rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr. Massimo **Coccia**, Professor and Attorney-at-law, Rome, Italy
Arbitrators:	Mr. Efraim **Barak**, Attorney-at-law, Tel-Aviv, Israel
	Dr. Martin **Schimke**, Attorney-at-law, Düsseldorf, Germany
Ad hoc clerk:	Mr. Francisco A. **Larios**, Attorney-at-law, Florida, USA

in the arbitration between

Football Association of Serbia

Represented by Dr. Marco Del Fabro and Mr. Roy Levy, Attorneys-at-law, Winterthur, Switzerland

- Appellant -

and

Union des Associations Européennes de Football (UEFA)

Represented by in-house counsel Dr. Emilio García Silvero and Mr. Carlos Schneider, Nyon, Switzerland

- Respondent -

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Football Association of Serbia against a decision of the UEFA Appeals Body dated 2 December 2014 (hereinafter the "Appealed Decision") upholding the decision of the UEFA Control, Ethics and Disciplinary Body (hereinafter also the "CEDB") dated 23 October 2014, which sanctioned the Football Association of Serbia with a deduction of three points in the 2016 UEFA European Championship qualifying round, two home matches behind closed doors and a fine of EUR 100,000.

II. THE PARTIES

2. The Appellant, the Football Association of Serbia (also referred to as the "Appellant" or the "FAS"), is the football governing body in the Republic of Serbia. It is a member of FIFA and UEFA and has its headquarters in Belgrade, Serbia.

3. The Respondent, the Union des Associations Européennes de Football (also referred to as "UEFA" or the "Respondent"), is the governing body of European football and one of the six continental confederations of FIFA. It has its headquarters in Nyon, Switzerland.

III. FACTUAL BACKGROUND

4. This section of the award sets out a brief summary of the main facts, as relevant and as established on the basis of the Parties' written submissions, the CAS file and the content of the hearing that took place on 16 April 2015. Additional facts are set out, where material, in other parts of this award.

5. On 14 October 2014, the national teams of Serbia and Albania played each other in a qualifying match for the 2016 UEFA European Championship (hereinafter the "Match"). The Match took place at the Partizan Stadium in Belgrade, Serbia. The Match referee was Mr. Martin Atkinson, from the United Kingdom (hereinafter also the "Match Referee").

6. A total of 25,550 spectators attended the Match. Due to an agreement reached between the FAS and the Football Association of Albania (hereinafter also the "FAA"), no Albanian supporters attended the Match. In fact, only approximately 100 individuals

particular when the Albanian national anthem played – and throughout the Match, the Serbian supporters chanted xenophobic slogans including "*Ubi Shiptara*" (translated from Serbian to English as "*Kill the Albanians*").

9. It is undisputed by the Parties and confirmed by the official reports of the Match Referee and UEFA officials that prior to the 42nd minute of the Match, the Serbian supporters committed the following incidents:

   - throwing a fire cracker onto the field from the section near the players' tunnel in minute 13;
   - burning a NATO flag in minute 14;
   - setting off two flares, one of which was thrown onto the field and landed by the corner flag nearest to the players' tunnel in minute 15;
   - using a laser pointer to disturb Albanian players in minute 24;
   - throwing a number of flares and objects when the Albanian side attempted to take a corner kick in minute 35; and
   - throwing two large lumps of rock towards the Albanian side's technical area in minute 38.

10. It is also undisputed by the Parties and confirmed by the same reports that, in minute 41 of the Match, a number of unknown Serbian supporters set off and threw a number of flares, one of which landed on the field and caused the Match Referee to stop play.

11. During this stoppage, a drone carrying a banner depicting the map of an area that is sometimes referred to as "Greater Albania" – an area said to comprise the territory of Albania along with various parts of Serbia, Montenegro, Macedonia and Northern Greece, as well as Kosovo, and considered to form the lost national homeland of Albanians – and showing several Albanian nationalistic symbols was seen to hover above the field. Upon spotting the drone, one of the Serbian players, Mr. Danko Lazović, alerted the Match Referee of the drone's presence. The Match stoppage continued as the drone hovered over the field.

12. Eventually, the drone began descending closer to the ground, until it was observed to come within reaching distance of a Serbian player, Mr. Stefan Mitrović, who reached the banner and began pulling the drone down by the cords from which the banner hung.

commotion. One of them went straight to headbutt Mr. Xhaka in the back of the head.

15. As this was occurring, a number of Serbian supporters invaded the field. The exact number is unclear, as the video footage available in these proceedings does not allow the number to be ascertained with precision. The Appellant claims that about 15 Serbian supporters invaded the field, while the Respondent considers 50 to be a fair count.

16. One of the Serbian supporters who invaded the field was observed to grab a plastic chair (which appertained to one of the security stewards around the field), and to then run with it all the way to the rim of the center circle, and then use the chair to hit one of the Albanian players, Mr. Bekim Balaj, on the shoulder. This same Serbian supporter then attempted to tackle Mr. Balaj, but instead took down the Albanian captain, Mr. Lorik Cana, who had intervened, seemingly to prevent an escalation of the scuffle. As they fell to the ground, a security steward was seen to run towards them, and, with his fists seen to be clenched, to throw punches. It is disputed between the Parties, however, whether the punches were aimed at the Albanian player or the Serbian supporter. The Panel finds, nonetheless, that based on a close examination of the evidence before it, that the security steward's punches were intended to hit the Albanian player.

17. In other parts of the field of play, the following facts were observed (i) a Serbian supporter punched the Albanian player, Mr. Mergim Mavraj; (ii) a Serbian substitute player punched the Albanian player, Mr. Ermir Lenjani, in the face; (iii) a Serbian substitute player punched the Albanian player, Mr. Orges Shehi; and (iv) a notorious Serbian supporter, Mr. Ivan Bogdanov, accompanied by other Serbian supporters, walked calmly around the field waving and clapping his hands to incite the crowd (Mr. Bogdanov is recognized as an individual who took center stage in, and even faced criminal charges for, the incidents that occurred in 2010 during the 2012 UEFA European Championship qualifier match between Italy and Serbia).

18. From the stands, the Serbian supporters were observed to throw objects, including chairs, at the Albanian side's bench.

coins, bottles and chairs. At the entrance of the players' tunnel, the Albanian players were met by two Serbian supporters who physically attacked them with shoves, punches and kicks.

21. One of these two Serbian supporters, after attacking the Albanian players at the entrance of the tunnel, subsequently walked to the nearest corner flag and calmly sat down beside it. No security personnel approached him. He remained there until one of the Serbian players urged him to leave the field. As the supporter stood up, one of the security stewards was observed to walk right in front of him and to wave his arms up and down as though to encourage the crowd to chant louder. After the security steward passed, instead of returning to the stands, as the Serbian player had urged him to do so, the Serbian supporter attempted to enter the players' tunnel. A security steward who was inside the players' tunnel stopped him from doing so and finally escorted him off the field.

22. Once all players and officials returned to their respective dressing rooms, a crisis group meeting was held. It was attended by the Match Referee Mr. Atkinson, Mr. Harry Been (the UEFA Match Delegate), Mr. Vincent Egbers (the UEFA Security Officer), Mr. Lutz Michael Fröhlich (the referee observer), Mr. Zoran Laković (the General Secretary of the FAS), Mr. Aleksander Bošković (the Serbian national team manager), Mr. Armand Duka (the President of the FAA) and Mr. Milivoj Mirkov (the Security Officer of the FAS). During this time, according to the evidence before the Panel, the UEFA officials were apparently in constant dialogue with the UEFA Match Centre in Nyon (Switzerland), and in particular, with Mr. Kenny Scott (UEFA Consultant and Security Adviser).

23. According to the evidence before the Panel, the UEFA personnel at the UEFA Match Centre apparently encouraged the UEFA officials in the Belgrade stadium to try to resume the Match once safety was ensured and the UEFA officials adopted this view.

24. While the Match was suspended, the FAS security officials gave assurances that extra police forces and stewards were being sent into the stadium to control the unruly fans and increase the level of protection of the field of play.

IV. RELEVANT UEFA DISCIPLINARY REGULATIONS 2014

27. The following provisions of the UEFA Disciplinary Regulations, Edition 2014 (hereinafter "DR"), are relevant to this case:

28. Article 6 ("Disciplinary measures") provides:

"1 The following disciplinary measures may be imposed on member associations and clubs:

a) warning;
b) reprimand;
c) fine;
d) annulment of the result of a match;
e) order that a match be replayed;
f) deduction of points (for the current and/or a future competition);
g) order that a match be forfeited;
h) playing of a match behind closed doors;
i) full or partial stadium closure;
j) playing of a match in a third country;
k) withholding of revenues from a UEFA competition;
l) prohibition on registering new players in UEFA competitions;
m) restriction on the number of players that a club may register for participation in UEFA competitions;
n) disqualification from competitions in progress and/or exclusion from future competitions;
o) withdrawal of a title or award;
p) withdrawal of a licence;
q) community football service.

