



LEGAL DIVISION
DISCIPLINARY AND INTEGRITY UNIT

Case Law
Control and Disciplinary Body & Appeals Body

Season 2013/2014
July 2013 - December 2013

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FOREWORD

Dear Sir or Madam,

I am pleased to provide you with the case law of the UEFA Control and Disciplinary Body and the UEFA Appeals Body for the period July to December 2013.

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

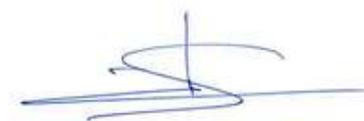
This document contains the leading cases from the UEFA Control and Disciplinary Body, as well as all of the decisions of the UEFA Appeals Body during this time period.

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

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

Yours faithfully,

UEFA

A handwritten signature in blue ink, appearing to be 'Emilio García', written over a light blue horizontal line.

Emilio García
Head of Disciplinary and Integrity



Control and Disciplinary Body

Decision of 22 August 2013

Budapest Honvéd

(Racist behaviour of supporters)

Circumstances of the case:

During the UEFA Europa League match FK Vojvodina vs. Budapest Honvéd on 18 July 2013, Budapest Honvéd supporters offended FK Vojvodina supporters by means of homophobic and racist abuse.

Legal framework:

Art. 14 DR *Racism, other discriminatory conduct and propaganda*. Art. 8 DR *Strict liability*.

Decision:

Budapest Honvéd was ordered to play their next home UEFA competition match behind closed doors. The CDB also decided to enforce the suspended sanction against Honvéd, as established in the CDB's decision of 22 August 2008, of playing one home UEFA competition match behind closed doors. Consequently, the CDB ordered Honvéd to play one additional fixture behind closed doors. In addition, the club was fined €50,000.

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

In fact

During the UEFA Europa League match FK Vojvodina vs. Budapest Honvéd on 18 July 2013, Budapest Honvéd supporters offended FK Vojvodina supporters by means of homophobic and racist abuse. In particular, Budapest Honvéd supporters chanted “Vojvodina Homosexual”, as well as directing monkey chants against the Cameroonian player Aboubakar Oumarou.

The Club in its statements, dated 30 July 2013, admits and regrets the offences concerning the homophobic chants directed against the FK Vojvodina supporters, but denies the charges regarding the monkey chants against the Cameroonian player Aboubakar Oumarou. In this regard, Budapest Honvéd FC withstands that the supporter’s shouting has been misunderstood by the FARE observer.

During the UEFA Europa League match Budapest Honvéd vs. FK Vojvodina on 25 July 2013, Budapest Honvéd supporters chanted “cigani, cigani” towards FK Vojvodina supporters and gave them the Nazi salute.

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

In law

According to Article 52 of the UEFA Statutes and Article 23 of the UEFA Disciplinary Regulations (hereinafter DR), the Control and Disciplinary Body is competent to deal with the present case.

Racist behaviour

Article 14 DR:

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

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

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

Regarding the UEFA Europa League match FK Vojvodina vs. Budapest Honvéd played on 18 July 2013, Budapest Honvéd supporters were directing homophobic chants against FK Vojvodina supporters and the so called "monkey chant".

The club in its statements admits the above mentioned homophobic chants, but explicitly denies the occurrence of the charges based on monkey chants directed against a Cameroonian player.

Even accepting the theory exposed by the Club that its supporters did not direct monkey chants against the FK Vojvodina player- quad non, the offence regarding the homophobic chants which was reported by the FARE observer and sustained with video footage, is clearly in violation of Article 14 DR.

Homophobic chants have no place within football events. Such signs of intolerant behaviour cannot be accepted by UEFA in organised football and is obviously contrary to article 14 DR quoted above.

Regarding the UEFA Europa League match Budapest Honvéd vs. FK Vojvodina played on 25 July, as described by the UEFA Delegate and the FARE observer in their reports, Budapest Honvéd supporters chanted "cigani, cigani" towards FK Vojvodina supporters and gave them the Nazi salute.

According to Article 38 DR, "facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided". In this regard, the Club did not submit any document that may lead to disprove the accuracy of the above mentioned report.

Bearing in mind the above and as the racist behaviour of Budapest Honvéd supporters has been established, the Control and Disciplinary Body considers that Budapest Honvéd shall be held responsible for racist behaviour of their supporters during the above mentioned matches and, therefore, must be sanctioned accordingly.

Determination of the appropriate disciplinary measure

Regarding the fixing of the sanction to be imposed on the association, the Control and Disciplinary Body has to take into account all circumstances of the case, both aggravating and exonerating (Art. 17 DR).

In the present case, the Chairman of the Control and Disciplinary Body considered in particular:

- The seriousness of the offence committed;
- The fact that Budapest Honvéd has already been punished for the racist conduct of its supporters within the last five years;

The Control and Disciplinary Body takes this opportunity to underline that it shall be kept in mind that as a matter of rightness, incidents occurred during the above mentioned matches have been jointly examined. In this regard, this UEFA disciplinary body deems that a more severe sanction could have been taken place, if this body may have issued two separate decisions. In this regard, the Club may have been forced to endure for each case at least the standard sanction contemplated in the UEFA Disciplinary Regulations.

In the light of the above considerations, the Control and Disciplinary Body orders Budapest Honvéd to play the next (1) UEFA competition match as a host club behind closed doors, to revoke the suspended sanction against Budapest Honvéd FC of playing one UEFA club competition match behind closed doors as established in the Control and Disciplinary Body's decision of 22 August 2008 and to order Budapest Honvéd FC to play one additional match as host club behind closed doors. In addition, Budapest Honvéd FC is fined €50'000.

Decision of 12 September 2013

Legia Warszawa

(Racist and inappropriate behaviour of supporters. Insufficient organization. Improper use of announcement system)

Circumstances of the case:

Regarding the UEFA Champions League match Molde FK vs. Legia Warszawa played on 31 July 2013, before kick-off Legia Warszawa supporters ignited approximately eight to ten flares and one smoke bomb. A banner was also displayed with the face of a flag with a Celtic cross symbol.

Regarding the UEFA Champions League match Legia Warszawa vs. Molde FK played on 7 August 2013, Legia Warszawa supporters displayed three prohibited symbols on different banners. Throughout the match all the stairways and gangways in the north stand were blocked by supporters.

Regarding the UEFA Champions League match FC Steaua București vs. Legia Warszawa played on 21 August 2013, Legia Warszawa supporters aimed a laser pointer at the Steaua goalkeeper.

Regarding the UEFA Champions League match Legia Warszawa vs. FC Steaua București played on 27 August 2013, Legia Warszawa supporters ignited several Bengal lights, obstructed emergency gates in the East and South Stand, and stairways in the East lower tier. Legia Warszawa supporters threw missiles and coins towards a Steaua player. In addition, the Legia Warszawa announcer incited the supporters through the loudspeaker to motivate their team. A poster with the wording "UEFA victory of blind political correctness" was also pasted on an advertising board.

Legal framework:

Art. 14 DR *Racism, other discriminatory conduct and propaganda*. Art. 16(2)(b) DR *throwing of objects*. Art. 16(2)(d) DR *use of laser pointers*. Art. 16(2)(e) DR *use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event*. Art. 8 DR *Strict liability*. Art. 38 Safety and Security Regulations *Public passageways*. Art. 38 Safety and Security Regulations *Public address system, announcers and announcements*.

Decision:

The CDB ordered Legia Warszawa to play two home UEFA competition matches behind closed doors, with half of the suspension (one game) deferred for a probationary period of five years. The club was also fined €150,000.

Chairman: Thomas Partl (AUT)

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

Members: Joël Wolff (LUX)
Hans Lorenz (GER)
Rudolf Repka (CZE)
Tomás Gea (AND)

In fact

Regarding the UEFA Champions League match Molde FK vs. Legia Warszawa played on 31 July 2013, before kick-off Legia Warszawa supporters ignited around eight to ten flares with heavy smoke and one red smoke bomb.

Furthermore, a banner was shown with the face of a flag with a Celtic cross symbol by Legia Warszawa SA supporters.

The Club in its statements, dated on 7 August 2013, argues that the flag was smuggled into the stadium by an unidentified person and has disappeared as soon as the organized group of Legia fans was made aware of the displaying of the Celtic cross. Regarding the ignition of objects, the Club stress that none of them were thrown onto the pitch.

Regarding the UEFA Champions League match Legia Warszawa vs. Molde FK played on 7 August 2013, Legia Warszawa supporters displayed three prohibited symbols on different banners, i.e. white Legion banner with wolf's rod behind the club's emblem, a banner with two SS Skulls and a wild boys banner with the letter S replaced by a rune sign. Finally, throughout the match all the stairways and gangways on the north (ultras) stand, lower and upper tier, were blocked by supporters.

