height, when the German player positioned herself right behind Kheira Hamraoui. Kheira Hamraoui sought to escape her marker by pushing her opponent away with her forearm and elbow, and her opponent then fell. Only then did the Paris Saint-Germain FC player (who was now able to move freely) take a few steps forward and head the ball, without her opponent (who was on the ground) being able to challenge for it.

It is thus clear, from a legal perspective, that the two players were not challenging for the ball at the point where the appellant pushed her opponent away with her arm in an improper manner. It is irrelevant, in this regard, whether she made contact with her opponent’s face, or simply her chin and then her neck, and it is irrelevant whether contact was made solely with the forearm, or also with the elbow. The fact is, the players were not challenging for the ball, which is one of the requirements of ‘rough play’ or ‘serious foul play’. Consequently, the respondent was right to classify that misconduct as ‘assault’ within the meaning of Article 15(1)(e) of the Disciplinary Regulations and punish it accordingly.

It is now necessary to look at whether, in suspending the player for three matches, the Control, Ethics and Disciplinary Body failed to take sufficient account of mitigating circumstances, as the appellants claim in the alternative.

Under Article 17(3) of the Disciplinary Regulations, the disciplinary measures enumerated in Article 14 of the Disciplinary Regulations are standard measures and can be reduced or increased by the competent disciplinary body only under exceptional circumstances.

The mitigating circumstances cited by the appellants are Kheira Hamraoui’s clumsiness and lack of intent, the fact that her opponent did not sustain a violent blow and the Paris Saint-Germain FC player’s previously unblemished disciplinary record.

Reading the referee's match report and looking at the images of the incident, there is no doubt that Kheira Hamraoui's actions were intentional. As indicated above, rather than challenging for the ball, her actions were aimed at getting away from her opponent, who was marking her tightly (but not fouling her). Kheira Hamraoui knew exactly what she was doing when she struck her opponent with her arm. It was neither an impulsive reaction nor a response to provocation, and it was certainly not a case of mere clumsiness. It was a deliberate act. The images do not allow any other interpretation in this regard.

Conduct that is regarded as assault within the meaning of Article 15(1)(e) of the Disciplinary Regulations – and punished with a red card by the referee – need not necessarily be violent. Indeed, a concrete threat to an opponent's physical integrity would represent an aggravating factor capable of increasing the standard punishment.

It should also be pointed out that, according to case law in this area, a lack of previous offences does not, as a rule, have any impact on the severity of the punishment, so there is no obligation to take it into account as a mitigating circumstance. In exceptional circumstances, however, it may be taken into account as a mitigating circumstance as part of an assessment of the relevant person's character, where that person's compliance with the law is extraordinary in nature. Such exceptional circumstances are strictly limited, given the risk of unequal treatment (see the judgment of the Swiss Federal Supreme Court of 14 January 2010 in ATF 136 IV 1 (6B_390/2009)).

Finally, the comparison drawn between the punishment imposed on Kheira Hamraoui by UEFA and that imposed by a specific national association (namely, The Football Association) is irrelevant. The two sets of regulations are not identical, and the actions of the two players are clearly different. Consequently, that plea is groundless.

To sum up, the ad hoc chairman of the Appeals Body concludes that a three-match suspension appears fully justified, given the particular circumstances of this case and the nature of the foul committed by Kheira Hamraoui. The player's previous good conduct is not sufficient, in itself, to reduce the standard punishment for such a violation of the Laws of the Game. The Control, Ethics and Disciplinary Body neither abused nor exceeded its powers of discretion, and its decision is consistent with the principles of both legality and proportionality. Moreover, that decision should also allow the other objectives of such a suspension to be achieved, namely improvement of the player's conduct and prevention of recidivism. Consequently, that decision should be upheld.

Decision of 12 May 2015

Swedish Football Association

(Unauthorised media on the pitch)

Circumstances of the case

A cameraman entered the pitch at the end of the match walking around with the players.

Legal framework

Art. 60.01 Competition Regulation

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined the Swedish Football Association € 5,000.

AB:

The Appeals Body cancelled the challenged € 5,000 fine.

Ad hoc Chairman: Pedro Tomás, Spain (as judge sitting alone)

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 13 November 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 the course of these proceedings, it refers here only to the submissions and evidence it considers necessary to explain its decision.

In substance, the UEFA match officials at 15th UEFA European Championship match between Sweden vs. Liechtenstein of 12.10.2014, reported the following incidents:

"A cameraman entered the pitch at the end of the match walking around with the players"

In its decision of 13 November 2014, the UEFA Control, Ethics and Disciplinary Body considered that the Swedish FA had violated Article 60.01 of the UEFA European Championship Regulations and Annex I of the Commercial Regulations for the qualifying matches for the UEFA Euro 2016 and decided as follows:

-To fine Swedish Football Association € 5'000.

-The above fine must be paid into the bank account indicated below within 90 days of communication of this decision.

The decision with grounds was notified to the appellant on 4 December 2014.

Summary of the proceedings before the Appeals Body

The appellant submitted its declaration of intention to appeal on 5 December 2014.

It submitted the grounds for appeal on 12 December 2014. These can be summarised as follows:

The camera man, who entered the field of play after the match, whose name is Mr Henrik Rydelius, was authorised to do so. He works for SBS Discovery TV, which is the host broadcaster for all European Qualifier matches played in Sweden. Therefore, Mr Rydelius was not an unauthorised person to enter the field of play. Consequently, the Swedish Football Association did not breach the UEFA European Championship Regulations.

In his response to the appeal, the Ethics and Disciplinary Inspector, after a close examination of the video footage, agreed with the appellant. Taking into account the relevant regulations of the UEFA European Football Championship 2014-16 and the witness statements provided by the SvFF confirming that the cameraman who entered the pitch at the end of the Match was an employee of the host broadcaster (SBS Discovery), UEFA admitted that the SvFF has sufficiently proven that it did not commit any disciplinary violation and shall not be imposed any sanction.

Hearing

No hearing was held as the appellant did not request one.

The ad hoc chairman examine the entire case file on 3 February 2015, in particular the challenged decision, the grounds for appeal and the Ethics and Disciplinary Inspector's reply to the appeal.

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

Jurisdiction of the Appeals Body and admissibility of the appeal

The Appeals Body has jurisdiction to deal with the case in question under Articles 24(4) and 54 of the UEFA Disciplinary Regulations. The Swedish Football Association 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.

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. Also in case where the requests of the parties and the ethics and disciplinary inspector are identical (let. C of paragraph 3)

In the case at hand, the conclusion of the appellant and the reply of the ethics and disciplinary inspector are identical, which meets the conditions required by the above provision to allow the case to be dealt with by a single judge. The 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 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 [...]”*

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 person exercising a function at a match on their behalf. This rule applies to 2014/15 UEFA Europa League matches, as expressly stated in paragraph 6.02 of the competition regulations.

According to Art. 2.9 of Annex I of the Commercial Regulations for the European qualifying matches for UEFA EURO 2016 and the 2018 FIFA World Cup, “No media representatives are allowed to go on to the field of play before, during or after the match, with the exception of the hand-held camera crew covering the team line-ups at the start of the match and up to two cameras of the host broadcaster filming after the end of the match, including extra time and kicks from the penalty mark.”

Under Article 34(5) of the UEFA Disciplinary Regulations if the requests of the parties and the ethics and disciplinary inspector are identical, the disciplinary bodies may consider ruling in accordance with those requests.

The case at hand

On the basis of the explanation and evidences brought by the appellant, both the appellant and UEFA agree, that no offence was committed as the camera man in question was indeed allowed on the field of play after the above-mentioned match.

Determination of the disciplinary measure

Under Article 34(5) of the UEFA Disciplinary Regulations if the requests of the parties and the ethics and disciplinary inspector are identical, the disciplinary bodies may consider ruling in accordance with those requests.

Given that the Chairman has no objection to overrule the identical findings of the parties, he complies with their requests in application of Article 34(5) DR. It emerges from this that the cameraman who entered the field of play after the final whistle had not violated the Art. 2.9 of Annex I of the Commercial Regulations for the European qualifying matches for UEFA EURO 2016 and the 2018 FIFA World Cup states.

In this respect, the provision of Article 8 of the UEFA Disciplinary Regulation cannot be applied to the Swedish Football Association, therefore it cannot be punished and is free from disciplinary measure.

Decision of 19 May 2015

Croatian Football Federation

(Racist behaviour / Setting off of fireworks)

Circumstances of the case

In the 30th minute two strikers were ignited; in the 55th minute two strikers were ignited and in the 66th minute two strikers were ignited. Approximately in the 4th minute around 200-300 Croatia national team supporters in the North stand lower tier chanted an homophobic slogan "HNS pederi" (English: "Croatian FA you faggots"). Approximately in the 9th, 24th and 28th minutes around 500 Croatia national team supporters in the North stand chanted for one minute "Za dom" and the East stand about 400 supporters replied "spremni!" (English: "For home(land) - ready!") The chant was repeated in the 24th minute. In the 28th minute it was given between North stand and South stand.