[...]

3 Fines must not be less than €100 or more than €1,000,000. In the case of individuals, a fine may not exceed €100,000.

4 The above-mentioned disciplinary measures may be combined."

29. Article 8 ("Responsibility") provides:

"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

time, or any other appropriate sanction.

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

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

a) a second offence is punished with one match played behind closed doors and a fine of € 50,000;
b) any subsequent offence is punished with more than one match behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.

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

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

[…]."

31. Article 16 ("Order and security at UEFA competition matches") provides:

"1 Host associations and clubs are responsible for order and security both inside and around the stadium before, during and after matches. They are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organisation of the match.

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

a) the invasion or attempted invasion of the field of play;
b) the throwing of objects;
c) the lighting of fireworks or any other objects;
d) the use of laser pointers or similar electronic devices;

"1 The competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances.

[…]."

33. Article 18 ("Concurrent offences") provides:

"If the party charged has committed multiple offences, the disciplinary body takes the disciplinary measure to be imposed for the most serious of those offences and increases it accordingly."

34. Article 19 ("Recidivism") provides:

"1 Recidivism occurs if another offence of a similar nature is committed within:

[…]
d) five years of the previous offence in all other cases.

2 Recidivism counts as an aggravating circumstance."

35. Article 38 ("Official reports") provides:

"Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided."

V. DECISION OF THE CONTROL, ETHICS AND DISCIPLINARY BODY

36. The CEDB found that the FAS committed the following offences:

- The setting off of fireworks in violation of Article 16 para. 2(c) DR;
- The throwing of objects in violation of Article 16 para. 2(b) DR;
- The use of laser devices in violation of Article 16 para. 2(d) DR;
- Crowd disturbances in violation of Article 16 para. 2(h) DR;
- A field invasion in violation of Article 16 para. 2(a) DR;
- Illicit chants in violation of Article 16 para. 2(e) DR; and
- Insufficient organisation in violation of Article 16 para. 1 DR.

Championship qualifier match between Italy and Serbia in 2010, UEFA sanctioned the FAS with a fine of EUR 120,000 and ordered it to refrain from ordering tickets for Serbian supporters for all away matches in that stage of the competition, as well as ordered the match forfeited by the FAS;

- the fact that stones and dangerous objects were thrown at the Albanian team's bench, putting at jeopardy their safety;
- the fact that a high number of supporters entered the field (including the criminal Ivan Bogdanov, who entered and left the field without any opposition whatsoever from security) despite there being approximately 4,000 policemen, security officers and stewards surrounding the field, which illustrates the poor security measures taken to protect the field of play;
- the fact that a supporter was able to hit an Albanian player with a plastic chair, placing him in great danger, which illustrates the poor security measures taken to protect the field of play;
- the fact that poor behaviour of the spectators greatly tarnished the image of UEFA and the world of football; and
- the behaviour of the stewards, particularly that the stewards were involved in a fight between players and supporters instead of trying to calm down the situation, which illustrates the negligent attitude of those responsible for guaranteeing safety at the Match, as well as the poor security measures taken to protect the field of play.

38. The CEDB concluded:

> "*101. As regards the appropriate disciplinary measures, the* [CEDB] *deems that, in this particular case, the extent of such measures needs to fulfill two conditions: to punish the Association for being liable, strict and direct, for the occurrence of such despicable incidents and to impose those disciplinary measures that may lead to deter such incidents from happening again.*
>
> [...]
>
> *107. First and foremost, the* [CEDB] *deems that a situation in which security has been completely override*[n], *the integrity of players has been directly harmed and the game had been stopped as a consequence of the surge created by the* [FAS'] *supporters with the Albanian players and security representatives, merit the most serious punishment possible.*

for the current 15th UEFA European Championship qualifying round is, as a first approach to the determination of an adequate disciplinary measure, a decent first step as to achieve the above aims, which shall certainly be accompanied with other sanctions aimed at balancing the damage provoked to the world of football, as well as to ensure the deterrent effect expected when imposing such measures.

110. Bearing the above in mind, the [CEDB] *deeply doubts that in further matches to be played by the* [FAS] *as the host team such regretful attitudes won't happen again. It derives from the fact that some years ago, and only a few matches distance from the* [FAS] *A-team playing at UEFA level, incidents of the same nature and gravity occurred even with the same protagonists, as it has been the case for the criminal called Ivan Bogdanov.*

111. Subsequently, the [CEDB] *has no doubts in that additional disciplinary measures shall touch both the Association and the supporters.*

112. Therefore, the [CEDB] *deems that, apart from the exclusion of the competition which this UEFA disciplinary body is temped, but hesitates to take, and bearing in mind all the above circumstances, as well as the above considerations, the adequate additional disciplinary measures* [to the three-point deduction] *are: to order the* [FAS] *to play their next two (2) UEFA competition matches as host association behind closed doors, as well as to fine* [FAS] *€100'000.*"

39. In light of the above, the CEDB decided to (i) deduct the FAS three points for the current UEFA European Championship qualifiers; (ii) order it to play its next two UEFA competition matches as host association behind closed doors; and (iii) fine it EUR 100,000.

VI. DECISION OF THE UEFA APPEALS BODY

40. On 2 December 2014, the UEFA Appeals Body adopted the decision now in appeal before the CAS. On 22 December 2014, the same body issued the grounds for its decision.

41. The UEFA Appeals Body explained in the Appealed Decision that, since the FAS did not contest the order to play its next two UEFA competition matches as host

- Illicit chants in violation of Article 16 para. 2(e) DR, citing specifically that the FARE report and the video footage evidences that the Serbian supporters chanted "*Ubi Shiptara*" ("*Kill the Albanians*");
- Use of a laser device in violation of Article 16 para. 2(d) DR;
- Throwing of objects and lighting fireworks in violation of Article 16 para. 2(b) and (c) DR, respectively;
- Insufficient organisation in violation of Article 16 para. 1 DR. The UEFA Appeals Body held that, as established by the UEFA official reports and the CEDB decision, several security and organisation failures of the FAS permitted a number of supporters to invade the field and attack the Albanian players. The UEFA Appeals Body noted that on top of that a known criminal, Mr. Ivan Bogdanov, freely and without any opposition entered and left the field, illustrating the poor security measures taken to protect the field of play; and
- Field invasion in violation of Article 16 para. 2(a) DR. The UEFA Appeals Body stressed that a field invasion is fundamentally unacceptable and rejected the FAS' allegation that the invasion was linked to the appearance of the drone carrying the banner with the map of "Greater Albania" and to the subsequent grabbing of the banner by the Albanian players. To the UEFA Appeals Body, the FAS' allegation was unsupported by the video footage of the Match, which shows that even before the appearance of the drone the Match Referee had already interrupted the Match due to the behaviour of the Serbian supporters.

43. The UEFA Appeals Body subsequently assessed whether aggravating and mitigating circumstances existed.

44. The UEFA Appeals Body considered the following as aggravating circumstances: (i) the throwing of rocks at the Albanian team's bench; (ii) the fact that Albanian players were actually attacked; (iii) the "*appalling*" disciplinary record over the past four years of the FAS, with particular reference to the 2012 European Championship qualifiers match between Italy and Serbia in Genoa in 2010; (iv) the fact that the Match Referee had to interrupt the Match in the first place due to flares and other objects being thrown by the Serbian supporters onto the field.

45. With regards to mitigating circumstances, the UEFA Appeals Body found as follows:

the Albanian supporters' displaying of the banner was clearly reprehensible, and the Control, Ethics and Disciplinary Body has already quite rightly, held the Football Association of Albania responsible for their conduct. However, this does not entitle the Serbian supporters to take justice into their own hands by invading the pitch and attacking the Albanian players. It is important to remember that the referee, who held full authority for matters on the pitch, was the only person empowered to take a decision, and that all other parties were obliged to submit to his authority and respect it under all circumstances. The presence of the banner cannot constitute an exonerating or mitigating factor for such misconduct on the part of the Serbian supporters (...)".

