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PROTECTING THE GAME / LEGAL DIVISION  
DISCIPLINARY AND ETHICS UNIT

# **CASE LAW**

## **Control, Ethics and Disciplinary Body & Appeals Body**

WE CARE ABOUT FOOTBALL

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Season 2016/17  
July 2016 - December 2016

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## Foreword

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Dear Sir or Madam,

I am pleased to provide you with the case law of the UEFA Control, Ethics and Disciplinary Body and the UEFA Appeals Body for the period July - December 2016.

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

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

Yours faithfully,

**UEFA**

A handwritten signature in blue ink, consisting of a stylized 'E' followed by a horizontal line and a small flourish.

**Emilio García**  
**Managing Director Integrity**

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

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





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Control, Ethics and Disciplinary Body

## Decision of 7 July 2016

Liverpool FC - Mamadou Sakho

(doping)

### **Circumstances of the case**

On 17 March 2016, the Liverpool FC player Mr. Mamadou Sakho (the "Player") underwent a doping control test after the UEFA Europa League match between Manchester United FC and Liverpool FC. The analysis of the Player's A sample (the "Sample") revealed the presence of a substance called Higenamine, this analysis was carried out at the World Anti-Doping Agency ("WADA") accredited laboratory in Cologne (the "Cologne Laboratory"). On 22 April 2016, UEFA notified the Player of this finding, noting that in conformity with the WADA Prohibited List of 1 January 2016, the above substance is prohibited at all times, in-and out-of-competition under the category S3. Beta-2 agonists, and its presence in the sample may result in a possible anti-doping rule violation. On 28 April 2016, disciplinary proceedings were initiated by UEFA against the Player in respect of his alleged breach of the UEFA Anti-Doping Regulations (the "ADR"). Following a request from the Player, on 28 April 2016, the Chairman of the CEDB decided to provisionally suspend the Player from participating in all matches for which he would otherwise be eligible for a period of 30 days, this provisional suspension was not subsequently extended by the Chairman of the CEDB.

**Legal framework** Article 2 (1) (a) and 4 (1) of the UEFA Anti-Doping Regulations.

### **Decision**

WADA has not formally communicated any determination to its accredited laboratories and that some (if not all) WADA accredited laboratories are uncertain of Higenamine's status on the prohibited list. In light of the foregoing, the CEDB decided to dismiss the case against the Player.

Acting Chairman: Hansen Jim Stjerne (DEN)

Members:

- Partl Thomas (AUT)
- Antenen Jacques (SUI)
- Bonett Chris (MLT)
- Gea Tomás (AND)
- Larumbe Beain Kepa (ESP)
- Lorenz Hans (GER)
- Řepka Rudolf (CZE)



## I. Facts Of The Case

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (the "**CEDB**") on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the CEDB proceedings.
2. Whilst the CEDB has considered all of the facts, allegations, legal arguments and evidence submitted in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
3. The most relevant facts of this case can be summarised as follows:
  - on 17 March 2016, the Liverpool FC player Mr. Mamadou Sakho (the "**Player**") underwent a doping control test after the UEFA Europa League match between Manchester United FC and Liverpool FC;
  - the analysis of the Player's A sample (the "**Sample**") revealed the presence of a substance called Higenamine;
  - this analysis was carried out at the World Anti-Doping Agency ("**WADA**") accredited laboratory in Cologne (the "**Cologne Laboratory**");
  - on 22 April 2016, UEFA notified the Player of this finding, noting that (emphasis added):

*"In conformity with the WADA Prohibited List of 1 January 2016, the above substance is prohibited at all times, in-and out-of-competition under the category S3. Beta-2 agonists, and its presence in your sample may result in a possible anti-doping rule violation."*
  - on 28 April 2016, disciplinary proceedings were initiated by UEFA against the Player in respect of his alleged breach of the UEFA Anti-Doping Regulations (the "**ADR**");
  - following a request from the Player, on 28 April 2016, the Chairman of the CEDB decided to provisionally suspend the Player from participating in all matches for which he would otherwise be eligible for a period of 30 days;
  - this provisional suspension was not subsequently extended by the Chairman of the CEDB;
  - on 27 May 2016, the Chairman of the CEDB appointed a UEFA Ethics and Disciplinary Inspector (the "**EDI**") to investigate the nature of the substance Higenamine and its categorisation as a prohibited substance on WADA's prohibited list;



- in this regard, the EDI contacted Mr. Adam Klevinas at WADA, Dr. Hans Geyer at the Cologne Laboratory and Dr. Martial Saugy at the WADA accredited laboratory in Lausanne (the "**Lausanne Laboratory**");
- on 31 May 2016, the EDI submitted his report (which included response letters from the representatives of WADA, the Cologne Laboratory and the Lausanne Laboratory) and this was sent to the Player;
- on 7 July 2016, the CEDB met in Paris to consider the case;
- the hearing was attended by representatives of the Player; and
- Dr. Hans Geyer (on behalf of the Cologne Laboratory) and Dr. Martial Saugy (on behalf of the Lausanne Laboratory) were also present at the hearing for cross-examination.

## **II. The Respondent's position**

4. The Player submitted his statements on 23 May 2016, 15 June 2016 and 22 June 2016.
5. The most relevant elements of these statements can be summarised as follows:
  - the Player accepts that Higenamine was present in the Sample;
  - however, the Player does not accept that he committed a violation of the ADR;
  - the Player argues that Higenamine is not listed on WADA's prohibited list;
  - the Player argues that Higenamine is not a Beta-2 Agonist under Category S3 on WADA's prohibited list; and
  - the Player provides various scientific reports to support this claim (including specially commissioned expert reports prepared by Professor Brian Kobilka and Professor Richard Bloomer).
6. The more detailed arguments made by the Player are set out below in so far as they are relevant.

## **III. Merits of the Case**

### **A. UEFA's competence**

7. Pursuant to Article 23 DR, the CEDB is competent to deal with this case.
8. In light of the above, UEFA's statutes, rules and regulations are applicable to these proceedings (in particular the UEFA Disciplinary Regulations (the "**DR**") and the ADR).

B. The alleged anti-doping offence

a) *Applicable legal framework and general remarks*

9. Article 13 DR provides that doping offences are to be punished in accordance with the ADR and the DR.

10. Article 2.01(a) ADR provides as follows (emphasis added):

*"2.01 The following constitute anti-doping rule violations:*

a) *Presence of a prohibited substance or its metabolites or markers in a player's sample*

(i) *It is each player's personal duty to ensure that no prohibited substance enters his body. Players are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the player's part be demonstrated in order to establish an anti-doping rule violation."*

11. Article 4.01 ADR states that (emphasis added):

*"Prohibited substances and prohibited methods comprise everything on the Prohibited List published by WADA from time to time. Unless provided otherwise in the Prohibited List or a revision, the Prohibited List and revisions go into effect under these regulations three months after publication by WADA, without requiring further action by UEFA. All players and other persons are bound by the Prohibited List and any revisions from the date they go into effect, without further formality. It is the responsibility of all players and other persons to familiarise themselves with the most up-to-date version of the Prohibited List and all revisions. The Prohibited List in force is available on WADA's website at [www.wada-ama.org](http://www.wada-ama.org). In addition, UEFA notifies national associations and clubs participating in UEFA competitions of any revisions to the Prohibited List in due time."*

b) *The responsibility of the Player*

12. The CEDB notes that the fact that Higenamine was correctly found to be in the Sample by the Cologne Laboratory is not contested.

13. There has, however, been considerable debate throughout the proceedings regarding the nature of Higenamine and its categorisation as a prohibited substance under Category S3 (Beta-2 Agonists) on WADA's prohibited list.

14. Having examined the various submissions and evidence (including the report of the EDI), the CEDB considers that there are several important questions to ask in this analysis:
  - Is Higenamine on WADA's prohibited list?
  - Is Higenamine a Beta-2 Agonist?
  - What has WADA communicated to its accredited laboratories about Higenamine?
  - Are the WADA accredited laboratories consistently testing for Higenamine?

15. The CEDB has addressed each of these issues in its deliberations as follows.

*Is Higenamine on WADA's prohibited list?*

16. To answer the first question, the CEDB logically began with a consideration of the language of the prohibited list itself.
17. In this regard, it is important to note that Higenamine is not expressly mentioned by name on WADA's prohibited list.
18. Indeed, the S3 category is only defined in very general terms and no specific substances at all are expressly mentioned as being included (emphasis added):

*"All beta-2 agonists, including all optical isomers, e.g. d- and l- where relevant, are prohibited."*

19. This situation raises immediate concerns for the CEDB, since it is clearly not possible for anyone - laboratory, disciplinary body, football player or otherwise - to know whether or not Higenamine is a prohibited substance just by reading WADA's prohibited list.
20. It is of course acknowledged that it is potentially difficult for WADA to list all of the relevant substances under a particular heading in its prohibited list, however, having regard to the other sections of the list, the S3 section is particularly light on detail.
21. On this basis, the CEDB considers that it is not enough for WADA to simply state in its prohibited list that all substances that might possibly fit a very general description (e.g. all Beta-2 Agonists) are prohibited. This is not specific enough.
22. Based on the foregoing, it is not possible for the CEDB to conclude (solely based on the language of WADA's prohibited list) that Higenamine is a prohibited substance and this clearly has a bearing on the present case.



*Is Higenamine a Beta-2 Agonist?*

23. There is, however, also an underlying scientific question about whether Higenamine does fit into the category of Beta-2 Agonists under section S3 and this is where the second of the questions outlined above must be considered.
24. To answer this, the CEDB has been provided with a significant volume of scientific research and expert analysis during the course of these proceedings, as well as statements from WADA, the Cologne Laboratory and the Lausanne Laboratory – all of which have been very helpful.
25. Having analysed such materials in detail, the CEDB concludes that it is not clear that Higenamine has been proven to be a Beta-2 Agonist.
26. The CEDB notes that the studies that have been generally carried out in the scientific community cast significant doubt on the classification of Higenamine as a Beta-2 Agonist.
27. In addition, the expert reports commissioned by the Player - which the CEDB notes come from very reputable sources in Professor Brian Kobilka and Professor Richard Bloomer – cast serious doubts on this categorisation.
28. Under this weight of evidence, and without receiving anything to the contrary from WADA, it is impossible for the CEDB to accept that Higenamine is scientifically proven to be a B2-Agonist.
29. This is in no way a determination of the CEDB based on its own scientific expertise. Rather this is the only conclusion that can be reasonably drawn by the CEDB based on the significant scientific information provided to it.
30. Further, it appears from documents in the case file that WADA has not completed its own internal scientific/procedural analysis of Higenamine and is not certain of its status as a Beta-2 Agonist.
31. The CEDB understands that WADA has an internal process of analysis and review in order to ensure that any substance is thoroughly investigated prior to it being added to the prohibited list. The first part of this process involves WADA gathering complete documentation on the pharmacological effects of the relevant substance and making a proposal to include the relevant substance under the relevant category of prohibited substances. Next, the proposal (along with the relevant arguments and scientific evidence) is circulated to WADA's stakeholders (including its accredited laboratories) in order to get feedback on the possible addition of the relevant substance to the prohibited list. Finally, if the proposal is accepted, the next step is for WADA to inform all of the accredited laboratories to implement the relevant substance in their screening processes.

32. Looking at the facts of the present case, this WADA procedure does not appear to have been completed yet for Higenamine.
33. This has also been confirmed by Dr. Saugy of the Lausanne Laboratory who, as well as expressing his own doubts about the categorisation of Higenamine as a Beta-2 Agonist, also questioned the steps that WADA has taken to reach its conclusion. Dr. Saugy is an extremely well-regarded and experienced professional – in this regard, his full and frank opinion of the status of Higenamine is persuasive.
34. In the opinion of the CEDB, there must be legal certainty as to the substances on WADA's prohibited list. Any uncertainty must be interpreted in favour of the accused and, based on the foregoing discussion of Higenamine, there is clearly considerable uncertainty in this case about the categorisation of Higenamine as a Beta-2 Agonist on WADA's prohibited list.
35. This uncertainty was also confirmed in a very convincing way by the statements of Dr. Hans Geyer of the Cologne Laboratory who explained that, after the Sample tested positive for Higenamine, he needed to check with WADA if Higenamine was actually a prohibited substance before making his determination. Dr. Geyer clearly did not know - based on the information available – whether or not Higenamine was a Beta-2 Agonist. He is an experienced professional who makes a valuable contribution in the fight against doping, it is therefore telling that he felt the need to check the position of Higenamine.

*What has WADA communicated to its accredited laboratories about Higenamine?*

36. By considering the third of the questions set out above, the CEDB was alerted to another issue in the present case – a lack of effective communication.
37. The CEDB notes that, even if Higenamine is a Beta-2 Agonist and is adequately covered by the general wording of Category S3, this fact was not properly communicated by WADA to its accredited laboratories.
38. The fact that the Cologne Laboratory tested for Higenamine but had to check with WADA before making a determination indicates a problem, as does the fact that the Lausanne Laboratory does not test for Higenamine at all.
39. In this regard, Dr. Saugy explained that he has not received any formal instruction from WADA to test for Higenamine and explained that the Lausanne Laboratory would not start testing for Higenamine until such communication is received.
40. The onus is clearly on WADA to communicate to its laboratories what is and what is not on the prohibited list. There are clearly gaps in communication with regard to Higenamine, something which also tends to support the suggestion that WADA's own internal procedure and analysis in respect of this substance is incomplete (as discussed above). Had WADA finished its own internal process, it would surely have formally

communicated this to all of its accredited laboratories (rather than simply making a one-off determination on request to the Cologne Laboratory).

*Are the WADA accredited laboratories consistently testing for Higenamine?*

41. Looking now at the last of the questions outlined above, the CEDB notes that the inconsistency of testing amongst WADA accredited laboratories is concerning - since this raises questions of legal certainty.
42. Frankly, the CEDB struggles to understand the value of a code which lacks universal enforcement. A code, for example, where different laboratories are looking for different things.
43. In the present case, the CEDB was presented with a situation where the Player tested positive for Higenamine because the Sample was sent to Cologne, but would not have tested positive if the Sample had been sent to Lausanne.
44. From a purely legal point of view, this is not robust.

*Conclusions*

45. As a final point, the CEDB feels compelled to make some mention of the rights of athletes and how they are affected by the uncertainty discussed above. Fundamentally, it is unreasonable to expect an athlete to have a greater understanding of a substance than a WADA accredited laboratory and its scientists.
46. Accordingly, in the present case, the CEDB must be mindful of what it could reasonably expect the Player (and his club and personal trainer) to have been able to learn about Higenamine from publicly available sources, given the fact that it does not appear by name in WADA's prohibited list, that WADA does not appear to have made a firm determination itself, that WADA has not formally communicated any determination to its accredited laboratories and that some (if not all) WADA accredited laboratories are uncertain of Higenamine's status on the prohibited list.
47. The identity of prohibited substances should not be a secret. The CEDB considers that athletes have a legitimate expectation that they will be able to determine what is on the prohibited list, otherwise they will constantly be 'in the dark'.
48. To conclude, the CEDB determines that:
  - it has not been proven that Higenamine is on WADA's prohibited list;
  - indeed, significant doubts exist as to whether Higenamine is even a B2-Agonist;
  - there has been a clear lack of communication from WADA, something which left even its own accredited laboratories unsure about the status of Higenamine; and



- the fact that the majority of WADA accredited laboratories do not test for Higenamine is inconsistent with the principle of legal certainty.
49. On this basis, the CEDB concludes that the Player has not committed a violation of the ADR.

**IV. The determination of the appropriate disciplinary measure**

50. In light of the foregoing, the CEDB decides to dismiss the case against the Player.

## Decision of 21 July 2016

Linfield FC

(racist behaviour)

### **Circumstances of the case**

Approximately in the 44th minute into the game, a group of around 150-200 Linfield supporters in the North Stand, Block N started chanting: "No, No Pope of Rome, No Chapels to sadden my eyes (Thank fuck!) No Nuns and no Priests, No rosary beads. Every day is the 12th of July." The chanting was repeated 3 times, lasting for about 45 seconds total. The chant also reoccurred at 22.31 in the 41st minute of the second half. Approximately in the 65th minute into the game a group of around 150 Linfield fans in the North Stand, Block N started chanting: "Why don't you go home? Who don't you go home? The famine's over. Why don't you go home?" Approximately in the 44th minute into the game, a group of around 300-400 Linfield supporters in the North Stand, Block N started chanting: "If you hate the Fenian bastards clap your hands. If you really fucking hate them, really fucking hate them Really fucking hate them clap your hands" Immediately following the final whistle of the second half, a group of around 300-400 Linfield supporters in the North Stand, Block N started chanting "Hello hello, we are the Billy Boys. Hello, hello, you'll know us by our noise. We're up to our knees in Fenian blood. Surrender or you'll die For we are the Brighton Derry Boys".

**Legal framework** Article 14 of the UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body, decided to order the partial closure of the Linfield FC Stadium during the next UEFA competition match in which Linfield FC would play as the host club.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Bonett Chris (MLT) Gea Tomás (AND) Řepka Rudolf (CZE) Wolff Joël (LUX)

## **I. Facts Of The Case**

1. 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.

2. Briefly, the most relevant facts as stated by the FARE report can be summarized as follows:

- Approximately in the 44th minute into the game, a group of around 150-200 Linfield supporters in the North Stand, Block N started chanting:

"No, No Pope of Rome,  
No Chapels to sadden my eyes (Thank fuck!)  
No Nuns and no Priests,  
No rosary beads  
Every day is the 12th of July."

- The chanting was repeated 3 times, lasting for about 45 seconds total. The chant also reoccurred at 22.31 in the 41st minute of second half.

- Approximately in the 65th minute into the game a group of around 150 Linfield fans in the North Stand, Block N started chanting:

"Why don't you go home?  
Who don't you go home?  
The famine's over  
Why don't you go home?"

- Approximately in the 44th minute into the game, a group of around 300-400 Linfield supporters in the North Stand, Block N started chanting:

"If you hate the Fenian bastards clap your hands  
If you hate the Fenian bastards clap your hands  
If you hate the Fenian bastards, hate the Fenian bastards  
Hate the Fenian bastards clap your hands."  
Then  
"If you really fucking hate them clap your hands  
If you really fucking hate them clap your hands  
If you really fucking hate them, really fucking hate them  
Really fucking hate them clap your hands"

- Immediately following the final whistle of second half, a group of around 300-400 Linfield supporters in the North Stand, Block N started chanting:

"Hello hello, we are the Billy Boys  
Hello, hello, you'll know us by our noise  
We're up to our knees in Fenian blood  
Surrender or you'll die"



For we are the Brighton Derry Boys.”