Regarding the UEFA Champions League match FC Steaua București vs. Legia Warszawa played on 21 August 2013, Legia Warszawa supporters used a green laser pointer aimed against the goalkeeper.

The Club in its statements, dated on 28 August 2013, argues that the security procedures were thoroughly taken by the Romanian police and the Steaua Bucuresti security forces, resulting in the confiscation of several objects. The Club considers that a laser device would have also been found amongst them. Consequently, Legia Warszawa stress that the accusation according to which a Legia Warszawa supporter must have been responsible solely on the basis that it was aimed towards the Steaua Bucuresti goalkeeper is unjustified.

Regarding the UEFA Champions League match Legia Warszawa vs. FC Steaua București played on 27 August 2013, Legia Warszawa supporters ignited several Bengal lights, obstructed five of the six emergency gates in the East Stand and three of six emergency gates in the South Stand, as well as stairways and vomitories in the East lower tier. In this regard, no stewards were at place. Furthermore, Legia Warszawa supporters threw missiles, paper rolls, paper cups and paper balls, as well as threw coins towards the Steaua Bucuresti player number 55. In addition, the Legia Warszawa announcer incited the supporters through the loudspeaker to motivate their team. Additionally, there was a loud speaker installation in the South sector which transmitted musical support to the public. Finally, a paper poster with the wording "UEFA victory of blind political correctness" was pasted on a low pitch advertising board.

The Club in its statements, dated on 3 September 2013, argues that the illicit paper poster has an incidental and isolated nature and that the Club undertook prompt and firm actions in order to eliminate it and to guarantee a friendly cheering atmosphere. As with regards to the throwing of missiles, Legia Warszawa points out that the referred objects did not threatened the health of any individual, being also not to be qualified as dangerous as they are not prohibited. Concerning the ignition of fireworks, the Club underlines that none of the Bengal lights have been thrown, the kick-off the match was not delayed and that all Bengal lights burned out by themselves. Finally, the Club stress that no UEFA Regulation limits or prohibits the usage by supporters of audio systems during UEFA competition matches. Nevertheless, the Club assumes the breach of Article 45(3) UEFA Safety and Security Regulations concerning the official speaker, drawing the attention that such incidents never happened before.

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

In law

According to Article 52 of the UEFA Statutes and Article 33 of the UEFA Disciplinary Regulations (hereinafter DR), the Control and Disciplinary Body is competent to deal with the present case.

Racist behaviour

Article 14 DR:

- b) Any person under the scope of Article 3 who insults the human dignity of a person or group of persons by whatever means, including on the grounds of skin colour, race, religion or ethnic origin, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction.

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

The fight against racism is a high priority for UEFA, which has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. In the present case, the photos of the incident substantiated well enough that the banner displayed by the supporters of FC Zenit St. Petersburg contained rune symbolism.

According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided. Consequently, the Control and Disciplinary Body considers any other pertinent documents in its possession. It can summon further evidence, provided that doing so will not delay the proceedings unduly.

In the case concerning UEFA Champions League match Molde FK vs. Legia Warszawa played on 31 July, the UEFA delegate established that a banner was shown with the face of a flag with a Celtic cross symbol by Legia Warszawa SA supporters.

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

Regarding the UEFA Champions match League Legia Warszawa vs. Molde FK played on 7 August 2013 Legia Warszawa supporters displayed three prohibited symbols on the banners, i. e. white Legion banner with wolf's rod behind the club's emblem, a banner with

two SS Skulls and a wild boys banner with the letter S replaced by a rune sign. In this regard, the UEFA Delegate confirmed that the banner with two skulls was clear.

The Control and Disciplinary Body wants to recall that FARE, partner of UEFA in the fight against racism, submitted also images that allow the Control and Disciplinary Body to be comfortably satisfied with the consideration that in fact at least one inappropriate and racist symbol was displayed during the above mentioned match. Indeed, the club did not submit any documents that may prove it otherwise.

As for the banner containing the racist symbolism of SS skulls, it shall be recalled that this type of skull was once a symbol of special SS groups (“SS-Totenkopfverbände”), now used (among others) by Combat 18 – an international neo- Nazi terrorist organisation.

Furthermore, rune symbolism is well-known and generally understood as being directly linked to neo-Nazis and white supremacists. In fact, use of the rune symbolism within the banner, recalls the letters used by Nazis to distinguish the “Schutzstaffel” (SS) uniforms during World War II, the closest group to the fascist ideology.

Displaying banners with a symbol or racist signs that are generally recognised as racist, expressing the idea that some races are inherently superior (physically, intellectually, or culturally) has to be considered as racist behaviour in the sense of Article 14 DR. As underlined in various disciplinary decisions issued by the competent UEFA bodies, racism is in total contradiction with the values of football, notably tolerance, friendship and respect.

Therefore, the club is to be held responsible for this racist behaviour by its supporters (Art. 14 DR) and must be punished accordingly.

The improper conduct of supporters

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.*

The throwing and ignition of objects

Setting off and throwing of objects are serious offences in that cannot only disrupt the orderly running of the match but also, and more importantly, endanger the physical integrity of those lighting the fireworks and throwing them, of other spectators, officials and even the players on the pitch. For this reason, the throwing and setting off of objects, are strictly forbidden.

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

Regarding the UEFA Champions League match Molde FK vs. Legia Warszawa played on 31 July 2013, the UEFA delegate established that before kick-off while the team entered, Legia Warszawa supporters ignited around eight to ten flares with heavy smoke and one red smoke bomb.

Regarding the UEFA Champions League match Legia Warszawa vs. FC Steaua București played on 27 August 2013, Legia Warszawa supporters ignited a large number of Bengal light and threw missiles, paper rolls, paper cups and paper balls, as well aimed coins towards the Steaua Bucuresti player number 55.

As with regards to the ignition of objects, the Control and Disciplinary Body considers that it is irrelevant that these objects were not thrown to onto the pitch, since the violation contemplated in Article 16(2)(c) DR refers to the ignition of fireworks and or other objects. The Control and Disciplinary Body reaches the same conclusion as with regards to the throwing of objects since Article 16(2)(b) DR clearly prohibits such conduct. However, threatening someone’s health shall be taken also into consideration as it may be an aggravating circumstance.

Subsequently, Legia Warszawa SA is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

Laser device

Considering that the use of laser pointers could seriously affect the well-being of the person to whom it is directed and could also disrupt the game as well as the fact, that this behaviour is likely to confuse the referees and also the player and therefore jeopardizes the player's opportunity to catch and play the ball the use of such devices is strictly prohibited in the stadium.

In the case concerning the FC Steaua București vs. Legia Warszawa played on 21 August 2013, the UEFA Delegate report established that Legia Warszawa SA supporters directed a laser at the opponent goalkeeper.

Directing the laser towards a person on the pitch constitutes an aggravating circumstance, as the risk for this person to suffer harm as well as the risk to provoke a match disturbance is significantly elevated.

The Club in their statements points out that the high number of supporters within the stadium and the implementation of every possible measure on their supporters lead to presume that the above mentioned incident was not instigated by any Legia Warszawa SA supporter.

As stated above, UEFA official reports are presumed to be accurate in accordance with Article 38 DR. The Control and Disciplinary Body considers that the evidence submitted by the Club is not enough to breach this accuracy since the delegate expressly attached this incident to have been perpetrated by Legia Warszawa SA supporters.

Consequently, Legia Warszawa SA is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

Illicit paper poster

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

In the case concerning the UEFA Champions League match Legia Warszawa vs. FC Steaua București played on 27 August 2013, a paper poster with the wording "UEFA victory of blind political correctness" was pasted on a low pitch advertising board.

Taking the above into account, it is irrelevant if the pasting of the concerned poster is an isolated and incidental situation, as alleged by the Club, since the Article 16(2)(e) DR does not distinguish between incidental and non-incidental cases, given that for the last sanctions are greater in accordance with Article 19 DR.

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

Insufficient organization

As stated above, the UEFA delegate reported that during the UEFA Champions League match Legia Warszawa vs. Molde FK played on 07 August 2013, all stairways and gangways on the north (ultras) stand, lower and upper tier, were blocked by supporters

In addition, during the UEFA Champions League match Legia Warszawa vs. FC Steaua București played on 27 August 2013, Legia Warszawa supporters obstructed five of the six emergency gates in the East Stand and three of six emergency gates in the South Stand, as well as stairways and vomitories in the East lower and South tier. In this regard, no stewards were at place.

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

According to Article 38 of the UEFA Safety and Security Regulations “the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators.”