(ii) Second, the alleged safety measures taken by the FAS were not a mitigating circumstance; the UEFA Appeals Body so reasoned: "*the measures allegedly taken by the* [FAS] *to guarantee safety, although laudable, form part of the general duties of any UEFA member association participating in UEFA competitions. In the case at hand, the* [FAS] *appears however to have failed in taking some of the security measures expected by UEFA from an organizing federation. The training of the steward seems to have been insufficient as a steward, who was supposed to be well trained (...) instigated supporters to behave in a bad manner. However, how can a steward who is supposed to be well trained incite supporters to behave in such a way? How can a well trained steward attack an opposing player? It is thus legitimate to agree with the Control, Ethics and Disciplinary Body's conclusion that there was a lack of organisation on the part of the organiser.*"

46. In light of the above, the UEFA Appeals Body concluded: "... *the* [CEDB] *correctly interpreted the applicable regulations and case law in the case at hand. It took account of all the facts in proper proportion. The seriousness of the offences committed by the home supporters, i.e. illicit chants, throwing of missiles and fireworks, pitch invasion and other security breaches, warranted a severe penalty. In fact, considering the very poor disciplinary record of the* [FAS], *the punishment seems rather lenient. There is certainly no reason to amend the* [CEDB]*'s decision.*"

Arbitration (hereinafter the "CAS Code") and Article 62 para. 1 of the UEFA Statutes, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter the "CAS") to challenge the Appealed Decision, taken on 2 December 2014 and notified to the Parties on 22 December 2014.

49. In the Statement of Appeal, the Appellant submitted an application for provisional measures requesting a stay of execution of the sanctions imposed by the UEFA Appeals Body, in particular with regard to the three-point deduction.

50. Following the CAS Court office's invitation to the Respondent on 6 January 2015 to state its position with regard to the application for provisional measures submitted by the Appellant, the Respondent filed its answer to said application on 12 January 2015.

51. On 27 January 2015, the Appellant filed its Appeal Brief.

52. On 5 February 2015, the CAS notified the Parties of the formation of the Panel constituting of Mr. Massimo Coccia, Mr. Efraim Barak, designated by the Appellant, and Dr. Martin Schimke, designated by the Respondent.

53. By letter of 9 February 2015, the CAS Court Office notified the Parties that the Panel ordered (i) the Respondent, in accordance with the first paragraph of Article R44.3 of the CAS Code, to produce and provide the CAS with audio recordings of the hearing in the underlying procedure within three days; (ii) the Respondent, in accordance with the second paragraph of Article R44.3, to produce and provide the CAS with the complete, official video footage, including any and all available camera feeds, of the Match between Serbia and Albania; (iii) the Appellant, within 14 days of receipt of the audio recordings of the hearing in the underlying procedure, to transcribe all testimonies and any other declarations rendered in that hearing on which it intended to rely. Furthermore, the Panel granted the Appellant 14 days from receipt of the aforementioned audio recordings and of the Match video footage to file its comments on them and suspended, until receipt of said comments and the transcript of the underlying procedure, the Respondent's 20 day limit for filing its answer, including its own comments on the audio recordings and Match footage.

attending the hearing.

56. On 9 March 2015, the Appellant submitted the transcript of the underlying hearing and its comments, in which the Appellant requested to admit "*new evidence*" relating to a decision of the African Football Confederation to the record.

57. On 11 March 2015, the Respondent agreed to admit the Appellant's "*new evidence*", all the while indicating, *inter alia*, that it considered such evidence as completely irrelevant for the case at hand.

58. On 19 March 2015, the Appellant informed the CAS Court Office that the following individuals would be in attendance at the hearing: Mr. Zoran Lakovic (General Secretary of the FAS), Mr. Nebojsa Ivkovic (Head of Legal of the FAS), Mr. Zoran Damjanovic (Counsel of the FAS), Dr. Marco Del Fabro (Counsel of the FAS), Mr. Roy Levy (Counsel of the FAS) and Mrs. Maja Trifunović (Independent Interpreter). The Appellant further indicated that the following individuals would testify as witnesses:

- In person: Mr. Zoran Lakovic;
- By telephone or in person, if required: Mr. Millivoj Mirkov (Security Officer of the FAS) and Mr. Zeljko Pantić (Chief of stewarding services);
- By telephone: Mr. Stefan Mitrovic (football player of the Serbian team).

59. Also on 19 March 2015, the Respondent indicated that UEFA would be represented at the hearing by Mr. Carlos Schneider (UEFA Disciplinary Lawyer), Dr. Jan Kleiner (Counsel for UEFA) and Dr. Emilio García Silvero (UEFA's Head of Disciplinary and Integrity).

60. On 10 April 2015, the CAS Court Office sent the Parties the Order of Procedure and requested them to sign it by 13 April 2015. It also advised the Parties that all witnesses not present at the hearing would be allowed to testify by video link only. Finally, the CAS Court Office invited the Appellant to file a witness statement for Mr. Laković by 13 April 2015 as a condition to having him testify at the hearing.

Olympic Committees (ANOC) in Lausanne, Switzerland.

64. In attendance at the hearing were for the Appellant's side Mr. Zoran Lakovic, Mr. Nebojsa Ivkovic, Mr. Zoran Damjanovic, Dr. Marco Del Fabro, Mr. Roy Levy and Mrs. Maja Trifunović, and for the Respondent's side Mr. Carlos Schneider, Dr. Jan Kleiner and Dr. Emilio García Silvero, all under their respective titles cited *supra* at para. 58 and 59.

65. The only witness heard in person at the hearing was Mr. Zoran Lakovic. Mr. Zeljko Pantić (Chief of stewarding services) and Mr. Stefan Mitrovic (football player of the Serbian team) both testified by video link.

66. At the outset of the hearing, the Parties confirmed that they did not have any procedural objections, nor any objections as to the constitution and composition of the Panel. The Panel disclosed on the record that the Arbitrators Prof. Massimo Coccia and Mr. Efraim Barak would be speakers in September 2016 at a seminar on "*CAS system and procedures*" organized by UEFA within the context of the educational programme entitled "*UEFA Football Law Programme*". The Parties confirmed that they did not have any objection to the Panel's composition even after this disclosure.

67. At the end of the hearing, after their closing submissions, the Parties acknowledged that the Panel had respected their right to be heard and procedural rights.

VIII. OVERVIEW OF THE PARTIES' POSITIONS

68. The following is a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

VIII.1 *The Appellant: Football Association of Serbia*

69. The Appellant admits that prior to the appearance of the drone in minute 42 of the Match, the following incidents occurred: (i) three fire crackers/flares were thrown on to

70. For all incidents occurring prior to the drone incident in minute 42 of the Match, the Appellant accepts as a fair punishment (as it did before the UEFA Appeals Body) the sanction of playing two matches behind closed doors. At the CAS hearing of 16 April 2015, the Appellant clarified that this apportionment of the sanctions was not drawn from the Appealed Decision itself, but rather from the Respondent's Answer, which states that "*(...) Appellant has already accepted and considered fair the disciplinary measure of two matches behind closed door for the incidents occurred during the first 42 minutes of the match... Hence, the only question to be addressed by the Panel is whether, for extremely serious incidents occurred just after the 42nd minute of the match, the deduction of three points (...) and the fine of € 100'000 are justified and proportionate*" and "*(...) Appellant accepted not only before the UEFA Appeals Body but also in its appeal brief submitted to CAS, the disciplinary measure of two matches behind closed doors for the above-described incidents (...). Therefore, no further comments or discussions are needed in relation to these incidents.*"

71. As for all the incidents following minute 42 of the Match, the Appellant condemns them as "*intolerable*", and, with specific reference to the invasion of the field, as "*fundamentally unacceptable*"; notwithstanding, the Appellant believes it should be exonerated from these incidents because they were all "*a direct consequence of the massive provocation to the Serbian national pride associated with the statement of the fascist banner which was attached to the drone*" and would not have occurred but for such provocation. At minimum, the Appellant maintains that such provocation should be considered a mitigating circumstance that must be taken into account in assessing the appropriate sanction(s).

72. In support of its contention that the drone provoked all incidents after minute 42 of the Match, the Appellant submits that: (i) no Serbian spectators had run onto the field and there were no signs of escalation before the two Albanian players "*attacked*" Mr. Mitrović and took away the banner from him; and (ii) even the UEFA Ethics and Disciplinary Inspector, who represented UEFA before the UEFA Appeals Body, stated in his reply to the FAA's Appeal of 24 November 2014 that "[i]*n the case at hand, not only was a banner of a political nature (absolutely unrelated to football) displayed by the* [Albanian] *supporters, but its display was the catalyst of all the intolerable*

organisation under Article 10 para. 1 DR. For the Appellant, what matters is that it took the most intense security measures in the history of the FAS. In its view, it is unrealistic to expect security to be 100% effective and if that is UEFA's goal, then it will have to play all matches behind closed doors. At the hearing the Appellant added to this argument that (i) UEFA verified security before the Match, making no objections whatsoever and (ii) that it is far too simplistic to declare that since the incidents occurred, security was insufficient – one has to also take into consideration the circumstances surrounding the Match.