## **II. The Respondent’s position**

3. The club in its statements dated 5 July 2016 contests the existence of any religious discrimination or sectarian statements.
4. Regarding the first incident, the one referring to the chant “No Pope of Rome”, the club indicates that no more than 6-8 supporters could be identified singing the song in the first link provided by the FARE observer. None of them were visible with the second video footage. In addition, the club holds that recording such video footage could even be identified as a breach against the Data Protection Act 1998.
5. Regarding the second incident, the one relating to the song entitled “Why don’t you go home?”, the club first contests the nature of this chant in the sense provided by FARE. It notes that convictions on racism were successfully appealed. The club insists on the exaggeration of the report on the number of supporters singing this song, as well as to the fact that the conflictive part “the famine is over” is not even audible, which impedes that this song is found inherently offensive.
6. Regarding the third conflictive chant, “If you hate the Fenian bastards clap your hands”, the club holds that at no time the key phrase is audible, being a gross misinterpretation of the facts.
7. Finally, regarding the song “Billy Boys” allegedly sang by its supporters, the club refers to the fact that an inaudible version of a section of this song is present on the background audio on the video where no offensive lyrics are immediately apparent. Only 1-2 individuals are singing or chanting this song, being a number of non-sectarian versions of this song used by Linfield supporters and fans of other football clubs. In addition, the club insists on the fact that it condemns any chant based on the “Billy Boys”.
8. Conclusively, the club stresses that it supports UEFA’s fight against racism and discriminatory behaviors. It also draws the attention to the troubled nature of the Northern Ireland’s history and that the nation remains a divided society with many legacy issues revolving around religious sectarianism.
9. 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.

## **III. Merits of the Case**

### **A. UEFA’s competence.**

10. 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.

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

B. The sectarian behaviour

*a) Applicable legal framework and general remarks*

12. According to Article 8 DR, an association that is bound by a rule of conduct laid down in UEFA's Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the association concerned, even if the association concerned can prove the absence of any fault or negligence.
13. According to Article 14 (1) DR, 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.
14. According to Article 14 (2) DR, if one or more of an association's supporters engage in the behaviour described above, the association responsible is punished with a minimum of a partial stadium closure.
15. 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 association*

16. Article 14 DR is a special rule taking over the principle set out in Article 8 DR which stipulates that associations are responsible for the racist 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 association in question (i.e. strict liability).
17. The fight against racism is a high priority for UEFA. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. Any racist behaviour is considered a serious offence under the DR and shall be punished with regard to the circumstances and the relevant association's previous record with the utmost severe sanctions.
18. The Control, Ethics and Disciplinary Body recalls that with respect to the standard of evidence, the standing jurisprudence of CAS holds that the party bearing the burden of evidence, in order to satisfy it, does not need to establish "beyond any reasonable doubts" the facts that it alleges to have occurred; it needs to convince the Panel that an allegation is true by a comfortable satisfaction, even sometimes by a "balance of

probability", i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence (see CAS 2008/A/1370 & 1376, FJFA & WADA v/ CBF, STJD, .Ijodo, § 12.7; CAS 2004/A/602, Lienhard v FISA, § 5.15; TAS 2007/A/1411, Flach/ vi UP A-CONI,§ 59). (CAS 2010/A/226, at para. 67). Particularly relevant is in this regard the view of an objective and reasonable observer (CAS 2007/A/1217 and CAS 2014/A/3324&3369).

19. Citing the CAS 2013/A/3324 & 3369, "context in law is everything", it follows that the combination of the different elements compounding the context of a case, may provide the standard of comfortable satisfaction required in disciplinary proceedings. In this regard, as admitted by the club, the context of this case is defined with the troubled nature of the Northern Ireland's history which remains the nation in a divided society with many legacy issues revolving around religious sectarianism.
20. Furthermore, the Control, Ethics and Disciplinary Body wishes to emphasize that FARE is a relevant partner of UEFA in the fight against racism which provides valuable information and evidence on incidents occurred in UEFA competition matches. The presence of the observer has been confirmed by the UEFA delegate in his report (Article 38 UEFA DR).
21. Having the above in mind and according to the information provided by FARE, four different sectarian chants took place during the match according to the report and the video footage sent by the FARE observer at the game.
22. The club contests the fact that some of these chants took place in the exact manner as reported by the FARE observers as well as highlights that the observer exaggerated the facts.
23. The Control, Ethics and Disciplinary Body after having evaluated the video footage, the report of the FARE observer and the arguments of the Respondent is comfortable satisfied that during the above mentioned match sectarian chants took place.
24. Regarding the chant "No Pope of Rome", this UEFA disciplinary body asserts that the chant is known as a loyalist song that wishes for a world without Catholicism. The song refers to Bridgton Cross which is traditionally considered to be Protestant area of Glasgow. In this regard, the message linked to this song is obviously sectarian.
25. The club does not contest the fact that this chant was given by its supporters which is clearly portrayed by the video footage at hand. The Respondent merely addresses to the low number of supporters singing this song during the match, which is obviously not enough to contest the certainty that the chant took place.
26. Consequently, the club is already liable for the sectarian behavior of its supporters in relation to this song in accordance with Article 14 DR.
27. Regarding the second chant, "Why don't you go home", this song is sung by some Ulster loyalists in Northern Ireland and Scotland and is normally directed at Catholics and, in

Scotland, Irish people, those of Irish descent or those with perceived affiliations to Ireland.

28. The club does not contests that its supporters sang this song, but refers that the part relating to "famine's over" which is indeed the offensive part of the song, is not audible and therefore not sectarian.
29. This UEFA disciplinary body understands that even accepting that the part referring to "famine's over" is not audible, it is the song itself which is sectarian as it is commonly accepted by the Northern Irish people and, obviously, by the club's supporters.
30. Consequently, the club is also here liable for the sectarian behavior of its supporters for the above behavior in accordance with Article 14 DR.
31. Regarding the third incident concerning the song "If you hate the Fenian bastards clap your hands", the Control, Ethics and Disciplinary Body complies with the assertions of the club insofar this is not audible. Even accepting that the context in which this song has been given could lead to a reasonable and objective observer to conclude that indeed the song chanted by the supporters was the one named above, the elements at hand do not provide sufficient evidence to reach the standard of proof of comfortable satisfaction. It is so mainly because the tune of this song is common to other chants in football and in sport worldwide which are also located in different contexts and with a different wording.
32. Consequently, the Control, Ethics and Disciplinary Body is not comfortably satisfied at this stage of the proceedings and with the evidence at hand that the club's supporters sang this song with the wording "if you hate the Fenian bastards clap your hands". It could have been, for instance "if you are a Linfield supporter clap your hands". Thus, the sectarian nature of the chant has not been sufficiently proven by the video footage provided by FARE.
33. Finally, the Control, Ethics and Disciplinary Body refers here to the song "Billy Boys" chanted by the club supporters. "Billy Boys" is a loyalist song from Glasgow, sung to the tune of "Marching Through Georgia." It originated in the 1930s as the signature song of one of the Glasgow razor gangs led by Billy Fullerton and later became viewed to reflect the long running sectarian divide in the city. In April 2014, the Irish Football Association (IFA) introduced punishments for "any ... song or chant that is undeniably sectarian or offensive". Linfield advised their supporters that this included all variations of *Billy Boys*, including the *Marching Through Georgia* tune – this also confirmed by the club in the course of these proceedings.
34. Linfield FC admits that its supporters sung the "Billy Boys" chant during the match but insists on the fact that there are a number of non sectarian versions, that the number of its supporters singing this song was extremely low, 1-2, and that it condemns any chant based on "Billy Boys" chanted by its supporters.

35. The Control, Ethics and Disciplinary Body cannot comply with the club arguments. First, the number of supporters singing this song is irrelevant in the light of Article 14 DR – “any person under the scope of Article 3”. Second, here as well, the message linked to this song is obviously sectarian which contravenes the above provision. Finally, the fact that the club condemns any version of the “Billy Boys” song implies that the club accepts the negative nature of this song. It cannot pretend to condemn any version of the “Billy Boys” song, but simultaneously not be liable for its supporters sectarian attitude.
36. Consequently, the club is also here liable for the sectarian behavior of its supporters in accordance with Article 14 DR.
37. The Control, Ethics and Disciplinary Body, after having evaluated the reports provided by the UEFA delegate and FARE observer concerning the chants, concludes that the conduct perpetrated by the Linfield FC supporters violated Article 14 DR and must be punished accordingly.

#### **IV. The determination of the appropriate disciplinary measure**

38. As regards to the racist behaviour, the Control, Ethics and Disciplinary Body draws the attention to the fact that after the enforcement of the Disciplinary Regulations Edition 2013, confirmed again in the UEFA Disciplinary Regulations Edition 2014, the fight against racist behaviour has entered into a new stage. It has resulted in more severe sanctions towards racist behaviours. As such, if one or more of a member association or club’s supporters engage in the behaviour described in Article 14 (1), the member association or club responsible is punished with a minimum of a partial stadium closure (Article 14 (2) DR).
39. Bearing in mind the above and due to the fact that this case refers to a first incident of discriminatory nature, the Control, Ethics and Disciplinary Body decides to order the partial closure of the Linfield FC Stadium during the next UEFA competition match in which Linfield FC would play as the host club, and, in particular Linfield FC shall close the North Stand of the Linfield FC Stadium, which shall comprehend at least 300 seats.



## Decision of 18 August 2016

Beitar Jerusalem FC

(racist behaviour, throwing of objects, field invasion, stairways blocked, unauthorized media on the pitch)

### **Circumstances of the case**

Before the UEFA Europa League 2016/2017 match between Beitar Jerusalem FC (the “Club”) and FK Jelgava on 4 August 2016 (the “Match”), several thousand of the Club’s supporters sang the chant “Here she comes, the racist team of the country, hu hu hu” for approximately one minute. During the Match, several thousand of the Club’s supporters chanted “In the block everyone knows, there are some lefties here, went far to Sakhnin, they don't represent us, listen good you Arabs, we don't make peace, and chorus always stays, let your village burn”. Although the UEFA delegate and security officer did not hear such chants themselves, they were reported to them by a FARE Observer and this observation was included in the official reports for the Match; in the FARE report, it is explained that the second chant is commonly used by a segment of the Club’s ultra-supporters and is directed at an Arab club/city that plays in the Israeli football league; the FARE report contains videos of the two chants. Before and during the Match, the Club’s supporters threw multiple inflatable black/yellow plastic bags onto the pitch. Various stairways were blocked throughout the Match and after the Match, three unauthorised media personnel came onto the pitch to film the Club’s players and take photos, also after the Match, two children (being family members of certain of the Club’s players), a Rabbi and a supporter of the Club entered the pitch without the correct accreditations (i.e. they invaded the pitch).

**Legal framework** Article 14, Article 16 (2) DR and Article 38 Safety and Security Regulations, Annex E UEL regulation

### **Decision**

The Control, Ethics and Disciplinary body decides to warn Beitar Jerusalem FC with regard to the unauthorised media incident and with regard to the other incidents, to order Beitar Jerusalem FC to play its next UEFA competition match as host club behind closed doors and to fine Beitar Jerusalem FC €62,000

Ad-hoc Chairman: Hansen Jim Stjerne (DEN)

Members:

- Antenen Jacques (SUI)
- Bonett Chris (MLT)
- Gea Tomás (AND)
- Larumbe Beain Kepa (ESP)
- Lorenz Hans (GER)

## I. Facts of the Case

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (the "**CEDB**") on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the CEDB proceedings.
2. Whilst the CEDB has considered all of the facts, allegations, legal arguments and evidence submitted in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
3. Briefly, the most relevant facts of this case can be summarised as follows:
  - before the UEFA Europa League 2016/2017 match between Beitar Jerusalem FC (the "**Club**") and FK Jelgava on 4 August 2016 (the "**Match**"), several thousand of the Club's supporters sang the chant *"Here she comes, the racist team of the country, hu hu hu"* for approximately one minute;
  - during the Match, several thousand of the Club's supporters chanted *"In the block everyone knows, there are some lefties here, went far to Sakhnin, they don't represent us, listen good you Arabs, we don't make peace, and chorus always stays, let your village burn"*;
  - although the UEFA delegate and security officer did not hear such chants themselves, they were reported to them by a FARE Observer and this observation was included in the official reports for the Match;
  - in the FARE report, it is explained that the second chant is commonly used by a segment of the Club's ultra-supporters and is directed at an Arab club/city that plays in the Israeli football league;
  - the FARE report contains videos of the two chants;
  - before and during the Match, the Club's supporters threw multiple inflatable black/yellow plastic bags onto the pitch;
  - various stairways were blocked throughout the Match;
  - after the Match, three unauthorised media personnel came onto the pitch to film the Club's players and take photos; and
  - after the Match, two children (being family members of certain of the Club's players), a Rabbi and a supporter of the Club entered the pitch without the correct accreditations (i.e. they invaded the pitch).

## II. The Respondent's position

4. In its statement dated 12 August 2016, the Club:
  - denies that any racist chanting occurred at the Match; and
  - notes that, even if the chanting occurred in the manner suggested by the FARE Observer, this can only have been the act of a small number of supporters for a short time and the wording of the chants cannot definitively be said to be anti-Arab.
5. The more detailed arguments made by the Club are set out below in so far as they are relevant.

## III. Merits of the Case

### A. UEFA's competence.

6. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the "**DR**"), the CEDB is competent to deal with this case.
7. In light of the foregoing, UEFA's statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. The racist behaviour

#### *a) Applicable legal framework and general remarks*

8. According to Article 8 DR, a club that is bound by a rule of conduct laid down in UEFA's statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the club concerned, even if the club concerned can prove the absence of any fault or negligence.
9. According to Article 14(1) DR, any person under the scope of Article 3 DR 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.
10. Under Article 14(2) DR, if one or more of a club's supporters engages in the behaviour described in Article 14 (1) DR, the club is punished with a minimum of a partial stadium closure.
11. According to Article 14(3)(a) DR, a second offence is punished with one match played behind closed doors and a fine of €50,000.

12. 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 Club*

13. Article 14 DR is a special rule taking over the principle set out in Article 8 DR which stipulates that clubs are responsible for the racist 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 in question (i.e. 'strict liability').
14. The fight against racism is an extremely high priority for UEFA.
15. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. Any racist behaviour is considered a serious offence under the DR and shall be punished with regard to the circumstances and the relevant club's previous record with the utmost severe sanctions.
16. In the present case:
  - before the Match, several thousand of the Club's supporters sang the chant *"Here she comes, the racist team of the country, hu hu hu"* for approximately one minute; and
  - during the Match, several thousand of the Club's supporters chanted *'In the block everyone knows, there are some lefties here, went far to Sakhnin, they don't represent us, listen good you Arabs, we don't make peace, and chorus always stays, let your village burn'*.
17. Such chants were identified by a FARE Observer who was present at the Match and reported in the official reports of the UEFA delegate and security officer on this basis.
18. The UEFA delegate and security officer at the Match did not identify the chanting themselves. However, the CEDB notes that the incidents were captured by the FARE Observer on video and that the CEDB has been provided with this video footage.
19. The CEDB stresses that, in the present case, it does not matter that the UEFA delegate and security officer did not identify the chants themselves. This is an entirely logical outcome given the language barrier. Indeed, such language/translation difficulties are even referred to in the official reports.
20. Having studied the evidence, the CEDB determines that the FARE report (and the videos therein) clearly confirm that the chants occurred and this behaviour cannot be ignored by the CEDB.
21. The Club's suggestion that the incidents were isolated is also inconsistent with the video evidence, which indicates that thousands of the Club's supporters sang the chants.

22. In any event, whether such chants were produced by a couple of supporters or twenty thousand supporters and whether the chanting lasted for ten seconds or one hour is irrelevant, since the chants were clearly produced by some supporters in the stadium and this is anticipated in Articles 14(1) and (2) DR.
23. The first chant - *"Here she comes, the racist team of the country, hu hu, hu"* – not only explicitly refers to racism but also seems to imply that the Club's supporters take pride in their racist behaviour. This is extremely disappointing and offensive.
24. In addition, the chant also incorporates a 'monkey chant' element (*"hu, hu, hu"*) which is one of the most instantly recognisable and repugnant forms of racist chant. This is completely unacceptable.
25. Having analysed the wording of the second chant, there can be no doubt that it is intended to insult the human dignity of a group of persons (i.e. Arabs, specifically those of Sakhnin) on the grounds of race, religion and/or ethnic origin.
26. The second chant *"In the block everyone knows, there are some lefties here, went far to Sakhnin, they don't represent us, listen good you Arabs, we don't make peace, and chorus always stays, let your village burn"* clearly makes known its target (i.e. Sakhnin and the visit of certain supporters to 'make peace', as referred to in the FARE Report) and, as such, is aggressive, offensive and provocative. Such violent racist intent has no place in sport.
27. The CEDB recalls that, according to Article 8 DR, which stipulates the principle of 'strict liability', clubs and member associations are to be held liable for the conduct of their supporters, even if they are themselves not at fault.
28. Indeed, 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).
29. In light of the foregoing, the CEDB concludes that the conduct perpetrated by the Club's supporters violated Article 14(1) DR and must be punished accordingly.

C. Insufficient organisation: blocking of stairways

a) *Applicable legal framework and general remarks*

30. According to Article 49 of the UEFA Safety and Security Regulations (the "**SSR**"), any breach of the SSR may be penalised in accordance with the DR.
31. As stated in Article 2 SSR, the purpose of these regulations is to safeguard the safety and security of everyone present at a match. In order to achieve this, several provisions concerning spectator control are included in the regulations.



32. Of particular relevance for the present case is Article 38 SSR which provides that *“the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators.”*
33. Under 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 Club*

34. Under Article 2 SSR, the purpose of the regulations is to maintain the safety and security of everyone present at the match. In order to achieve this goal the SSR contain several provisions concerning spectator control at the stadium (including Article 38 SSR).
35. It is well established that UEFA is entitled to put in place and enforce regulations aimed at protecting the safety of spectators, including the requirement that the organisers of football matches must keep stairways free of obstruction (in this regard, see the recent case of *CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v UEFA*).
36. In the present case, according to the official reports for the Match, various stairways were blocked throughout the Match.
37. None of the statements provided by the Club breached the accuracy of the official reports which clearly state that stairways were blocked.
38. Accordingly, the Club (as the host and match organiser) therefore violated Article 38 SSR and must be punished accordingly.

D. The improper conduct of supporters: the throwing of objects

*a) Applicable legal framework and general remarks*

39. According to Article 16(2) DR (emphasis added):

*“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.”*

40. 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 Club*

41. Generally speaking, throwing objects is a very serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can potentially endanger the physical integrity of the perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, throwing objects in stadiums is strictly forbidden.
42. In the present case, it is noted that the objects thrown were more of a nuisance than a danger, however, the potential nuisance that such objects can cause (e.g. potentially delaying kick-off) and the disorderly impact/disruption that this can have on the Match (e.g. problems for the referee, a delayed kick-off and its impact on UEFA's media partners, etc.) cannot be ignored.
43. According to Article 8 DR, which stipulates the principle of 'strict liability', and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
44. It has long been established in case law that strict liability applies regardless of fault. As a matter of fact, a 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).
45. In the present case, according to the official reports for the Match, lots of plastic bags (which had been placed on the supporters' seats before the Match) were thrown onto the pitch before and during the Match.
46. The CEDB considers that these incidents are obvious examples of a lack of discipline from the Club's supporters and is also concerned that the Club did not properly announce its intention to conduct such a fan activity in advance of the Match.
47. Consequently, in light of the foregoing and applying Articles 8 and 16(2) DR, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

E. The improper conduct of supporters: field invasions

*a) Applicable legal framework and general remarks*

48. According to Article 16 (2) DR (emphasis added):

"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."