In the present case emergency gates, stairways and passageways were obstructed. In case of any emergency where the stands have to be evacuated quickly, this can create a very dangerous situation.

Legia Warszawa SA as the host and match organiser therefore violated the above-mentioned provisions and must be punished accordingly.

Improper use of announcement system

According to Article 43 UEFA Safety and Security:

- 1) *The stadium's public address system must be capable of being heard clearly both inside and outside the stadium, above the crowd noise, even in the case of a sudden upsurge in spectator noise levels.*
- 2) *Trained announcers who are capable of addressing visiting foreign spectators in their own language must be available when required. If possible, an announcer whose voice is familiar to visiting supporters from their own stadium at home shall be used.*
- 3) *Announcements over the public address system must be of a strictly neutral character. The public address system must not be used:*
 - (a) for the dissemination of political messages;*
 - (b) to support the home team;*
 - (c) for any form of discrimination against the visiting team.*

In the case concerning the UEFA Champions League match Legia Warszawa vs. FC Steaua București played on 27 August 2013, the Club partially admitted the incidents concerning the improper use of the announcement system, as they admit that the official speaker did not abide the UEFA regulations concerning this matter.

It shall be recalled that according to the UEFA delegate's report, the official Legia Warszawa announcer incited the supporters through the loudspeaker to motivate their team. There was a loud speaker installation in South sector which transmitted the musical support to the public

The Club in its statements insists on the fact that none UEFA regulations specifically contemplates a prohibition directed to the use of loudspeaker or electronic announcement system by supporters.

Regarding the use of a loud speaker installation in the South sector by Legia Warszawa SA supporters, it shall be stress that such attitudes aimed to dread the opponents and border the line of fair play contemplated in Article 11 DR. The aim of cheering up the team shall not involve the setting aside of any chance by other supporters to encourage their players, even less if they need electrical support for this purpose.

Bearing in mind the above, Legia Warszawa SA is to be held responsible for the improper use of announcement system in accordance with Article 43 UEFA Safety and Security.

Determination of the appropriate disciplinary measure

Regarding the fixing of the sanction to be imposed on the association, the Control and Disciplinary Body has to take into account all circumstances of the case, both aggravating and exonerating (Art. 17 DR). In the present case, the Chairman of the Control and Disciplinary Body considered in particular

- The seriousness and multiplicity of the offences committed;
- The fact that Legia Warszawa SA has already been punished several times for the racist behaviour supporters within the last five years and.
- The fact that Legia Warszawa SA has already been punished for the setting of fireworks and for throwing of objects.
- The fact that Legia Warszawa SA has already been punished for the insufficient organisation within the last five years and, in particular, the blocking of stairs, gates and passageways.

Furthermore, the Control and Disciplinary Body wants to stress that the incidents occurred during the UEFA Champions League match Legia Warszawa vs. FC Steaua Bucureşti on 27 August 2013, took place while the host club was serving a partial stadium closure sanction. Incidents as the witnessed during the above mentioned match are completely in contradiction to UEFA disciplinary values and principles, even more taking into consideration that the Club was serving the referred partial stadium closure suspension. This regretful circumstance shall be deemed as a highly aggravating circumstance.

Finally, the Control and Disciplinary Body takes this opportunity to underline that it shall be kept in mind that as a matter of rightness, incidents occurred during the above mentioned matches have been jointly examined. In this regard, this UEFA disciplinary body deems that a more severe sanction could have taken place, if this body may have issued separately decisions concerning the above mentioned incidents.

In light of the above considerations, the Control and Disciplinary Body orders Legia Warszawa SA to play the next (1) match as a host club behind closed doors. In addition, Legia Warszawa SA shall play one additional match as host club behind closed doors. This suspension is deferred for a probationary period of five years. Additionally, the Control and Disciplinary Body deems also to impose a fine of €150'000 against the Club as appropriate.

Decision of 17 October 2013

FC Basel 1893

(Insufficient organization)

Circumstances of the case:

Regarding the UEFA Champions League match FC Basel 1893 vs. FC Schalke 04 played on 1 October 2013, the game was stopped because a large banner displaying "GAZPROM, DON'T FOUL THE ARCTIC" was unfolded by four people hanging from the roof. After a number of minutes the banner was removed and the match was resumed.

Legal framework:

Art. 16(1) DR *Order and security at UEFA competition matches*. Art. 38 Safety and Security Regulations *Prevent known and potential troublemakers from attending the match*. Art. 44 Safety and Security Regulations *Political action*. Art. 45 Safety and Security Regulations *Provocative action*.

Decision:

The CDB fined FC Basel €30,000.

Chairman: Thomas Partl (AUT)

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

Members: Joël Wolff (LUX)
Rudolf Repka (CZE)
James Shaw (NIR)

In fact:

The match was stopped because a big banner was unfolded from the roof on the side of the main tribune. This banner was unfolded by four people hanging from the roof. The banner said: "GAZPROM, DON'T FOUL THE ARCTIC". After some minutes the banner was totally removed and the match was resumed. 15 people, 9 in orange overalls, dressed like alpinists and 6 in civil clothes, used the retirement home apartments above the adjacent shopping center, to come to top of the stand. The 15 people were arrested by the club's security guards and handed over to the police.

Due to the above circumstance the above mentioned match had to be stopped by the referee.

The Club in their statements dated on 17 October 2013, argue that following the results of the on-going investigations FC Basel has taken all safety precautions required by UEFA. The conduct of the Club was not negligent in act or omission in relation to the organization and the performance of the above mentioned match. It follows that FC Basel have implemented all due and reasonably appropriate security measures.

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

In law

According to Article 52 of the UEFA Statutes and Article 23 of the UEFA Disciplinary Regulations (hereinafter DR), the Control and Disciplinary Body is competent to deal with the present case.

The insufficient organization

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.

According to Article 6(2)(b) Safety and Security Regulations, the match organiser and the participating associations or clubs must do everything within their power to: (...) “b) prevent, in cooperation with the public authorities (especially the police and the travel authorities) and supporters’ clubs, known and potential troublemakers from attending the match”.

According to Article 44 UEFA Safety and Security Regulations, the promotion or announcement, by any means, of political messages or of any other political actions inside or in the immediate vicinity of the stadium is strictly prohibited before, during and after the match.

According to Article 45 UEFA Safety and Security Regulations, the match organiser, together with the chief police officer or stadium security officer, must prevent any provocative action being taken by spectators inside or in the immediate vicinity of the stadium (unacceptable levels of verbal provocation from spectators towards players or opposing fans, racist behaviour, provocative banners or flags, etc.).

Bearing in mind the above, it is obvious that the case in hand deals with an incident concerning a violation of the UEFA Safety and Security Regulations.

In first place, the Control and Disciplinary Body takes this opportunity to recall, that it cannot allow football matches organised by UEFA to become forums for people who want to abuse the game’s popularity to publicise their political, religious or any other sort of opinions which do not fit with a sports event.

It shall be underlined that the case in hand is a complex one in which several elements must be taken into consideration. It obviously refers to a security issue which involves the non-authorized access of a group of persons to the roof of the FC Basel’s stadium and the further displaying of an illicit banner which was aimed against one of the most important UEFA’s sponsors.

It is the responsibility of the match organiser, in this case the host club, to prevent any disorder inside and outside the stadium as with regards to security matters. Consequently, the organiser takes *prima facie* the responsibility for incidents of any kind and may be subject to disciplinary measures and directives in accordance with Article 16(1) DR. This responsibility may be tempered if the Club or association proves that they have not been negligent.

Contrary to the application of the principle of strict liability, in which the responsibility of the Club or the association is established even if the Club or the association bears no fault, in incidents regarding safety and security matters the responsibility depends directly on the attitude, means and measures implemented by the match organiser. Consequently, the

keystone regarding the insufficient organization of a match relies, basically, on the existence of a negligent attitude of the match organiser.

In this regard, the Club states as follows:

“In consideration of the aforesaid it follows that the duty to prevent such atypical and unforeseeable disturbances like the one at hand may not be placed on the football clubs. In case of such a disturbance the duty of the football clubs must be restricted to a professional reaction to this disturbance. This especially includes the protection of the spectators, the players and all other persons involved as well as the efficient and quick termination of the disturbance, as far as possible. FCB has undoubtedly complied with these duties: After the anonymous phone call, security was adapted to the given situation within a few minutes only. In addition, stadium stewards were on the stadium roof as the "crime scene" within a few minutes and were able to convince the activists to bring a stop of the action within another few minutes (cf. margin number 12 seqq. above).”