Legal framework

Art. 14 DR

Art. 16 (2) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body ordered the Croatian Football Federation to play their next (1) UEFA competition match as host association behind closed doors and to fine Croatian Football Federation 50,000 € for the racist behaviour of its supporters. The CEDB also decided to fine the Croatian Football Federation 50,000 € for the setting off of fireworks.

AB:

The Appeals Body rejected the appeal lodged by the Croatian Football Federation and upheld the CEDB's decision of 8 April 2015.

Chairman: Pedro Tomás, Spain

Members: Björn Ahlberg, Sweden
António Mortágua, 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 8 April 2015, 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 report dated 28 March 2015, the UEFA delegate indicated that the two FARE observers present in the stadium had told him after the match that they had heard “some discriminatory chants”.

During the game, the UEFA delegate had asked his liaison officer several times about what the home supporters were chanting to each other. He had been informed that they were chanting normal chants such as: “Fight for your country and your nation”. He had not heard any other chants.

In their report, the FARE observers indicated that:

- in the 4th minute of the match, about 200–300 Croatian supporters located in the lower tier of the north stand chanted: “HNS pederi” (English: “Croatian FA you faggots”);
- in the 9th, 24th and 28th minutes, about 500 Croatian supporters in the north stand chanted “Za dom” for one minute and about 500 supporters located in the east stand replied “spremni!” (English: “For home(land) – ready!”). In the 28th minute, the same chant was performed by supporters in the north and south stands.

Football Against Racism in Europe (FARE) reported the above-mentioned incidents to UEFA through the UEFA delegate appointed for the match concerned.

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. These include football fans from Croatia.

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 Croatian Football Federation had previously been punished with a partial stadium closure by the Control, Ethics and Disciplinary Body in its decision dated 11 December 2014 following discriminatory behaviour by its supporters during the match between Italy and Croatia on 16 November 2014.

The decision with grounds was notified to the appellant on 24 April 2015.

Summary of the proceedings before the Appeals Body

On 27 April 2015, the Croatian Football Federation announced its intention to appeal against the Control, Ethics and Disciplinary Body's decision of 8 April 2015.

On 30 April 2015, the Croatian Football Federation submitted the grounds for appeal and stressed that it was only appealing against the part of the decision concerning the sanction to play one match behind closed doors as a result of its supporters' discriminatory conduct.

The appellant's submissions can be summarised as follows:

- Even though the previously appealed decision of 11 December 2014, under which the association had been punished with a partial stadium closure and a fine of €80,000 for offences including discriminatory conduct by its supporters, would have had a deterrent effect on its supporters, it had conducted additional activities to prevent discriminatory behaviour. Notably, two weeks before the match against Norway, it had organised a prevention campaign called 'My tribune', in which players, the national association and coaches had talked about the need to combat violence and discrimination in the stadium. The Croatian Football Federation had also sponsored a youth camp for ethnic minorities living in Croatia. The state authority had not taken sufficient action against discriminatory behaviour at sports events, in particular by regulating prohibited conduct and related punishments.
- The recommendations contained in the 1985 European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches had remained unheeded and the football authorities were being left to combat violence and discrimination in stadiums on their own.
- Regarding the match in question, significant steps had been taken in terms of the use of pyrotechnic devices, since only a small number of strikers had been ignited, but no flares. The person who had lit the strikers had been prosecuted and convicted by the courts. The Croatian Football Federation would file an action for damages against him.
- It was always the same small minority of spectators who participated in discriminatory behaviour. Attempts were being made to identify the perpetrators and criminal charges would be filed against them.
- The clubs and the Croatian Football Federation were becoming hostages of extremist supporters, who were aware that they could do great damage to clubs or to the federation itself just by chanting. The punishments imposed against the club and the federation helped them to achieve their purpose.
- The appeal should be accepted and the sanction of playing a match behind closed doors replaced with a fine or, alternatively, a partial stadium closure or limitation of the attendance at Croatia's next match against Italy on 12 June 2015 to 5,000 girls under 14 years old accompanied by their mothers and female football players.
- The Croatian Football Federation requested that a hearing be held.

The UEFA Ethics and Disciplinary Inspector submitted her reply on 8 May 2015. She concluded that the appeal should be rejected, the Control, Ethics and Disciplinary Body's decision of 8 April 2015 confirmed and the costs of the proceedings charged to the appellant.

Hearing

The chairman of the Appeals Body opened the hearing and noted the presence of both the UEFA Ethics and Disciplinary Inspector and the appellant's representative.

The chairman informed the appellant and the Ethics and Disciplinary Inspector of the procedure to be followed (Article 57 of the Disciplinary Regulations) and told them that the hearing would be recorded for the preservation of evidence (Article 34(3) of the Disciplinary Regulations).

The chairman of the Appeals Body then asked the appellant and the Ethics and Disciplinary Inspector if they had any objections. Both agreed with the proposed procedure and raised no objections.

The video footage of the incidents provided by the appellant was viewed several times, as was that of the official UEFA broadcaster.

The chairman gave the floor to the Ethics and Disciplinary Inspector and then to the appellant. Both confirmed their requests and presented broadly the same arguments as contained in their written submissions.

Appeals Body's jurisdiction 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. The Croatian Football Federation 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 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.

The appeal in this case is directed exclusively at the sanction imposed by the Control, Ethics and Disciplinary Body on the basis of Article 14 of the Disciplinary Regulations for discriminatory conduct by Croatian national team supporters (the order that the Croatian national team should play its next home UEFA competition match behind closed doors for the racist behaviour of its supporters).

The appellant does not contest the fine or the punishment for the other supporter misconduct committed in violation of Article 16(2) of the Disciplinary Regulations, as no relief is sought on

these counts. The uncontested sanctions (fines of €50,000 for racist behaviour and €5,000 for the setting of fireworks in points 1 and 2 of the contested decision respectively) shall therefore not be re-examined and remain in force.

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 UEFA's Statutes, regulations, decisions and directives warrant disciplinary measures.

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.

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) and (3) of the Disciplinary Regulations establish a *lex specialis* in relation to Articles 6(1) and 19 of the same regulations, providing a clear system of escalation of sanctions for discriminatory offences:

- partial closure of the stand for a first violation;
- one match behind closed doors and a fine for a second offence;
- more than one match behind closed doors, stadium closure, forfeiting of a match, the deduction of points or disqualification from the competition for any subsequent offence.

When discriminatory behaviour occurs, possible mitigating circumstances must be assessed in the restrictive framework of Article 17(3) of the Disciplinary Regulations. In order for the standard sanctions of Article 14 to be reduced, the mitigating circumstances must be 'exceptional'.

In the case at hand

It is not contested that Croatian supporters performed the clearly homophobic chant "HNS pederi" (English: Croatian FA you faggots) and that some chanted "Za dom", to which about 400 supporters in the east stand replied "spremni!" (English: For home(land) – ready). The latter was the rallying cry of Croatia's Second World War Ustasa regime, a close ally of Nazi Germany. The Ustasa killed hundreds of thousands of Serbs, Jews, anti-fascist Croatians, Roma and others in concentration camps. It is worth noting that the Republic of Croatia has condemned and publicly apologised for the crimes committed by Ustasa.

The Croatian Football Federation rightly admitted all the infringements reported by the match officials, for which it is liable under the principle of strict liability, and did not contest the discriminatory nature of the chants performed by its supporters (see page 3 of the grounds for appeal).

The facts established by the Control, Ethics and Disciplinary Body are contested neither by the Ethics and Disciplinary Inspector nor by the Croatian Football Federation, which only disputes the disciplinary measure related to the violation of Article 14 of the Disciplinary Regulations, i.e. the order that it play its next UEFA match behind closed doors.

Such behaviour not only constitutes a serious violation of UEFA's statutory objectives; it also offends the human dignity of a group of people. Therefore, UEFA, through its disciplinary bodies, must ensure that such incidents do not happen again.

Since the people who performed these chants during the above-mentioned match were Croatian supporters in the sense of the UEFA regulations and were Croatian national team supporters, the Croatian Football Federation must be held responsible for their misbehaviour (strict liability principle).

It therefore remains for the Appeals Body to examine, firstly, 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 power of discretion by ordering the Croatian national team to play its next home match behind closed doors for discriminatory conduct under Article 14(3) of the Disciplinary Regulations. Secondly, it must decide whether the argument put forward by the appellant could be considered as an exceptional circumstance in the sense of Article 17(3) of the Disciplinary Regulations.

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 describes the efforts it has made to combat discriminatory conduct by its supporters. Regarding the measures allegedly taken by the appellant to combat its supporters' improper behaviour, the Appeals Body is of the opinion that, although laudable, they belong to the general duties of any club or national association participating in UEFA competitions.

Identifying perpetrators, campaigning against racism and sponsoring a youth camp for ethnic minorities cannot therefore be considered mitigating factors.

However, any extra effort on the part of a national association to combat violence in stadiums must be encouraged.

The appellant also argues that the Croatian government has shown reluctance to participate in the fight against discrimination by failing to implement the recommendations of the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches.