- 49. According to Article 40 SSR, the match organiser must ensure that players and match officials are protected against the intrusion of spectators into the playing area.
- 50. 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 Club*

- 51. Because of the potential security risk caused by pitch invasions - as nobody is aware of the real intentions of the intruders at the time of the incident - as well as the possible disturbances that may be associated with such behaviour, pitch invasions are strictly forbidden.
- 52. In the present case, according to the official reports for the Match, there were several pitch invasions after the final whistle – in particular, one supporter who was initially stopped by a steward subsequently entered the pitch after the intervention of one of the Club's players.
- 53. Such incidents may appear harmless (particularly those involving children), however, they represent a serious departure from security protocol and cannot be ignored. It is important to remember that it is not necessary for anyone to be injured or for a security issue to be caused before a sanction can be imposed in such cases.
- 54. As noted above, the Club is strictly liable for such pitch invasions in accordance with Articles 8 and 16(2) DR. In addition, as the host club, the Club also bears the responsibility for safety and security at the stadium – in this regard these pitch invasions are a clear infringement of Article 40 SSR.
- 55. Consequently, the Club shall be held responsible for the misconduct of the various individuals who entered the pitch and shall be punished accordingly.

F. Unauthorised media on the pitch

a) *Applicable legal framework and general remarks*

56. According to Article 47.01 of the UEFA Europa League Regulations (the “**UEL**R”), the provisions of the DR apply for all disciplinary offences committed by clubs, officials, members or other individuals exercising a function at a match on behalf of an association or club.

57. According to Article 78.02 UELR:

*“No media representatives are allowed to go onto the field of play before, during or after the match, with the exception of the 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.”*

58. 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 Club*

59. It is clear that the UELR require the Club to ensure that no unauthorised media enter the pitch before, during and after the Match.

60. However, the UEFA delegate for the Match reported that, after the Match, three unauthorised media personnel came onto the pitch to film the Club’s players and take photos.

61. This is unacceptable since it conflicts with UEFA’s commercial/media programme for the UEFA Europa League and also poses a security risk.

62. Consequently, the Club shall be held responsible for its breach of the UELR and shall be punished accordingly.

**IV. The determination of the appropriate disciplinary measures**

63. Based on Article 17 DR, the CEDB 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.

64. With regard to the racist behaviour, the CEDB draws attention to the fact that following the implementation of the 2013 edition of the DR (and as subsequently confirmed again in the 2014 and 2016 editions of the DR), UEFA’s fight against racist behaviour entered a new era. This has resulted in more severe sanctions being imposed in respect of racist behaviour.

65. In the present case, it is noted that the Club has one previous record of racist behaviour by its supporters and such recidivism must be taken into consideration by the CEDB.
66. Accordingly, since this case concerns a second infringement of Article 14(1) DR, Article 14(3)(a) DR applies and, as such, the Club shall be punished with one match played behind closed doors and a fine of €50,000 in respect of the racist behaviour offence.
67. Further, the CEDB urges the Club to increase its efforts to prevent its supporters from singing such chants because its previous efforts have evidently not been sufficient to stop such behaviour and further instances may result in stronger disciplinary measures being imposed on the Club.
68. With regard to the blocked stairways, throwing of objects and pitch invasion offences, in determining the measures to apply, the CEDB took into account:
  - the seriousness of blocking stairways, noting that it poses a significant threat to the health and safety of supporters, players and other persons in the stadium;
  - the potentially disruptive effect of pitch invasions and the throwing of objects, as well as the fact that such offences indicate a lack of effective security/organisation; and
  - the previous record of the Club's supporters with regard to throwing objects, noting that the Club has previously been punished for similar offences.
69. In light of the foregoing, the CEDB considers a fine of €12,000 to be an appropriate sanction for these offences.
70. Having considered the circumstances of the unauthorised media offence, the CEDB underlines the importance of respecting the rights of UEFA's media partners (as well as security protocol at matches) and has decided to issue a warning to the Club in respect of this breach of the UELR.



## Decision of 24 August 2016

Brøndby IF

(protest)

**Circumstances of the case**

During the the UEFA Europa League 2016/2017 match between Panathinaikos and Brøndby IF, the referee showed a red card to the Brøndby IF player Frederik Rønnow. The referee stated as follows: "In the 50th minute of the game the goalkeeper with No1 of Brøndby (Rønnow, Frederik) denied an obvious goal scoring opportunity when the ball was out of playable distance and he had no intention to play the ball, the foul made by hand." On 19 August 2016, Brøndby IF lodged a protest against the red card imposed against its player. It is the club's view that the Laws of the game have changed on the 1st of June, and it is now clearly stated that in a case like in the case in hand, the offending player should receive a yellow card. According to the club Frederik Rønnow was incorrectly punished with a red card, which is an obvious violation of the laws, and this is an obvious mistake by the referee, that significantly affected the result of the match.

**Legal framework** Article 49 and 50 DR.

**Decision**

The Control, Ethics and Disciplinary Body holds that the protest has to be dismissed. In the light of the existent documents and evidences, it can only be concluded that the referee took a decision within the scope of his authority and discretion in accordance with the 5th Law of the FIFA Laws of the Game. The referee's decision not only complied with the applicable rules of the UEFA Disciplinary Regulations, i.e Article 15 DR which foresees a one match suspension for this kind of actions, but it also fulfilled the conditions of the alleged 12th FIFA Laws of the game. In this regard, the referee expressly stated that the player fouled his opponent when the ball was out of playable distance and he had no intention to play the ball, both contemplated as situations deserving a red card instead of a caution. There is no room to argue that the referee committed an obvious error as regards to the above situations. The Control, Ethics and Disciplinary Body is convinced that he acted in full accordance with the UEFA Regulations and the FIFA Laws of the Game.

Chairman: Partl Thomas (AUT)

**I. Facts Of The Case**

1. 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.

2. On 18 August 2016, Panathinaikos vs Brøndby IF played a match corresponding to the UEFA Europa League 2016/2017. During the said match, the referee showed a red card to the Brøndby IF player Frederik Rønnow. The referee stated as follows:
  - *In the 50th minute of the game the goalkeeper with No1 of Brøndby (Rønnow Frederik) denied an obvious goal scoring opportunity when the ball was out of playable distance and he had no intention to play the ball, the foul made by hand.*
3. On 19 August 2016, Brøndby IF lodged a protest against the red card imposed against its player

## **II. The Respondent's position**

4. It is the club's view that the Laws of the game have changed on the 1st of June, and it is now clearly stated that in a case like in the case in hand, the offending player should receive a yellow card.
5. According to the club Frederik Rønnow was incorrectly punished with a red card, which is an obvious violation of the laws, and this is an obvious mistake by the referee, that significantly affected the result of the match.
6. 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.

## **III. Merits of the Case**

### **A. UEFA's competence.**

7. 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.
8. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

### **B. The incident**

#### *a) Applicable legal framework and general remarks*

9. According to Article 9 (5) DR, the provisions of UEFA DR relating to protests against match results affected by a referee's decision that was an obvious violation of a rule remain applicable.

10. According to Article 50:

*A protest is admissible only if it is based on: (...)*

*d) an obvious violation of a rule by the referee that had a decisive influence on the final result of the match*

11. According to Article 15 (1) DR:

*(1) The following suspensions apply for competition matches:*

- a. suspension for one competition match or a specified period for:*
- i. a second caution in the same match;*
  - ii. rough play;*
  - iii. repeated protests against or a failure to comply with the referee's orders;*
  - iv. insulting players or others present at the match;*
  - v. unsporting conduct;*
  - vi. provoking spectators;*
  - vii. participating in a match when suspended or otherwise ineligible to play;*
  - viii. **denying an obvious goal scoring opportunity***

12. According to Law 12 of the FIFA Laws of the Game, if the referee gives the signal for a penalty kick to be taken and, before the ball is in play, one of the following occurs:

### **Denying a goal or an obvious goal-scoring opportunity**

Where a player commits an offence against an opponent within their own penalty area, which denies an opponent an obvious goal-scoring opportunity and the referee awards a penalty kick, the offending player is cautioned unless:

- a. The offence is holding, pulling or pushing or
- b. The offending player does not attempt to play the ball or there is no possibility for the player making the challenge to play the ball or
- c. The offence is one which is punishable by a red card wherever it occurs on the field of play (e.g. serious foul

play, violent conduct etc.)

13. According to Law 5 of the FIFA Laws of the Game, the decisions of the referee regarding facts connected with play, including whether or not a goal is scored and the result of the match, are final.

*b) The merits*

14. It shall be recalled, here again, that the 5th Law of the Game establishes that each match is controlled by a referee who has full authority to enforce the Laws of the Game in connection with the match to which he has been appointed.
15. It is undeniable that after almost every match, referees find themselves criticised for decisions they made on the pitch and the parties that feel disadvantaged regularly complain about these situations. If every decision taken by the referee would be challenged and reviewed, the smooth running of the competition would become impossible. Consequently, Law 5 of the FIFA Laws of the Game has been construed as referring to factual decisions, which are final and not to be reviewed.
16. Nevertheless, the above does not permit a blanket ban on challenges to referees' decision, as it is the case of factual decisions taken by the referee, but not on technical decisions.
17. Technical decisions are those decisions that precede factual decisions taken by the referee who, once deciding over a factual circumstance applies then the rules of the game. Briefly, factual decisions are separated from technical decisions insofar as a factual decision is asserted in the perception of the referee, which is not to be contested or opposed by any means. The jurisprudence of the UEFA disciplinary bodies in combination with the UEFA DR is clear in this regard. There is no room to review a factual decision taken by the referee on the field of play. In contrast, a technical decision derives from the enforcement of the rules following a previous factual decision.
18. Bearing the above in mind, only technical decisions taken by the referee are to be reviewed and, only, in exceptional circumstances, for instance, exclusively when the latter had a decisive influence on the final result.
19. The club argues that the red card shown against its player Frederik Rønnow is an obvious violation of the laws and therefore an obvious error of the referee which significantly affected the result of the match.
20. According to Article 15 (1) (a) (viii) DR, to deny a goal scoring opportunity is punished with a one match suspension. Furthermore, the 12<sup>th</sup> FIFA Laws of the Game foresees that for cases of denying an obvious goal opportunity a red card should be imposed against the player if "the offending player does not attempt to play

the ball or there is no possibility for the player making the challenge to play”.

21. According to the referee’s report the Brøndby IF goalkeeper Rønnow Frederik denied an obvious goal scoring opportunity when the ball was out of playable distance and he had no intention to play the ball.
22. It is reminded again that it is the duty of the referee, based on his authority, to interpret the different actions. It includes the denying of an obvious goal opportunity and the facts involving this action.
23. In the light of the existent documents and evidences, it can only be concluded that the referee took a decision within the scope of his authority and discretion in accordance with the 5<sup>th</sup> Law of the FIFA Laws of the Game. The referee’s decision not only complied with the applicable rules of the UEFA Disciplinary Regulations, i.e Article 15 DR which foresees a one match suspension for this kind of actions, but it also fulfilled the conditions of the alleged 12<sup>th</sup> FIFA Laws of the game. In this regard, the referee expressly stated that the player fouled his opponent when the ball was out of playable distance and he had no intention to play the ball, both contemplated as situations deserving a red card instead of a caution.
24. Bearing the above in mind, there is no room to argue that the referee committed an obvious error as regards to the above situations. The Control, Ethics and Disciplinary Body is convinced that he acted in full accordance with the UEFA Regulations and the FIFA Laws of the Game.



## Decision of 28 September 2016

Panathinaikos FC

(improper conduct of the team, insufficient organization, field invasions by supporters, late kick-off, stairways blocked, setting off of fireworks, throwing of objects, use of laser pointer, improper conduct of officials, direct red card)

### **Circumstances of the case:**

Two fireworks were ignited by the Club's supporters during the Match, before the Match, three of the Club's supporters entered the dressing room area without any accreditations; following the Match, the AFC Ajax supporters who were 'held back' for security reasons were denied access to refreshments and toilets; two objects (one cup and one seat) were thrown at the AFC Ajax supporters by the Club's supporters during the Match; one bottle was thrown onto the pitch by the Club's supporters during the Match; laser pointers were directed at AFC Ajax players by the Club's supporters on four occasions during the Match; after the final whistle, one of the Club's supporters invaded the pitch; the Club's supporters blocked stairways in the stadium for the entire match; the Club was responsible for a two minute delay to the kick-off because the team was slow to respond to the referee's instructions; seven yellow cards were issued to six of the Club's players during the Match; and the Club's player, Wakaso Mubarak, was dismissed (straight red card) for "an act of violent conduct whereby he put his head into the head of an opponent".

**Legal framework** Article 11 (1) DR, Article 11 (2) DR, Article 15 (4) DR, Article 15 (1) DR, Article 16 (2) DR and article 38 safety and security regulation

### **Decision**

The Control, Ethics and Disciplinary body decided to fine Panathinaikos FC €61,000, to suspend the Panathinaikos FC player Wakaso Mubarak for three matches, to warn Panathinaikos FC for the late kick off infringement and to warn Panathinaikos FC coach Andrea Stramaccioni for the late kick off infringement.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Bonett Chris (MLT) Gea Tomás (AND) Hans Lorenz (GER) Řepka Rudolf (CZE)

## I. Facts Of The Case

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (the “**CEDB**”) on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the CEDB proceedings.
2. Whilst the CEDB has considered all of the facts, allegations, legal arguments and evidence submitted in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
3. According to the official reports for the UEFA Europa League 2016/2017 match between Panathinaikos FC (the “**Club**”) and AFC Ajax on 15 September 2016 (the “**Match**”):
  - two fireworks were ignited by the Club’s supporters during the Match;
  - before the Match, three of the Club’s supporters entered the dressing room area without any accreditations;
  - the floodlights at the Club’s stadium are not of the required standard;
  - following the Match, the AFC Ajax supporters who were ‘held back’ for security reasons were denied access to refreshments and toilets;
  - two objects (one cup and one seat) were thrown at the AFC Ajax supporters by the Club’s supporters during the Match;
  - one bottle was thrown onto the pitch by the Club’s supporters during the Match;
  - laser pointers were directed at AFC Ajax players by the Club’s supporters on four occasions during the Match;
  - after the final whistle, one of the Club’s supporters invaded the pitch;
  - the Club’s supporters blocked stairways in the stadium for the entire match (in particular, in sectors 13 and 14 of the West stand);
  - the Club was responsible for a two minute delay to the kick-off because the team was slow to respond to the referee’s instructions;
  - seven yellow cards were issued to six of the Club’s players during the Match; and
  - the Club’s player, Wakaso Mubarak, was dismissed (straight red card) for “*an act of violent conduct whereby he put his head into the head of an opponent*”.

## II. The Respondent's position

4. In its statement dated 22 September 2016, the Club:
  - attributed the problems with its floodlights to the construction work being carried out on its stadium;
  - attributed the problem with unauthorised persons accessing the dressing room area to the old age of its stadium and the fact that one of its stewards was out of position;
  - suggests that in the 2016/17 season of the UEFA Europa League it has not received more than three yellow cards in a match and so the CEDB should use its discretion to not sanction the Club with regard to improper conduct;
  - notes that the pitch invasion was by a child, did not affect the match and posed no threat;
  - accepts that it caused the late kick-off and attributes this to the distance between the home team dressing room and the pitch;
  - accepts that stairways in the stadium were blocked at certain times during the Match;
  - asks the CEDB to take account of the fact that it (and all Greek clubs) have a long history of using fireworks at matches;
  - states that the coffee cup was made of paper and that the bottle did not have a lid on it; and
  - argues that the use of laser pointers did not disrupt the match.
5. The more detailed arguments made by the Club are set out below in so far as they are relevant.

## III. Merits of the Case

### A. UEFA's competence

6. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the "**DR**"), the CEDB is competent to deal with the case.
7. In light of the foregoing, UEFA's statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. Insufficient organisation: Unauthorised access, floodlights, access to facilities

#### *a) Applicable legal framework and general remarks*

8. Article 39 of the UEFA safety and Security Regulations (the “**SSR**”) provides that the match organiser must ensure that all access doors/gates in the stadium are *“attended at all times by a specially appointed steward, to guard against abuse”*.
9. According to Article 46(1)(c) SSR, when supporters are ‘held back’ for security reasons *“the match organiser must ensure that, during this period of retention, the retained supporters have access to refreshments and sanitary facilities”*.
10. According to Article 49 SSR, any breach of the SSR may be penalised in accordance with the DR.
11. Article 31 of the Regulations of the UEFA Europa League 2015-18 Cycle (the “**UEL Regulations**”) sets out the requirements applicable to floodlights at stadiums used for UEFA Europa League matches.
12. Article 80 of the UEL Regulations provides that *“[n]on-compliance with the obligations set out in these regulations may lead to disciplinary measures in accordance with the UEFA Statutes, the UEFA Disciplinary Regulations...”*.
13. 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 Club*

14. The purpose of the SSR is to maintain the safety and security of everyone present at matches. In order to achieve this goal, these regulations contain several provisions relating to spectator control.
15. In the present case, according to the official reports for the Match and the Club’s statement, one of the entrances to the stadium was not properly manned by security and this led to three supporters gaining unauthorised access to the dressing room area. This clearly constitutes a security risk.
16. In addition, also according to the official reports for the Match, certain facilities/services were not provided for away supporters who had been ‘held back’ after the match.
17. Further, based on the official reports for the Match, the Club also failed to meet the requirements of the UEL Regulations with regard to its floodlights (which were certified at a ‘lux level’ below the required standard).
18. The Club has not provided any evidence that disproves the accuracy of the official reports with regard to these incidents.
19. On this basis, the CEDB considers that the organisation of the match was not implemented correctly and that the Club has failed to comply with Articles 39 and 46 SSR, as well as Article 31 of the UEL Regulations.

C. Blocking of stairways

a) *Applicable legal framework and general remarks*

20. Article 38 SSR provides that:

*"[T]he 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".*

21. According to Article 49 SSR, any breach of the SSR may be penalised in accordance with the DR.

22. 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 Club*

23. The purpose of the SSR is to maintain the safety and security of everyone present at matches. In order to achieve this goal, these regulations contain several provisions relating to spectator control.

24. It is well established that UEFA is entitled to put in place and enforce regulations aimed at protecting the safety of spectators, including the requirement that the organisers of football matches must keep stairways free of obstruction (in this regard, see the recent case of *CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v UEFA*).

25. In the present case, according to the official reports for the Match, certain stairways were blocked during the Match (in particular, in the West stand).

26. None of the arguments provided by the Club breaches the accuracy of the official reports which clearly state that stairways were blocked. Indeed, the Club even admits that stairways were blocked at certain times during the Match.

27. Accordingly, the Club (as the host and match organiser) violated Article 38 SSR and must be punished accordingly.

D. The improper conduct of supporters: throwing objects

a) *Applicable legal framework and general remarks*

28. According to Article 16(2) DR (emphasis added):

*"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."*

29. 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 Club*

30. Throwing objects is a very serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, the throwing of objects in stadia is strictly forbidden.
31. According to Article 8 DR, which stipulates the principle of 'strict liability', and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
32. It has long been established in case law that strict liability applies regardless of fault. As a matter of fact, a 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).
33. In the present case, according to the official reports, three objects were thrown by supporters of the Club (including part of seat, which was thrown at away supporters and is particularly dangerous).
34. Nothing has been presented by the Club that would breach the accuracy of the official UEFA reports.
35. The CEDB deems that these incidents are obvious examples of a lack of discipline from the Club's supporters as they endangered the physical integrity of those present in the stadium (in particular, when part of a seat was ripped out and thrown), as well as showing a complete disregard for any civic rules.
36. Consequently, applying Article 16(2)(b) DR, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.