The Control and Disciplinary Body cannot comply with the assertions made by the Club according to which they define the incident as unforeseeable, as well as they intend to restrict the scope of their responsibilities towards possible security disorders as the one in hand, mainly limiting their actions not to preventive measures but to reactive actions. The same result follows from the arguments concerning the hypothetical measures that may have to be implemented in cases where the responsibility of the match organiser would include the prevention of incidents as the dealt with in this case, i. e. establish an immense safety net inside and in a wide radius around the stadium, as well as to secure the air space.

On the one hand, it shall be taken into account that the incident took place at a UEFA Champions League match, flagship of UEFA competitions and one of the most important sports events world-wide. The organization of such a sport event is presumed to be exemplary. The solely fact that 15 persons achieved to perpetrate such a violation in which they gain access to the roof of a stadium and displayed an extremely large banner whilst several of these persons were hanging from the deck, can only be explained by a general failure of the security system implemented by the match organiser in this particular match.

On the other hand, the Control and Disciplinary Body deems that to secure the roof of any unauthorised entrance lays within the reasonable aspects to be taken care of when securing the infrastructure of a stadium. The Club insists that “it is simply impossible for a football club to entirely secure all neighbouring buildings in the surroundings of the stadium”, but, at the same time, draws the attention to the fact that negotiations have been carried out with the retirement home Tertianum, from which the perpetrators reached the roof of the stadium, in order to set up future security measures. Consequently,

it seems not overstated and complicated to have at least a minimum security net that may prevent from the occurrence of such incidents. It shall be recalled that the lack of any prevention in this regard triggers in itself important doubts about the alleged diligent attitude of the Club concerning the security matters implemented for the match.

In addition, it is not expected, as alleged by the Club, to entirely secure all neighbouring buildings in the surroundings of the stadium, but the stadium in itself. The organiser shall bear in mind that the UEFA Champions League matches are broadcasted world-wide and that it can be used by organized groups, as the one in question, in order to make their claims. It shall also be noted that “luckily” Greenpeace is not known as being a violent group and therefore the incident did not have major issues as with regards to the safety of the people attending the match. Nevertheless, concerns still prevail about the situation that may have arisen if the group would have been violent, taking into consideration the high number of spectators attending the match.

Furthermore, the Club stresses that “it is just as impossible and not to be expected by a football club to be prepared for disturbing actions of a professional organisation which is literally specialized in actions of this kind and whose acts and methods display incredible audacity and high criminal energy”. It is not expected that the prevention of such actions relies solely in the hands of the Club, but, specifically, in cooperation with the public authorities (Article 6(2)(b) UEFA Safety and Security Regulations). In this regard, the Control and Disciplinary Body draws the attention to the content of the UEFA Security officer’s reports, the official report and the additional report. Taking it into consideration, the Control and Disciplinary Body reaches the conclusion that such cooperation has been deficient, as the Mr. Thommen, Basel police representative, stated that the safety and security inside the stadium is responsibility of FC Basel. If it has been agreed between the match organiser and the police forces that the security inside the stadium is solely the organizers responsibility and the Club itself admits that they are not prepared to face incidents like the one in question, the Control and Disciplinary can only deem that this was due to a negligent attitude from the Club which assumed responsibilities for which they recognized they were not prepared to.

Briefly, it shall be taken into consideration that the content of the UEFA official reports are presumed to be accurate in accordance with Article 38 DR. In this respect, the Club did not make any statements that may disprove the content of the security officer’s report.

Finally, the UEFA security officer’s report draws the attention to the fact that the Venue Director of that match stated that five minutes prior to kick-off FC Basel Safety officer was informed by the police that there would be a Greenpeace action. Worrying is also the fact that the UEFA Security officer was not informed about this situation neither by the FC Basel Safety officer nor by the police representatives at any time. The Control and Disciplinary Body can only, here again, deem that such attitude was negligent. In particular, regrets

derive from the fact that the Club did not contact neither the delegate nor the UEFA security officer to inform them in order to discuss the issue. Besides, if the referred five minutes would have been added to the four minutes that passed until the incident, it could eventually have given the possibility to prevent the incident or at least to minimize the consequences. The Control and Disciplinary Body considers that the fact that this information has been hidden from the UEFA Security officer and, by that, eliminated any possibility reaction, see to draft an emergency plan involving the UEFA representatives, was due to a negligent attitude from the Club.

Bearing the above in mind, the Control and Disciplinary Body is comfortably satisfied with the assertion that the incident involving the above mentioned action of Greenpeace was linked to a negligent attitude of FC Basel in the organization of the match. Therefore, the Club shall be deemed responsible in accordance with Article 16(1) DR, and must be punished accordingly.

Determination of the appropriate disciplinary measure

Regarding the fixing of the sanction to be imposed on the club, the Control and Disciplinary Body has to take into account all circumstances of the case, both aggravating and exonerating (Art. 17 DR).

In the present case, the Control and Disciplinary Body considered in particular:

- The seriousness of the offence committed;
- The fact that FC Basel has already been punished for insufficient organization within the last five years;
- The potential risk to the safety of the persons attending the match, as well as the security failure, that represents the access to the roof of 15 persons, the entrance of an extremely large banner and the further displaying of the banner whilst several persons were hanging from the desk;
- The fact that the incident occurred in a stadium full of spectators;
- The fact that the game had been stopped during several minutes, which damaged directly the smooth running of the match and the core of the competition;
- The fact that the incident took place in a UEFA Champions League competition, which is the flagship competition of UEFA and one of the most important sports event world-wide;

In light of the above considerations, the Control and Disciplinary Body decided a fine of € 30'000 to be the appropriate disciplinary measure in the present case.

Decision of 17 October 2013

Chelsea FC

(Late kick off)

Circumstances of the case:

Regarding the UEFA Champions League match Chelsea FC vs. FC Basel 1893 played on 18 September 2013, the second half was delayed for approximately 85 seconds due to Chelsea leaving the dressing room late.

Legal framework:

Art. 11(2)(h) DR *Causing a match to be interrupted*. Art 16.01 UEFA Champions League Regulations *Half-time interval lasts 15 minutes*.

Decision:

The CDB decided to warn Chelsea FC and the Chelsea FC head coach for the late kick-off.

Chairman: Thomas Partl (AUT)

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

Members: Joël Wolff (LUX)
Rudolf Repka (CZE)
James Shaw (NIR)
Tomás Gea (AND)

In fact:

Second half time was delayed for about 85 seconds due to the fact that team Chelsea left the dressing room too late.

The Club in their statements dated on 23 September 2013 argues that there is no reference inside the UEFA official reports to any improper conduct of the coach regarding the late kick off.

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

In law:

According to Article 52 of the UEFA Statutes and Article 23 of the UEFA Disciplinary Regulations (hereinafter DR), the Control and Disciplinary Body is competent to deal with the present case.

Late kick off

In the case in hand, second half time was delayed for about 85 seconds due to the fact that team Chelsea left the dressing room too late.

Pursuant to Law 7 of the Laws of the Game and Article 16.01 of the Regulations of the UEFA Champions League 2013/2014, the half-time interval must not exceed 15 minutes. Any alteration can only be made with the consent of the referee or the organizer, which in this case was the UEFA Administration.

According to Article 11(2)(h) a breach of UEFA Disciplinary Regulations is committed by anyone who is responsible for a late kick-off.

In the present case however, neither the referee nor the UEFA Administration authorised any extension of the 15 minutes half-time interval.

In this respect, it needs to be taken into account that every delay of the kick-off times might lead to serious consequences for the relationship of UEFA and its commercial partners.

In addition, respect needs to be paid to the nature of the competition of the UEFA Champions League as UEFA's flagship club competition. In this view, any behaviour tending to tarnish the image of this major competition cannot be accepted and must therefore be punished accordingly.

Moreover, respecting the principle of equal treatment and opportunities, both teams are entitled to and need to be given the same duration of the half-time interval. A unilateral extension of the half-time interval by a club, would infringe this fundamental principle.

As with regards to the responsibility, and according to the principle of strict liability, the Club shall be held responsible for the improper conduct of the team.

Regarding the responsibility of the coach, the Club insists that no reference in any UEFA official report is made to the improper conduct of the coach, as well as request an explanation to the fact that disciplinary proceedings have been opened against the coach.

As an introductory remark, it shall be pointed out that the wording of the provision contemplating the infringement of the late kick off has been modified with the new Edition of the UEFA Disciplinary Regulations, see UEFA Disciplinary Regulations Edition 2013. The former UEFA Disciplinary Regulations Edition 2012 established that a violation of the UEFA Regulations is committed by anyone who culpably reports for a match late or not at all. However, the current UEFA Disciplinary Regulations contemplate a violation by anyone who is responsible for late kick off. The approach between the notions of culpably reporting a late kick off and being responsible for the late kick off is evident, since the first needs the intention to be late on the field of play and the second a negligent attitude from the subject or subjects responsible to respect the kick off timing is enough.