74. The Appellant argues that the sanctions UEFA imposed on it (i.e. a three-point deduction and a fine of EUR 100,000) are evidently and grossly disproportionate. The Appellant believes that UEFA imposed the three-point deduction only to ensure that neither team (the FAA having been declared the losers by forfeit in a separate CEDB decision) walked away from the Match with any points to their name. To support the alleged lack of proportionality of the sanction, the Appellant principally submits that:

1) It is unclear from reading the Appealed Decision which misbehaviour corresponds to which sanction, as the UEFA Appeals Body, like the CEDB before it, simply named all the infringements occurring during the Match, listed the aggravating circumstances, dismissed the mitigating circumstances, and, finally, proceeded to impose "*an overall sanction for everything that happened during the match*". As a result, the Appellant believes that UEFA has contravened Article 18 DR (see *supra* at para. 33). According to the Appellant, this unlawful act by the UEFA Appeals Body "*made it impossible for the Appellant to analyze the assessment of the sanctions*".

2) The UEFA Appeals Body wrongly considered some incidents as aggravating under Article 17 para. 1 DR, including (i) the behaviour of the security stewards, (ii) the FAS' disciplinary record, (iii) Mr. Ivan Bogdanov's attendance, and (iv) the Serbian supporters' misbehaviour.

   (i) First, according to the Appellant, no steward "*instigate*[d] *the crowd to behave in a bad manner*". The Appellant maintains that the security stewards were well-trained and that while it is true that one steward gestured to the crowd to chant louder, he did not wave for the crowd to come closer, nor did

(ii) Second, the Appellant is adamant that its disciplinary record cannot be described as "*appalling*". The Appellant argues that the UEFA Appeals Body only cites one match in support of its claim that the FAS has a poor disciplinary record – the UEFA European Championship qualifiers match between Italy and Serbia in 2010 – but this match took place 4 years ago, meaning that it is far-removed, and was played in Genoa, Italy, meaning that the FAS had no responsibility for the safety and security of the match.

(iii) Third, according to the Appellant, it had no legal right to prevent Mr. Ivan Bogdanov from entering the stadium, since under Serbian public law that could have only be accomplished if: (1) a court had imposed a ban on Mr. Bogdanov or (2) a steward had concluded by the behaviour of Mr. Bogdanov upon attempting to enter the stadium that he was under the influence of alcohol or drugs or that he was likely to behave in a violent way or to misbehave. Further, his purchase of a ticket could not be prevented given that under Serbian law an individual has the right with proper identification to purchase up to seven tickets. The purchaser becomes responsible for the other six attendees but the identity of those attendees remain unknown to the seller.

(iv) Finally, the Appellant contends that the Serbian supporters' misbehaviour cannot act as both a cause for a sanction and as an aggravating factor as that would be double punishment.

3) The UEFA Appeals Body failed to consider some mitigating circumstances under Article 17 para. 1 DR, including:

(i) UEFA's joint responsibility for the incidents occurring during the Match. The Appellant insists that UEFA allowed the Match to be played, despite being fully knowledgeable of the long lasting conflict between Serbia and Albania, and that, therefore, it is jointly responsible for the incidents occurring in that Match. The Appellant cites that in the past UEFA had intervened in other instances when delicate combinations of countries were selected into the same group (e.g. Armenia/Azerbaijan, Russia/Georgia, Russia/ Ukraine, and Spain/Gibraltar) yet failed to do the same with Albania and Serbia;

stadium); and (3) deploying 4,000 police officers (of which 1,000 were riot police) and 947 stewards in and around the stadium (i.e. more than 2/3 of all 1,200 available stewards), which was in the history of the FAS the highest number of police officers and stewards ever deployed in the Partizan Stadium. The Appellant disagrees with the UEFA Appeals Body's statement that "*the measures allegedly taken by the home team to guarantee safety, although laudable, form part of the general duties of any UEFA member association participating in UEFA competitions.*" To the Appellant, this statement is not supported by CAS 2013/A/3139 *Fenerbahçe SK v. UEFA*, which considered security measures taken as a mitigating factor;

(iii) that the security personnel at the Match managed to prevent a massive field invasion and as a result only 15 individuals succeeded in invading the field;

(iv) that the stewards did not have sufficient time to fully extend the tunnel to the field as is the ordinary procedure;

(v) that the Appellant filed criminal complaints against Mr. Bogdanov and the other individuals that invaded the field;

(vi) that the Serbian spectators were allegedly provoked by the banner of "Greater Albania" hanging from the drone. According to the Appellant, provocation should be considered a mitigating circumstance based on numerous laws and regulations. The Appellant cites Swiss tort law, under which prior provocation reduces the amount of indemnity which the wronged party may claim, as well as Swiss criminal law, under which a prior provocation may result in a reduced punishment. Additionally, the Appellant submits that various judicial bodies in football evidence that provocation is a mitigating factor. The Appellant refers, inter alia, to CAS 2014/A/3665, 3666 & 3667 *Luis Suarez, FC Barcelona & AUF v. FIFA*, where the CAS declared: "*Based on art. 39 par. 4 FIFA DC, all relevant factors and the degree of the Player's guilt shall be taken into account when imposing the sanction. In this view, it is first of all uncontested that the Player acted with intent when biting Mr Chiellini. Further, it is clear the Mr Chiellini did not provoke the Player, and*

has stubbornly refused to accept that provocation is a mitigating circumstance;

(vii) that the "*attack*" of the two Albanian players, Mr. Xhaka and Mr. Lila, on the Serbian player, Mr. Mitrović, triggered all the subsequent incidents; and

(viii) that the drone incident was unforeseeable.

4) The UEFA Appeals Body decision deviates from other decisions purportedly related to similar facts and circumstances. The Appellant points out that CAS jurisprudence, particularly CAS 2012/A/2821 *Bursaspor Kulübü Dernegi v. UEFA*, has held that a sanction may be disproportionate and may be reduced if a comparison with other similar cases shows such a deviation. As to comparable cases, the Appellant refers to the matches of Italy v. Croatia of 16 November 2014, Bulgaria v. Croatia of 10 October 2014, Romania v. Hungary of 11 October 2014, and FC Basel v. Real Madrid of 26 November 2014.

According to the Appellant:

> "*when comparing this case to previous cases of UEFA it becomes clear that the sanctions imposed on the Appellant are disproportionate. It seems that UEFA felt forced to deduct 3 points from the Appellant because it was forced to declare the match forfeit due [to] the Albanian team's refusal to continue to play. As the forfeit win means that the Appellant would receive 3 points, UEFA may have felt that in light of a kind of 'equal treatment of the parties' it should also deduct 3 points from the Appellant although the facts would not justify such a severe sanction*".

The Appellant also compares the present case with a CAF disciplinary case dated 5 February 2015, in which Equatorial Guinea was fined USD 100,000 and sanctioned with one match behind closed doors (the latter sanction suspended) because its Africa Cup of Nations match against Ghana was interrupted for 30 minutes due to the throwing of bottles by the home supporters and other violent incidents that led to injuries. The Appellant recognizes that CAF and UEFA are different regional confederations but maintains that since both confederations operate under the supervision of FIFA and apply their disciplinary codes, which have the same

Football Association of Albania v. UEFA & Football Association of Serbia the FAS is held responsible for the Match not being played in full and thus charged with a 0:3 forfeit, said forfeit would have to be considered in the present appeal as an additional sanction and taken into account in assessing the proportionality of Appealed Decision. In the Appellant's view, it cannot be sanctioned both with a forfeit and also with a deduction of three points as this would constitute double punishment and raise even higher the level of disproportionality of the Appealed Decision.

76. Finally, the Appellant requests, in the event that the CAS does not set aside the three-point deduction, that it suspends said deduction for a probationary period. According to the Appellant, UEFA often suspends severe sanctions as it did for example in the UEFA Appeals Body decision of 29 October 2012 against PAOK FC (2012/2013 July-December).

77. At the hearing, in support of its position, the Appellant called to be heard as witnesses Messrs. Zoran Laković (the General Secretary of the FAS), Zeljko Pantić (the Chief of Stewarding Services) and Stefan Mitrović (Serbian national team player).