When entering the competition, the Croatian Football Federation agreed and confirmed in writing that, along with its players and officials, it would comply with UEFA's Statutes, regulations, directives and decisions (see Article 4 *et seq.* of the Regulations of the UEFA European Football Championship 2014–16). With such an undertaking, the support of the state in safety and security matters is always welcome. However, the possible failure by the state in this respect cannot exonerate a club or national association whose supporters violate the UEFA regulations. The national association's responsibility towards UEFA applies regardless of whether or not its government supports it in any particular area when the incident occurred.

However, the Appeals Body would like to point out that Article 14 of the Constitution of the Republic of Croatia states that: "*All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics. All persons shall be equal before the law*". It is therefore clear that the Croatian Constitution prohibits discrimination.

Croatia also has an Anti-Discrimination Act (see Official Gazette 85/2008, 112/2012), which contains comprehensive anti-discrimination legislation covering all forms of discrimination.

In this respect, it is also worth noting that Croatian courts have issued numerous decisions related to discriminatory acts, notably the decision issued by the County Court of Varaždin on 2 April 2013 in the case of L.I. and Ž.B. v Branka d.o.o. and B.J. (see Official Gazette 3684/12 (P817/11)), and the decision of 16 December 2013 (K-DO-1204/13) in the case of M.Š. and Š.Š.

Without being experts in Croatian law, we can learn from the above that there is state anti-discrimination legislation in Croatia and that Croatian courts have sanctioned violations of its provisions. This contradicts the appellant's argument in this respect because it shows that breaches of the Anti-Discrimination Act are punished when brought before the courts.

This is backed up by the appellant's argument that: "Identification of the perpetrators is currently ongoing and misdemeanour and criminal charges will be filed against them" (see last paragraph of page 3 of the appellant's grounds for appeal). Therefore, the argument of the appellant according to which the state does not assist them to combat discriminatory act is unfunded.

The appellant also argues that only a minority of supporters were involved in this reprehensible conduct. This argument must be rejected, since Article 14(3) of the Disciplinary Regulations, which deals specifically with violations committed by supporters, states that: “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”. Therefore, even if only one supporter violates Article 14 of the Disciplinary Regulations, the club or national association can be held responsible. This cannot be considered a mitigating circumstance and is certainly not an exceptional circumstance.

The appellant fears becoming a hostage of extremist groups of supporters, who are aware that their chants can do great damage to a club or national association. This argument must be ruled out, since the reason for supporters’ misconduct is irrelevant where UEFA is concerned. It is up to the national association to identify the origin and possible reason for the problem and tackle it. The fact that the disruptive supporters are opponents of the Croatian Football Federation or disagree with the current composition of its board, for example, cannot count as a mitigating circumstance. The Croatian Football Federation itself mentions that it takes cases before the courts, thus confirming the existence of state legislation against discriminatory conduct. The supporters concerned will therefore be punished and the Croatian Football Federation could even ban them from attending its matches.

The appellant also requests that the sanction imposed by the Control, Ethics and Disciplinary Body that it should play its next UEFA match behind closed doors be replaced with a fine or an order limiting the stadium attendance.

The Appeals Body cannot consider such a request, since it has to apply the specific rule set forth in Article 14(2) *et seq.* of the Disciplinary Regulations. The level, nature and chronology of the sanctions for discriminatory conduct is precise and the system of sanctions must be respected when Article 14 is breached. In this respect, the panel has no room of manoeuvre but must apply the rule as indicated. Therefore, the conclusion of the appellant must be rejected.

In view of the above, the appellant has failed to provide any evidence of exceptional circumstances that could justify a departure from the stadium closure applicable to a second offence of discriminatory conduct by supporters under Article 14(3) of the Disciplinary Regulations. Since there are no exceptional circumstances in the case at hand, Article 17(3) of the Disciplinary Regulations does not apply.

In the light of the above, the Control, Ethics and Disciplinary Body correctly interpreted the regulations and the case law applicable to the present case. It took account of all the facts with a due sense of proportion. The seriousness of the conduct of certain Croatian supporters deserves to be penalised. In this regard, the fact that the Croatian Football Federation had apparently taken preventive measures is laudable, but it cannot be considered an exceptional circumstance in the sense of Article 17(3) of the Disciplinary Regulations.

In the light of the above, the Appeals Body believes that, by ordering that a match be played behind closed doors, 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.

Decision of 19 May 2015

Chelsea FC

Crowd disturbances / Setting off of fireworks

Circumstances of the case

At about 20: 35hrs a group of approx. 150 Chelsea supporters approached the search area to enter sector V. The Police officers describe them as being drunk and aggressive whilst attempting to pass back already validated tickets. The Police stopped the ingress momentarily and this caused a crowd surge towards the Police lines whereby a single officer deployed CS spray which contaminated approx. 20 Chelsea supporters. A small number required First Aid as a result of this incident. A number of Chelsea supporters were thereafter refused entry. Chelsea supporters ignited two fireworks during the match.

Legal framework

Art. 16 (2) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined Chelsea FC 12,000 €.

AB:

The Appeals Body rejected the appeal lodged by Chelsea FC and upheld the CEDB's decision of 19 May 2015.

Chairman: Pedro Tomás, Spain

Members: Björn Ahlberg, Sweden
António Mortágua, Portugal

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 19 March 2015, 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 that it considers necessary to explain its reasoning.

In his report dated 17 February 2015, the UEFA delegate of the match Paris Saint-Germain FC and Chelsea FC, played on 17 February 2015, indicated the following incidents:

- In the 37th and 91st minutes of the match, the Chelsea FC fans lit Bengal lights.

- *“At about 20:35 hrs a group of approx. 150 Chelsea supporters approached the search area to enter sector V. The Police officers describe them as being drunk and aggressive whilst attempting to pass back already validated tickets. The Police stopped the ingress momentarily and this caused a crowd surge towards the Police lines whereby a single officer deployed CS incapacitant spray which contaminated approx. 20 Chelsea supporters. A small number required First Aid as a result of this incident.*
- *The police match commander is supportive of the actions of the officer, however Chelsea security officers and stewards believe that the actions of the officer was disproportionate to the risk and contaminated innocent supporters. A number of Chelsea supporters were thereafter refused entry. No arrests were made as a result of this incident. No injuries were reported. A full debrief took place after the match involving both clubs and the Metropolitan Police. The security officer had a full debrief with the police match commander. This incident was not witnessed by any of the UEFA appointed officers.”*

At its meeting on 19 March 2015, the Control, Ethics and Disciplinary Body considered that the supporters of Chelsea FC had behaved in an improper manner. It held their club responsible for this misconduct and fined Chelsea FC €12,000.

The decision with grounds was notified to the appellant on 2 April 2015.

Summary of the proceedings before the Appeals Body

On 6 April 2015, Chelsea FC announced its intention to appeal against the Control, Ethics and Disciplinary Body’s decision of 19 March 2015.

On 13 April 2015, Chelsea FC submitted the grounds for appeal, stressing that it was only appealing against the part of the decision concerning the crowd disturbances and was not denying the use of pyrotechnic devices by its supporters.

The appellant’s submissions can be summarised as follows:

There is no reliable evidence of any inappropriate behaviour by Chelsea FC supporters when entering the stadium. In fact, the opposite is true. Chelsea FC is able to provide evidence that clearly demonstrates that police failures led to a brutal, unprovoked and indiscriminate attack on the club’s supporters, which the club considers entirely unacceptable. Accordingly, the club does not accept that its supporters infringed the UEFA Disciplinary Regulations and strongly contests UEFA’s charge.

The Control, Ethics and Disciplinary Body has wrongly based its conclusions on inaccurate and unreliable hearsay evidence from the French police. Furthermore, Chelsea FC’s submission contains overwhelmingly consistent evidence demonstrating that:

- (a) the French police’s queue management system was unsafe and violated the principles of crowd control and management that UEFA rightly promotes;
- (b) as a result of a significant build-up of supporters in a confined area, there was a crush which led to panic and distress among supporters;

(c) the French police reacted to a dangerous overcrowding issue by confronting innocent fans with indiscriminate, brutal and unnecessary force.

The incident was not witnessed by any of the UEFA-appointed officers. Consequently, the decision of the Control, Ethics and Disciplinary Body appears to be based solely on the hearsay evidence provided by the French police to the UEFA delegate.

It would have been impossible for a group of 150 supporters to approach the search area to enter Sector V at 20.35 and pass back already validated tickets. According to numerous consistent accounts from Chelsea FC supporters, there was a build-up of many hundreds of supporters at the entry point to Sector V from around 20.00, such that any new supporters arriving would have needed to join the back of a long and congested queue of many hundreds of fans. Supporters joining the back of the queue at 20.35 would not have been in a position to present their tickets until well after kick-off, and well after the deployment of the CS spray. The appellant supported the above argument with written statements – some of which were not signed – by a number of Chelsea FC supporters.

The Ethics and Disciplinary Inspector submitted her reply on 27 April 2015. She concluded that the appeal should be rejected, the Control, Ethics and Disciplinary Body's decision of 19 March 2015 should be upheld, and the costs of the proceedings should be charged to the appellant.

Hearing

No hearing was held, as the appellant requested that the proceedings be conducted in writing only and neither the Chairman of the Appeals Body nor the Ethics and Disciplinary Inspector raised any objections.