E. The improper conduct of supporters: setting off fireworks

a) *Applicable legal framework and general remarks*

37. According to Article 16 (2) DR (emphasis added):

*"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."*

38. 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 Club*

39. Setting off fireworks is a very serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, the lighting of pyrotechnics in stadia is strictly forbidden.

40. According to Article 8 DR, which stipulates the principle of 'strict liability', and Article 16(2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.

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

42. In the present case, according to the official reports, two fireworks were lit by supporters of the Club during the Match.

43. In the present case, nothing has been presented by the Club that would breach the accuracy of the official UEFA reports.

44. The CEDB deems that these incidents are obvious examples of a lack of discipline from the Club's supporters as they endangered the physical integrity of those present in the stadium.
45. Consequently, applying Article 16(2)(c) DR, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

F. The improper conduct of supporters: the use of a laser pointer

a) *Applicable legal framework and general remarks*

46. According to Article 16 (2) DR (emphasis added):

*"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."*

47. According to Article 8 DR, which stipulates the principle of 'strict liability', and Article 16 (2) DR, which builds on this principle, an association is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
48. 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 Club*

49. Laser pointers can seriously affect the physical wellbeing of the person who is targeted and can also disrupt the match (in particular, by distracting the person who is targeted and therefore causing that person to miss the ball). Accordingly, the use of such devices is strictly prohibited at matches.
50. According to the official reports for the Match, laser pointers were used by the Club's supporters to target AFC Ajax players on four occasions during the Match.

51. Applying the principle of strict liability as described in Articles 8 and 16(2) DR, a club shall be held liable for the conduct of its supporters, even if it is not at fault itself.
52. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case CAS 2002/A/423 PSV Eindhoven).
53. In the present case, nothing has been presented by the Club that would breach the accuracy of the official UEFA reports with regard to the use of laser pointers. It is irrelevant that the use of the laser pointers did not disrupt the match.
54. Consequently, the Club is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

G. The field invasion

a) *Applicable legal framework and general remarks*

55. According to Article 16 (2) DR:

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

- 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;*

*any other lack of order or discipline observed inside or around the stadium."*

56. 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 Club*

57. Because of the potential security risk caused by pitch invasions (since nobody is aware of the real intentions of the intruders at the time of the incident), as well as the possible disturbances that may result from such behaviour, pitch invasions are strictly forbidden.

58. To be clear, it is not necessary for any injury to occur or for any security issue to arise before a sanction can be taken against a club in respect of a pitch invasion.
59. In the present case, one supporter of the Club invaded the pitch after the final whistle.
60. This is stated in the official reports for the Match.
61. The Club, whilst admitting that the pitch invasion occurred, suggests that the incident had no influence on the match and that the invader posed no threat.
62. The CEDB considers that these arguments are irrelevant and in no way breach the accuracy of the official reports with regard to the existence of the pitch invasion.
63. Consequently, the Club is liable for the misconduct of its supporter and shall be sanctioned accordingly.

H. The late kick off

a) *Applicable legal framework and general remarks*

64. According to Article 8 DR:

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

65. According to Article 11(2)(h), a breach of the DR is committed by anyone who is responsible for a late kick-off.

b) *The responsibility of the Club and head coach*

66. In the present case, according to the official reports for the Match, the Club was responsible for a two minute delay to the kick-off because the team failed to follow the referee's instructions promptly.
67. This has been admitted by the Club.
68. It must be remembered that a delay in the kick-off time of a match might lead to serious consequences for the relationship between UEFA and its commercial/media partners.
69. In addition, due respect needs to be paid to the nature of the UEFA Europa League as one of UEFA's flagship club competitions. Any behaviour that tarnishes the image of this major competition cannot be accepted and must be punished.

70. With regard to the responsibility of the Club's head coach, it must be pointed out that the DR contemplate a violation by anyone who is responsible for the late kick off. As the head coach of a club is the highest authority of the team before, during and after a match, he is of course responsible for ensuring that his team is on the pitch on time. It is, after all, the head coach who decides when the team is prepared to leave the dressing room.
71. Accordingly, both the Club and the head coach are in the spotlight when it comes to respecting kick off timings.
72. Consequently, on this occasion, the Club's coach shall be held responsible for the late kick off.
73. According to the principle of strict liability, the CEDB also considers that the Club shall be held responsible for the late kick-off.

I. The player Wakaso Mubarak

*a) Applicable legal framework and general remarks*

74. According to Article 15(1)(e) DR, a suspension for three competition matches (or a specified period) applies when a player assaults another player or another person present at the match.
75. 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*

76. 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.
77. According to the consistent practice of the UEFA disciplinary bodies, assault in the sense of the above provision consists of any act committed not only intentionally but also recklessly by which the opponent's physical or psychological well-being is interfered with.
78. In the present case, the player Wakaso Mubarak put his head onto the head of an opponent.
79. This is highly aggressive and violent behaviour. It has nothing to do with the game and is simply a physically hostile act.

80. Consequently, Article 15(1)(e) DR applies and the player needs to be punished accordingly.

J. The improper conduct of the team

*a) Applicable legal framework and general remarks*

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

*b) The responsibility of the Club*

82. In the present case, seven yellow cards and one red card were shown to six of the Club's players during the Match.
83. The CEDB acknowledges 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.
84. In the present case, no evidence has been provided by the Club on this issue.
85. Moreover, the CEDB recalls that according to Article 9(1) DR, decisions by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies.
86. Referring to the above provisions, the Club is to be held responsible for the misconduct of its players and must be punished accordingly.

**IV. The determination of the appropriate disciplinary measure**

87. Based on Article 17 DR the CEDB 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. Disciplinary measures can be reduced or increased by the competent disciplinary body on the basis of the circumstances of the specific case.
88. With regard to the instances of insufficient organisation, the CEDB took into account the multiplicity of the offences and also the Club's previous disciplinary record.
89. Consequently, the CEDB considers that a fine of €10,000 is the appropriate sanction in respect of such offences.
90. Regarding the blocked stairways, the CEDB took into account the seriousness of the offence committed (noting that the blocking of stairways represents a significant threat to the health and safety of supporters and other persons in the stadium) and the large



scale of the infraction (noting that multiple stairways across the stadium were blocked for the whole Match).

91. Based on the foregoing, the CEDB considers that a fine of €12,000 is the appropriate sanction for the blocked stairways offence.
92. With regard to the setting off of fireworks and throwing of objects, the CEDB identified and took into account the seriousness of the offences committed (noting that these offences represent a significant threat to the health and safety of supporters and other persons in the stadium) and the Club's previous record (noting that the Club has already been punished for similar offences on several occasions).
93. Based on the foregoing, the CEDB considers that a fine of €13,000 is the appropriate sanction for these offences.
94. With regard to the improper conduct of the team, the CEDB considers that a fine of €10,000 is the appropriate sanction in respect of such offences (having regard to the Club's previous record of improper conduct and also the serious nature of the incidents at the Match).
95. With regard to the pitch invasion, the CEDB identified and took into account the Club's previous record (noting that the Club has already been punished for similar offences on several occasions).
96. Based on the foregoing, the CEDB considers that a fine of €8,000 is the appropriate sanction for this offence.
97. With regard to the use of laser pointers during the Match, the CEDB notes that such acts represent a serious threat to the physical well-being of the targets and also may impact on sporting performance.
98. Based on the foregoing, the CEDB considers that a fine of €8,000 is the appropriate sanction for this offence.
99. The CEDB considers that a warning is the appropriate sanction in respect of the late kick-off offences (for both the Club and head coach), since this is a first offence.

## Decision of 28 September 2016

Sporting Clube de Portugal

(dismissal of Mr. Jorge Jesus - coach)

### **Circumstances of the case**

In the 57th minute of the the UEFA Champions League 2016/2017 match between Real Madrid CF and Sporting Clube de Portugal, the coach of Sporting Clube de Portugal, Mr. Jesus, was sent off for complaining about the decisions of the referee. He was taken to the VIP area and quickly positioned himself in a seat behind the Club's team bench, from where he was communicating with his assistant coach who was located on the Club's team bench. Furthermore, Mr. Jesus stood on his seat and shouted to Club representatives on the Club's team bench.

**Legal framework** Article 62 (1) UEFA Disciplinary Regulations.

### **Decision**

The CEDB decided to suspend the coach for one match. Moreover, taking into account that the coach was showing no regard at all for the rules set out in the DR or the notion of good sporting conduct, the CEDB increased the sanction to a two-match suspension.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Bonett Chris (MLT) Gea Tomás (AND) Hans Lorenz (GER) Řepka Rudolf (CZE)

## **I. Facts Of The Case**

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

3. According to the official reports for the UEFA Champions League 2016/2017 match between Real Madrid CF and Sporting Clube de Portugal (the “**Club**”) on 14 September 2016 (the “**Match**”):
  - the Club’s head coach, Mr. Jesus, was sent off in the 57<sup>th</sup> minute of the Match;
  - he was taken to the VIP area and quickly positioned himself in a seat behind the Club’s team bench;
  - afterwards, he communicated (using signs and words) with his assistant coach (who was located on the Club’s team bench); and
  - Mr. Jesus stood on his seat and shouted to Club representatives on the Club’s team bench.

## II. The Respondent’s position

4. In its statement dated 21 September 2016, the Club:
  - states that Mr. Jesus accepts the referee’s decision to dismiss him from the bench after he protested “*vehemently*”;
  - notes that Mr. Jesus’ reaction was “*somewhat excessive*”;
  - claims that Mr. Jesus “*naturally and unconsciously*” moved to the seat behind the Club’s team bench; and
  - considers that the pressure and anxiety of the Match caused Mr. Jesus to shout out.
5. The more detailed arguments made by the Club are set out below in so far as they are relevant.

## III. Merits of the Case

### A. UEFA’s competence

6. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the “**DR**”), the CEDB is competent to deal with the case.
7. In light of the foregoing, UEFA’s statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. Mr. Jesus

#### a) *Applicable legal framework and general remarks*

8. According to Article 11(1) DR, member associations and clubs, as well as their players, officials and members, must respect the Laws of the Game, as well as UEFA's Statutes, regulations, directives and decisions, and comply with the principles of loyalty, integrity and sportsmanship.
9. According to Article 15(1)(a)(iii) DR, a suspension for one competition match (or a specified period) applies in respect of *"repeated protests against or a failure to comply with the referee's orders"*.
10. Article 60(1) DR states that:

*"Unless the competent disciplinary body decides otherwise, a player sent off the field of play or an official expelled from the technical area is automatically suspended for the next match of the competition in which the expulsion occurred."*

11. Under Article 62(1) DR (emphasis added), *"a team manager/coach who is sent off or suspended from carrying out his function may not be in the technical area or communicate directly or indirectly with the team's players and/or technical staff during the match"*.
12. 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 coach*

13. According to the official reports for the Match, Mr. Jesus repeatedly protested against the referee's decision(s) and exited the specified technical area.
14. By his own admission, such behaviour was excessive.
15. Based on the foregoing, the CEDB therefore considers that Mr. Jesus' behaviour falls under Article 15(1)(a)(iii) DR.
16. Further, the official report of the UEFA delegate for the Match states that Mr. Jesus communicated with his team's bench (in particular, his assistant coach) after being dismissed.
17. None of the arguments presented by the Club breaches the accuracy of the delegate's report which clearly states how such communication occurred and which is, of course, presumed to be accurate under Article 38 DR.
18. On this basis, the CEDB concludes that Mr. Jesus' behaviour following his dismissal directly contravened Article 62(1) DR and he must therefore be sanctioned for such behaviour.

**IV. The determination of the appropriate disciplinary measures**

19. Based on Article 17 DR the CEDB 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. Disciplinary measures can be reduced or increased by the competent disciplinary body on the basis of the circumstances of the specific case.
20. With regard to Mr. Jesus' dismissal from the bench, the CEDB applied Article 15(1)(a)(iii) DR and therefore considers that a one match suspension is the appropriate sanction.
21. Further, the CEDB considers a further one match suspension to be necessary in respect of Mr. Jesus' breach of Article 62(1) DR. The behaviour of Mr. Jesus after being dismissed was blatant and obvious, showing no regard at all for the rules set out in the DR or the notion of good sporting conduct.

## Decision of 13 October 2016

FC Zürich

(illicit banner, illicit chants, setting of fireworks, field invasion away supporters,  
stairways blocked)

### **Circumstances of the case**

In the 15th minute of the match, FC Zürich supporters were singing "Kurdistan, Kurdistan" whereas in the 90th minute of the match, PKK flags were shown during three different moments also by the home-team supporters. Further, an anti-Erdogan slogan was shown by the FC Zürich supporters, a couple of which were wearing a white T-shirt with one character written on it. When looking at all T-shirts together it was written: "Dictator Erdogan". The slogan was visible for 8 minutes before it was removed by stewards. After the end of the match, when there was still one Turkish player on the pitch and when the home-team players were greeting their supporters, a Turkish supporter coming from a home-supporters stand ran onto the pitch and tried to reach the Turkish player. Although several stewards pursued him, he was able to climb over the fence of the main stand before the stewards could catch him. Throughout the whole match, home-team supporters were blocking the stairways in the sector behind the goal on the right side from the main stand, behind a big banner that said "Zürcher Südkurve".

**Legal framework** Article 16 (2) UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body deems that the lack of order/discipline inherent in the act of supporters moving from one sector to another is a serious offence. Such conducts is clearly contrary to all standards of orderly behaviour and poses a severe safety risk. Consequently, FC Zürich is to be held responsible for the misconduct of its supporters and must be penalised with a €40,000 fine.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Bonett Chris (MLT) Gea Tomás (AND) Lorenz Hans (GER) Řepka Rudolf (CZE) Wolff Joël (LUX)



## **I. Facts Of The Case**

1. 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.
2. Briefly, the most relevant facts of this case, as established by the reports of the UEFA match delegate, can be summarized as follows:
  - According to the UEFA venue director who reported the incident to the UEFA match delegate, after the 15<sup>th</sup> minute of the match, the home-team supporters were singing "Kurdistan, Kurdistan".
  - During half-time and following the beginning of the second half, after the 79<sup>th</sup> minute of the match, when the home-team scored 2-1 and after the 90<sup>th</sup> minute of the match, when the match was still going on, PKK flags were shown during three different moments by the home-team supporters in sector D29.
  - An anti-Erdogan slogan was shown by the home-team supporters in sector D29. Every single one of those supporters wore a white T-shirt with one character written on it. When looking at all T-shirts together it was written: "Dictator Erdogan". The private security company appointed by the home-team managed to make the supporters take their T-shirts off or cover them after the 53<sup>rd</sup> minute of the match. The slogan was visible for 8 minutes.
  - A Turkish supporter (coming from a home supporters stand) ran onto the pitch after the end of the match when there was still one Turkish player on the pitch and when the home-team players were greeting their supporters. The supporter that ran onto the pitch tried to reach the Turkish player. Although several stewards pursued him, he was able to climb over the fence of the main stand before the stewards could catch him.
  - Throughout the whole match, home-team supporters were blocking the stairways in the sector behind the goal on the right side from the main stand, behind a big banner that said "Zürcher Südcurve".
  - One Bengal light that was set off by the home-team supporters in the first minute of extra-time of the first half, after the home-team scored 1-0. The supporters were standing behind the goal on the right side from the main stand, behind a big banner that said "Zürcher Südcurve".

## II. The Respondent's position

3. The Club in its statements dated on 3 October 2015, argues that in view of the neutrality of Switzerland with regard to the conflict between Turkey and the PKK, and taking into account that the PKK is not regarded as an illegal organization in Switzerland, the displaying of PKK flags is also not illegal in Switzerland. Therefore these flags cannot be considered as containing political messages.
4. The club disputed that its supporters were chanting "Kurdistan, Kurdistan", whereas even if such chants would have occurred, this would not have been illegal in Switzerland and could therefore not be considered a negative message not related to sport. Given that Art. 16 (2) (e) DR only aims at prohibiting political propaganda, insults and provocations, the mere mentioning of the origin of certain supporters cannot be considered as illicit. In a liberal, democratic and neutral country such as Switzerland, FC Zürich would not even be allowed to stop supporters from making such chants, which is why it cannot be punished for it.
5. Moreover, the club claims that it did everything to prevent supporters from bringing such flags and banners into the stadium, which was not possible due to the thin texture which made it easy to hide. The same goes for the T-Shirts, which were impossible to recognize as part of a political statement at the entrance and the relevant body searches. The club however admits that the T-shirts in combination added up to an illicit banner in violation of Art. 16 (2) (e) DR. The club nevertheless stressed that it reacted quickly to make the supporters cover or remove the relevant messages, banners and shirts.
6. With regard to the pitch invasion and the accusation of insufficient organization, the club explained that the pitch was already completely empty as the incident occurred 10 minutes after the conclusion of the match. The intruder was immediately detained and a stadium ban was imposed on him. Moreover, the intruder was no threat to anyone since the pitch was already empty and the invasion was only part of a "test of courage" between juveniles.
7. As regards the blocking of stairways, the club explains that this behavior is generally allowed during Swiss league matches, which is why the supporters are lacking sensitization for the issue of blocked stairs during UEFA competition matches. Moreover, given that all sanitation is located behind the stand, it is inevitable that people are constantly using said stairways.
8. Regarding the setting off of fireworks, the club admits the incident while also stressing that it did everything to prevent supporters bringing fireworks into the stadium.
9. 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.

### III. Merits of the Case

#### A. UEFA's competence.

10. 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.
11. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

#### B. The illicit banner and chants

##### *a) Applicable legal framework and general remarks*

12. According to Article 16 (2) DR:

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

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

15. 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, religious or whatsoever other opinions not related to a sport's event. 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.

16. In the present case, the supporters of the home-club were chanting "Kurdistan, Kurdistan" around the 15<sup>th</sup> minute of the match.
17. The Control, Ethics and Disciplinary Body, after thoroughly taking into account the explanations provided by the club, acknowledged that the club on the hand disputes the occurrence of the incident as it was described by the UEFA venue director and the UEFA match delegate, while on the other hand not providing any evidence in this regard.
18. Consequently, recalling the content of Article 38 DR where it is stated that facts contained in official UEFA reports are presumed to be accurate whereas proof of their inaccuracy may, however, be provided, the Control, Ethics and Disciplinary Body came to the conclusion that the club did not provide any evidence which would be sufficient to break the accuracy of the official UEFA reports. Hence, the club needs to be punished accordingly for the violation of Article 16 (2) (e) DR.
19. Regarding the PKK banners, the Control, Ethics and Disciplinary Body, after evaluating the information provided by the UEFA match delegate, has no doubt as that the content is not fit for a sport's event. In this regard, the Control, Ethics and Disciplinary Body emphasized that it is completely irrelevant whether a gesture, message, banner or chant is legal or illegal in the respective country, given that for the assessment of a possible violation of the UEFA Disciplinary Regulations, only the latter are of relevance primarily.
20. In a next step, the Control, Ethics and Disciplinary Body looked at the context of the displaying of the banners, i.e. a Turkish visiting team and Turkish away-supporters coming to the home-teams stadium, and the showing of PKK banners by home-team supporters. In this context, the Control, Ethics and Disciplinary Body was comfortably satisfied that the displaying of the banners was a political demonstration, and was definitely a provocation directed at the visiting-team supporters. In any case, the banners and the message stipulated on it have no relation to football in general or the match in particular, and did evidently transmit a message that is not fit for a sports event, which is why the club also needs to be punished for this violation of Art. 16 (2) (e) DR.
21. Regarding the t-shirts of the club's supporters displaying the slogan "Dictator Erdogan", the club admitted the incident itself and also confirmed that such message constituted a violation of Art. 16 (2) (e) DR, which is why the Control, Ethics and Disciplinary Body did not deem it necessary to go into the matter any further.
22. After recalling again that the arguments put forward by the club in the present case do not breach the accuracy of the official UEFA reports which expressly refer to the displaying of the referred banners and the illicit chants and are presumed to be accurate under Article 38 DR, the Control, Ethics and Disciplinary Body considers that the above arguments are irrelevant as with regards to the clarification of the facts and the

classification of the above-mentioned incident. The club is responsible for any violation conducted by its supporters against the UEFA Disciplinary Regulations.