78. Mr. Laković testified, *inter alia*, that:

i) he had organized many risky matches in the past, but that this was a very particular case ("*a security nightmare*") given that it was the first match between Serbia and Albania since 1967;

ii) the FAS took all security measures possible, having 4,000 policemen, 947 stewards and a security plan to which nobody at UEFA objected;

iii) the stewards were well-trained;

iv) the oil drum in the stadium (approved and checked by security personnel and police) was empty and used simply as a platform by the chant leaders, thus posing no security risk;

v) while the fans were highly provoked by the fascist banner on the drone, no Serbian supporters entered the field until after the two Albanian players ran aggressively towards and pushed Mr. Mitrović and took the banner away from him (Mr. Laković described this as an "*attack*" although he admitted that it was not a horribly intensive one);

vi) security personnel at the stadium prevented a "*huge*" number of Serbian supporters (around 100) from entering the field;

catalyst;

x) while these sorts of incidents are not expected in football in other parts of Europe, in countries like Serbia, Albania, Montenegro, and Russia, among others, it is a reality due to the many wars that have taken place and the existing political tensions;

xi) it would be problematic if all these countries would request not to play each other; and

xii) he had never seen a drone at a football match before and to this day does not know how its use at a football match can be prevented.

79. Mr. Pantić testified, *inter alia*, that:

i) 1,200 stewards work for him;

ii) the preparation for the Match lasted 2 months;

iii) at the Match there were 947 stewards, 109 of which surrounded the field at the beginning of the Match (usually only 40 or 50 stewards surround the field at the beginning of the Match);

iv) 2 security rings were set up, the first to remove suspicious individuals and the second to control tickets and search and remove from individuals dangerous objects and offensive banners;

v) a huge number of flares and firecrackers were removed from individuals;

vi) during the Match he was in constant communication with the FAS Security Officer and the head of police;

vii) one Serbian supporter managed to get through the stewards surrounding the stadium (who were three meters apart from each other), grab a chair and hit an Albanian player, but immediately thereafter the stewards captured him and removed him from the field;

viii) the field invasion occurred before extra security forces were sent to strengthen security;

ix) the steward accused of attacking Mr. Cana was actually trying to protect him and to punch the Serbian supporter who was lying underneath;

x) the steward who pumped up the crowd was fired and represented just 1 out of the 947 stewards working that day;

81. In light of the above, the Appellant requests in its prayers for relief (confirmed at the hearing) that the CAS:

> *"Declare the appeal of the Football Association of Serbia to be upheld.*
>
> 1. *Set Aside point 1, point 3 and point 4 of the Decision under appeal.*
> 2. *Declare that no deduction of any points is imposed on the Football Association of Serbia, or alternatively order that the deduction of three (3) points is suspended, or alternatively order that only one (1) point is deducted.*
> 3. *Order the fine of EUR 100,000 to be considerably reduced.*
> 4. *Declare to stay the execution of the Decision under appeal.*
> 5. *Declare that the costs of these proceedings shall be borne by UEFA and the Appellant shall be compensated for its lawyers' fees and all expenses in relation to this proceeding including the proceeding before the UEFA Appeal Body.*"

VIII.2 *The Respondent: UEFA*

82. The Respondent principally submits that:

1) The Appellant is strictly liable for the misbehaviour of its supporters described in para. 9 *et seq.* herein. In support of the applicability of the principle of strict liability, the Respondent points to Article 16 para. 2 DR, which states that clubs are responsible for the misbehaviour of its supporters "*even if* [the association] *can prove the absence of any negligence in relation to the organisation of the match*". Further, the Respondent adds that the Appellant does not contest said principle's applicability. As a result, the Respondent maintains that the Appellant had to be punished under Articles 16(a), (b), (c), (d), (e) and (h) DR for the misbehaviour of its supporters throughout the Match. Observing that the Appellant contested the occurrence of the illicit chants, the Respondent argues that there is sufficient evidence (i.e. images and video footage exhibited during these proceedings, as well as media coverage) to prove to comfortable satisfaction that the Serbian supporters made offensive xenophobic chants including "*Kill the Albanians*" in violation of

failed completely. The result shows that the security was insufficient. As fundamental failures, the Respondent refers to the fact that (i) security perimeters were easily breached and overrun, allowing, without any obstruction, supporters from accessing the field and attacking the Albanian players and returning back to the stands (more specifically, the Respondent refers to the Serbian supporter who managed to hit an Albanian player with a chair, and to Mr. Bogdanov, who, accompanied by other Serbian supporters, calmly walked around the field); (ii) a steward kicked an Albanian player; (iii) a steward pumped up the crowd as the Albanian players were being attacked by the tunnel. Concerning the stewards' behaviour, the Respondent maintains that "*the only relevant perspective... when assessing these actions is that of an 'objective onlooker*'" (CAS 2013/A/3324, at para. 9.13). From such an objective perspective it can hardly be disputed that the attitude of a steward, who would have the main and essential task of maintaining security, but instead is involved in the mass confrontations and on this occasion also pumps up the crowd, is simply intolerable. To the Respondent, "*such behaviour once more casts doubts on the diligence of Appellant when organising and implementing the necessary security measures including hiring well-qualified stewards*". The Respondent insists that "[a]*t the end of the day, it is not the quantity of security personnel, but the organisation, the professionalism, the behaviour and the efficiency of such personnel that is decisive. The fact that the measures taken by the Appellant were anything but sufficient is sadly proven by*" all the incidents that occurred throughout the Match. The massive intervention taken to restore order in the stadium was exactly what was lacking before in terms of security.

3) The disciplinary sanctions imposed on the Appellant are not evidently and grossly disproportionate. The Respondent considers that the sanctions are at least proportionate, if not too lenient. According to the Respondent, CAS jurisprudence limits a Panel's "*review of disciplinary sanction to cases of clear and obvious deviations from the regulations, i.e. to cases of evidently and grossly disproportionate sanctions (...) to avoid that CAS becomes a kind of 'Court of Automatic Discounts*'". The Appellant believes that the sanctions imposed on the FAS cannot be viewed as evidently and grossly disproportionate given that:

conflictive history between the two countries, is groundless. For two associations to be prevented from playing each other, one of three conditions must be fulfilled: (i) there must be abnormal diplomatic relations between the two countries involved; (ii) there must be an on-going military or armed conflict between the countries involved; or (iii) a request to be kept apart must be made by either of the two associations. This is the standard practice of UEFA, which is well known to all members but not stipulated in any of the UEFA regulations. Since none of these conditions were met, there is no reason nor regulatory possibility for UEFA not to have let Serbia and Albania play each other. At the hearing, the Respondent, in relation to this argument, compared the present case with that of the Royal Spanish Football Federation (RFEF) and the Gibraltar Football Federation (GFA). It explained that even though the Governments of Spain and of the United Kingdom (under whose sovereignty is the territory of Gibraltar) have a normal diplomatic relationship, the RFEF has refused to play against the GFA, and for this reason UEFA, in applying its standard practice, has not drawn the sides to play against each other. In the present case, neither before the Match nor even to this day has either the FAS or the FAA, in this or any other competition, requested that they not be drawn against each other. Given that the governments of Serbia and Albania have a normal diplomatic relationship, this means that UEFA, in applying its standard practice, will not interfere if the sides are matched up. Finally, at the hearing, the Respondent, on the question of UEFA potentially being partially responsible, asserted that Article 64 of the UEFA Organisational Regulations (Edition 2014), which stipulates that the match delegate acts as "*UEFA's official representative at a UEFA match*" and is responsible that "*especially the rules of order and security inside and outside the stadium before, during and after the match are observed*", does not place on the UEFA match delegate the responsibility of guaranteeing safety.

iii) The Appellant's security measures failed completely. The Respondent believes that the Appellant was completely negligent and that the security measures it took were utterly inefficient. All of the incidents that occurred

iv) The behaviour of the fans before and after minute 42 of the Match is so unacceptable that it is enough to impose even the exclusion from participating in UEFA competitions. The Respondent stresses that regardless of what provoked the misbehaviours, the fact of the matter is that the incidents prior to and after the stoppage of the Match in minute 42 did take place and that such incidents were "*intolerable*" as admitted by the Appellant. As a result, the Respondent argues that the Appellant must bear the consequences applicable for said misbehaviours under the UEFA regulations and it cannot escape responsibility based on hypothetical/theoretical assumptions, nor can it have the sanctions reduced based on the purported existence of a provocation. The Respondent explains: "*in no way can CAS justify the attitude of the Serbian supporters. Provocation has no mitigating effect in UEFA disciplinary proceedings (...) There is no possible way to justify the incidents by an alleged provocation triggered by the entrance of the drone. Rather, this drone merely serves as an excuse for the regretful and violent misbehaviours and the failures of Appellant to provide safety and security for all spectators. To consider the appearance of this drone as provocation with a mitigating effect is to grant these supporters the right to commit such atrocities every time they would felt* [sic] *"provoked". Evidently, this would go against the very spirit of all applicable UEFA Regulations*". The fact is that the incidents *"did occur"* and so the Appellant must bear the consequences. The Respondent adds that, in any case, even before the drone appeared, the Serbian supporters had already caused the Match to be stopped twice due to their misbehaviours, for which the Appellant has even accepted the sanction of two matches played behind closed doors. Thus, it is clear to the Respondent that the Appellant never had control of security in the stadium and the drone consequently cannot be seen as having provoked the incidents occurring after minute 42 of the Match. The Respondent further comments that the same is true for the argument that the Albanian players provoked the incidents by "*attacking*" Mr. Mitrović. The Respondent believes that, on the one hand, there is not sufficient evidence of an "*attack*" and second, that "*if UEFA had to count the*

apportionment of sanctions, that the sanctions would be proportionate. If for the incidents up to the 42nd minute of the Match the appropriate sanction in the eyes of the Appellant is two matches behind closed doors, then the sanction for all the incidents occurring thereafter could easily exceed those imposed by UEFA (a three-point deduction and EUR 100,000 fine) and reach even the exclusion from the competition.