The Appeals Body examined the entire case file, looking in particular at the contested decision, the grounds for appeal and the Ethics and Disciplinary Inspector's reply.

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

Appeals Body's jurisdiction 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. Chelsea FC lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted on time, and the appeal fee was 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, from both a factual and a legal perspective.

The appeal has the effect, therefore, of transferring jurisdiction to a higher court, which reviews all of the factual and legal elements on which the first-instance decision was based. The higher court may therefore consider the case on its merits for a second time and issue a new decision.

In accordance with legal doctrine and case law (see G. Piquerez, *Traité de procédure pénale suisse*, second edition, 2006, pp. 754–755 and the case law cited therein), the transfer of jurisdiction may be limited by the appellant, who may, if he so wishes, dispute only certain parts of the original judgment.

The appeal in this case is directed exclusively at the charge regarding the crowd disturbance involving the club's supporters at the entrance to the stadium.

The appellant does not contest the charge regarding the use of pyrotechnic devices by its supporters during the above-mentioned match (see page 1 part 2 in fine of the written submission) in violation of Article 16(2) of the Disciplinary Regulations. Consequently, the uncontested charge will not be re-examined, and the decision of the Control, Ethics and Disciplinary Body in this regard will remain applicable.

Legal Considerations of The Appeals Body

The legal framework

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.

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

Article 16(2) of the Disciplinary Regulations states:

"[...] 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."*

Safety and security are the primary considerations when UEFA organises football matches. Indeed, they are always its priority. The panel has no doubt that the same is true of the appellant.

The case at hand

In this instance, the appellant contested the facts reported to UEFA by the match delegate – i.e. the fact that Chelsea FC supporters behaved in an aggressive manner at the entrance before kick-off and created disorder.

The appellant argues that there is no evidence that this occurred and that it is all based on hearsay from the French police, as no UEFA representative saw the incident. The appellant is therefore contesting the facts as they were established by the Control, Ethics and Disciplinary Body, raising the issue of evidence.

Consequently, the first question that the Appeals Body must address is the issue of whether, in this case, the Control, Ethics and Disciplinary Body properly assessed the evidence before concluding that Chelsea FC supporters had behaved aggressively towards the police officers in charge of controlling them at the entrance to the stadium before kick-off, or whether the evidence is insufficient to punish Chelsea FC for such an offence.

According to Article 37 of the Disciplinary Regulations, 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.

Thus, the above provision establishes the freedom of proof, which means that cases may be judged on the basis of more than just 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 decisions. If there is no objective proof, they must, if necessary, base their decisions on circumstantial evidence.

This means that the Control, Ethics and Disciplinary Body is not required – as the appellants seem to think – to rely solely on match officials' reports and refrain from using other investigative measures if those officials fail to mention a contentious situation which subsequently comes to light.

Consequently, contrary to the appellant's claims, the disciplinary bodies can – indeed, *must* – take account of evidence other than match officials' reports when an incident is reported. They can, for example, use video recordings or information provided anonymously or examine witnesses, with a view to becoming convinced or comfortably satisfied that something did or did not occur.

The appellant is right to claim that no UEFA representative saw the incident. However, it was reported in sworn statements by police officers – who, as the regulatory authority in the stadium, were in charge of detecting and preventing potential threats to safety.

Thus, the police took the view, after assessing the crowd that Chelsea FC supporters entering the stadium were behaving in an unsafe manner. They then informed the UEFA delegate about the incident. Moreover, some of Chelsea FC's supporters had obviously been drinking (see

Exhibit KO2 -the written testimony of Person 1- paragraph 4 second sentence). Experience tells us that, in the normal course of events, excessive amounts of alcohol result in disorderly conduct.

It is also surprising that, despite those supporters being accompanied by eight police officers from the Metropolitan Police, there are no statements by them in the file provided by the appellant.

As far as the assessment of the available evidence is concerned, the Appeals Body is comfortably satisfied, after carefully examining the relevant evidence (including the written testimonies of a number of supporters and the UEFA delegate's report), that Chelsea FC supporters behaved in an inappropriate manner at the entrance to the stadium, as the first-instance body decided.

Accordingly, the Appeals Body must examine whether the Control, Ethics and Disciplinary Body respected the relevant regulations and legal principles (particularly those of legality and proportionality), or whether it abused its powers of discretion by fining Chelsea FC €12,000 on account of the improper conduct of its supporters.

Determination of the disciplinary measure

Under Article 17(1) of the Disciplinary Regulations, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances.

Article 53 of the UEFA Statutes and Article 6(1) of the Disciplinary Regulations contain lists of possible disciplinary measures, which include a fine, the playing of matches behind closed doors, a stadium closure, the playing of matches in a (neutral) third country, and disqualification from competitions in progress and/or exclusion from future competitions. Article 6(3) of the Disciplinary Regulations determines the minimum and maximum fines that can be imposed. These general provisions give the disciplinary bodies broad powers of discretion when it comes to determining disciplinary measures.

The police officers on the gates – on whom the law confers special powers – stand in the front line, ensuring that supporters enter and exit the stadium safely and dealing with any behaviour that puts people at risk, such as crowd surges. Consequently, they have to be firm when they detect any behaviour by supporters that could result in disorder.

The fact that, in the present case, the appellant considers the intervention by the police to be pointless and disproportionate is irrelevant and must be disregarded.

Indeed, UEFA's disciplinary bodies are not competent to evaluate the activities of the police during their operations or pronounce on whether their actions were proportionate or not. In any case, the fact that the police identified a conflict situation requiring them to intervene confirms the seriousness of the misconduct by some Chelsea FC supporters.

This disciplinary measure is not purely punitive. It also has a preventive and educational objective – i.e. it seeks to prevent people's physical integrity from being endangered at UEFA matches and to force Chelsea FC to improve its internal organisation so as to have more control over travelling supporters.

In the light of the above, the Appeals Body concludes that the contested disciplinary decision was legally justified and that the Control, Ethics and Disciplinary Body did not abuse its powers of discretion by fining Chelsea FC €12,000. The Appeals Body considers this punishment to be an appropriate means of preventing the repetition of such offences. Consequently, Chelsea FC's appeal is rejected and the contested decision is upheld.

Decision of 19 May 2015

Vfl Borussia Mönchengladbach

(Illicit banner)

Circumstances of the case

Visiting fans displayed 'FUCK UEFA' with white tape at the very front of their section, before the game, and remained in place during the whole match.

Legal framework

Art. 16 (2) (e) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body fined Vfl Borussia Mönchengladbach 20,000 €.

AB:

The Appeals Body rejected the appeal lodged by Vfl Borussia Mönchengladbach and upheld the CEDB's decision of 11 December 2014.

Chairman: Björn Ahlberg, Sweden (as judge sitting alone)

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 11 December 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 reported that: "visiting fans displayed 'FUCK UEFA' with white tape at very front of their section, before the game, and remained in place whole match; Security decided not to remove it, further report to follow; visiting fans stood the whole game, blocking all passageways / stairways".

In its decision of 11 December 2014, the Control, Ethics and Disciplinary Body considered that the VfL Borussia Mönchengladbach supporters had displayed a message of offensive nature and thus violated Article 16(2)(e) of the UEFA Disciplinary Regulations. Accordingly, VfL Borussia Mönchengladbach was held responsible for the conduct of its supporters and fined €20,000.

The decision with grounds was notified to VfL Borussia Mönchengladbach on 12 January 2015.

Summary of the proceedings before the Appeals Body

On 14 January 2015, VfL Borussia Mönchengladbach submitted its declaration of intention to appeal against the Control, Ethics and Disciplinary Body's decision of 11 December 2014.

The grounds for appeal, submitted with the declaration of intention to appeal, can be summarised as follows:

After a tremendous effort, the club had identified the supporter responsible. To this end, it had exerted considerable pressure on the fan clubs by withdrawing discounts and other privileges, e.g. priority purchase of tickets for away matches, in order to encourage them to cooperate. It had also threatened to pass on any sanctions to the fan clubs unless they helped to identify the perpetrator. In the course of these lengthy, intensive and remarkable efforts, the perpetrator who, as had been suspected, had acted alone, had been identified as Lukas Schulze-Sambohl, who had admitted the offence in the appended statement dated 13 February 2015.

The club added that it would endeavour to recover as many losses resulting from his misconduct as possible. However, it should be borne in mind that Lukas Schulze-Sambohl was barely 21 years old, still in education and still living with his parents, so there was no possibility of recovering any damages from him either currently or for a long time to come, especially if the amount of the claim was maintained.

The appellant asked the UEFA Appeals Body to take this into account when determining the extent of the sanction. The successful identification of a perpetrator should be counted in a club's favour, especially if, as in this case, it was the result of a remarkable effort and fan clubs' cooperation.

On 19 February 2015, the UEFA Ethics and Disciplinary Inspector submitted his response to the appeal, requesting that it be rejected, the Control, Ethics and Disciplinary Body's decision confirmed and the costs of the appeal proceedings charged accordingly.

Hearing

No hearing was held as the appellant did not request one and neither the UEFA Ethics and Disciplinary Inspector nor the ad hoc chairman of the Appeals Body raised any objection.