Furthermore, as the head coach of the team is the highest authority of the team at the game, he is also responsible that his team is on the pitch on time. In this regard, it is worth to mention that Article 36 UEFA Club Licensing and Financial Fair Play Regulations establish that the head coach is responsible for football matters of the first squad.

The Control and Disciplinary Body deems that the respect of the timing shall also be considered as being under the football matters of the head coach of the first squad, since, obviously, assuring that the team is on the field of play to play the match is essential. In

this respect and under ordinary circumstances, it is the head coach who decides when the team is prepared to be out of the dressing room.

Consequently, the Control and Disciplinary body considers that the coach shall therefore be held responsible for the late kick off of the team, and, therefore, violated Article 11(2) (h) DR.

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

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

- the seriousness of the offence committed;
- the club's previous record: Chelsea FC has already been punished for late kick-off;

Nevertheless, as the standing practice of the Control and Disciplinary Body regarding the approach to the above infringement has changed by means of the outcome of the new UEFA Disciplinary Regulations, this UEFA disciplinary body has decided to offer the clubs, associations and their coaches with the possibility to amend the situation prior to take any serious disciplinary measures against them.

Bearing the above in mind and even assuming that the previous record of the Club shows a number of incidents regarding the late kick off, the Control and Disciplinary Body have decided not to take these into consideration as with regards to the existence of recidivism in accordance with Article 19 DR.

In the light of the above considerations, the Control and Disciplinary decided to warn Chelsea FC and Chelsea FC coach, Dos Santos Mourinho Felix Jose Maria, for late kick-off.



APPEALS BODY

Decision of 13 August 2013

PAOK FC

(Request for reopening of proceedings)

Circumstances of the case:

Following incidents during the Europa League match PAOK FC vs. SK Rapid Wien on 23 August 2012, PAOK FC were disqualified from one UEFA competition in progress and/or excluded from the next competition for which the club would normally qualify for within the next five years (suspended for a probationary period of three years). The club was also ordered to play their next three UEFA home matches behind closed doors and fined €150,000.

PAOK FC requested that the proceedings be reopened to review this decision. Ivan Savvidis had taken up his position as owner of the club only three days prior to the match in question. The club claimed that the new owner had immediately taken measures to deal with violence and security. However, he did not have time to implement any security reforms before the match in question. The club also argued that the punishment given to them was disproportionate.

Legal framework:

Art. 46 DR *Reopening of proceedings*.

Decision:

PAOK's request to reopen the proceedings was rejected.

Chairman: Pedro Tomás, Spain

Members: Goetz Eilers, Germany
Michael Massen, Netherlands

In fact

A.

Following incidents that occurred during the UEFA Europa League match PAOK FC v SK Rapid Wien (2-1) on 23 August 2012, the Control and Disciplinary Body rendered the following decision: 1) FC PAOK FC is disqualified from one UEFA competition in progress and/or excluded from the next competition for which it would normally qualify within the next five years. This ban is suspended for a probationary period of three years. 2) PAOK FC is ordered to play its next three UEFA competition home matches behind closed doors, i.e. with no spectators present. 3. PAOK FC is fined €150,000.

B.

On 29 October 2012, the UEFA Appeals Body rejected the appeal lodged by PAOK FC against the aforementioned decision, judging that safety and security standards had been breached as the home club had failed to take, or failed to ensure that third parties took, the necessary measures required to maintain order and security in the stands and to ensure that the match could take place without incident. The violent scenes that occurred were clearly a consequence of organisational shortcomings and inappropriate measures. In view of the Appeals Body, it is particularly hard to understand why spectators were allowed to invade the pitch, approach the sector where the visiting supporters were located, and then hurl abuse and various objects at them for several minutes, and why it took so long for the security services to be deployed.

The Control and Disciplinary Body was therefore right to punish the club in accordance with Article 11(2) of the UEFA Disciplinary Regulations.

C.

On 2 August 2013, PAOK FC requested that the proceedings be reopened to review the above-mentioned decision. The club based its request on new, substantial facts which fell into the categories of mitigating factors and proportionality.

As regards substantial new facts, Ivan Savvidis had taken up his position as the owner of the club on 20 August 2012 and immediately taken measures to deal with violence and security issues as a top priority. The incidents in question occurred only three days later, meaning that he did not have time to implement any security reforms. Since then, different measures had been taken, notably the installation of additional CCTV systems inside and

outside the stadium. The club's match on 30 July 2013 against FC Metalist Kharkiv had indeed been excellent from a security perspective. Therefore, the case should be reopened in order to consider the implementation of these security measures.

In terms of proportionality, the decisions of the UEFA Appeals Body against Fenerbahçe SK and Beşiktaş JK had affected the draw for the third qualifying round of the UEFA Champions League as the two Turkish clubs had to be replaced by another Turkish club, Bursaspor, which had a lower ranking than PAOK FC. This, therefore, affected the formation of the groups of seeded and non-seeded clubs for the purposes of the draw. PAOK FC would have been included among the non-seeded clubs rather than the seeded had Fenerbahçe SK been participating. PAOK FC therefore considers the decision of the Appeals Body to be a new fact as PAOK could not have known that a UEFA decision would suddenly thrust it into a situation in which it had to face far more challenging opponents than expected.

Finally, the club argues that the ordering of three matches to be played behind closed doors has now proved to be disproportionate both in terms of the club's behaviour and in comparison with that of SK Rapid Wien. It therefore requests that the case be reopened and the decision of the Appeals Body of 29 October 2012 revised by reducing the number of UEFA competition home matches to be played behind closed doors from three to one (already served) or by suspending the remaining two matches to be played behind closed doors for a probationary period of three years, and by lifting the three-year probationary period on disqualification from a UEFA competition in progress and/or exclusion from the next competition for which the club would otherwise have normally qualified within the next five years (suspended for a probationary period of three years).

D.

On 12 August 2013, the UEFA disciplinary inspector submitted his response to the request of PAOK FC to reopen the proceedings in respect of the decision of the Appeals Body of 29 October 2012. He concluded that the request should either not be taken into consideration or that it should be rejected for lack of new substantial facts or evidence in the sense of the relevant legal provision (Art. 46 DR).

In law

1.

As under state law, UEFA disciplinary law allows for a case in which a final decision has already been taken to be re-opened under very restricted circumstances. Article 46 of the UEFA Disciplinary Regulations states in this respect:

"1 On request, the competent disciplinary body reopens proceedings where a party or UEFA claims to have new and substantial facts or evidence that it was unable to provide before the decision became effective.

"2 An application to reopen proceedings must be addressed to the disciplinary body that took the contested decision within 14 days of the grounds for review coming to light, and no more than four years after the decision in question became effective."

On this basis, a request to reopen proceedings presupposes, in the first place, that the challenged decision has become effective in the sense that all internal ordinary legal remedies have been exhausted and that all relevant deadlines have expired (Art. 46(2) DR).

In the case in hand, the decision in question, rendered on 29 October 2012, became effective on as no appeal was lodged before the CAS. The Appeals Body may therefore consider the merits of the request.

2.

a) According to Article 46(1) of the UEFA Disciplinary Regulations and its aim, a request to reopen proceedings can only be admitted if it brings:

- new facts or evidence, which already existed at the time the disciplinary body had to make the challenged decision but did not come to light before the decision became effective;

and

- substantial facts or evidence, which means facts or evidence which would have been likely to alter the essential outcome of the proceedings had the disciplinary body been aware of them; in other words, facts discovered or proven after proceedings have closed must be such that they are likely to undermine the arguments on which the decision was based.

In the case in hand, none of these conditions are fulfilled.

b) The "mitigating factors" argued by the club, namely the arrival of its new owner, which occurred before the decision was taken and was already mentioned during the proceedings, and the security measures he has taken since then, constitute relevant facts in the sense of Article 46 of the UEFA Disciplinary Regulations, as explained under a) above.

As the match organiser, PAOK FC must do everything it can to ensure that order and security are maintained in and around the stadium. This is a constant obligation for all

of a club's domestic and international matches. PAOK FC cannot therefore present the excellent order and security at its international match against FC Metalist Kharkiv played on 30 July 2013 as a new and substantial fact that justifies the revision of a sanction based on incidents which occurred before the situation improved.

- c) As regards the proportionality argument put forth by the club, it centres primarily on the fact that a change of circumstances has affected PAOK since the decision in question became effective.

This change of circumstances relates to the fact that the UEFA Appeals Body decisions against Fenerbahçe SK and Beşiktaş JK were stayed following the said clubs appealing before the CAS, which resulted in PAOK FC being included in the seeded group of teams with presumably stronger opponents.