vi) The Appellant is a recidivist and has a poor disciplinary record. The Respondent submits that under Article 19 DR, the previous record of the Appellant counts as an aggravating circumstance, and thus plays an important element in assessing the proportionality of the Appealed Decision. The Respondent considers the sanctions imposed on the Appellant as "*a logical further step taken by UEFA in light of the range of sanctions at its disposal pursuant to Article 53 of UEFA Statutes and is in no extent evidently and grossly disproportionate to the offences witnessed during the match*". To support this, the Respondent refers to the FAS' disciplinary record, noting that in connection with senior national team and U-21 competitions the FAS has been sanctioned six times by UEFA in the past five years. In this connection, the Respondent places particular emphasis on the senior national team match between Italy and Serbia of 12 October 2010 in which the FAS committed several incidents that led UEFA to impose the following sanctions: a forfeit, two matches behind closed doors (1 under probation), a ban from ordering tickets for its supporters for any remaining home matches in the 2012 UEFA European Championship qualifiers and a fine of EUR 120,000. For comparative purposes, the Respondent lists the incidents that occurred during that match: the throwing of fireworks into the stands and onto the field (one of which appeared to have hit the Italian goalkeeper, Emiliano Viviano, on the foot or lower leg without causing any injury) causing the referee to interrupt the match, an attempted field invasion, the use of banners and flags displaying insults and political statements, the burning of an Albanian flag, and chanting of insults. The Respondent concludes: "*UEFA cannot understand how Appellant having the*

as regards the current proceedings. Serbia as a host team bears an additional responsibility in accordance with Article 16(1) UEFA DR, in addition to the one imposed as regards to the improper conduct of its supporters (Article 16(2) UEFA DR)".

vii) In the Respondent's view, given that the offences committed by the FAS in the Match are more serious than those committed in the Italy v. Serbia UEFA European Championships qualifier match of 2010, the adequate sanction is, at least, the one actually imposed by the UEFA Appeals Body, if not the exclusion from participating in UEFA competitions altogether. Bearing this in mind, coupled with the fact that the disciplinary history of the FAS shows highly worrying figures, the Respondent claims that it cannot be adduced that the sanctions imposed in the Appealed Decision are evidently and grossly disproportionate.

viii) With regard to the decision of the CAF disciplinary decision of 5 February 2015, the Respondent affirms that it is completely irrelevant as it was "*rendered by a different disciplinary body, within the scope of a different confederation, under a different legal framework and in accordance with a different internal jurisprudence to tackle hooliganism in football.*"

ix) The sanctions comply with UEFA's standing practice. According to the Respondent, UEFA deals with disciplinary proceedings on a case-by-case basis, which may lead to more or less severe sanction depending on the particularities of each case. In any case, the Respondent cites that the case at hand is not analogous with the matches of Italy v. Croatia of 16 November 2014, Bulgaria v. Croatia of 10 October 2014 and Romania v. Hungary of 11 October 2014 because none of those cases included: (1) the throwing of fireworks at players; (2) the throwing of rocks at the opponent's bench; (3) the invasion of the field by supporters; (4) a direct attack on the players; (5) a field invasion by a renowned "fanatic"; and (6) the kicking and punching of players as they attempted to scamper off the field. Finally, the Respondent did not consider relevant the Appellant's references at the hearing to sanctions imposed in domestic league matches, as only the UEFA

UEFA competition match as host association behind closed doors (the second of these deferred for a probationary period of two years) and fined EUR 50,000.

x) The consideration of mitigating and aggravating circumstances was made in accordance with Article 17 DR. The Respondent contends that some of the alleged mitigating circumstances have no legal ground (e.g. the alleged responsibility of UEFA for allowing the Match to be played). Other alleged mitigating circumstances simply cannot be considered as such (e.g. the alleged extraordinary security measure implemented for the Match, which appeared as utterly inefficient). Finally, other alleged mitigating circumstances were simply irrelevant (this includes, the fact that Mr. Bogdanov is subject to criminal complaints, as well as the purported provocation of the drone/"*attack*" of the Albanian players).

83. In light of the above, the Respondent requests in its prayers for relief (confirmed at the hearing) that the CAS issue an award:

"- *Rejecting the reliefs sought by the Appellant;*

- *Charging all costs and expenses of these proceedings to Appellant;*

- *Granting a substantial contribution to Respondent for the legal fees incurred.*"

IX. JURISDICTION AND APPLICABLE LAW

IX.1 *Jurisdiction*

84. The jurisdiction of the CAS, which is not disputed, derives from Article R47 of the CAS Code and Article 62 para. 1 of the UEFA Statutes (Edition 2014).

85. Article R47 of the CAS Code stipulates as follows: "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies*

87. The Respondent did not raise any jurisdictional objection and both Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.

88. It follows that the CAS has jurisdiction to decide on the present dispute.

IX.2 *Applicable Law*

89. According to Article 63 para. 3 of the UEFA Statutes (2014 edition), "*...proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS*".

90. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS, the "*Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

91. According to Article 5 of the UEFA Disciplinary Regulations (2014 edition), "*the disciplinary bodies base their decisions on UEFA's Statutes, regulations, directives and decisions, as well as the Laws of the Game and Swiss law and any other law that the competent disciplinary body considers applicable*".

92. Therefore, the applicable law under which the Panel will decide the present dispute is to be found in the UEFA regulations, including the UEFA Disciplinary Regulations (2014 edition) and, subsidiarily, Swiss law.

X. DISCUSSION ON THE MERITS

93. The Appellant does not contest that it has committed several infringements at the Match, including the use of a laser device (Article 16, para. 2(d) DR), the letting off of fireworks (Article 16 para. 2(c) DR), the throwing of objects (Article 16 para. 2(b)

(emphasis added).

94. The Appellant also does not contest the sanction of two matches played behind closed doors, which it accepts for the incidents that happened before the 42nd minute, when the drone carrying the Albanian nationalistic symbols appeared (see *supra* at para. 11). In this connection, the Respondent objects to the Appellant's apportionment of the sanctions between the incidents that occurred prior to the appearance of the drone and those that occurred thereafter and draws attention to the fact that neither the Appealed Decision nor the CEDB decision made such a distinction in imposing the sanctions.

95. What the Appellant does contest is (A) the infringement of Article 16 para. 1 DR for insufficient organisation and (B) the proportionality of the sanctions of a three-point deduction and EUR 100,000 fine in relation to the incidents that occurred after the appearance of the drone.

96. Therefore, the issue before the Panel is not to determine whether the Appellant is guilty of infringing Articles 16 para. 2(a), (b), (c), (d), (e) and (h) DR, which is undisputed by the Appellant and thus need not be analyzed, but rather only to determine (A) whether the Appellant violated Article 16 para. 1 DR for insufficient organisation and (B) whether the sanctions imposed in the Appealed Decision are disproportionate. In this regard, the Panel bears in mind the longstanding CAS jurisprudence, according to which a CAS panel does not revise the measure of a disciplinary sanction unless it is evidently and grossly disproportionate (see *infra* at para. 108 *et seq.*).

97. Also in connection with the assessment of the sanction, on a preliminary basis, the Panel notes that the Appellant has complained that the Appealed Decision did not distinguish between the different sanctions in order to attribute them to some specific incidents prior to or after the appearance of the drone. In the Panel's view, to appraise and inflict an overall punishment (composed of several types of sanctions set forth by the UEFA rules, such as the deduction of points, the matches behind closed doors and the pecuniary sanction) for everything that happened during the Match is wholly legitimate under Articles 17 and 18 DR, as these provisions include no obligation to state which specific sanction corresponds to which misbehaviour. On the basis of the CEDB decision and the Appealed Decision, it was perfectly possible for the Appellant

and is liable for incidents of any kind and thus subject to disciplinary sanctions, unless it can prove lack of any negligence in the organisation of the match (see *supra* at para. 31).