23. Consequently, the club shall be held responsible for the various violations of Art. 16 (2) (e) DR by its supporters.

C. Insufficient organization: pitch invasion

a) *Applicable legal framework and general remarks*

24. According to Article 16 (2) DR:

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

- 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.

25. According to Article 40 UEFA Safety and Security Regulations (SSR), the match organiser must ensure that players and match officials are protected against the intrusion of spectators into the playing area.
26. 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 club*

27. Because of the potential risk of invasions for security reasons, as nobody is aware of the real intentions of the intruders at the time of the incident, as well as the possible disturbances that may be attached with such conducts, invasions are strictly forbidden. It is however not necessary that any person is injured or any further security issue may result from these actions, before a sanction can be taken.
28. In the case in hand, 10 minutes after the final whistle was blown, one supporter entered the pitch from the home-supporters' sector. The club had alleged that the pitch was already completely empty, whereas the UEFA match delegate had clearly stated in this

report that the home-team players were still greeting their fans and there was still one Turkish player on the pitch.

29. In view of the above, given that the club did not provide any proof for its allegations and explanations, the assumed accuracy of the official UEFA reports remained unbroken.
30. Given that there were still players from both sides on the pitch, and considering that the alleged true intentions of the perpetrator have only been unfolded following the incident and nobody could have possibly known before if the said perpetrator constituted a real security risk or not, the Control, Ethics and Disciplinary Body was comfortably satisfied that the club did not respect its obligations arising from Art. 40 SSR and shall be sanctioned accordingly.

D. Insufficient organization: pitch invasion

*a) Applicable legal framework and general remarks*

31. According to Article 49 SSR, any breach of the said regulations may be penalised in accordance with the UEFA Disciplinary Regulations.
32. As stated in Article 2 SSR, the purpose of the regulations is to safeguard the safety and security of everyone present at a match. In order to achieve this, several provisions concerning spectator control are included in the regulations.
33. Of particular relevance for the present case is Article 38 of the UEFA Safety and Security Regulations which provides that *"the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators."*
34. Moreover, under 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.

*b) The responsibility of the club*

35. Under Article 2 of the UEFA Safety and Security Regulations, the purpose of the regulations is to maintain the safety and security of everyone present at the match. In order to achieve this goal the UEFA Safety and Security Regulations contain several provisions concerning spectator control at the stadium, including Article 38 of the UEFA Safety and Security Regulations.
36. It is well established that UEFA is entitled to put in place and enforce regulations aimed at protecting the safety of spectators, including the requirement that the organisers of football matches must keep stairways free of obstruction (in this regard, see the recent case of *CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v UEFA*).



37. In the case at hand, according to the report of the UEFA match delegate, throughout the whole match, home-team supporters were blocking the stairways in the sector behind the goal on the right side from the main stand, behind a big banner that said "Zürcher Südkurve".
38. The chairman subsequently took note of the explanations of the club that the blocking of the stairways is a behavior which is generally allowed during Swiss league matches, which is why the supporters are lacking sensitization for the issue of blocked stairs during UEFA competition matches. Moreover, the club had argued that all sanitation is located behind the stand, which is why it is inevitable that people are constantly using said stairways
39. Contrary to the above, the Control, Ethics and Disciplinary Body came to the conclusion that the arguments provided by the club did not break the accuracy of the UEFA Security Officer's report. Moreover, the Control, Ethics and Disciplinary Body deemed that the explanations of the club were irrelevant as to the assessment of the case at hand. If there were to be a lack of sensitization for the issue, it is up to the club to work on such pressing issues, especially in view of the fact that the blocking of stairways can lead to severe security issues.
40. The same goes for the alleged normal usage of the stairways to the location of the sanitation areas. If such sanitation area and its location causes such issues, the club should have taken additional measures to stop the stairways from being blocked. In addition, the report of the UEFA match delegate clearly states that the stairways were blocked throughout the entirety of the match, which certainly does not suggest that the stairs were merely used by spectators to access the sanitary areas.
41. In view of all of the above, the Control, Ethics and Disciplinary Body was comfortably satisfied that the club as the host and match organiser violated Article 38 SSR and must be punished accordingly.

E. The setting off of fireworks

a) *Applicable legal framework and general remarks*

42. According to Article 16 (2) DR (emphasis added):

"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."*

- 43. According to Article 8 DR, which stipulates the principle of 'strict liability', and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
- 44. 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 club*

- 45. Setting off fireworks is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the persons who are lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.
- 46. In the present case, one Bengal light that was set off by the home-team supporters in the first minute of extra-time of the first half, after the home-team scored 1-0.
- 47. Given the low impact of only one Bengal light and taking into account that this was a completely isolated incident, the Control, Ethics and Disciplinary Body decided to close the disciplinary proceedings against the club which were opened for the setting off of fireworks.

**IV. The determination of the appropriate disciplinary measure**

- 48. 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.
- 49. In the present case, regarding the illicit chants and banners, the Control, Ethics and Disciplinary Body identified and took into account the seriousness of the offence committed, while also taking into account that it appears like the club was rather quick to have the relevant banners removed.
- 50. Regarding the insufficient organization by the club as the host and match-organizer, i.e. regarding the pitch invasion and the blocking of stairways, the Control, Ethics and Disciplinary Body took into account the following circumstances:

- the seriousness of the offence committed; and
  - the club's previous record: the club has already been sanctioned numerous times for violations of the UEFA Safety & Security Regulations.
51. In the light of the above considerations, the Control, Ethics and Disciplinary Body deems that a total fine €40'000 shall be deemed as the adequate disciplinary measure.

## Decision of 13 October 2016

AC Sparta Praha

(racist behaviour)

### **Circumstances of the case**

The UEFA match delegate reported that he “heard monkey chants for a short period from the Home Ultras in the 18th minute” and a FARE observer present at the match also noted that “in the 18th minute into the game, several dozens of Sparta Praha supporters (...) made very briefly monkey noises following a collision between a Sparta Praha player and a black FC Internazionale player”.

**Legal framework** Article 14 Disciplinary Regulations.

### **Decision**

The CEDB decided to punish the club with a partial stadium closure and to display a banner bearing the words “No to Racism” alongside the UEFA logo.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Bonett Chris (MLT) Gea Tomás (AND) Lorenz Hans (GER) Wolff Joël (LUX)

## **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (the “**CEDB**”) on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the CEDB proceedings.
2. Whilst the CEDB has considered all of the facts, allegations, legal arguments and evidence submitted in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
3. The key facts of the present case can be summarised as follows:

- the UEFA delegate for the UEFA Europa League 2016/2017 match between AC Sparta Praha (the “**Club**”) and FC Internazionale Milano on 29 September 2016 (the “**Match**”) reported that he “*heard monkey chants for a short period from the Home Ultras in the 18th minute*”; and
- a FARE observer present at the Match also noted that “*in the 18th minute into the game, several dozens of Sparta supporters in sections H37-40 made very briefly monkey noises following a collision between a Sparta player and a black Inter player*”.

## II. The Respondent’s position

4. In its statement dated 6 October 2016, the Club:
  - claims that the relevant chant was actually just a “*hu hu hu*” chant that its supporters traditionally use to show their disapproval with events on the pitch and not a “*monkey noise*”; and
  - insists that none of the players involved in the relevant football action(s) on the pitch which precipitated the alleged “*monkey chant*” were black and therefore questions whether the behaviour of the Club’s supporters could ever be said to be racist.
5. The more detailed arguments made by the Club in support of its written submissions are set out below in so far as they are relevant.

## III. Merits of the Case

### A. UEFA’s competence.

6. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the “**DR**”), the CEDB is competent to deal with the case.
7. In light of the foregoing, UEFA’s statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. The racist behaviour

#### *a) Applicable legal framework and general remarks*

8. According to Article 8 DR, a club that is bound by a rule of conduct laid down in UEFA’s statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the club concerned, even if the club concerned can prove the absence of any fault or negligence.
9. According to Article 14(1) DR, any person under the scope of Article 3 DR 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.

10. Under Article 14 (2) DR, if one or more of a club's supporters engages in the behaviour described in Article 14 (1) DR, the club shall be punished with a minimum of a partial stadium closure.
11. 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 Club*

12. Article 14 DR is a special rule (building on the principle set out in Article 8 DR) which stipulates that clubs are responsible for the racist conduct of their supporters.
13. 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 in question (i.e. 'strict liability').
14. 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).
15. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. Racist behaviour is considered a serious offence under the DR and must be punished (having regard to the circumstances and the relevant club's previous record) with the utmost severe sanctions.
16. In the present case, the UEFA delegate observed that a group of the Club's supporters produced "*monkey chants*" during the Match. This behaviour was also reported by a FARE observer who was present at the Match.
17. This kind of chant is one of the most instantly recognisable and repugnant forms of racist chant. Such behaviour is completely unacceptable.
18. The Club has not provided any evidence that would breach the accuracy of the UEFA delegate's official report, which clearly states that the "*monkey chants*" occurred (and which is also supported by the report of a FARE observer).
19. In light of the foregoing, the CEDB concludes that the conduct of the Club's supporters violated Article 14(1) DR and must be punished accordingly.

**IV. The determination of the appropriate disciplinary measure**

20. Based on Article 17 of the UEFA Disciplinary Regulations 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.

21. With regard to the racist behaviour, the CEDB wishes to draw attention to the fact that, following the implementation of the 2013 edition of the DR (and as subsequently confirmed again in the 2014 and 2016 editions of the DR), UEFA's fight against racist behaviour entered a new era. This has resulted in more severe sanctions being imposed in respect of racist behaviour.
22. Accordingly, since this case concerns the Club's first infringement of Article 14(1) DR, taking into account the seriousness and despicability of the racist behaviour of the Club's supporters, the Club shall be punished with a partial stadium closure.
23. Given that the racist behaviour came from sectors H37 to H40 (inclusive), these four sectors shall be closed.
24. In addition, the Club shall display a banner bearing the words "*No to Racism*" alongside the UEFA logo. This banner shall be displayed in (and cover) sectors H37 to H40.
25. The CEDB also urges the Club to increase its efforts to prevent its supporters from singing such chants since further incidents may result in stronger disciplinary measures being imposed on the Club.



## Decision of 10 November 2016

Legia Warszawa

(crowd disturbances)

**Circumstances of the case**

The UEFA security officer appointed for this match reported “In total 12 arrests reported at the debrief. All Polish supporters were arrested because of violent attacks on Police Officers and some for robberies. All supporters will go to the court!” In the following, UEFA appointed an Ethics and Disciplinary Inspector who initiated disciplinary investigations against the Legia Warszawa. The Ethics and Disciplinary Inspector then requested the Chairman of the CEDB to issue a provisional measure and, in particular, to ban the club from selling tickets to supporters for away matches.

**Legal framework** Article 16 (2) DR.

**Decision**

The CEDB ban the club from selling tickets to supporters for next away UEFA competition match and imposed a deferred ban for two additional away UEFA competition matches. In addition a fine of €80'000 has been imposed to the club.

Chairman: Partl Thomas (AUT)

Vice-Chairman: Berzi Sándor (HUN)

Member: Antenen Jacques (SUI)

**I. Facts Of The Case**

1. 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.
2. On 18 October 2016, Legia Warszawa played a UEFA Champions League match against Real Madrid CF. The UEFA security officer appointed for this match reported the following incident:

*“In total 12 arrests reported at the debrief. All Polish supporters were arrested because of violent attacks on Police Officers and some for robberies. All supporters will go to the court!”.*

3. On 25 October 2016, UEFA informed the club that disciplinary investigations had been initiated by an Ethics and Disciplinary Inspector.
4. On 26 October 2016, the UEFA Ethics and Disciplinary Inspector requested the Chairman of the Control, Ethics and Disciplinary Body to issue a provisional measure and, in particular, to ban the club from selling tickets to supporters for away matches.
5. On 27 October 2016, UEFA informed the club about the request of the UEFA Ethics and Disciplinary Inspector. The club could provide any statements on the above request until 31 October 2016.
6. On 31 October 2016, the club stated that it already decided not to implement new organizational and disciplinary measures in respect to the club's fans in the away matches relating to UEFA Champions League competitions and requests not to impose any official provisional measure. It might have influence on Legia's popularity.
7. On 2 November 2016, the UEFA Ethics and Disciplinary Inspector submitted his report and requested to fine €100'000 and to ban Legia Warszawa from selling tickets to away supporters until the end of the season 2016/2017.
8. On 3 November 2016, the Control, Ethics and Disciplinary Body provisionally banned the club from selling tickets to supporters for away matches until this body before it decided over the events occurred during the UEFA Champions League 2016/2017 match played between Real Madrid CF vs. Legia Warszawa on 18 October 2016.

## **II. The Respondent's position**

9. The Club in its statements dated 9 November 2016, argues that the fans displayed several banners and supported the players throughout the Match. In accordance with various media reports behavior of the Club's fans at the stadium should be seen as excellent.
10. Further, the precautions that were taken to secure the path of the Club's fans from the meeting point to the stadium were inappropriate. The area was not properly marked and secured by the Police. The fans had to cross intersections through the middle of the street due to the unfortunate logistics prepared by the Spanish Police. Also the instructions given by the Police were not clear due to the fact that almost none of the Police officers spoke English.
11. Finally, the Club also would like to highlight that in accordance with the UEFA jurisprudence accidents outside the stadium are not a matter of interest of the CEDB. Such principle was also confirmed by the official information from UEFA Media & Public Relations received by Polish media (sport.tvn24.pl - a nationwide information channel) after the Match: "Please note that any incidents taking place outside the perimeter of the stadium are not in UEFA's jurisdiction".

12. The club concludes that it should again be underlined that neither UEFA nor any of the clubs are capable of fully evaluating the whole situation that took place before the Match in Madrid- furthermore, Legia presents its full readiness to assist Spanish police in regards to the identification of people responsible for the incidents.
13. 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.

### III. Merits of the Case

#### A. UEFA's competence.

14. 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.
15. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

#### B. The crowd disturbances

##### *a) Applicable legal framework and general remarks*

16. According to Article 43 DR, the chairman of the competent disciplinary body, or his nominee, is entitled to issue provisional measures where these are deemed necessary to ensure the proper administration of justice, to maintain sporting discipline or to avoid irreparable harm, or for reasons of safety and security. He is not obliged to hear the parties and/or the ethics and disciplinary inspector.

##### *b) The merits*

17. The main issue here is to decide if the evidence submitted to this UEFA disciplinary body is enough to the comfortable satisfaction of the Control, Ethics and Disciplinary Body to impose a disciplinary measure in accordance with Article 16 (2) (h) DR.
18. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided, which in this particular case has not been done by the Club. In this regard, the delegate reported as follows:

*"In total 12 arrests reported at the debrief. All Polish supporters were arrested because of violent attacks on Police Officers and some for robberies. All supporters will go to the court!"*

19. Following this delegate report, the Ehtics and Disciplinary initiated disciplinary investigations on this matter. He attached some video footage showing violent confrontations between Legia supporters and the Spanish police authorities at the

vicinity of the stadium. In addition, Legia also sent other video footages including other confrontations between the same group of persons. Finally, the previous records of the club show that incidents, which involve Legia supporters, normally occur at away matches played by the UEFA competitions.

20. First and foremost, the Control, Ethics and Disciplinary Body has to decide if its jurisdiction goes beyond the stadium borders or as expressed by the Ethics and Disciplinary Inspector, includes the vicinity of the stadium.
21. On the other hand, Article 8 and Article 16 (2) DR contemplate what is commonly known as "principle of strict liability". It means that a member association or club that is bound by a rule of conduct laid down in UEFA's Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence.
22. Briefly, a club or an association is responsible for those inappropriate behaviours undertaken by its supporters, even if it is not in fault itself.
23. Regarding the question about the spatial application of Article 16 (2) DR, the Control, Ethics and Disciplinary Body deems that it includes incidents occurred both inside and around the stadium. This conclusion derives from two considerations: the reference to Article 16 (1) DR to incident inside and around the stadium and the express wording of Article 16 (2) (h) DR, referring again to infringements taken place inside and around the stadium.
24. It is reasonable to conclude that the reference to the location given in Article 16 (1) DR, i.e. "inside and around the stadium" must also apply to Article 16 (2) DR. It has no sense to limit the enforcement of Article 16 (1) DR and then at the next paragraph without any specific wording restrict even more the spatial application of Article 16 (2) DR.
25. The above becomes evident whilst reading Article 16 (2) (h) DR, which emphasizes that clubs and associations are responsible for "any other lack of order or discipline observed inside or around the stadium" coming from its supporters.
26. Turning to the case at hand, the Control, Ethics and Disciplinary Body can't justify the attitude of the Legia supporters. Again, the above described incidents which involve an oblique confrontation between supporters and police authorities, have to be qualified as acts of hooliganism and are considered as particular serious offences. Such behaviour is all the more unacceptable as it tarnishes the image of football and UEFA.
27. In the light of the circumstances expressed above, this UEFA disciplinary body deems that there are sufficient grounds to consider the club responsible for the inappropriate behaviour in accordance with Article 16 (2) (h) DR. This is so even if the club has already

prevent any organisational measure in respect of the future UEFA away competition matches.

28. Bearing the above in mind, the club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (h) DR and must be punished accordingly.

#### **IV. The determination of the appropriate disciplinary measure**

29. 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.
30. 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 strong hooligan nature of the attitude of these supporters confronting violently the police authority.
31. The violent images witnessed by means of the different video footages provided by both parties need a clear and straight reaction from UEFA in the sense of impeding away supporters of this club to organise themselves and repeat the above described incidents. A ban from selling tickets to away supporters may therefore act as a deterrent effect to supporters but will also relieve, the club's contenders, presenting themselves as the next match organisers, which can be concerned from a safety and security perspective.
32. In the light of the above considerations, the Control, Ethics and Disciplinary Body decides to ban Legia Warszawa SA from selling tickets to its away supporters for the next (1) UEFA competition match in which the club will play as the away team. In addition, this UEFA disciplinary body imposes a deferred ban against Legia Warszawa SA from selling tickets to its away supporters for two (2) additional UEFA competition matches. Finally, the club is fined €80'000.





Appeals Body

## Decision of 12 October 2016

VfB Admira Wacker Mödling

(floodlight failure; field invasion; stairways blocked)

### **Circumstances of the case**

In the 56th minute of the UEFA Europa League match between VfB Admira Wacker Mödling and FC Slovan Liberec, the lights went off and the game stopped for 33 minutes. In the 74th minute the lights went off again and the game stopped for 9 minutes. In 90th minute the lights went off again and the game stopped for 8 minutes. Moreover, a person entered the pitch in the 80th minute of the match and reached the middle of the pitch before the stewards could catch him. Finally, some of the stairs to the upper stand were blocked by standing spectators. On 5 August 2016, the CEDB decided to impose a sanction on the club for the abovementioned violations and fined the club €25'000.