Irrespective of the concrete consequences of the decision in question following the aforementioned decisions of the UEFA Appeals Body against Fenerbahçe SK and Beşiktaş JK, this proportionality argument does not constitute a fact, but questions the legal assessment of an effective decision in the light of UEFA decisions taken in the meantime. Obviously, it therefore does not fall under Article 46(1) of the UEFA Disciplinary Regulations. The Appeals Body is even surprised that an experienced European club such as PAOK FC should bring such an argument to bear to try to reopen closed proceedings.

3.

To sum up, the fact that the new owner of PAOK started only three days before the incidents in question and that he took the necessary steps to prevent such incidents from reoccurring, and the fact that the decision of the UEFA Appeals Body taken on 15 July 2013 against the aforementioned Turkish clubs affected the position of PAOK FC in the mechanism of the aforementioned draw are not new and substantial facts in the sense of Article 46 of the UEFA Disciplinary Regulations.

4.

In view of the above, it is obvious that PAOK FC has not provided any new facts or evidence that justifies the reopening of the proceedings. Therefore, the club's request to reopen the proceedings must be rejected and the decision of the UEFA Appeal Body of 29 October 2012 confirmed.

The allocation of the costs of the 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 parties (Article 44(2) of the UEFA Disciplinary Regulations).

Given that the request has been rejected and the grounds for it were insubstantial, it is consequently appropriate to charge all the costs of the proceedings, totalling €3,000, to PAOK FC. The Greek Football Federation is jointly and severally liable for the payment of the costs charged to PAOK FC (Article 44 of the UEFA Disciplinary Regulations).

Decision of 16 August 2013

FC Salzburg

(Admissibility of protests. Player eligibility)

Circumstances of the case:

FC Salzburg lodged a protest against Fenerbahçe SK following their UEFA Champions League third qualifying round second leg match on 6 August 2013. FC Salzburg alleged that due to the fact that UEFA disciplinary bodies had excluded Fenerbahçe SK from participating in the next two UEFA club competitions for which they would otherwise qualify, Fenerbahçe SK would not be participating in the UEFA Champions League 2013/2014. FC Salzburg therefore alleged that the match resulted in an unlawful participation of Fenerbahçe players who should be declared ineligible.

Legal framework:

Art. 50 DR *Admissibility of protests.*

Decision:

CDB:

The CDB decided the protest was inadmissible.

Appeals Body:

The appeal lodged by FC Salzburg was rejected.

Chairman: Pedro Tomás, Spain

In fact:

A.

On 6 August 2013, Fenerbahçe SK played against FC Salzburg the UEFA Champions League 2013/2014 third qualifying round second leg match.

On 7 August 2013, FC Salzburg lodged a protest against Fenerbahçe SK concerning the above-mentioned match.

In their protest's grounds, attached to their declaration protest, the Club alleged that due to the fact that UEFA disciplinary bodies excluded Fenerbahçe SK from participating in next two UEFA club competitions for which they would otherwise qualify, Fenerbahçe SK shall not participate in UEFA Champions League 2013/2014, resulting their chipping in in an unlawful participation of their players who shall be declared consequently ineligible. Consequently, the participation of Fenerbahçe SK in any UEFA competition during this season may violate Article 50(1)(a) DR concerning the eligibility of player, provoking besides a significant incident that may have had a decisive influence on the final result of the match in accordance with Article 50(1)(e) DR.

On 9 August 2013, the Control and Disciplinary Body rendered its decision and decided to declare the protest inadmissible.

On 12 August 2013, FC Salzburg submitted its declaration of the intention to appeal in accordance with article 53(2) DR.

Pursuant to article 53(3) and due to the urgency of this case, the Chairman of the Appeals Body decided to shorten the deadline contemplated in article 53(2) DR and conduct in writing the disciplinary proceedings before the Appeals Body. The parties agreed with this procedural question.

B.

On 15 August 2013 FC Salzburg filed its grounds for appeal. These submissions can be summarized as follows:

- a) Preliminary issue (Rights to appeal before CAS): the club will attend until the final CAS decision concerning the involvement of Fenerbahce SK in match fixing activities, has been rendered, in order to decide if they will lodge any appeal, as to protect their legal position concerning their participation in the Champions League 2013/2014.
- b) Request for being granted with the Fenerbahce SK "Case file": in order to safeguard and protect their legal position before the UEFA disciplinary bodies and with regard to a

prospective appeal before CAS, in case this appeal would be rejected by the Appeals Body, the Club request to be granted with the "Case file" concerning the UEFA disciplinary proceedings related to Fenerbahce SK about match fixing issues.

- c) The lack of guilt of FC Salzburg: FC Salzburg has found themselves in an unwilling situation in which they stand as a victim of random chance and coincidences which may induce them to suffer both sporting and financial harm, irrespective from the outcome of the decision at CAS.

It shall be relied on the material legal situation created by the UEFA disciplinary bodies' decisions confirming the involvement of Fenerbahce SK in match fixing activities, and not whether CAS decided to stay the above mentioned decision. In this regard, FC Salzburg stands guiltless in between a situation characterized by random chance and coincidences that have led to provisionally allow Fenerbahce SK to be admitted in that competition, without this club fulfilling the requirements of the Champions League 2013/2014. The legal situation of FC Salzburg shall not depend on how the CAS schedules its timeframe to decide on the appeal lodged by Fenerbahce SK.

The legal question shall be dealt with according to an abstract decision comprising a secure way of handling this issue from a legal point of view. It shall not be done by taking into consideration its specific development and, its legal consequences. Furthermore when they result in a situation in which a Club like FC Salzburg, due to the fact of its ignorance about the elements involving the case against Fenerbahce SK, had not been able to comprehensively and efficiently defend their legal position.

Regarding the case of Metalist Kharkiv, FC Salzburg stress that PAOK being in the same position as the Club, may be allowed to play the next round of the Champions League 2013/2014, whilst FC Salzburg due to random chances and events is not permitted to play the next round against Arsenal FC.

- d) Fenerbahce SK did not comply with Article 2.04 (g) UEFA Champions League Regulations. The club violated therefore Article 50(a) DR since all the players of the team were not eligible to play the protested match, as well as Article 50(1)(e) as the proved involvement of Fenerbahce SK in match fixing activities provoked a situation which had a direct impact on the match and, subsequently, on the result.

In the light of the above considerations, FC Salzburg request: (i) To allow FC Salzburg to participate in the next UEFA Champions League 2013/2014 play-off matches, (ii) Being Fenerbahce SK possibly not to be granted with the revenues related to its participation in the UEFA Champions League 2013/2014 play-offs due to the possible final decision of the CAS excluding them from UEFA competitions, FC Salzburg request to be awarded at least with this amount irrespective from other amounts referred to damages linked to their non-participation in the above mentioned competition.

C.

On 16 August 2013, the UEFA Disciplinary Inspector filed its reply to the appeal. The Disciplinary Inspector requests to reject the appeal lodged by FC Salzburg on 15 August 2013.

On 16 August 2013, Fenerbahçe SK as interested party in these proceedings filed its statements. The club rejects the position of the Appellant and requests to the Appeals Body to dismiss the appeal.

D.

The arguments put forward by the parties in support of their conclusions, are set out below, in so far as they are relevant.

In law

1.

Under the terms of Article 24(3)(a) of UEFA Disciplinary Regulations, the Chairman of the Appeals Body is competent to take a decision as a judge sitting alone in protest cases.

On this basis, the Chairman of the Appeals Body has jurisdiction to rule on the case directly.

2.

According to article 50 DR:

- 4) *"A protest is admissible only if it is based on:*
- i) an ineligible player's participation in a match;*
 - j) an unfit field of play, as long as the referee was informed as soon as the problem was reported or observed (whether in writing before the match, or orally by a team captain, in the presence of the captain of the opposing team, during the match);*
 - k) an obvious error by the referee as defined by Article 9 of these regulations, in which case the protest may be directed only at the disciplinary consequences of the referee's obvious error;*
 - l) an obvious violation of a rule by the referee that had a decisive influence on the final result of the match;*
 - m) any other significant incident that had a decisive influence on the final result of the match"*

In the case in hand and as the Control and Disciplinary Body rightfully stated, on 10 July 2013, the UEFA Appeals Body partially upheld the decision of the Control and Disciplinary Body of 22 June 2013 and excluded Fenerbahçe SK from participating in the next two UEFA club competitions for which they would be otherwise qualified.

On 18 July 2013, CAS decided as follows (CAS 2013/A/3256 Fenerbahçe Spor Kulübü v. UEFA):

“on behalf of the Deputy President of the CAS Appeals Arbitration Division, I confirm that the decision of the UEFA Appeals Body dated 10 July 2013 is stayed”

Hence, since the UEFA Appeals Body decision of 10 July 2013 is stayed and until the CAS renders a final decision, the participation of Fenerbahçe SK in UEFA competitions is provisionally admitted.