99. Thus, in order for there to be a violation of Article 16 para. 1 DR, the Panel must first assess whether there occurred any incidents related to order and security at the Match, which would be imputable to the Appellant, and, second, if such incidents did occur, whether the Appellant has proven that it lacked any negligence in the organisation of the Match, which would absolve it of liability.

100. With respect to the first issue before the Panel, it is quite clear that several incidents did occur during the Match that are violations of Article 16 para. 1 DR. The Panel refers to the fact that:

(i) a number of Serbian supporters were able, with seemingly relative ease, to invade the field of play and to attack the Albanian players. While the number of invaders cannot be ascertained with precision from the video footage of the Match, the Panel finds that, at minimum, as the Appellant has admitted, 15 supporters were able to invade the field of play, which to the Panel is a considerable amount.

(ii) the security stewards took a lackadaisical approach and failed to react appropriately to the incidents occurring after the 42nd minute of the Match. In this regard, the Panel must make reference to the following: (i) one security steward was involved in a fight between a Serbian supporter and the Albanian captain Mr. Cana and even threw punches at Mr. Cana; (ii) another security steward waved his hands up and down as though to pump up the crowd; (iii) security stewards did not prevent Serbian supporters from grabbing plastic chairs appertaining to the stewards and using them against Albanian players; (iv) security stewards failed to immediately remove a Serbian supporter who, after having attacked the Albanian players at the entrance of the players' tunnel as they exited the field, was left to calmly walk to the corner flag and sit down for some time, his removal coming only after having subsequently attempted to enter into the players' tunnel; and (v)

102. The Panel finds, however, that the Appellant has failed to establish that it lacked any negligence in the organisation of the Match, particularly in consideration of the fact – well-known to the Appellant, as acknowledged in its submissions – that this was a high-risk match in light of the historical hostility between Albanians and Serbians, particularly exacerbated by the notorious political events concerning Kosovo. In fact, the Panel finds, in relation to the risks specifically posed by the Match, (i) that the planned security measures were inadequate for the Match and (ii) that the security stewards, judging by the fact that they were part of the problem rather than part of the solution, were not sufficiently well-trained.

103. Regarding point (i) above, the Panel agrees, and history has proven, that field invasions and attacks on players are indeed avoidable. However, the security measures the Appellant took to avoid such incidents from occurring during the Match were inadequate. First of all, the Panel observes that in the case at hand the Appellant itself has confirmed that 947 out of the 1,200 stewards available were deployed for the Match, meaning that 253 stewards were left undeployed even though they could have been used. Second, the Panel observes the Appellant has confirmed that during the first half of the Match, most of the security stewards and the police officers deployed were not even stationed inside the stadium, but rather outside. In fact, only 109 out of the deployed 947 security stewards and 210 out of the deployed 4,000 police officers (including riot police) actually surrounded the field at the beginning of the Match. It was not until after the incidents of the 42nd minute of the Match that additional police officers (including riot police) and 210 more security stewards were sent in as reinforcement. According to the declarations of its own representatives, the Appellant, with these additional security stewards and police officers, would have been able to ensure order and security until the end of the Match had the Match Referee not abandoned it. For the Panel, this is a confirmation that the number of security personnel deployed for the Match and stationed inside the stadium were insufficient, and, thus, that the planned security measures were inadequate for the Match. Therefore, in the absence of evidence to the contrary, the Panel finds that the Appellant has failed to establish that there was a complete lack of negligence on its part with respect to the adequacy of the planned security measures.

specific match at stake.

106. The Panel finds that the testimony of Mr. Pantić on the adequacy of the security stewards' training was not sufficiently persuasive given that he had a self-serving interest in not being blamed for the incidents occurring and, thus, in maintaining that the hiring, selection and training of the security stewards was handled professionally. In the Panel's opinion, some objective evidence on this issue is missing and should have been submitted to the record by the Appellant, such as documents or testimony by non-interested parties explaining/confirming, *inter alia,* what standards the security stewards were required to meet in order to be employed, that they were regularly trained, that their criminal records were checked before being employed, that any possible affiliations to violent fan clubs were investigated, that they had not been previously involved in stadium or political incidents and that they were not subject to any stadium bans. Bearing in mind this lack of evidence, and with the blatant misconducts of some security stewards in mind (see *supra* at para. 100(ii)), the Panel is not convinced the Appellant lacked any negligence with respect to the training of the security stewards.

107. Having determined that the Appellant failed to establish that it lacked any negligence in the organisation of the Match, the Panel holds that the Respondent has infringed Article 16 para. 1 DR and is subject to disciplinary measures for that infringement.

X.2 *The Appealed Decision is not evidently and grossly disproportionate*

108. According to well-established CAS jurisprudence, even though CAS panels retain the full power to review the factual and legal aspects involved in a disciplinary dispute, they must exert self-restraint in reviewing the level of sanctions imposed by a disciplinary body; accordingly, CAS panels should reassess sanctions only if they are evidently and grossly disproportionate to the offence:

> "[t]*he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence*" (CAS 2012/A/2762; CAS 2013/A/3139; CAS 2009/A/811-844).

explicit policy". In other words, this Panel does not consider warranted, nor proper, to interfere with the Decision, to slightly adjust it" (CAS 2011/A/2645, with reference to CAS 2011/A/2518 and CAS 2010/A/2283, citations omitted).

110. In the present case, the Appellant does not deny that some sanction is appropriate for the incidents that occurred at the Match; it merely requests the CAS to review the measure of the sanctions imposed in the Appealed Decision. The Appellant argues that the sanctions are grossly and evidently disproportionate given the Appealed Decision purportedly (i) failed to take into account exonerating and mitigating circumstances and (ii) wrongly considered a few incidents as aggravating factors.

111. The Panel first turns its attention to the legal framework for assessing the proportionality of a sanction based on the applicable UEFA Disciplinary Regulations and notes the following.

112. The CEDB and the UEFA Appeals Body have full discretionary power when it comes to sanctioning. They must, nevertheless, in determining the disciplinary measure to be imposed, consider the objective and subjective elements of an offence and take into account the aggravating and mitigating circumstances (see Article 17 DR *supra* at para. 32).

113. In case of multiple offences, the CEDB and the UEFA Appeals Body take the disciplinary measure to be imposed for the most serious of those offences and increase it accordingly (see Article 18 DR *supra* at para. 33).

114. Recidivism, which occurs if another offence of a similar nature is committed within five years of a previous offence, counts as an aggravating factor (see Article 19(d) DR *supra* at para. 34).

115. Among the disciplinary measures that may be imposed on member associations for the infringements committed are a fine, the playing of a match behind closed doors, the deduction of points for the current and/or future competition, and the disqualification from the competition in progress and/or exclusion from future competitions (see Article 6 DR *supra* at para. 28).

116. Here, it is undisputed that the Appellant did violate Articles 16 para. 2(a), (b), (c), (d), (e) and (h) DR for a field invasion, the throwing of objects, the setting off of fireworks,

aggravating circumstances that should have been considered by the UEFA Appeals Body.

118. The Panel finds that there is only one applicable mitigating circumstance, consisting in the fact that UEFA showed some degree of unwariness in dealing with such a high-risk match.

119. In fact, UEFA is not totally removed from what occurred at the Match. The Panel draws attention to the fact that (i) UEFA seems to have somewhat underestimated, when drawing the qualifying groups, the high risks posed by a match between Serbia and Albania, and (ii) UEFA failed to raise any objections as to the Serbian security measures prior to the Match (indeed, no report by a UEFA representative was submitted to the record indicating that, prior to the Match, UEFA believed the security measures to be implemented on match day would be inadequate). That said, the Panel does not consider UEFA as jointly responsible for what occurred at the Match, as, ultimately, the duty to ensure security fell on the home association as per the relevant UEFA regulations, namely Article 16 DR.

120. On the other hand, the Panel does not consider as a mitigating circumstance the fact that the Appellant took certain security measures, arranging for the presence of 4,000 police officers and 947 stewards at the Match. To be sure, the Panel recognizes that in CAS 2013/A/3139 it was held that while the taking of certain security measures and arranging for the presence of a certain number of security personnel inside and around the stadium are circumstances that cannot serve as a ground for excuse or exculpation of a club, they "*may however be taken into account in the determination of the proportionality of the sanction*" (see 2013/A/3139 at para. 55 and 126). The Panel finds that the applicability of said circumstances as a mitigating circumstance, in light of the operative word "*may*", is not automatic; rather the Panel must look to the particularities of each case to determine their potential applicability. In doing so here, the Panel considers that the security measures taken by the Appellant in the present case do not warrant serving as a mitigating circumstance for three reasons. First, the Panel considers that the provision of security is a standard duty of home teams (be it clubs or national teams) and, as such, should not easily be considered as a mitigating factor. Second, the Panel must point out that, even if this was the highest level ever of security

demonstrates that the original deployment of those forces was inadequately planned and implemented.