The club in its appeal argued that the floodlight system was regularly and properly serviced and that the incident was therefore not foreseeable and preventable. Also regarding the pitch invasion, the club stressed that it had taken all the necessary precautions to prevent such an incident, while emphasizing that the pitch invader was a mentally disordered person without any affiliation to the club. Regarding the blocking of stairways, the club argued that the free flow of spectators was not impeded.

**Legal framework** Art 16 (2) DR, Art. 43 UEFA Stadium Structure Regulations, Art. 38 Safety and Security regulation.

### **Decision**

On 5 August 2016, the CEDB decided to impose a sanction on the club for the abovementioned violations and fined the club €25'000.

The Appeals Body uphold the initial CEDB decision and reject the appeal.

Ad-hoc Chairman: Michael Maessen (Netherlands)

Vice-chairman: Levent Bıçakcı (Turkey)

Members: Björn Ahlberg (Sweden)  
Gianluca D'Aloja (Italy)

## **I. Facts Of The Case**

1. 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's decision of 22 October 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 these



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

2. On 28 July 2016, VfB Admira Wacker Mödling played against FC Slovan Liberec an UEFA Europa League match.
3. According to the delegate's report of the match:

"When the lights were off, number 9 (Toni Vastic) from the home team FC Admira Wacker squeezed his opponent's neck (No 9 from Slovan Liberec Jan Navrátil), pushed him to the ground and was therefore sent off with a red card because of violent conduct.

In 56th minute of the game the lights went off and the game stopped for 33 minutes.

In 74th minute the lights went off again and the game stopped for 9 minutes.

In 90th minute the lights went off again and the game stopped for 8 minutes.

A person entered the pitch in minute 80 and reached the middle of the pitch before the stewards could catch him.

Some of the stairs to the upper stand were blocked by standing spectators".

4. On 5 August 2016, the Control, Ethics and Disciplinary Body decided to impose the following measures:
  1. To suspend the VfB Admira Wacker Mödling player Vastic Toni for three (3) UEFA competition matches for which he would be otherwise eligible.
  2. The club ensures the player is informed personally of this decision.
  3. To fine VfB Admira Wacker Mödling € 25'000.
5. On 10 August 2016, the club requested the grounds of the Control, Ethics and Disciplinary Body's decision, which it received on 21 September 2016.
6. On 23 September 2016, the club appealed the fine imposed to it, accepting the sanction imposed against its player of three UEFA competition matches suspension.

## **II. Summary of the proceedings before the Appeals Body**

7. On 29 September 2016, the Appellant filed its grounds for appeal. In its statements, the Appellant, essentially, argued the following:
  - The failure of the floodlights:
    - o The investigations after the match showed that the failure of the floodlight was most probably caused by too sensitive adjustment of the electronically configured circuit breaker.

- The fact that the floodlight system was installed and regularly serviced by specialists and has not failed in the past shows, that the club was not negligently in organizing the match.
- Unfortunately the failure was most likely caused by a too sensitive adjustment of the electronically configured circuit breaker by the service technician. The trained staff was not able to alter the electronic configurations of the circuit breaker as such changes may only be made by a specialist technician.
- In the light of the club's past experiences it was not foreseeable that it could be necessary that a specialist technician for the floodlight system has to be present during the matches and neither the specialist company installing not the specialist company servicing the floodlight-system has ever recommended that a specialist should be present during matches in case changes to the configurations of the circuit breaker turn out to be necessary.
- The field invasion:
  - The person who invaded the field of play is none of the club's supporters but a mentally disordered person with no affinity to the club. This person has invaded in the year 2016 already three times different fields of play in Austria. On 24 April 2016 he invaded the field at the game Rapid Wien-Sturm Graz, on 31 Mai 2016 he invaded the field at the Game Austria-Malta and on 4 June 2016 he invaded the field at the game Austria - Netherlands. At all these occasions this person was caught and identified by stewards from the security firm "Securitas". This company recommended imposing a ban to visit stadiums on this person to the authorities.
  - The clubs has taken all measures to ensure order and security at the match. The security company "Securitas" was in charge for order and security at the match and has sent enough and qualified staff to ensure order and security. The personnel was positioned correctly and watched the tribunes. The person who invaded the field said himself that he was spying at the stadium for a long time to find out which area was protected least and waited for a fortunate moment to invade the field. The established facts point to no negligence in any way in relation to the organisation of the match.
- The blocking of stairways:
  - The few spectators standing on some of the stairs did not impede the free flow of spectators and thus the said Article is not violated. The club further points to the fact that only 2.245 spectators visited the game according to the official report and that the main tribune has a capacity for 5.000 spectators. Consequently a few spectators standing on some of the stairs to the upper stand could not significantly impede the free flow of spectators. Article 38 is designed to protect spectators in emergency cases where all spectators wish to leave the stadium at the same time. In such an emergency case the stairs will be necessarily full of spectators. The spirit and purpose of Article 38 is to keep exit routes free of obstructions

such as sales booths, billboards, equipment etc. and not free of spectators. As no such obstructions were on the stairs, the provision of Article 38 was not infringed.

- The club has instructed a reliable security firm to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions. Thus, we are not accountable for failures of this company.
- To recapitulate the club emphasizes that it did not act negligently in respect of the failure of the floodlight and consequential interruption of the game and the field invasion.

### **III. Written procedure**

8. No hearing was held, since the Appellant did not request oral proceedings and the Appeals Body did not raise any objection.
9. The Appeals Body examined the entire case file, in particular the challenged decision, the official reports, evidences and the grounds for appeal.
10. The parties' arguments are set out and examined below, as far as they are relevant to the decision.

### **IV. Appeals Body Competence and Admissibility of the Appeal**

11. Article 24 (4) DR states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
12. The club lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
13. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) DR).

### **V. Legal Considerations Of The Appeals Body**

#### **A. The legal framework.**

14. Pursuant to Article 52 of the UEFA Statutes, as well as Article 24 of the UEFA Disciplinary Regulations (DR), the Appeals Body is competent to deal with the case.
15. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

B. In the case in hand

16. First and foremost, it is recalled that the present appeal is directed to the €25'000 fine imposed on the club for the order issues and security outcomes occurred during the UEFA Europa League 2016/2017 match played between VfB Admira Wacker Mödling and FC Slovan Liberec 28 July 2016.

17. According to the delegate's report of the match:

*"When the lights were off, number 9 (Toni Vastic) from home team FC Admira Wacker squeezed his opponent's neck (No 9 from Slovan Liberec Jan Navrátil), pushed him to the ground and was therefore sent off with a red card because of violent conduct.*

*In 56th minute of the game the lights went off and the game stopped for 33 minutes.*

*In 74th minute the lights went off again and the game stopped for 9 minutes.*

*In 90th minute the lights went off again and the game stopped for 8 minutes.*

*A person entered the pitch in minute 80 and reached the middle of the pitch before the stewards could catch him.*

*Some of the stairs to the upper stand were blocked by standing spectators".*

18. In short, the club faced disciplinary proceedings for three different shortcomings: failure of the floodlights, field invasion and blocking of stairways.

**Failure of the floodlights**

19. In accordance with the UEFA delegate report, the game stopped in three different occasions – minutes 56, 74 and 90. The overall global period of stoppage lasted for almost 50 minutes.

20. In the light of the above, the Appeals Body must decide on the scope of the Appellant's responsibility for the mentioned and different failures of the floodlights during the match, if any.

21. According to Article 11 DR:

1. *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.*

2. *For example, a breach of these principles is committed by anyone:*
  - a. *who engages in or attempts to engage in active or passive bribery and/or corruption;*
  - b. *whose conduct is insulting or otherwise violates the basic rules of decent conduct;*
  - c. *who uses sporting events for manifestations of a non-sporting nature;*
  - d. *whose conduct brings the sport of football, and UEFA in particular, into disrepute;*
  - e. *who does not abide by decisions or directives of the UEFA Organs for the Administration of Justice, or decisions of the Court of Arbitration for Sport involving UEFA as a party or between two UEFA members associations;*
  - f. *who does not comply with instructions given by match officials;*
  - g. *who does not pay for tickets received from another club or national association;*
  - h. *who culpably reports late – or not at all – for a match, or is responsible for a late kick-off;*
  - i. *who culpably causes a match to be interrupted or abandoned, or is responsible for its interruption or abandonment;*
  - j. *who enters a player on a match sheet who is not eligible to play.*
  
22. According to Article 16 (1) DR, 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.
  
23. According to Article 43 UEFA Stadium Structure Regulations:
  1. *For matches that are being broadcast, the stadium must be equipped with a floodlighting system maintaining the following minimum average illuminance (calculated according to Annex I):*
    - a) 800 Ev(lx) towards fixed cameras
    - b) 500 Ev(lx) towards mobile cameras
  2. *In order to ensure that the match can proceed in the event of a power failure, an independent backup power supply able to provide at least two-thirds of the equivalent light intensity values must be available.*
  
24. This UEFA Appeals Body notes, here again, that the floodlight failed three times during the match. It provoked an overall match interruption of around 50 minutes.
  
25. It is important to highlight that UEFA Europa League stands as one of the most important football club competitions world-wide. Participants are requested to maintain the highest professional levels in order to provide both spectators and supporters around the world

the best possible football event. In this regard, to protect the smooth running of a match must be a priority for the match organisers.

26. It is a priority mainly for two reasons. First, sport's events are designed to have no external impacts that may stop the normal course of a sporting challenge. It goes without saying that the beauty of a sport spectacle becomes more evident the less it is interrupted by external events. In this regard, football games have different rhythms and stages of intensity throughout their playing time. When interruptions take place, these cut off the normal rhythm, intensity and course of the game. Consequently, the smooth running of a sport event is core to its proper development.
27. Second, and in relation to the first point, to protect the smooth running of the match is also aimed to prevent undue impacts on the integrity of a sporting event. Such impacts may have a direct influence on the final result. For obvious reasons this is not acceptable.
28. In short, if a sporting governing body would allow external interferences in football games, it would become a nonlinear sport. This would blatantly be against its very essence and objectives. In this regard, it seems clear that impacts on the smooth running of the match have to be taken very seriously by UEFA.
29. In the case in hand, the match was stopped at three different occasions because the floodlights of the stadium failed. In an overall, the match stopped for about 50 minutes.
30. According to the UEFA Stadium Structure Regulations, the match organiser bears the responsibility for maintaining the appropriate average illuminance (Article 43 (1) UEFA Stadium Structure Regulations). In particular, Article 43 (2) UEFA Stadium Structure Regulations foresee that in the event of a power failure, an independent backup power supply must be able to provide at least two-thirds of the equivalent light intensity.
31. Consequently, even in cases in which a power failure occurs, some prevention must take place in order to safeguard the smooth running of the match or to minimize the consequences of this failure. This was not the case during the match in which the club was unable to solve the issue almost during the whole match – last system failure took place at the 90 minute.
32. The arguments of the club about the fact that the system is installed and regularly serviced proving that the failure of the floodlight was most probably caused by too sensitive adjustment of the electronically configured circuit breaker, are not enough to prove that it diligently prepared the match.
33. This UEFA disciplinary body understands that the club bears the responsibility to maintain the minimum average illuminance and an alternative back-up power in accordance with the Article 43 UEFA Stadium Structure. The club did not prevent a situation which is not as unusual in football matches as pretended by the club and which is, indeed, foreseen and needs to be prevented as mentioned in the UEFA Regulations.

34. The fact that the match was stopped at several occasions during long periods of time - counting all of them about 50 minutes, that the last stoppage took place at the 90th minute and that the club implicitly admits that it was not prepared for this event, demonstrates that the club was not up to the task whilst preparing the match. In addition, it derives from the UEFA Stadium Structure Regulations that the match organiser, here the club, had indeed the obligation to maintain a minimum of illuminance and a back-up power supply in case of power failure.
35. Consequently, the club must be held responsible for the incident relating to the several failures of the floodlighting.

### **Blocking of stairways**

36. In the case in hand, the delegate reported that during the match "some of the stairs to the upper stand were blocked by standing spectators".
37. The question here is to assess again in which extent the responsibility of the match organiser is at stake in the occurrence of the above mentioned factual circumstances and in the light of the UEFA regulations.
38. According to Article 38 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
39. The club in its statements notes summarily that a few spectators standing on some of the stairs to the upper stand could not significantly impede the free flow of spectators. The spirit of Article 38 UEFA Safety and Security Regulations is not breached as it is to keep exit routes free of obstructions such as sales booths, billboards, equipment etc. and not free of spectators.
40. This UEFA Appeals Body does not comply with the Appellant's assertions. This is so in the extent that CAS had already the opportunity to deal with this question. In this regard it is confirmed that UEFA's competence to adopt security regulations which protect the spectators is in particular foreseen in Article 2 of the UEFA Statutes in lit. d): "organise and conduct international football competitions" and lit. j): "ensure that the needs of the different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account". Security regulations which protect the spectators are based on the objective to "organise and conduct international football competitions" and to "ensure that the needs of the different ... supporters ... in European football are properly taken into account" (CAS 2015/A/3926 Schalke FC vs UEFA).
41. As regards the present case, the UEFA Appeals Body complies with the CAS in that it is proportional that the stairs in a stadium have to be kept free of obstructions. It appears obvious that if the stairways are kept free, the evacuation of spectators is easier. Standing or sitting on the stairways may not necessarily lead to an incident, in most cases it leads



to no incident. But it may lead to an incident, with grave consequences, as the 1985 Heysel stadium tragedy has shown. People can be killed in crowd movements if escape ways are obstructed. To prohibit standing on the stairways is a very light intervention. It is easy to apply: all spectators have an assigned seat and can therefore stand in front of the assigned seat. If this light intervention is compared to its purpose, the safety of the spectators in an emergency-situation, these rules are obviously proportional. UEFA is entitled based on the association autonomy to regulate for the benefit of the safety of the spectators a norm that requires the organizer of a football match to keep the stairways free.

42. Again, Article 38 of the UEFA Safety and Security Regulations reads: "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". The focus of this rule is clearly that the stairs must be kept "free of any obstructions" and not only obstructions, which could impede the free flow of spectators. If the rule would only apply to those obstructions which impede the free flow of spectators, the rule would be very difficult to apply, since the effect of the obstruction would always have to be considered when applying the rules (CAS 2015/A/3926 Schalke FC vs UEFA).
43. Finally, according to Article 38 of the UEFA Disciplinary Regulations "facts contained in official UEFA reports are presumed to be accurate. Proof of the inaccuracy may, however, be provided." This provision creates a "regulatory assumption", that the statements contained in official UEFA reports are correct. This regulatory assumption shifts the burden of proof to the Appellant in this case. In this regard, the Appellant confirms the facts contemplated in the official report. Consequently, there can be no doubt that stairs to the upper stand were blocked by standing spectators as inferred by the delegate in his report.
44. In the light of the above, this UEFA disciplinary body conveys with the first instance decision and deems that the club is to be held responsible for the blocking of stairways incident.

### **Field invasion**

45. In the case in hand, a person entered the pitch in minute 80 and reached the middle of the pitch before the stewards could catch him.
46. The club considers, summarily, that it acted diligently when organising the match. It took all measures to ensure order and security at the match. It also considers that the supporter invading the pitch was not one of its own. This person has already invaded the field three times in three different matches in the past.
47. Here again, the Appeals Body needs to examine if from the inappropriate attitude of the invader a responsibility arises towards the Appellant, even in a situation in which it allegedly bears no fault. In this regard, this UEFA disciplinary body will first analyse the goal pursued by this provision, second, the strict liability principle connected to these

kind of incidents and, third, the notion of supporter which links the inappropriate attitude of the latter with the responsibility of the club.

48. Because of the potential risk of invasions for security reasons, as nobody is aware of the real intentions of the intruders at the time of the incident, as well as the possible disturbances that may be attached with such conducts, invasions are strictly forbidden.
49. It is however not necessary that any person is injured or any further security issue may result from these actions, before a sanction can be taken. In addition, both the attempt of field invasion as well as the field invasion in itself are under the scope of action of Article 16 (2) DR.
50. As regards the responsibility of the club, the principle of strict liability as described in Articles 8 and 16(2) DR implies that the club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (*CAS 2002/A/423 PSV Eindhoven*). Remarkably, the club is even liable for the inappropriate behaviour of its supporters at away matches where the away team's scope of action in matters of security is very limited (*CAS 2013/A/3047 FC Zenit St. Petersburg vs Football Union of Russia*).
51. The *ratio legis* of this approach relies mainly on the fact that UEFA acts by means of the clubs to impose UEFA's objectives on supporters behaving inappropriately. In brief, clubs are responsible for conforming to the standards and spirit of the UEFA regulations. In this regard, CAS infers that if clubs were able to extricate themselves from any responsibility by claiming that they had taken all measures they could reasonably be expected to take to prevent any breach of the UEFA rules, and if supporters still manage to commit such an act, there would be no way of penalising that behaviour, even though it constituted a fault in itself. UEFA's rules of conduct would therefore be nothing more than vague obligations, since they would be devoid of any sanctions. By penalising a club for the behaviour of its supporters, it is in fact the latter who are targeted and who, as supporters, will be liable to pay the penalty imposed on their club. This is the only way in which UEFA has any chance of achieving its objectives. Without such an indirect sanction, UEFA would be literally powerless to deal with supporters' misconduct if a club refused to take responsibility for such behaviour (*CAS 2007/A/1217 Feyernoord Rotterdam vs UEFA*).
52. Finally, as for the notion of supporter, it is recalled that this concept is an open one. CAS accepts UEFA's approach in its regulations to the notion of supporters, which leaves an open definition and provides UEFA with a more comprehensive and reasonable scope of action on disciplinary matters. The use of the term "supporter" must remain open in order to be able to act against conducts by individuals that could harm the aims and values of UEFA. (*CAS 2007/A/1217 Feyenoord vs UEFA*).
53. In this regard, the UEFA Appeals Body finds that several particular circumstances of this specific case must be taken into account and should lead to the objective and reasonable conclusion that the perpetrator was in this sense in fact a supporter of the club. Briefly,

the person is admittedly Austrian as he apparently was also involved in other incidents taken place in matches played in this country, he came from the main stand which is reserved mainly to home supporters and the delegate in his report allocated this action to a home supporter. The fact that this person is mentally disordered is not proven and is still irrelevant for the notion of supporter used by UEFA in its legal framework.

54. Following the above, the club is responsible for the invasion taken place during the above mentioned match in accordance with Article 16 (2) DR.

C. Determination of the disciplinary measure

55. It is the Appeals Body's constant practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the Appeals Body, none of this applies here.
56. The Appeals Body 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 – to the extent of its power of appreciation – and proportionality.
57. On the basis of the above, the Appeals Body has no option but to uphold the initial decision and reject the appeal.

**VI. Costs**

58. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) DR).
59. It is considered justified to charge all of the costs of this case to the Appellant, whose appeal is rejected on all counts.
60. In this case, since these proceedings were conducted in writing, the costs are limited to the appeal fee paid already by Appellant. Consequently, the costs of the proceedings are € 1'000.