The ad hoc chairman of the Appeals Body examined the entire case file, in particular the challenged decision, match officials' reports, grounds for appeal and the Ethics and Disciplinary Inspector's reply to the appeal.

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

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. VfL Borussia Mönchengladbach 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 Articles 53 and 54 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.

Under Article 24(3) of the Disciplinary Regulations, the chairman of the Appeals Body, one of its vice-chairmen or one of its members acting as ad hoc chairman may take a decision as a judge sitting alone, notably in urgent or protest cases, or cases where the sanction imposed by the Control, Ethics and Disciplinary Body is a fine of up to €35,000 or a suspension from playing or carrying out a function for up to three matches.

In the case at hand, since the object of the litigation is a fine of €20,000, the ad hoc chairman of the Appeals Body may examine the merits of the case as a judge sitting alone.

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, 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.

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 persons exercising a function at a match on their behalf. This rule also applies to 2014/15 UEFA Europa League matches, as expressly stated in paragraph 6.02 of the competition regulations. Article 8 of the UEFA Disciplinary Regulations forms the legal basis on which UEFA can ensure that its objectives and the constraints imposed on its members are respected not only by its members, but also by third parties for whom they are answerable.

Article 16(2) of the UEFA Disciplinary Regulations states the following:

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

- a) the invasion or attempted invasion of the field of play;
- b) the throwing of objects;

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

Under Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. However, proof of their inaccuracy may be provided.

In the case at hand

It is evident that the message displayed on the banner during the above-mentioned match was not fit for a sports event. In this respect, it is important to recall that UEFA does not tolerate its football matches being used as a forum to express any kind of opinion or frustration not fit for such an event. If a supporter has a question or is unhappy with how UEFA or one of its bodies has dealt with an issue, there are several ways of expressing this opinion or criticism, notably by writing to UEFA. Displaying it ostentatiously at a football match is unacceptable.

By displaying such an insulting banner, the supporter concerned violated the above provision and VfL Borussia Mönchengladbach must be held responsible and punished accordingly.

Such a banner is likely to create confusion: it could have caused TV viewers and supporters in the stadium to think UEFA was associated with a violation that could justify this type of message. In any case the supporter's behaviour is likely to have damaged UEFA's image.

Quite rightly, the appellant does not deny that one of its supporters displayed a banner containing the message "FUCK UEFA". Neither does it deny that this message was not fit for a sports event. The appellant identified the fan responsible as one of its own supporters but considers the sanction imposed excessive and mentions factors that, in its view, should result in the fine being reduced.

Consequently, the only point that the ad hoc chairman of the Appeals Body must re-examine is whether the factors provided by the appellant are to be considered as mitigating circumstances that justify an amendment of the decision taken by the Control, Ethics and Disciplinary Body on 11 December 2014.

Determination of the disciplinary measure

Pursuant to Article 17(1) of the UEFA Disciplinary Regulations, the competent disciplinary body determines the type and extent of the disciplinary measures 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 UEFA Disciplinary Regulations, recidivism is to be considered an aggravating circumstance. Recidivism occurs if two or more offences of a similar nature are committed in the space of five years (Article 19(1)(d) of the UEFA Disciplinary Regulations).

Article 53 of the UEFA Statutes and Article 6(1) of the UEFA 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 the minimum and maximum fines that can be imposed. These general provisions give the disciplinary bodies broad powers of discretion when it comes to determining disciplinary measures.

The appellant requests that the €20,000 fine imposed by the Control, Ethics and Disciplinary Body be reduced on the grounds that mitigating circumstances should have been taken into consideration in the first instance.

The reasons put forward by the appellant for amending the sanction (reducing the fine) cannot be considered as mitigating circumstances on the following grounds.

As a principle a Club in a situation as the one in hand has the obligation to do its utmost to identify the perpetrator of a fault. If the Club succeeds in such efforts and identifies the person in question this therefore is in line with what you can hope and what can be expected. Although the fact that the appellant identified and found the perpetrator is laudable, this therefore cannot be considered a mitigating circumstance that justifies an amendment of the decision.

The appellant also argues that, since the supporter in question is only 21 years old, still in education and still living with his parents, there is no possibility of recovering any damages from him, either currently or for a long time to come, especially if the amount of the claim is maintained. However, this argument is also irrelevant, since this is a matter between the club and the perpetrator. In such cases, clubs often either claim financial compensation from the supporter concerned or ask them to carry out football-related community service. Apparently, in the present case, the appellant decided not to make any such request, even though the perpetrator is an adult. The fact that the appellant therefore receives no economic compensation or any other effect from the perpetrator is no mitigating circumstance.

On top of that, the Club has been sanctioned by UEFA a few months ago for exactly the same incident (Case 27476). At that time, the CEDB fined the Club €15,000.

In view of the above, the ad hoc chairman of the Appeals Body finds that the Control, Ethics and Disciplinary Body correctly interpreted the provisions and case law applicable to this case. It took into account all the facts in fair proportion when limiting the sanction to a €20,000 fine. Accordingly, the size of the fine appears more than proportionate. Therefore, the Control, Ethics and Disciplinary Body's decision of 11 December 2014 must be confirmed and the appeal, which is clearly unfounded, must be rejected.

Decision of 19 May 2015

Trabzonspor AŞ

(Field invasion / Setting off and throwing of fireworks)

Circumstances of the case

- At minute 28 the referee sent off the coach of Trabzonspor mister Vahid Halilhodzic because after a technical decision he kicked the ball very hard to the assistant referee. He remained about 45 seconds inside because allegedly he did not understand the situation
- One Trabzonspor A.Ş. supporter invaded the field of play
- A large number of Bengal Lights and firecrackers were ignited by the away fans
- The match was suspended by the referee for about one minute because about 5 or 6 fireworks were thrown on the pitch from the Trabzonspor tribune.

Legal framework

Art. 16 (2) (a)

Art. 16 (2) (c)

Decision

CEDB:

The Control, Ethics and Disciplinary Body decided to suspend the Trabzonspor AS official for three (3) UEFA competition matches in which he would otherwise participate. The CEDB also fined the Club 55,000 €.

AB:

The Appeals Body rejected the appeal lodged by Trabzonspor AS and upheld the CEDB's decision of 13 November 2014.

Chairman: Pedro Tomás, Spain

Members: Björn Ahlberg, Sweden
António Mortágua, Portugal

Facts of the Case

Below is a summary of the main facts, as established by the UEFA Appeals Body on the basis of the UEFA Control, Ethics and Disciplinary Body's decision of 13 November 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, it emerges from the UEFA match officials' reports that the following incidents occurred during the 2014/15 UEFA Europa League match between KSC Lokeren OV and Trabzonspor AŞ on 6 November 2014:

In the 28th minute, the Trabzonspor AŞ coach, Vahid Halilhodzic, was sent off for kicking the ball very hard at an assistant referee after the referee had sanctioned a foul on the field of play. The coach remained in the technical area for 45 seconds, explaining to the referee that he did not understand the situation.

In the 61st minute, Trabzonspor AŞ supporters lit about 20 to 25 Bengal lights, some of which were thrown and landed on the field of play and caused a dense blanket of smoke to envelope one quarter of the pitch, forcing the referee to suspend the game for about a minute.

At the referee's request, the Trabzonspor AŞ captain tried to calm down his team's supporters.

One Trabzonspor AŞ supporter invaded the field of play.

In its decision dated 13 November 2014, the Control, Ethics and Disciplinary Body issued the following decision:

To suspend the Trabzonspor AŞ official Vahid Halilhodzic for three (3) UEFA competition matches in which he would otherwise participate.

To fine Trabzonspor AŞ €55,000.

The club ensures the official is informed personally of this decision.

The decision with grounds was notified to the appellant on 1 December 2014.

Summary of the proceedings before the Appeals Body

On 5 December 2014, the appellant submitted the grounds for appeal, which can be summarised as follows:

It had been informed by Trabzonspor AŞ supporters living in Belgium that KSC Lokeren OV was selling tickets in two stands normally reserved for home supporters to Turkish supporters (from Germany, the Netherlands and France). It had been impossible for the club to communicate with or educate these supporters because of their diversity. Most of these supporters had not been wearing anything to show that they were Trabzonspor AŞ supporters, but had bought tickets for stands normally reserved for home supporters. The club believes that all these incidents occurred because KSC Lokeren OV had sold tickets for the home stands to Turkish fans.

The appellant considers that the organiser hired stewards lacking the necessary expertise and physical fitness, with ages varying from very young to very old. They were unable to prevent supporters moving from one stand to another.

The supporter who invaded the field of play did so easily because of inadequate stewarding. The appellant believes that the supporter in question was "under the influence", but does not specify of what. The appellant also considers that the supporters were not searched properly due to inadequate stewarding.

The appellant also argues that the Control, Ethics and Disciplinary Body did not take the following mitigating circumstances into consideration:

- the time when the pitch invasion occurred, i.e. 1 hour 47 minutes before kick-off, the fact that nobody was injured, that no violence was committed, and that a supporter “under influence” had been allowed into the stadium due to inadequate stewarding;
- the lack of proper of body searches, which meant that pyrotechnic devices had been taken into the stadium.