121. The Panel also rejects that the appearance of the drone carrying a banner depicting Albanian nationalistic symbols can be considered as an exonerating or mitigating circumstance. It is obvious that the appearance of the drone, as well as the subsequent Albanian players' snatching of the banner from Mr. Mitrović, had some influence in the commotion that occurred within the stadium after the 42nd minute of the Match. However, the Panel does not see this as a "*provocation*" that, in legal terms, might help the Appellant's case, because (i) when the fans of both teams are present in the stands – as normally occurs in national teams' matches – it is normal that each group of fans is forced to witness the showing of the other fans' national and even nationalistic symbols, and (ii) players' brawls are unfortunately not exceptional in football matches.

122. In this connection, the Panel notes, first, that while the appearance of the drone was indeed unforeseeable, the same cannot be said about all of the incidents that preceded and ensued it, including the particularly brutal crowd chants, the throwing of dangerous objects from the stands, the abandonment of the bench by the Serbian substitutes and their confrontation with Albanian players, the invasion of the field by Serbian supporters, the attack of the Albanian players by the Serbian supporters and the consequent Match Referee's interruption of the Match and, in short, the inacceptable general commotion in the stadium. All such incidents were absolutely foreseeable to the Appellant and could have occurred with or without the appearance of the drone. In fact, these are the exact kind of incidents that are typically at risk to occur during the course of a football match of high risk and for which an association must be prepared in coordination with the governmental and local authorities.

123. Second, the Panel does not accept that the drone and/or Albanian players' snatching of the banner from Mr. Mitrović was the sole catalyst for all the incidents occurring after the 42nd minute of the Match. The Panel is of the view that it was rather the actions of some Serbian players, namely the substitutes' abandonment of the bench and confrontation with the Albanian players, which played a considerable role in provoking all of the incidents occurring after the 42nd minute of the Match. It cannot be ignored, moreover, that while a fracas between the competing teams is unfortunately a relatively

125. The first of the two aggravating circumstances is that under Article 19(d) DR the Appellant is a recidivist. Indeed, in the previous five years the Appellant has been sanctioned for offences of a similar nature six times, three in connection with matches of the senior national team and three of the U-21 team. The most notable is the UEFA 2012 European Championship qualifiers match between Italy and Serbia of 2010, in which UEFA sanctioned the FAS with a forfeit of that match by the score of 0:3, two matches behind closed doors (one under probation), the prohibition to order tickets for Serbian supporters for any away matches of the senior national team during the qualifying stages of that competition, and a fine of EUR 120,000 for having committed the following infringements: the throwing of objects, the setting off/throwing of fireworks, the displaying of banners with forbidden content, the setting of an Albanian flag on fire, an attempt to invade the field, and acts of damage. The Panel observes that the incidents in that match, while serious, were not nearly as severe as those which occurred in the Match. The Panel makes specific reference to the fact that in the Italy v. Serbia match of 2010 there was not an invasion of the field nor the attack of players by supporters, which is a considerable and grave distinction. As such, the sanction imposed in the Appealed Decision (or even disqualification and/or exclusion as discussed *infra* at para. 127) is in the Panel's view "*a logical further step taken by UEFA in light of the range of sanctions at its disposal*" pursuant to Article 6 DR (see CAS 2013/A/3139).

126. The second aggravating circumstance is that the incidents that occurred at the Match were of a severe nature and, as already remarked, posed a very serious threat to the safety of the players and the refereeing crew. The Panel refers namely to the field invasion of a considerable number of Serbian spectators (at least 15) and the attack of Albanian players by Serbian supporters. The Panel finds particularly severe and worrisome that some of the Serbian supporters who invaded the field (both immediately after the confrontation between the Serbian and Albanian players and also at the moment the Albanian players exited the field) were able, without any appreciable resistance from the security personnel, to reach the players and even attack them aggressively by tackling and throwing punches, and that one even managed to grab a chair and use it to hit one of the Albanian players on the shoulder. It is only by sheer good fortune that the consequences of the attacks were not far worse. The Panel

chair shot, if done with sufficient force and in the right place, not to mention the throwing of rocks, chairs, flares and other dangerous objects, all of which actually occurred at the Match, could have lead to severe, and conceivably fatal, injuries of the Albanian players.

127. The Panel finds that the actions perpetrated by the Serbian supporters are intolerable (as acknowledged by the Appellant itself) and that, accordingly, it would be entirely appropriate and proportionate to apply much harsher sanctions, such as the loss of the Match and the disqualification from the current UEFA European Championship competition pursuant to Article 6, letters g and n, DR, given the multiplicity of infringements, the status of the Appellant as a recidivist and the seriousness of the offences committed, especially those that put at serious risk the safety of the players and the refereeing crew. The Panel observes that the CEDB was in fact tempted "*to apply the harshest sanction possible, which is the exclusion from competition*" and that the UEFA Appeals Body considered the CEDB sanctions to be "*rather lenient*". In the Panel's view, the mentioned mitigating circumstance (see *supra* at para. 118 *et seq.*) is, by far, insufficient to reduce what the Panel would virtually consider as the appropriate sanction – no less than the disqualification from the current UEFA competition. Accordingly, the Panel finds that the sanctions actually imposed in the Appealed Decision – a three-point deduction, two matches played behind closed doors and a fine of EUR 100,000 – are lenient and, *a fortiori*, not evidently and grossly disproportionate.

128. Further, the Panel finds that the sanctions imposed on the Appellant in the Appealed Decision are not disproportionate, and even too lenient, when compared with previous UEFA cases. The cases the Appellant cites to establish a favourable comparison – Italy v. Croatia of 16 November 2014, Bulgaria v. Croatia of 10 October 2014, Romania v. Hungary of 11 October 2014 and FC Basel and FC Real Madrid of 26 November 2014 – are not analogous, as none of them dealt with a considerable number of supporters invading the field and attacking the players with tackles, punches and even a chair. This is not a negligible distinction, but rather puts the case at hand in a far more serious category deserving of much harsher sanctions. As for the comparison with the CAF disciplinary case in connection with the Equatorial Guinea v. Ghana match, the Panel

suspended. However, given that in the Panel's view even disqualification from the current UEFA competition or, at the very least, the loss of the Match, would have been an appropriate sanction, there is no reason to suspend the three-point deduction.

130. Finally, the Panel remarks that this decision should not be taken as a rebuke of the current executives, staff and players of the FAS. They are in the very unfortunate situation of having to deal, without any fault of their own, (i) with a portion of their supporters that ranks among the most dangerous groups of hooligans in today's European football, (ii) with the absence of State legislation – as alleged by the Appellant and not denied by the Respondent – which could allow the FAS on a preventive basis to not admit into the stadium potentially violent supporters, and (iii) with the consequences of an explosive political situation that has plagued the Balkans for some time, in particular in the last couple of decades. However, the principle of strict liability for supporters' misbehaviour – whose lawfulness under Swiss law has not been contested by the Appellant and has been endorsed by CAS jurisprudence (see CAS 2013/A/3094 and the awards quoted therein) – is a fundamental facet of the current football regulatory framework and one of the few legal tools that football authorities have at their disposal to deter hooliganism and, more in general, supporters' improper conduct. Accordingly, the Panel has considerable sympathy for FAS executives, staff and players, as well as for the highly competent defence put in place by the Appellant's counsel, but cannot avoid confirming the sanction imposed by UEFA on their association.

XI. COSTS

131. Since this appeal is brought against a disciplinary decision issued by an international sports-body, pursuant to Article R65.1 and 2 of the CAS Code, the proceedings are free of charge, except for the Court Office Fee, which the Appellant has already paid and is retained by the CAS.

132. For the awarding of legal fees and expenses the Panel turns to Article 65.3 of the CAS Code, which stipulates as follows: "*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses*

contribution for legal fees must be granted in its favour. That said, the Panel deems it fair and appropriate to hold the Appellant responsible for contributing CHF 1,000 towards the Respondent's expenses incurred in connection with these proceedings.

1. The appeal filed on 30 December 2014 by the Football Association of Serbia against the decision adopted on 2 December 2014 by the UEFA Appeals Body is dismissed in its entirety.
2. The Football Association of Serbia is ordered to contribute to the expenses incurred by UEFA in connection with these proceedings in the amount of CHF 1,000 (one thousand Swiss Francs).
3. All other or further requests or motions submitted by the Parties are dismissed.

Done in Lausanne, 10 July 2015

THE COURT OF ARBITRATION FOR SPORT



Massimo Coccia
President of the Panel