## Decision of 12 October 2016

Legia Warszawa

(crowd disturbance)

**Circumstances of the case**

On 16 September 2016, disciplinary proceedings were opened against Legia Warszawa for incidents related to crowd disturbances, setting off of fireworks, throwing of objects, insufficient organization, blocking of stairways and racist behaviour occurred during the UEFA Champions League 2016/2017 match Legia Warszawa (hereinafter “the club” or “the Appellant”) vs. Borussia Dortmund played on 14 September 2016. In addition, it was reported that in the 30th minute of the match, between 15 and 20 of the club’s supporters tried to force entry into the sector 122 where the Borussia Dortmund supporters were seated. Some of the said supporters were masked with balaclavas. According to the relevant reports, these supporters were stopped by stewards and the police, which resulted in disorder and made fans fleeing from the area. In addition to the above, the club’s supporters stole pepper spray from stewards and used it against the latter’s faces. It was reported that some of the stewards were contaminated, as well some supporters, some of which were women and children.

The CEDB considered the behavior of the club’s supporters as particularly severe acts of hooliganism - a particularly serious offence. As well as posing a risk to the safety and security of supporters, such behavior is all the more unacceptable because it tarnishes the image of football, of UEFA and the UEFA Champions League. The CEDB found that, taking into account that the said incidents also affected the security and safety of women and children, made the situation even more intolerable. The CEDB therefore decided to impose a full stadium closure for its next home-match as well as a fine of €80’000.

**Legal framework** Article 16 (2) DR.

**Decision**

Due to the acts of the Appellant’s supporters and the unsafe situation which was created through the violence and the attacks committed by the Appellant’s supporters, an unforeseeable security risk had been created, which was rightfully regard as an aggravating circumstance by the CEDB. As a consequence, the Appeals Body decided to reject the appeal of the club and to confirm the decision of the CEDB in its entirety.

Ad-hoc Chairman: Michael Maessen (Netherlands)

Vice-chairman: Levent Bıçakcı (Turkey)

Members: Björn Ahlberg (Sweden)  
Gianluca D’Aloja (Italy)

## I. Facts Of The Case

1. 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's decision of 28 September 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 these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. On 16 September 2016, disciplinary proceedings were opened against Legia Warszawa for incidents related to crowd disturbances, setting off of fireworks, throwing of objects, insufficient organization, blocking of stairways and racist behaviour occurred during the UEFA Champions League 2016/2017 match Legia Warszawa (hereinafter "**the club**" or "**the Appellant**") vs. Borussia Dortmund played on 14 September 2016.
3. In substance, according to the report of the UEFA match delegate and the UEFA security officer had reported that at the time of the teams lining-up, a very large number of Bengal lights were ignited in the North Stand upper & lower, occupied by the club's supporters.
4. Moreover, it was reported that in the 30<sup>th</sup> minute of the match, between 15 and 20 of the club's supporters tried to force entry into the sector 122 where the Borussia Dortmund supporters were seated. Some of the said supporters were masked with balaclavas. According to the relevant reports, these supporters were stopped by stewards and the police, which resulted in disorder and made fans fleeing from the area. In addition to the above, the club's supporters stole pepper spray from stewards and used it against the latter's faces. It was reported that some of the stewards were contaminated, as well some supporters, some of which were women and children.
5. Finally, the relevant official UEFA reports suggest that all stairways in the North stand and one stairway in the East stand were blocked by the club's supporters. Furthermore, after the conclusion of the match, the UEFA match delegate and the UEFA security officer were informed by the referee that in the 63<sup>rd</sup> minute of the match, one plastic bottle was thrown onto the field of play by the club's supporters.
6. On 28 September 2016, the Control, Ethics and Disciplinary Body decided to order the Appellant to play its next UEFA competition match as host club behind closed doors for the crowd disturbances and to fine the club €80'000 for the setting off of fireworks, the throwing of objects, the illicit chants, the insufficient organization and the blocking of stairways. The proceedings for racist behaviour have been closed.
7. On 28 September 2016, the decision without grounds of the Control, Ethics and Disciplinary Body was notified to the Appellant.

8. On 3 October 2016, the decision with grounds was notified to the Appellant.
9. On 4 October 2016, the Appellant announced its intention to appeal.
10. On 7 October 2016, the Appellant provided UEFA with the grounds for its appeal, which can be summarized as follows:

The crowd disturbances

- Regarding the crowd disturbances, it fully supports the opinion of UEFA that such actions are unacceptable as they tarnish the image of football including the image of the club, UEFA and the whole UEFA football family.
- The club accepts its strict liability for the behaviour of its supporters, i.e. it does not intend to undertake actions aiming for its full release from liability with regards to crowd disturbances which occurred during the match.
- However, the club stressed that the incident had no ongoing character and only a very small part of the club's supporters watching the match in the vicinity of the relevant sector 123 was disrupted by such incident which in fact lasted precisely one minute 40 seconds.
- Several mitigating circumstances have not been taken into account by the Control, Ethics and Disciplinary Body panel, which may have led the Control, Ethics and Disciplinary Body to the misleading opinion concerning the incident that occurred in sector 123. In particular with regard to the crowd disturbances, the Control, Ethics and Disciplinary Body did not take into account mitigating circumstances which made the decision disproportionate.
- The club undertook all necessary measures to ensure the safety of the visiting-team's supporters before, during and after the match. The area dedicated to the away-team supporters was monitored and well secured by the police at all time. Additionally, the club fully cooperated with the away-team's administration to provide a safe and secure environment for the away-team supporters.
- Contrary to the allegations included in the decision of the Control, Ethics and Disciplinary Body, excluding the crowd disturbances in the 28<sup>th</sup> minute of the match, no other incidents were observed between away- and home-team supporters or with the police. In particular, the statement presented by the Control, Ethics and Disciplinary Body that the club's supporters also stole riot shields from the police is not in line with what really happened. As confirmed by the police, no incidents occurred between the club's supporters and the police. In addition, it should be observed that the police intervention only took place already after the crowd disturbances were controlled by the security personnel present at the stadium.
- While the club acknowledged that some of the scenes might appear as a danger to the health and well-being of other supporters, it should be highlighted that due to the timely and professional actions taken by the club's security, the outcome was that not a single away- or home-team supporter, steward, member of the club's security or any police officer was injured during the incidents. Therefore, the club cannot agree with the conclusion indicated in the Control, Ethics and

Disciplinary Body decision that *"punching and kicking to the side, the back of the head of the stewards deployed in the sector severely endangered their health and safety"*, this especially in view of the fact that only two persons of the security personnel were physically attacked during the incident, however without being injured or needing medical treatment. Also the allegation in the Control, Ethics and Disciplinary Body decision that women and children were being hurt is untrue and misleading.

- Security immediately restored order so quickly that spectators in the adjacent VIP sector did not even realize that the incident occurred. Also the match was neither delayed nor stopped at any time. The high level of professionalism, efficiency and cooperation of the club with the police and the security personal was also confirmed in the report of the UEFA security officer who had reported that the security stewards and the police responded *"very quickly and the Legia ultras were forced to escape."*
- The club stated that it identified the hooligans who took part in the incident and will impose bans on all of them, this in full cooperation of the club's officials with the police. In total, 19 people responsible for the prohibited conduct and crowd disturbance during the match.
- While the club admits that its supporters are responsible for the crowd disturbance, in the club's opinion the behaviour of the away-supporters has to be taken into account as a mitigating circumstance. Even though only a small number of the away-team supporters engaged in such provocative behaviour, nevertheless such actions caused anger and negative responses from the club's supporters.
- Regarding the disproportionality of the sanction, the club argued that in the previous years, the Control, Ethics and Disciplinary Body only twice imposed the sanction of a match behind closed doors for reasons related to racist and discriminatory behaviour. Even in this racist cases, the sanctions were deferred for a probationary period of two years.
- The disproportionality of the sanction imposed by the Control, Ethics and Disciplinary Body can be also seen when comparing the incident with other incidents that occurred during other football matches in 2014 (FC Dnipro Dnipropetrovsk vs. F.C. Kobenhavn, AC Sparta Praha vs. SK Slovan Bratislava) and where restoring order took several minutes as well as it delayed the game and endangered the health of supporters and players. The club stressed that even in these cases the sanctions were much more lenient and even in the one case where a stadium closure was imposed, the sanction was deferred by the Control, Ethics and Disciplinary Body. In the abovementioned cases of FC Dnipro Dnipropetrovsk and AC Sparta Praha, the clubs also had already been punished for the improper conduct of its supporters, before a more lenient sanction was imposed on the clubs.
- The club referred to its "NO TO AGRESSION" policy it introduced during its matches, addressing inappropriate behaviour by its supporters, educating and informing its supporters and ultra-groups that the club will not tolerate such conduct at the stadium.
- The club has made numerous improvements of the organization and the stadium infrastructure in the last six years, installing CCTV monitoring systems, construct additional fences in order to decrease attempts of unauthorized movements of



supporters within the stadium. This confirms that the club is efficient in its actions aiming to tackle improper behaviour at the stadium and that the incidents under scrutiny here should be considered as extraordinary and individual.

#### Setting off of fireworks

- Regarding the setting off of fireworks, the club admits that pyrotechnics were used by its supporters during the match, but stressing that the fireworks were used solely as an element of an ultra-choreography at the start of the match.
- Such choreography in any way did not affect the course of the match, the fireworks were not thrown and the match was not delayed or stopped, neither did they generate damage to the stadium or supporters.
- The club understands the seriousness of the breach but stressed that it is doing its best efforts to fight such actions in the stadium. The club admits that such behaviour should not be allowed in the stadium while also pointing to the fact that its supporters are regularly given awards for their artistic settings during various matches, which makes it even more difficult to eliminate such behaviour.
- The club held numerous meetings with the relevant ultra-groups who had promised to not use pyrotechnics during the next matches, which the supporters respected in the club's next match in the domestic league against Lechia Gdansk. This should be also taken as a mitigating circumstance.

#### Throwing of objects

- The club criticises that the Control, Ethics and Disciplinary Body did not take into account the immediate disciplinary sanctions that were undertaken by the club after the match, given that the supporter who threw the object was identified and sanctioned with a stadium ban of two years.
- Moreover, the match was not stopped or delayed due to the throwing and the object did not land in any close range to any of the players.

#### Insufficient organization

- The club performs a detailed body-search procedure at the entrance of the stadium before every match, including monitoring of clothes, bags and all other items, this by personnel trained in accordance with professional European standards. Especially in the North Stand of the stadium, 43 stewards and private security personnel was employed by the club.
- The club stressed that this is the first time the club received a negative remark concerning the standards of body-searching. Nonetheless, the club will undertake additional measures to increase the precision of the body-searching as well as the number of private security-personnel in the area.

### The blocking of stairways

- The club is aware of the conditions existing at the North stand of the stadium during the match. However, it needs to be taken into consideration that the match was treated as one of the most important matches for the club as well as for the club's supporters in the last 20 years. The club admits that it is facing these problems regularly, but the club is constantly trying to improve the situation and to impose actions and internal regulations to make the North stand as safe as possible.

### Conclusions

- The decision of the Control, Ethics and Disciplinary Body was taken without the full examination of the relevant evidence regarding the crowd disturbance and the Control, Ethics and Disciplinary Body did not take into account mitigating circumstances of the case.
- In consequence, a disciplinary measure of playing the next home-match behind closed doors is not proportionate and not in accordance with the previous jurisprudence of the UEFA disciplinary bodies.

### Pleadings

- To amend the Control, Ethics and Disciplinary Body decision in regards to the crowd disturbances ordering the Appellant to play its next UEFA competition match as host club behind closed doors, by deferring the imposed sanction for a probationary period of two years, or
  - alternatively by imposing a sanction of € 70'000, or
  - alternatively by imposing a sanction of a ban from selling tickets to supporters for one away match.
  - To uphold the Control, Ethics and Disciplinary Body decision in part of fining the Appellant with € 80'000.
11. Also on 7 October 2016, an UEFA Ethics and Disciplinary Inspector, Mr. Jean-Samuel Leuba, was appointed to reply to the Appeal of the Appellant.
  12. On 10 October 2016, the UEFA Ethics and Disciplinary Inspector submitted his report.
  13. Briefly, the most relevant facts established by the UEFA Ethics and Disciplinary Inspector in his reply are to be summarized as follows:
    - The Control, Ethics and Disciplinary Body correctly took into account all the circumstances when determining the sanction. In particular, it should be remembered, when assessing the disciplinary measures imposed, that multiple offences were committed and that the appellant has been punished for many similar offences in the past.

### The crowd disturbances

- The first-instance Control, Ethics and Disciplinary Body decision stated that Article 16 (2) (h) DR was violated when a group of the club's supporters suddenly and violently invaded sector 123. These ultras wore balaclavas or masked their faces in other ways, some of them attacked stewards and took their pepper spray before using it against them very aggressively. In particular, however, the video footage provided by the UEFA security officer shows the level of violence with which some of the ultras punched and kicked the stewards. It also shows them using and throwing a police riot shield.
- Finally, it proves that there was a complete lack of order and security in the sector concerned for a period of time, and that the gang of ultras caused a sudden movement of spectators that could have created panic. Unfortunately, past events show the tragic consequences that a sudden crowd movement in the stand can create (in particular the Heysel stadium disaster in Brussels).
- The appellant tries to underplay the seriousness of these incidents and the aggressive, violent conduct of its ultras. In particular, it reiterates several times that there was no fighting between its supporters and those of the visiting club, Borussia Dortmund. It also points out that there was no fighting between its supporters and the police. However, these arguments cannot hide the violence with which its supporters attacked the stewards. The fact that none of them was seriously injured is due more to luck than any element of control over the situation. These ultras' behaviour is totally unacceptable, since it seriously endangered not only the stewards who were attacked, but also all the spectators in the sector concerned.
- The appellant also claims that its supporters were provoked by visiting supporters. Although it is true that some Borussia Dortmund supporters misbehaved, there is absolutely no connection between their misconduct and the sudden, violent invasion of the stand by a gang of ultras. On the contrary, it could even be suggested that these ultras had intended to cause trouble from the start, whether by fighting the opposing supporters, the stewards or the police. The fact that all their faces were masked backs this up.
- The violence that broke out in a sector of the Legia Warszawa stadium was shocking and cannot be tolerated at a UEFA competition match, especially a UEFA Champions League match. Such behaviour and images tarnish not only the appellant's reputation, but also those of the UEFA competition and football in general.

### The setting off of fireworks

- The club did not deny the occurrence of the incidents while referring to the artistic choreography and that the fireworks were not thrown. These different arguments do not make the offences any less serious. Indeed, the ignition of any firework seriously endangers the physical integrity of nearby spectators. UEFA and match organisers cannot tolerate the use of any such device, since they can cause serious injury.

- Finally, the club's argument that its supporters did not set off any fireworks at its most recent domestic league match is irrelevant. The absence of such devices should be the norm, not an exception that merits a more lenient sanction.

#### The throwing of objects

- The offence committed cannot be considered less serious simply because nobody was struck or, indeed, injured by the projectile. Indeed, the throwing of objects can endanger the physical integrity of those on the pitch (players or match officials) as well as disrupting the orderly running of the match. Therefore, there is no mitigating circumstance in this case.

#### Insufficient organization

- As the first-instance body stated, the very fact that a huge number of fireworks were taken into the stadium, whether by supporters of Legia Warszawa or of Borussia Dortmund, demonstrates that the body searches at the stadium entrances were inappropriate.
- Either an insufficient number of searches were carried out or the searches were not rigorous enough. The appellant produces a video recording showing one of the stadium entrances at which searches were carried out. However, this video does not prove that appropriate searches were conducted at every stadium entrance. Moreover, the mere fact that a large number of fireworks were taken into the stadium by supporters of the two teams is ample evidence that the checks were insufficient, whether in terms of number or quality.
- The reports and photographs in the case file show the extent of the infringements. The huge number of fireworks ignited inside the stadium by the Legia Warszawa and Borussia Dortmund supporters posed a very high risk of accidents and could have caused serious injuries. The obligation to conduct adequate searches is specifically designed to prevent such dangerous devices being brought into football stadiums. In the present case, the fact that so many fireworks were taken into the stadium shows that the searches were inadequate in the extreme.

#### The blocking of stairways

- The appellant does not deny this offence, but points out that measures have since been taken to ensure that such behaviour is not repeated in future. It should be noted that, according to the UEFA security officer, the stewards made no attempt to clear the blocked stairways (cf. page 3 of the UEFA security officer's report). The obstruction of public passageways (such as stairways and corridors) in the stands could, if an incident occurs, prevent security personnel from intervening or supporters from evacuating the area.

#### Conclusion

- The Control, Ethics and Disciplinary Body took all the circumstances into account when it determined the disciplinary measures to be imposed against the club. The large number of different offences, namely six, which were mainly security-related, and the club's long list of previous offences justify the sanction that was imposed.
- The club is wrong to call for Article 17 (2) DR to be applied. The mitigating circumstance through which the immediate reaction of the host club may be taken into consideration only applies to offences related to Article 16 (2) (e) DR which is not the case here.
- When determining the disciplinary measures, the multitude of offences committed must be taken into account. Virtually all the offences committed by the club endangered the safety of the spectators inside the stadium. The huge number of fireworks is one example. In particular, however, the violent behaviour of some of the club's ultras warrants an appropriate sanction. It is clear that safety could no longer be guaranteed in one of the stands for a period of the match.
- The choice of disciplinary measures should also take into account the club's large number of previous offences, which, unfortunately, are similar in nature to those in the present case (fireworks, throwing of objects, blocking of stairways, crowd disturbances, etc.). Previous punishments have tended to take the form of fines. In this case, fines appear to have no effect whatsoever on the appellant's supporters, in particular the ultras. Indeed, the repetition and number of offences committed by these supporters justify the first-instance body's decision to close the club's stadium. This is the only type of sanction that will make the ultras realise how their behaviour affects both the club and its supporters. The sanction of one match to be played behind closed doors therefore appears proportionate, i.e. appropriate in order to achieve its objective, and measured, in view of the club's disciplinary record and the number of offences committed in this case

#### Pleadings

- The appeal lodged by the Appellant against the Control, Ethics and Disciplinary Body's decision is rejected, and the decision confirmed.
  - The costs of the appeal procedure are charged to the Appellant.
14. On 12 October 2016, the UEFA Appeals Body held its meeting, during the course of which a hearing was held in the presence of the legal representatives of the Appellant and the UEFA Ethics and Disciplinary Inspector.
  15. The ad-hoc-Chairman of the Appeals Body opened the appeal hearing, noted the presence of the Appellant and the UEFA Ethics and Disciplinary Inspector.
  16. Afterwards, the ad-hoc-Chairman 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.

17. The floor was given to the parties, who, in substance, reiterated the arguments given in their written pleadings and developed and maintained their requests.

## **II. Appeals Body Competence and Admissibility of the Appeal**

18. Article 24 (4) DR states as follows: “The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.”
19. Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
20. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) DR). In view of the competence of the Appeals Body to evaluate the case on a *de novo* basis, taking into account that the Appellant has made extensive pleadings not only as to the so-called crowd disturbances (despite its prayer for relief), but also as to the usage of fireworks inside the stadium by the Appellant’s supporters, the throwing of objects, the blocking of stairways and the alleged insufficient organization by the Appellant as organizer of the relevant match, the Appeals Body had competence to review the incidents in their factual entirety.