The appellant argues that the sanction was disproportionate in view of the facts and similar cases, in particular the UEFA Champions League match between Borussia Dortmund and Galatasaray AŞ on 4 November 2014, when Galatasaray AŞ fans lit numerous Bengal lights and firecrackers, some of which were thrown onto the field of play and into the stand occupied by the home fans, injuring several home fans. The Control, Ethics and Disciplinary Body decided to fine Galatasaray AŞ €70,000.

Finally, the appellant asks the Appeals Body to set aside the first-instance decision and to reduce the fine.

On 19 February 2015, 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, since neither the appellant nor the Ethics and Disciplinary Inspector had requested one.

The Appeals Body met on 19 May 2015 to examine 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 parties’ arguments are set out and examined below, in so far as they are relevant to the decision.

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. Trabzonspor AŞ 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.

Unlike in the first-instance proceedings, neither the coach Vahid Halilhodzic nor his club filed a statement regarding the sanction imposed against him by the Control, Ethics and Disciplinary Body, since the appeal is directed mainly against the sanction imposed against the club for its

supporters' alleged improper conduct. It is therefore legitimate to consider that the appeal only concerns part 2 of the operative 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 or 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.

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 persons exercising a function at a match on their behalf. This rule also applies to 2014/15 UEFA Europa League matches, as expressly stated in paragraph 6.02 of the competition regulations.

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

² (...), 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.

By listing examples of unauthorised behaviour, this provision lays down principles of conduct that supporters must observe inside a stadium. It gives concrete expression to the general principle of strict liability laid down in Article 8 of the Disciplinary Regulations, according to which 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 accordingly.

In the case at hand

The appellant rightly did not contest the facts as reported to UEFA by the match officials.

The appeal is directed against the sanction imposed by the Control, Ethics and Disciplinary Body against Trabzonspor AŞ for the sanction imposed for the massive use of pyrotechnic devices by its supporters.

As a result, the Appeals Body will only consider the disciplinary sanction imposed for the violation of Article 16(2) of the Disciplinary Regulations by the Trabzonspor AŞ supporters.

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, and whether this sanction was disproportionate.

The Appeals Body shall, in particular, examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of legality and proportionality, or abused its discretionary power by fining Trabzonspor AŞ €55,000 for improper conduct by its supporters.

The away supporters' lighting of fireworks, some of which were thrown and landed on the field of play, constitutes 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.

It is also clear that the invasion of the pitch by a supporter, whatever the motive, violated the above provisions.

The Appeals Body notes that the Control, Ethics and Disciplinary Body was right to hold Trabzonspor AŞ responsible for its supporters' numerous acts of serious misconduct.

In view of the above, the Appeals Body deems that the Control, Ethics and Disciplinary Body was right to consider it satisfactorily established and proven that Trabzonspor AŞ supporters invaded the field of play and lit pyrotechnic devices.

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) 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), full or partial 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.

Unfortunately, this is not the first time in the last five years that Trabzonspor AŞ has been punished for its supporters' improper behaviour.

The fireworks that were lit and thrown endangered the safety of spectators, players and officials, forcing the referee to interrupt the game, which shows the seriousness of the incident. This is another aggravating circumstance.

The appellant insinuates that the people who committed the offences were not really Trabzonspor AŞ supporters. Indeed, it claims that most of them were from Germany, France, the Netherlands, etc., that they were not wearing anything showing that they were Trabzonspor AŞ supporters, and that they had bought their tickets from the home club. This argument is clearly unfounded and irrelevant.

It is the constant practice of the UEFA disciplinary bodies to consider as supporters of a club, under Articles 8 and 16(2) of the UEFA Disciplinary Regulations, individuals whose behaviour would lead a reasonable and objective observer to conclude that he or she was a supporter of the club in question. The team a person cheers and where they are seated in the stadium are important criteria for determining a supporter's allegiances (see also CAS 2007/A/1217 Feyenoord Rotterdam v UEFA, which confirmed the case law of the UEFA disciplinary bodies). Therefore, the people who committed these offences are Trabzonspor AŞ supporters. Besides, the appellant itself admitted that it had supporters outside Turkey (see page 2, paragraph 3 of the appellant's grounds of appeal).

The appellant alleges that the home club was guilty of inadequate organisation on several counts notably that it hired stewards of a certain age and that controls at the entrances were not properly conducted.

In this respect, possible organisational shortcomings could, at most, be considered mitigating circumstances. However, it emerges from the match delegate's additional report that: "Searching of the away fans was done by the police and they were very efficient as they confiscated a number of fireworks at the entry points". This suggests that the controls at the gates (including body searches) were properly conducted at the match in question. The appellant's argument in this respect must therefore be ruled out.

The appellant also puts forward a number of mitigating circumstances that it claims the Control, Ethics and Disciplinary Body did not take into consideration:

The pitch invasion occurred before kick-off and nobody was injured. Contrary to what the appellant suggests, the exact time at which a supporter unlawfully enters the field of play does not need to be established in order to conclude that a pitch invasion has been committed. Nor is it relevant that the supporter in question had no intention of attacking or harming the well-being of another person. As a so-called formal offence, pitch invasions do not require anyone to even feel in danger, let alone be injured, before disciplinary action is taken. Once again, the mere presence of an unauthorised person on the pitch before, during or after a match justifies disciplinary action.

The appellant argues that the sanction was not proportionate to the incident or to the case of Borussia Dortmund v Galatasaray AŞ played on 4 November 2014.

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 case mentioned by the appellant, the UEFA Ethics and Disciplinary Inspector appealed against the Control, Ethics and Disciplinary Body's decision and the Appeals Body partially admitted the appeal, ordering Galatasaray AŞ to play one match behind closed doors, suspended for a probationary period of five years (see AB_17849_b_Galatasaray). The sanction in this case is harsher than the fine imposed against Trabzonspor AŞ.

Regarding proportionality, CAS case law makes it clear that the sanction imposed must not be evidently or grossly disproportionate to the offence (see CAS 2005/C/976).

Therefore, the Appeals Body notes that the Control, Ethics and Disciplinary Body has taken account of all the concrete circumstances, in particular the club's poor previous record, the seriousness of the incidents and the fact that two different offences were committed. It also takes into account the fact that pyrotechnic devices were thrown onto the pitch, causing the referee to interrupt the match. Under these circumstances, the fine imposed clearly does not appear disproportionate.

In the present case, none of the above factors submitted by the appellant can be considered mitigating circumstances in the sense of Article 17(1) of the Disciplinary Regulations. The Appeals Body therefore has no reason to depart from the decision imposed by the Control, Ethics and Disciplinary Body. Therefore, the decision of the Control, Ethics and Disciplinary Body is upheld and the appeal lodged by Trabzonspor AŞ rejected.

Decision of 19 May 2015

Croatian Football Federation

(Racist behaviour / Throwing off of fireworks)

Circumstances of the case

In 30 minute two strikers were ignited; in 55 minute two strikers were ignited ; in 66 minute two strikers were ignited.

Approximately in the 4th minute around 200-300 Croatia national team supporters in the North stand lower tier chanted an homophobic slogan "HNS pederi" (English: "Croatian FA you faggots").

Approximately in the 9th, 24th and 28th minutes around 500 Croatia national team supporters in the North stand chanted for one minute "Za dom" and the East stand about 400 supporters replied "spremni!" (English: "For home(land) - ready!") The chant was repeated in the 24th minute. In the 28th minute it was given between North stand and South stand.

Legal framework

Art. 14 DR

Art. 16 (2) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body ordered the Croatian Football Federation to play their next (1) UEFA Competition match as host association behind closed doors and to fine Croatian Football Federation 50,000 € for the racist behaviour of its supporters. The Croatian Football Federation was also fined 5,000 € for the setting off of fireworks.

AB:

The Appeals Body rejected the appeal lodged by the Croatian Football Federation and confirmed the CEDB's decision of 8 April 2015.

Chairman: Pedro Tomás, Spain

Members: Björn Ahlberg, Sweden
António Mortágua, 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 8 April 2015, 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 report dated 28 March 2015, the UEFA delegate indicated that the two FARE observers present in the stadium had told him after the match that they had heard “some discriminatory chants”.

During the game, the UEFA delegate had asked his liaison officer several times about what the home supporters were chanting to each other. He had been informed that they were chanting normal chants such as: “Fight for your country and your nation”. He had not heard any other chants.

In their report, the FARE observers indicated that:

in the 4th minute of the match, about 200–300 Croatian supporters located in the lower tier of the north stand chanted: “HNS pederi” (English: “Croatian FA you faggots”);

in the 9th, 24th and 28th minutes, about 500 Croatian supporters in the north stand chanted “Za dom” for one minute and about 500 supporters located in the east stand replied “spremni!” (English: “For home(land) – ready!”). In the 28th minute, the same chant was performed by supporters in the north and south stands.

Football Against Racism in Europe (FARE) reported the above-mentioned incidents to UEFA through the UEFA delegate appointed for the match concerned.

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. These include football fans from Croatia.

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.