In the light of the above, the Chairman of the Appeals Body cannot reach any other conclusion than the players of Fenerbahçe SK were eligible to play at the UEFA Champions League 2013/2014 third qualifying round second leg match.

The Chairman of the Appeals Body believes, as the Chairman ad hoc of the Control and Disciplinary Body did, that, considering the decision passed by the CAS on 18 July 2013, neither the players weren't eligible to participate during the match nor any other significant incident occurred during the above mentioned match that may have had a decisive influence on the final result.

Finally, the Chairman of the Appeals Body wants to recall that the Appellant lodged a protest under the terms of the article 50 DR. Hence, only legal considerations based on the UEFA relevant regulations can be applied in the present proceedings. Moreover, according to articles 61 and 62 of the UEFA Statutes, it is important to note that the Court of Arbitration for Sport has exclusive jurisdiction in its capacity of an appeals arbitration body to review any decision taken by a UEFA organ. In this regard and for obvious reasons, UEFA is bound by the decisions rendered by the CAS.

Taking into account the above considerations, the appeal lodged by FC Salzburg shall be rejected.

3.

The allocation of the costs of proceedings, including all the expenses of 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 parties involved. (Article 44(2) of the DR).

Taking into account the fact that the present proceedings has been conducted in writing and, due to the urgency of this case the Chairman has decided alone, the Appeals Body considers that the total cost shall be €1,000.

Decision of 19 August 2013

Trabzonspor A.Ş. Gustavo Colman

(Assaulting another player)

Circumstances of the case:

During the UEFA Europa League match between FC Dinamo Minsk and Trabzonspor A.Ş played on 1 August 2013, the Trabzonspor player Gustavo Colman was sent off for contacting his head against his opponent and placing his hand on the opponent's throat.

Legal framework:

Article 15(1)(e) DR *Assaulting another player*.

Decision:

CDB:

Gustavo Colman was suspended for four UEFA club matches.

Appeals Body:

The appeal was partially admitted. The CDB decision of 9 August 2013 was altered and the suspension was reduced to three matches.

Chairman: Pedro Tomás, Spain

In fact

A.

Under section 7 of the official report (“incidents description”) completed by the referee after the 2013/14 UEFA Europa League match between FC Dinamo Minsk and Trabzonspor played on 1 August 2013, the referee noted: *“96 minute: red card for No.20 (Trabzonspor AS. After a foul by this player against the No. 19 of the Home team [FC Dinamo Minsk]. The 20 searched contacted with the head with his head against the opponent. Afterwards he putted his hand on the throat of no. 19 (Dinamo Minsk)”*.

B.

In the decision rendered 9 August 2013, the Chairman of the UEFA Control and Disciplinary Body stated that by head butting his opponent, the player Colman placed the physical well-being of his opponent in great danger. He admitted in addition, that the player also grabbed his opponent’s throat, which was an aggravating factor. As a result, he decided that the player’s action as described constituted an assault in the sense of Article 15(1)(e) of the UEFA Disciplinary Regulations (hereinafter: DR), for which the standard sanction is a three-match suspension. With view of the aggravating circumstances described above, he deemed a four-match suspension to be the appropriate punishment in this case. The operative part of the decision was communicated to the club on 9 August 2013.

C.

On 13 August 2013, the club requested the decision with ground in accordance with Art. 52 DR. The grounds of this decision were sent to the club the same day i.e. on 13 August 2013.

D.

On 19 August 2013, the player and his club submitted their written statement of appeal against the decision. They stated in substance that, *“We have watched the TV footage of the incident and evaluated it carefully. (...) in the 94:21 second of the game Colman kicks the ball out of his opponent’s (no.19) control and the ball goes out. While doing so, his kick to the ball has been considered as a dangerous one by the referee. The referee (...) blows the whistle. After this decision Colman begins to run slowly to his position. While turns back he tries to reach to the player no. 19 to apologize. However player no. 19 takes his hand back and he hits Colman from his back. Colman says what while passing by he also swears as “F***” to Colman. The moment Colman hears the swear, he loses his temper and turns back to the player no. 19 and asks why he swears at Colman. As an answer he receives more swear and Colman puts hand to the player no. 19 throat for less than a second”*

The club also denied the qualification of serious assault retained in the contested decision, as the conduct of Colman was not aggressive and his act did not harm his opponent.

The appellants also indicated that the CDB wrongly retained that the player Colman “kicked” his opponent, as there is no word of kicking in the referee’s report.

Therefore, the appellants asked the panel to consider the provocation of the opponent player no. 19 and requested to set aside the decision of the CDB and decrease the suspension of the player Colman, to defer the remaining suspension measures for a probationary period of one year and to allocate the cost of the proceedings in proportion to the ratio between the sanction imposed by the CDB and that imposed by the Appeals Body.

E.

On 22 August 2013, UEFA’s representative, the disciplinary inspector Chris Georgiades, submitted his response to the appeal, requesting that “(...) *the decision reached whereby the Player was suspended for four matches of the UEFA club competitions is correct and as such should be upheld, the Players Appeal dismissed accordingly. Alternatively, if the Appeals Body is of the opinion that the incident relating to the Player placing his hand on the opponent’s throat did not occur the incident then could be said to constitute “common assault” with sanction of three games applicable*”.

F.

The more detailed arguments given by the parties will be considered below in so far as they are relevant to the Appeals Body’s decision.

In law

1.

- a) Pursuant to Art. 24(3) of the Disciplinary Regulations (thereafter : DR), the Chairman of the Appeals Body, one of its vice-chairman or one of its members acting as ad hoc chairman may take a decision alone notably in urgent cases.
- b) In the present case, the date of the next match of Trabzonspor is scheduled on 29 August 2013 and (the player involved has already served two-match suspension) and due to the necessity to give Trabzonspor the time to deal with the possible sports consequence of the decision, it was considered appropriate to deal with the case urgently. Furthermore neither Trabzonspor nor the disciplinary inspector has requested

to hold hearing. So there were sufficient reasons for the chairman to deal with the present case as a judge sitting alone.

2.

- a) Under Article 52 of the UEFA Statutes and Article 11 DR, unsporting conduct, breaches of the Laws of the Game and infringements of the UEFA Statutes, regulations, decisions and directives are punished by disciplinary means.
- b) In addition, under Article 38 DR, official reports, must be considered as being truthful and reliable unless they can be proved otherwise, clearly and beyond doubt.
- c) In the present case and after having watched the video footage of the incident provided by the appellants, the chairman of the Appeals Body is of the opinion that the intensity of the player's gesture does not allow to qualify it as severely as the referee did.

In other words, the appellants have provided evidence which allows denying, in the eyes of the chairman of the Appeals Body, the accuracy of the referee's report with regard to the reported "grabbing of throat". Indeed, the footage of the incident allows observing, that the player Colman placed his hand on his opponent's throat but did not "grab" his throat as reported.

However, it remains, that the player Colman assaulted his opponent as he intentionally head butted him, which constitutes an assault in the sense of Art 15(1) DR. Indeed, the term assault covers any act by which the physical wellbeing of an individual is deliberately attacked. This includes fights, head-butts, face slaps, kicks, stamping, jostling, pinching etc. As a rule, such acts do not occur when trying to win the ball. They therefore have nothing to do with the game.

3.

Article 15(1)(e) DR provides for a suspension for three matches or a specified period if a player assaults another player or other person present at a match.

4.

Thus, the only remaining question to consider is whether the Control and Disciplinary Body abused its discretionary powers in imposing a four-match suspension on the player. According to Article 17(2) DR, the disciplinary bodies determine the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the case, taking into account any aggravating and mitigating circumstances.

5.

- a) It is the Appeals Body's constant practice to consider the Control 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.

The standard sanction of a three-match suspension for assault was scaled up in this case because, in the opinion of the Control and Disciplinary Body, the player's had grabbed his opponent's throat after having head butted him.

- b) Having watched the video of the incident a number of times, the Chairman of the Appeals Body is satisfied once Colman head butted his opponent then he placed his hand on the opponent throat but he did not grab it. Therefore, this additional match of suspension appears disproportionate: This hand gesture was inappropriate but it does not appear to deserve a single match suspension in itself.

It also emerged from the video footage of the incident that the head butt in question was of very slight intensity: the player contacted his head with the opponent head without a particular violence. Rightly the CDB qualified this act an assault in the sense of the Art. 15(1)(e) DR, and justify a sanction of the standard provided by this provision.