## **III. Legal Considerations Of The Appeals Body**

### The crowd disturbances

#### A. The legal framework.

21. According to Article 16 (2) (h) DR, clubs are liable for the 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, such as lack of order or discipline observed inside or around the stadium.
22. According to Article 8 DR, which stipulates the principle of “strict liability”, and Article 16 (2) DR, which builds upon this principle, a member association is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
23. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

B. In the case at hand

24. To begin with, the Appeals Body recalled that the crowd disturbances under scrutiny in this case were not disputed by the Appellant and that the Appellant for the most part only disputes the proportionality of the sanction which was imposed by the Control, Ethics and Disciplinary Body in its decision. However, the Appeals Body noted that the Appellant disagrees with some details contained in the official UEFA reports as they were also established in the decision of the Control, Ethics and Disciplinary Body.
25. Therefore, the Appeals Body started by recalling the facts of this case and the exact sequence of events which were considered as “crowd disturbances” by the first instance UEFA disciplinary body.
26. As it can be seen on the video evidence which was provided by the UEFA Security officer and by the Appellant in the proceedings before this Appeals Body, supporters of the Appellant suddenly violently entered the relevant block, throwing kicks and punches in the direction of the stewards, trying to rush into the adjacent block where the supporters of the visiting team, Borussia Dortmund, were seated. The perpetrators were masked, wearing balaclavas and covering their faces, took away protective shields and pepper sprays from the surprised stewards, and immediately used such sprays against the latter, violently throwing said shields at the stewards. It can be seen that one stewards was kicked in his back or neck, while another was violently punched from the side, making him fall to the ground for a short moment, before jumping down a row in order to escape.
27. It can also be seen that as soon as the attacks started, the spectators in this sector immediately tried to escape and flee the area in an uncontrolled and hectic manner. Among these supporters, several women and children can be seen, most of them covering their faces in order to avoid getting affected by the pepper spray which was used by the Appellant’s supporters against the stewards and which started affecting the whole area. After less than two minutes, the area which was attacked by the Appellant’s supporters and which was affected by the pepper spray is mostly empty, whereas fleeing spectators are closely crowded together as they are apparently not able to quickly leave the area at once.
28. Following the incident, the supporters of Borussia Dortmund themselves engaged in angry shouting and pointing towards the now mostly empty sector where the incidents took place, before the police finally appears several minutes later, entering the sector of the Borussia Dortmund supporters.
29. Already at this point, after thorough evaluation of the video evidence which was provided during the course of the proceedings before the Control, Ethics and Disciplinary Body and before the Appeals Body, the Appeals Body came to the conclusion that contrary to what the Appellant was trying to suggest in its pleadings, the relevant incidents can not only be labelled as “crowd disturbances” as it was mentioned by the Control, Ethics and Disciplinary Body, but as a severe form of hooliganism. The level and the intensity of the violence shown by the Appellant’s supporters are absolutely detestable and should have



no place in football in general, and definitely not in the UEFA Champions League, i.e. on European football's biggest stage.

30. In this context, the Appeals Body believed that for the assessment of this case, it was not of a vital importance whether the riot shields, which were clearly thrown by the Appellant's supporters, were stolen by the latter from the police or from the stewards. In the view of the Appeals Body, after having reviewed the relevant video evidence, the official UEFA reports and the decision of the Control, Ethics and Disciplinary Body were very accurate when describing the incidents.
31. Given that the Appellant does not dispute the occurrence of the events, the Appeals Body was convinced that the Control, Ethics and Disciplinary Body rightfully assumed a violation of Art. 16 (2) (h) DR, stressing that the letter of the wording of Art. 16 (2) (h) DR, i.e. the term "*any other lack of order or discipline observed inside the stadium*" does not even closely cover the acts of hooliganism performed by the Appellant's supporters.
32. In this regard, it therefore remained 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 to sanction the Appellant with a full stadium closure for its next home-match.

C. Determination of the disciplinary measure

33. The Appeals Body recalled that the appeal of the Appellant was almost in its entirety directed against the proportionality sanction, i.e. the stadium closure and the match behind closed doors during its next home-match.
34. The Appeals Body further recalled that the Appellant had based its defence on the assumption that the Control, Ethics and Disciplinary Body had failed to assess and take into consideration the full circumstances of the case as well as mitigating circumstances in favour of the Appellant, which should have led to a more lenient sanction.
35. In this regard, the Appeals Body's recalled that it is its constant practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the Appeals Body, none of this applies here.
36. The Control, Ethics and Disciplinary Body first mentioned the previous record of the Appellant, according to which the Appellant has already been punished with respect to crowd disturbances. This point was also raised by the UEFA Ethics and Disciplinary Inspector who had stated that the Appellant has repeatedly been sanctioned with fines for the behaviour of its supporters and was also already sanctioned with a ban for selling tickets to its away-supporters. In this regard, after evaluating the previous record of the club, the Appeals Body noted that since the 2013/2014 season, more than 20 separate

disciplinary proceedings had been opened against the Appellant, this *inter alia* for crowd disturbances and severe cases of setting off of fireworks, which had always been sanctioned with fines of increasing amounts by the Control, Ethics and Disciplinary Body.

37. In this regard, the Appeals Body referred to Art 19 (2) DR according to which recidivism counts as an aggravating circumstance. Taking into account that the Appellant has received a very high number of “warning shots” in the past three seasons and that it must have been aware of its problems with its hooligans supporters, the Appeals Body concurred with the opinion of the Control, Ethics and Disciplinary Body that these previous records had to be regarded as an aggravating circumstance, calling for more severe sanctions than the ones already imposed in the past.
38. The Appeals Body then turned its attention to the second circumstance which was been taken into account by the Control, Ethics and Disciplinary Body, i.e. the seriousness of the offences committed. In this regard, the Control, Ethics and Disciplinary Body had referred to the extreme violence committed by the Appellant’s supporters against stewards, police and the danger for other spectators, in particular also women and children. The Control, Ethics and Disciplinary Body had further stated that hooliganism completely contradicts UEFA’s values and principles and is one of the most serious problems confronting sport today as it creates a serious issue for the organisers of sports competitions, as it runs contrary to all possible expectations of a fair, smoothly run, peaceful and joyful sport event which intends to unite different cultures around the world by means of playing a common sport, as is the case with football.
39. The Appeals Body fully agreed with such interpretation of the Control, Ethics and Disciplinary Body. Even though it appears like the riot shields which were thrown by the Appellant’s supporters had not been stolen from the police but from the stewards, this is, as it was stated above, completely irrelevant when determining the seriousness of the offence. The fact that shields were used as weapons, pepper spray was intensively used against stewards, affecting the whole sector and therefore innocent bystanders, is absolutely unacceptable anywhere in the world, and particularly in a football stadium.
40. Also, the Appeals Body could not agree with the interpretation of the Appellant that the intensity of the incident was rather low since it only lasted a couple of minutes, only two stewards were attacked and no other spectator reported any injuries to the staff in the stadium. From the video images it becomes absolutely clear that extreme violence (e.g. kicks, punches, pushing) was directed against the stewards, and the fact that apparently nobody was seriously injured is a matter of mere luck. The Appeals Body was – contrary to what the Appellant had alleged – convinced that the intensity of the crowd disturbances and the violence used by the Appellant’s supporters were shockingly high. Also any alleged provocations by some few Borussia Dortmund supporters cannot serve as justification.
41. When the attack on the sector started, people started escaping the area, covering their faces in order not to get affected by the pepper spray which was deployed in the area. On the video images, women and children could be seen in panic, being pushed by and

within the crowd. The UEFA Ethics and Disciplinary Inspector had mentioned the Heysel stadium disaster in Belgium, where a mass panic has led to the death of 39 people and 454 being injured. Even though luckily no such catastrophe has happened in the match of the Appellant against Borussia Dortmund and even though the Appellant had rebutted such comparison in the hearing, the risk of a mass panic breaking out is exactly at its biggest when people are aimlessly and in fear or panic escaping from a dangerous situation. This was exactly the case here and could have led to a great danger for the other spectators.

42. In view of the aforementioned, the Appeals Body had no understanding whatsoever for the Appellant's attitude according to which apparently as long as nobody was injured, it could not have been that dangerous. Due to the acts of the Appellant's supporters and the unsafe situation which was created through the violence and the attacks committed by the Appellant's supporters, an unforeseeable security risk had been created, which was rightfully regarded as an aggravating circumstance by the Control, Ethics and Disciplinary Body. Even though the stewards in the stadium have done their best to contain the danger by putting their own life and safety at risk, this cannot serve as a mitigating circumstance in favour of the Appellant, as it rather raises the question whether the Appellant had done enough to prevent such an escalation of violence in the first place.
43. In this respect, the Appeals Body also acknowledged that the Appellant failed to explain how the hooligan perpetrators even managed to reach the relevant sector in order to attack it. The Appellant on numerous occasions tried to explain the effectiveness and professionalism of its security measures, which is why it is even more incomprehensible for the Appeals Body that despite the clear instructions given in the UEFA Safety & Security Regulations, namely Art. 37 (1) SSR which states that match organisers must ensure and take measures that spectators cannot move from one sector to another, a group of 25 masked hooligans manages to simply enter another sector without being stopped by the security personnel before. This raises serious concerns about the level of security in the stadium and puts in question whether the Appellant has really done everything in order to prevent such an event from occurring, as it appears like the attack was prepared in a more professional way than the relevant security measures in the respective sector.
44. In a next step, the Appeals Body took note of the third aggravating circumstance mentioned in the decision of the Control, Ethics and Disciplinary Body, the poor image given of UEFA competitions, UEFA itself and football overall. As it was acknowledged by the Appellant himself, the behaviour of its supporters tarnishes the image of football including the image of the club, UEFA and the whole football family.
45. The Appeals Body fully agreed with such an interpretation. The Appellant participates in the UEFA Champions League which is not only the biggest European club competition featuring the biggest clubs in European football, but is also transmitted to countries all over the world, broadcasted on a worldwide scale. The same goes for the images

produced by the Appellant's hooligans in the match under scrutiny, which were transmitted live into millions of homes and featured on news channels all over the world.

46. The Appeals Body is strongly convinced that in the UEFA Champions League, clubs should participate with their best teams in order to compete on the highest level. But the same should go for the clubs and their supporters. UEFA cannot allow a club and its supporters to tarnish and endanger the image of the game of football in general, and the UEFA competitions in particular, by acts of violence, hooliganism and crowd disturbances, which is contrary to all possible expectations of a fair, smoothly run, peaceful and joyful sport event which intends to unite different cultures around the world by means of playing a common sport, as is the case with football – as it was rightfully stated by the Control, Ethics and Disciplinary Body.
47. The Appeals Body then turned its attention to the two other cases of crowd disturbances mentioned by the Appellant in its submissions, which had been reviewed during the hearing. The Appeals Body also took note of the Appellant's argument that since no match behind closed doors had been imposed against any of the clubs involved, in view of the legal principle of equal treatment, an equal and hence similar, more lenient sanction, should have been imposed on the Appellant, whereas the sanction imposed by the Control, Ethics and Disciplinary Body was disproportionate.
48. However, after thorough analysis of the relevant video footage, the Appeals Body could not concur with the explanations and interpretations of the Appellant. The abovementioned legal principle requires a disciplinary body to treat equal cases equally, whereas it, by the same token, expressly forbids to treat unequal cases equally. In this legal context, the Appeals Body wanted to stress first that the fact that more lenient sanctions had been imposed on different clubs for different incidents has no imperative effect on future decisions, as every decision making body has room for interpretation and a legal range in which it can operate and from which it can chose an appropriate sanction.
49. With this being established, the Appeals Body also emphasized that none of the other clubs mentioned by the Appellant, i.e. neither FC Dnipro Dnipropetrovsk nor AC Sparta Praha, had such a long and elaborated history of disciplinary violations like the Appellant. Therefore, already based on the above, the legal basis for the legal assessment and comparison of these cases was not "equal", which would have imperatively lead to an equal sanction.
50. Likewise, the Appeals Body noticed that in the case of FC Dnipro Dnipropetrovsk, the incidents occurred in a basically empty stadium, which is obviously not comparable to the incidents under scrutiny in these proceedings where acts of violence and acts of hooliganism in a sold out stadium, causing a whole block to escape form the danger. Moreover, even in said case the club was sanction with a match behind closed, deferred for a probationary period of two years. As regards the case AC Sparta Praha, the Appeals Body noted that the club was also sanctioned with a match behind closed doors, a sanction which was also deferred for a period of two years.

51. It can therefore be seen that a match behind closed doors is the sanction which is usually imposed for such crowd disturbances, whereas it is within the discretion and the legal scope of the Control, Ethics and Disciplinary Body to defer the sanction or not. However, in this case, the Appeals Body could not see how the Control, Ethics and Disciplinary Body would have exceeded its power of discretion when ordering the match behind closed doors without a probationary period, as the first instance body had sufficient reason to believe and has sufficiently given explanations as to that the sanction as it was imposed was appropriate and proportionate.
52. In this context, the Appeals Body further referred to the proceedings against the Russian Football Union during the 2016 UEFA European Football Championship in France, where the latter was charged by the UEFA disciplinary bodies with an exclusion from the competition under probation, i.e. an even more severe and impactful sanction. It can therefore be seen that the sanction against the Appellant was not even on the top of the range of possible sanctions that can be imposed for crowd disturbances, and that even more severe sanctions would have been possible.
53. The Appeals Body also agreed with the explanation given by the UEFA Ethics and Disciplinary Inspector, who had argued that the Appellant has been sanction with financial fines on more than 20 occasion, none of which have had an effect on the organization by the club or the behaviour of its supporters. In this regard, the Appeals Body took note that the Appellant, according to its own assessment, has improved on basically all areas related to order and security in the stadium and the Appeals Body definitely has sympathy for the approach, the positive attitude and the effort the Appellant is allegedly undertaking to improve the situation.
54. As it is obvious from these proceedings, an even increased effort is obviously needed. In this regard, on a preliminary basis, the Appeals Body stressed that a proactive attitude and the willingness to guarantee order and security in the stadium is not only needed, but also to be expected from a club which wants to compete and participate on the highest European level.
55. Furthermore, the Appeals Body stressed, after again recalling the previous record of the club, that despite the alleged increased efforts of the Appellant with regard to order and security in the stadium, allegedly increasingly preventing its supporters from engaging in acts of violence, the throwing of objects, the setting off of fireworks, the efforts were obviously not sufficient. Not only have the same incident been reoccurring over and over again, but neither did it have a positive influence on the intensity of the incident. In particular in view of the massive usage of fireworks in the match against Borussia Dortmund and the high intensity of violence used by its hooligans, the explanations and the policy of appeasement by the Appellant are just not credible. It is not sufficient to constantly point to one's own efforts and improvement, when the result, which is violence and lack of safety and security in the stadium remains unchanged. Therefore, neither these alleged but unsuccessful efforts by the club, nor its "NO TO AGRESSION" campaign needed to be taken into account as mitigating circumstances by the Control, Ethics and

Disciplinary Body, as these circumstances are not fit to compensate for the behaviour of its supporters and its apparent shortcomings in order and security in the stadium.

56. In this regard, the Appeals Body had to acknowledge that the video footage of the Appellant from which some minutes of the body searches at the entrance to the stadium could be seen, had no evidential value. In the opinion of the Appeals Body, four-and-a-half-minutes of surveillance footage of body searching at the stadium have no evidential value when only an hour later hundreds of fireworks are used in an enormous choreography by the very supporters who should have been prevented from bringing such items to the stadium in the first place.
57. In view of the above, the Appeals Body was further convinced that the Control, Ethics and Disciplinary Body was absolutely right in imposing the sanction of a match behind closed doors without deferring the sanction for a probationary period of two years, as it was requested by the Appellant, and instead of imposing a more lenient sanction such as a ban of selling tickets to away supporters. It is correct that measures like a probationary period can, in theory, be applied in order to induce a change in the behaviour of supporters and to show and educate them that their actions will not be tolerated, while also showing the match host and organizer that it needs to increase its security measures in a massive way. However, the Appeals Body was of the firm belief, as it was established above, that such instrument only makes sense if a real change in behaviour can be expected from the relevant supporters and if the relevant match organiser, i.e. here the Appellant, did what was expected from it.
58. Unfortunately, the Appeals Body was convinced that this was not the case here. In this regard, the Appeals Body pointed again to the shockingly long previous record of previous infringements by the club and its supporters, as well as to the fact that the Appellant has received numerous warnings and second chances in order to take the necessary measures to solve the obvious hooligan issues the Appellant is facing. However, none of the previous sanctions have led to any improvements by the Appellant or its supporters whatsoever, as the incidents have obviously become rather worse as it can be seen from the violent acts of hooliganism under scrutiny here, as well as the massive and unprecedented usage of fireworks by the Appellant's supporters. Even a previous ban for selling tickets to away supporters did not have any effect apparently, which is why the Control, Ethics and Disciplinary Body rightfully not imposed such sanction yet again.
59. As regards the Appellants pleading to be sanctioned with more lenient sanctions such as the ban of selling tickets to away supporters or even only a financial sanction, i.e. a fine, the Appeals Body could not in the slightest way agree with such pleading. First of all, the disgraceful incidents happened at a home-match of the Appellant and not at an away-match. So even though the Appellant tries to suggest also during the hearing the worst hooligans especially travel to away matches, this only shows the Appeals Body how devastating the security situation is at the club as the incidents in Warszawa was not able to guarantee order in security inside its own stadium, which is exactly what the match behind closed doors in Warszawa effectively tackles.



60. Moreover, the Appeals Body could not see how the Control, Ethics and Disciplinary Body would have come to a different conclusion as regards the sanction which was effectively imposed. First, in view of the intensity and the seriousness of the incidents, secondly taking into account that the Appellant has failed to improve the apparent and worrying safety- and security situation at the stadium and the Appeals Body could not see the alleged progress the Appellant was constantly referring to, while thirdly also considering that in the situation at hand, the Appellant had also failed to explain how these hooligan supporters even managed to storm through the relevant sector and attack the sector of the Borussia Dortmund supporters and how it was possible that none of the described alleged security measures were capable of stopping the incident from happening, the Appeals Body fully agreed that the full stadium closure was the only and appropriate sanction which had to be imposed on the Appellant.
61. Finally, the Appeals Body referred again to the decision of the Control, Ethics and Disciplinary Body where it was stated that the Control, Ethics and Disciplinary Body warns the club that it should increase its efforts to prevent the type of behaviour that occurred in the present case from happening again, as further instances may result in even stronger disciplinary measures being imposed. Bearing in mind this warning, the Appeals Body came to the conclusion that the Control, Ethics and Disciplinary Body did not exceed or abuse its power of discretion when it order the Appellant to play its next home-match behind closed doors. In view of the above, the Appeals Body was convinced that the Control, Ethics and Disciplinary Body did not even reach the maximum of which sanctions could have been imposed, as even harsher sanctions could have been imposed on the Appellant for the behaviour of its supporters during the UEFA Champions League match against Borussia Dortmund.
62. As a consequence of all of the above, the Appeals Body decided to reject the appeal of the Appellant and to confirm the decision of the Control, Ethics and Disciplinary Body in its entirety.

#### **IV. Costs**

63. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) DR).
64. It is considered justified to charge all of the costs of this case to the appellant, whose appeal is rejected on all counts.
65. Consequently, the costs of the proceedings are € 4'000.





UEFA  
ROUTE DE GENÈVE 46  
CH-1260 NYON 2  
SWITZERLAND  
TELEPHONE: +41 848 00 27 27  
TELEFAX: +41 848 01 27 27  
[UEFA.com](http://UEFA.com)

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