On 8 April 2015, the Control, Ethics and Disciplinary Body decided to impose on the Croatian FA the following sanction:

To order the Croatian Football Federation to play their next (1) UEFA competition match as host association behind closed doors and to fine Croatian Football Federation € 50'000 for the racist behaviour of its supporters.

To fine Croatian Football Federation € 5'000 for the setting off of fireworks.

The decision with grounds was notified to the appellant on 24 April 2015.

Summary of the proceedings before the Appeals Body

On 27 April 2015, the Croatian Football Federation announced its intention to appeal against the Control, Ethics and Disciplinary Body's decision of 8 April 2015.

On 30 April 2015, the Croatian Football Federation submitted the grounds for appeal and stressed that it was only appealing against the part of the decision concerning the sanction to play one match behind closed doors as a result of its supporters' discriminatory conduct.

The appellant's submissions can be summarised as follows:

Even though the previously appealed decision of 11 December 2014, under which the association had been punished with a partial stadium closure and a fine of €80,000 for offences including discriminatory conduct by its supporters, would have had a deterrent effect on its supporters, it had conducted additional activities to prevent discriminatory behaviour. Notably, two weeks before the match against Norway, it had organised a prevention campaign called 'My tribune', in which players, the national association and coaches had talked about the need to combat violence and discrimination in the stadium. The Croatian Football Federation had also sponsored a youth camp for ethnic minorities living in Croatia.

The state authority had not taken sufficient action against discriminatory behaviour at sports events, in particular by regulating prohibited conduct and related punishments.

The recommendations contained in the 1985 European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches had remained unheeded and the football authorities were being left to combat violence and discrimination in stadiums on their own.

Regarding the match in question, significant steps had been taken in terms of the use of pyrotechnic devices, since only a small number of strikers had been ignited, but no flares. The person who had lit the strikers had been prosecuted and convicted by the courts. The Croatian Football Federation would file an action for damages against him.

It was always the same small minority of spectators who participated in discriminatory behaviour. Attempts were being made to identify the perpetrators and criminal charges would be filed against them.

The clubs and the Croatian Football Federation were becoming hostages of extremist supporters, who were aware that they could do great damage to clubs or to the federation

itself just by chanting. The punishments imposed against the club and the federation helped them to achieve their purpose.

The appeal should be accepted and the sanction of playing a match behind closed doors replaced with a fine or, alternatively, a partial stadium closure or limitation of the attendance at Croatia's next match against Italy on 12 June 2015 to 5,000 girls under 14 years old accompanied by their mothers and female football players.

The Croatian Football Federation requested that a hearing be held.

The UEFA Ethics and Disciplinary Inspector submitted her reply on 8 May 2015. She concluded that the appeal should be rejected, the Control, Ethics and Disciplinary Body's decision of 8 April 2015 confirmed and the costs of the proceedings charged to the appellant.

Hearing

The chairman of the Appeals Body opened the hearing and noted the presence of both the UEFA Ethics and Disciplinary Inspector and the appellant's representative.

The chairman informed the appellant and the Ethics and Disciplinary Inspector of the procedure to be followed (Article 57 of the Disciplinary Regulations) and told them that the hearing would be recorded for the preservation of evidence (Article 34(3) of the Disciplinary Regulations).

The other members of the Appeals Body introduced themselves.

The chairman of the Appeals Body then asked the appellant and the Ethics and Disciplinary Inspector if they had any objections. Both agreed with the proposed procedure and raised no objections.

The video footage of the incidents provided by the appellant was viewed several times, as was that of the official UEFA broadcaster.

The chairman gave the floor to the Ethics and Disciplinary Inspector and then to the appellant. Both confirmed their requests and presented broadly the same arguments as contained in their written submissions.

Appeals Body's jurisdiction 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. The Croatian Football Federation 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 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. The appeal in this case is directed exclusively at the sanction imposed by the Control, Ethics and Disciplinary Body on the basis of Article 14 of the Disciplinary Regulations for discriminatory conduct by Croatian national team supporters (the order that the Croatian national team should play its next home UEFA competition match behind closed doors for the racist behaviour of its supporters).

The appellant does not contest the fine or the punishment for the other supporter misconduct committed in violation of Article 16(2) of the Disciplinary Regulations, as no relief is sought on these counts. The uncontested sanctions (fines of €50,000 for racist behaviour and €5,000 for the setting off of fireworks in points 1 and 2 of the contested decision respectively) shall therefore not be re-examined and remain in force.

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 UEFA's Statutes, regulations, decisions and directives warrant disciplinary measures.

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.

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 color, race, religion or ethnic origin, will be suspended for ten matches or a specified period of time.

Article 14(2) and (3) of the Disciplinary Regulations establish a *lex specialis* in relation to Articles 6(1) and 19 of the same regulations, providing a clear system of escalation of sanctions for discriminatory offences:

partial closure of the stand for a first violation;

one match behind closed doors and a fine for a second offence;

more than one match behind closed doors, stadium closure, forfeiting of a match, the deduction of points or disqualification from the competition for any subsequent offence.

When discriminatory behaviour occurs, possible mitigating circumstances must be assessed in the restrictive framework of Article 17(3) of the Disciplinary Regulations. In order for the standard sanctions of Article 14 to be reduced, the mitigating circumstances must be 'exceptional'.

In the case at hand

It is not contested that Croatian supporters performed the clearly homophobic chant "HNS pederi" (English: Croatian FA you faggots) and that some chanted "Za dom", to which about 400 supporters in the east stand replied "spremni!" (English: For home(land) – ready). The latter was the rallying cry of Croatia's Second World War Ustasa regime, a close ally of Nazi Germany. The Ustasa killed hundreds of thousands of Serbs, Jews, anti-fascist Croatians, Roma and others in concentration camps. It is worth noting that the Republic of Croatia has condemned and publicly apologised for the crimes committed by Ustasa.

The Croatian Football Federation rightly admitted all the infringements reported by the match officials, for which it is liable under the principle of strict liability, and did not contest the discriminatory nature of the chants performed by its supporters (see page 3 of the grounds for appeal).

The facts established by the Control, Ethics and Disciplinary Body are contested neither by the Ethics and Disciplinary Inspector nor by the Croatian Football Federation, which only disputes the disciplinary measure related to the violation of Article 14 of the Disciplinary Regulations, i.e. the order that it play its next UEFA match behind closed doors.

Such behaviour not only constitutes a serious violation of UEFA's statutory objectives; it also offends the human dignity of a group of people. Therefore, UEFA, through its disciplinary bodies, must ensure that such incidents do not happen again.

Since the people who performed these chants during the above-mentioned match were Croatian supporters in the sense of the UEFA regulations and were Croatian national team supporters, the Croatian Football Federation must be held responsible for their misbehaviour (strict liability principle).

It therefore remains for the Appeals Body to examine, firstly, 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 power of discretion by ordering the Croatian national team to play its next home match behind closed doors for discriminatory conduct under Article 14(3) of the Disciplinary Regulations. Secondly, it must decide whether the argument put forward by the appellant could be considered as an exceptional circumstance in the sense of Article 17(3) of the Disciplinary Regulations.

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 describes the efforts it has made to combat discriminatory conduct by its supporters. Regarding the measures allegedly taken by the appellant to combat its supporters' improper behaviour, the Appeals Body is of the opinion that, although laudable, they belong to the general duties of any club or national association participating in UEFA competitions. Identifying perpetrators, campaigning against racism and sponsoring a youth camp for ethnic minorities can not therefore be considered mitigating factors.

However, any extra effort on the part of a national association to combat violence in stadiums must be encouraged.

The appellant also argues that the Croatian government has shown reluctance to participate in the fight against discrimination by failing to implement the recommendations of the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches.

When entering the competition, the Croatian Football Federation agreed and confirmed in writing that, along with its players and officials, it would comply with UEFA's Statutes, regulations, directives and decisions (see Article 4 *et seq.* of the Regulations of the UEFA European Football Championship 2014–16). With such an undertaking, the support of the state in safety and security matters is always welcome. However, the possible failure by the state in this respect cannot exonerate a club or national association whose supporters violate the UEFA regulations. The national association's responsibility towards UEFA applies regardless of whether or not its government supports it in any particular area when the incident occurred.

However, the Appeals Body would like to point out that Article 14 of the Constitution of the Republic of Croatia states that: "*All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, color, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics. All persons shall be equal before the law*". It is therefore clear that the Croatian Constitution prohibits discrimination.

Croatia also has an Anti-Discrimination Act (see Official Gazette 85/2008, 112/2012), which contains comprehensive anti-discrimination legislation covering all forms of discrimination.

In this respect, it is also worth noting that Croatian courts have issued numerous decisions related to discriminatory acts, notably the decision issued by the County Court of Varaždin on 2 April 2013 in the case of L.I. and Ž.B. v Branka d.o.o. and B.J. (see Official Gazette 3684/12 (P.817/11)), and the decision of 16 December 2013 (K-DO-1204/13) in the case of M.Š. and Š.Š.

Without being experts in Croatian law, we can learn from the above that there is state anti-discrimination legislation in Croatia and that Croatian courts have sanctioned violations of its provisions. This contradicts the appellant's argument in this respect because it shows that breaches of the Anti-Discrimination Act are punished when brought before the courts.

This is backed up by the appellant's argument that: "Identification of the perpetrators is currently ongoing and misdemeanour and criminal charges will be filed against them" (see last paragraph of page 3 of the appellant's grounds for appeal). Therefore, the argument of the appellant according to which the state does not assist them to combat discriminatory act is unfunded.

The appellant also argues that only a minority of supporters were involved in this reprehensible conduct. This argument must be rejected, since Article 14(3) of the Disciplinary Regulations, which deals specifically with violations committed by supporters, states that: "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". Therefore, even if only one supporter violates Article 14 of the Disciplinary Regulations, the club or national association can be held responsible. This cannot be considered a mitigating circumstance and is certainly not an exceptional circumstance.

The appellant fears becoming a hostage of extremist groups of supporters, who are aware that their chants can do great damage to a club or national association.

This argument must be ruled out, since the reason for supporters' misconduct is irrelevant where UEFA is concerned. It is up to the national association to identify the origin and possible reason for the problem and tackle it. The fact that the disruptive supporters are opponents of the Croatian Football Federation or disagree with the current composition of its board, for example, cannot count as a mitigating circumstance. The Croatian Football Federation itself mentions that it takes cases before the courts, thus confirming the existence of state legislation against discriminatory conduct. The supporters concerned will therefore be punished and the Croatian Football Federation could even ban them from attending its matches.

The appellant also requests that the sanction imposed by the Control, Ethics and Disciplinary Body that it should play its next UEFA match behind closed doors be replaced with a fine or an order limiting the stadium attendance.

The Appeals Body cannot consider such a request, since it has to apply the specific rule set forth in Article 14(2) *et seq.* of the Disciplinary Regulations. The level, nature and chronology of

the sanctions for discriminatory conduct is precise and the system of sanctions must be respected when Article 14 is breached. In this respect, the panel has no room of manoeuvre but must apply the rule as indicated. Therefore, the conclusion of the appellant must be rejected.

In view of the above, the appellant has failed to provide any evidence of exceptional circumstances that could justify a departure from the stadium closure applicable to a second offence of discriminatory conduct by supporters under Article 14(3) of the Disciplinary Regulations. Since there are no exceptional circumstances in the case at hand, Article 17(3) of the Disciplinary Regulations does not apply.

In the light of the above, the Control, Ethics and Disciplinary Body correctly interpreted the regulations and the case law applicable to the present case. It took account of all the facts with a due sense of proportion. The seriousness of the conduct of certain Croatian supporters deserves to be penalised. In this regard, the fact that the Croatian Football Federation had apparently taken preventive measures is laudable, but it cannot be considered an exceptional circumstance in the sense of Article 17(3) of the Disciplinary Regulations.

In the light of the above, the Appeals Body believes that, by ordering that a match be played behind closed doors, 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.

Decision of 19 May 2015

Royal Netherlands Football Association

(Protest)

Circumstances of the case

On 4 April 2015, England played against Norway an European Women's Under-19 Championship 2015 match. In the minute 96, the referee whistled a penalty kick against Norway which was taken by the FA player Leah Williamson. Before taken the penalty kick a player from the England team encroached the penalty area. The FA player scored the penalty, but the referee annulled the goal and awarded a free kick to Norway.

On 5 April 2015 the FA filed a protest on the basis of alleged obvious violation of a rule by the referee as defined in Article 50 (1) (d) DR. In particular, the FA protested against the referee's decision of awarding a free kick instead of ordering to retake the penalty kick in accordance to the 14 Law of the FIFA Laws of the Game.

In substance, the FA holds that according to the FIFA rules of the game, where a player of both the defending team and the attacking team infringe the laws of the game, the penalty kick should be retaken which was, however, not imposed.

Legal framework

Art. 48 (b) DR

Decision

CEDB:

The Control, Ethics and Disciplinary Body ordered the match to be replayed. The match shall be carried out as follows:

- The match will be replayed from the minute the penalty kick was awarded to the Football Association at the European Women's Under-19 Championship 2015 match between England vs Norway played on 4 April 2015, and extended according to the discretion of the referee.
- The penalty kick shall be retaken by the Football Association.

AB:

The Appeals Body declared unfounded the appeal lodged by the Royal Netherlands Football Association. The CEDB's decision of 8 April 2015 is upheld.

Chairman: Pedro Tomás, Spain

Members: Björn Ahlberg, Sweden
António Mortágua, Portugal

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 8 April 2015, 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.

During the UEFA European Women's Under-19 Championship match between England and Norway played on 4 April 2015, an English player took a penalty kick and scored. However, a player from each team had encroached into the penalty area. Having blown the whistle for a goal, the referee signalled for the penalty to be retaken before awarding an indirect free-kick to Norway. The penalty was not retaken.

On 5 April 2015, The Football Association filed a protest, which reached UEFA headquarters at 20.19 that evening. In its protest, The Football Association argued that the UEFA-appointed referee had not followed the Laws of the Game, under which the penalty should have been retaken.

In its decision dated 8 April 2015, the ad hoc chairman of the Control, Ethics and Disciplinary Body, acting as judge sitting alone, ruled as follows:

To order the match to be replayed. The replay of the match shall be carried out as follows:

- The match will be replayed from the minute the penalty kick was awarded to the Football Association at the European Women's Under-19 Championship 2015 match between England vs Norway played on 4 April 2015, and extended according to the discretion of the referee.
- The penalty kick shall be retaken by the Football Association.

The UEFA Administration will inform both associations about the date and time when the match will be replayed in accordance with the above conditions.

The decision with grounds was notified to The Football Association and the Football Association of Norway on 27 April 2015.

On 16 April 2015, the Royal Netherlands Football Association asked to see the grounds of the Control, Ethics and Disciplinary Body's decision.

On 27 April 2015 and on the basis of Article 45 UEFA DR, the Royal Netherlands Football Association received the decision with grounds.

Summary of the proceedings before the Appeals Body

On 30 April 2015, the Royal Netherlands Football Association submitted the grounds for its appeal, in which it asked the Appeals Body to annul the Control, Ethics and Disciplinary Body's decision of 8 April 2015. It also paid the appeal fee.

In his reply to the appeal, the UEFA Ethics and Disciplinary Inspector requested that the appeal be dismissed.

Hearing

No hearing was held, since the appellant requested that the proceedings be conducted in writing only and the chairman of the Appeals Body did not raise any objection to this request.

The Appeals Body examined the entire case file, in particular the challenged decision, the grounds for appeal and the Ethics and Disciplinary Inspector's reply to the appeal, on 8 May 2015.

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

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.

Legal Considerations of The Appeals Body

The legal framework

The Appeals Body examines *ex officio* whether the conditions to be a party in appeal proceedings (Article 53 of the Disciplinary Regulations) are fulfilled before it considers the merits of a case.

According to Article 31(1) of the Disciplinary Regulations, the parties comprise the individual, member association or club which is directly affected and the individual/body which is entitled to protest and the opponent in that protest.

Under Article 53 of the Disciplinary Regulations, only the parties directly affected by a decision and the Ethics and Disciplinary Inspector have the right to appeal.

In the case at hand

The Royal Netherlands Football Association contests the merits of the decision of 8 April 2015, which was addressed to The Football Association and the Football Association of Norway, accusing the first-instance body of wrongly applying the Laws of the Game. It argues that the decisions of the referee on the field of play are final, so the match cannot be partially replayed.

However, the alleged violation of the Laws of the Game can only be considered and analysed by the Appeals Body if it finds that the appellant, i.e. the Royal Netherlands Football

Association, which did not play in the match in question, has standing to appeal in the case at hand.

In this respect, the formal criteria that must be met for an appeal to be considered admissible are set out in Article 53 of the Disciplinary Regulations (2014 edition). Article 53(1) states that:

“The parties directly affected by a decision and the Ethics and Disciplinary Inspector all have the right to appeal.” This provision restricts the standing to appeal.

The Royal Netherlands Football Association’s main grievance seems to be that the Control, Ethics and Disciplinary Body wrongly interpreted the Laws of the Game in the dispute between The Football Association and the Football Association of Norway.

The Royal Netherlands Football Association neither explains nor demonstrates its interest in the present case, nor how it is affected by the contested decision.

Even if the Appeals Body were to examine this point *ex officio*, it appears that the appellant is in no case directly affected by the decision of 8 April 2015 in the sense of Article 53(1) of the UEFA Disciplinary Regulations. The fact that the result of the match that is to be partially replayed under the first-instance decision is likely to be modified does not directly affect the other competitors. The consequences of a different result would only be indirect.

It appears, therefore, that the Royal Netherlands Football Association, which is not directly affected by the appealed decision, does not have a right to appeal under Article 53(1) of the Disciplinary Regulations. Its appeal must therefore be rejected without further analysis and the Control, Ethics and Disciplinary Body’s decision of 8 April 2015 confirmed.



UEFA
ROUTE DE GENÈVE 46
CH-1260 NYON 2
SWITZERLAND
TELEPHONE: +41 848 00 27 27
TELEFAX: +41 848 01 27 27
UEFA.com

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