- c) The appellants underlined that the act of the player did not harm his opponent; this does not change the qualification of the facts. As the CDB rightly recalled in the contested decision any act with intend which the physical wellbeing of an individual is affected constitutes an assault. In other words "assault" as a formal offence it does not require proof of people being injured or of the absence of danger. The offence of assault is committed by the mere attack (slight could be) on the wellbeing of person, irrespective of it intensity.
- d) Furthermore, the Chairman was not provided any convincing evidence, to admit a provocation as mitigating circumstance form part of the player Colman head butted.

Considering that the player Colman did have an inappropriate gesture after he had already head butted his opponent (aggravating factor), the Chairman of the Appeals Body believes that even if those gestures were not violent in the extreme, the standard sanction for assault is appropriate and proportionate in this case.

Consequently, the appeal shall be partially admitted and the Control and Disciplinary Body's decision be modified accordingly.

6.

The fact that the CDB retained “kick” instead of “head butt” has no impact on the outcome of these appeal proceedings as the Appeals Body has the full power to review the case in fact and in law. The appellants cannot gain any legal benefit of having rightly mentioned this.

7.

The allocation of the costs of proceedings, which include all the expenses of the Appeals Body, depends on the outcome of those proceedings. The Appeals Body is at its own discretion how these costs are to be allocated to the various parties (Art. 44 DR). In the instance case, the costs, totaling €3,000; €2,000 is to be paid by the appellants, less the appeal fee, with the player and his club jointly responsible for payment; the rest is borne by UEFA.

Decision of 29 August 2013

FC Steaua Bucuresti

(Discriminatory and inappropriate behaviour of supporters)

Circumstances of the case:

During the UEFA Europa League match of 7 March 2013 between FC Steaua Bucureşti and Chelsea FC, Steaua supporters displayed a banner containing a half skull and half Celtic cross, and used laser pointers on several occasions.

Legal framework:

Art. 11bis(1) DR *Discrimination and similar conduct*. Article 11(2) DR *use of laser pointers*.
Art. 6 DR *Strict liability*.

Decision:

CDB:

The CDB fined Steaua Bucuresti €45,000.

Appeals Body:

The appeal lodged by FC Steaua Bucuresti was rejected and the CDB decision of 25 May 2013 was upheld.

Chairman: Pedro Tomás, Spain

Members: António Mortagua, Portugal
Michel Wuilleret, Switzerland

In fact:

A.

In its decision of 25 May 2013, the UEFA Control and Disciplinary Body fined FC Steaua Bucureşti (hereinafter: Steaua / or the club) €45,000 having held it responsible for the following misconduct on the part of its supporters at the UEFA Europa League match of 7 March 2013, FC Steaua Bucureşti v Chelsea FC:

discriminatory conduct under the terms of Article 11bis(1) of the UEFA Disciplinary Regulations for displaying a banner containing a half skull and half Celtic cross;
improper conduct under the terms of Article 11(2) DR for having used laser pointers on several occasions.

B.

On 2 July 2013, Steaua addressed its intention to appeal against the CDB decision of 25 May 2013 and paid the appeal fee of €1,000. On 9 July 2013, the Disciplinary Services Unit acknowledged receipt of the appeal and gave Steaua a deadline to send its appeal statement. It submitted the grounds for appeal on 15 July 2013.

It mentioned that the CDB's arguments were not conclusive enough to impose a sanction under the terms of Art.11(2) bis of the Disciplinary Regulations for the following reason:

The Celtic cross is not necessarily linked to neo-Nazism and white supremacy (it is widely used as Christian symbol). Contrary to the CDB's opinion, the Celtic cross was not popularized by the Ku Klux Klan but was present in history long before the moment indicated in the UEFA decision, as it was actually first popularised by the Christians and before that by the Roman Empire.

Steaua requested the Appeals Body to re-examine the aspects regarding the alleged racist behaviour of their supporters and to exonerate the club from the sanction relative to the offence of racism (Art. 11bis DR).

C.

The disciplinary inspector replied on 5 August 2013. He concluded that the appeal is rejected, the decision of the CDB of 25 May 2013 be confirmed and the costs of the proceedings be charged to the appellant.

D.

At today's hearing, the appeals Body noted that Steaua had informed UEFA only on the eve of the hearing that they would not be attending the hearing. The disciplinary inspector, Faruk Basturk was present at the hearing.

The chairman of the Appeals Body (hereafter: AB) confirmed that the hearing would take place despite the absence of the appellant. He then announced the composition of the panel and informed the party present of the procedure to be followed and of the fact that everything the panel and the party would say would be recorded.

The disciplinary inspector agreed to the procedure and raised no objection.

No additional evidence having been requested, the floor was given to the disciplinary inspector, who presented and expanded on the arguments set forth in his written statement and maintained his original request.

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

The AB concluded the hearing, deliberated and decided as follows.

In law:

1.

The Appeals Body has jurisdiction to hear this case under Articles 34(3) of the UEFA Statutes and 24(4) of the Disciplinary Regulations.

Steaua lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeals fee was paid on time. The appeal is therefore admissible under the terms of Articles 53 and 54 of the Disciplinary Regulations. It is worth underlining that the previous Disciplinary Regulations (2012 edition) apply to all aspects of material law, while the current edition (2013) that entered into force on 1 June 2013 applies to all aspects of procedural law in this case.

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

2.

- a) Under Article 52 of the UEFA Statutes and Article 8 of the UEFA Disciplinary Regulations, unsporting conduct, breaches of the Laws of the Game, as well as infringements of UEFA's Statutes, regulations, decisions and directives, are sanctioned by disciplinary means.

- b) According to Article 2(b) of the UEFA Statutes, one of UEFA's objectives is to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion or race, or for any other reason.
- c) Article 6 of the UEFA Disciplinary Regulations forms the legal basis that enables UEFA, through its disciplinary bodies, to ensure that its objectives and the obligations imposed on its members are respected not only by the latter, but also by third parties for whose actions members are responsible

Under Article 6(1) of the UEFA Disciplinary Regulations, member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the association or club. This rule also applies to 2012/13 UEFA Europa League matches, as expressly stated in paragraph 21.01 of the competition's regulations.

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

- d) Article 11bis of the UEFA Disciplinary Regulations specifies that anyone who insults the human dignity of a person or group of persons, by whatever means, including on grounds of colour, race, religion or ethnic origin, shall incur a suspension for five matches or for a specified period (paragraph 1). Any member association or club whose supporters engage in the behaviour described in paragraph 1 shall incur a minimum fine of €20,000 (paragraph 2).

3.

- a) A symbol can appear in different forms: words, sounds, gestures or visual or virtual images that represent, stand for or suggest an idea or belief.

In the case in hand, it is uncontested, that supporters of FC Steaua Bucuresti displayed a banner containing a half skull and half Celtic cross.

The appellant argues that a cross bar with a ring at the intersection (Celtic cross) has a Christian meaning, which is basically right. However, it cannot be ignored, that this symbol has been diverted by neo Nazi to make it their power symbol and gained so with a discriminatory character. It is true that the Celtic cross has a religious origin.

However, the Nazis hijacked and used the Celtic cross for something it was not meant for. In other words, they diverted its original meaning and this symbol is since then linked to their philosophy. Indeed, it is now common knowledge that the Celtic cross is one of the most popular symbols for neo-Nazis and white supremacists. As a consequence, UEFA cannot allow it at its matches.

Indeed, the Nazi philosophy was based on the fact that some races are inherently superior. The Nazi had symbols to represent their idea, philosophy and powers. Among these symbols were SS-totenkopf (Skull) a symbol of SS group and the Celtic cross, which is a worldwide known symbol for supremacy of the white race. For this reason UEFA always never accept such symbol in the stadium where its matches are playing.

- b) The fight against racism is a high priority for UEFA, which has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. In the present case, the photos of the incident substantiated enough that the banner displayed by the supporters of Steaua contained Celtic cross and also totenkopf (Skull) symbols.

By showing such a banner these supporters acted in a way to demonstrate their sympathy for the neo Nazi philosophy and for the idea a superior race and obviously not to show their allegiance to the Christian faith. Indeed, and no matter what the club tries to argue, the Celtic cross is knowingly and generally understood as one of the most popular symbols for neo-Nazis and white supremacists.

Along with many other runic symbols, the totenkopf, which also appears on the litigious banner, was used by the 3rd SS Panzer Division (armed wing of the Germany Nazi Party during the Nazi era in Germany). Since then, this sign is widely and worldwide understood and recognized as another symbol of the Nazi power. Associated with discriminatory and racist ideas, it has no place in football stadium either.

- c) Displaying banners with symbols that are generally recognised as racist symbols expressing the idea that some races are inherently superior (physically, intellectually, or culturally) has to be considered as racist behaviour in the sense of Article 11bis DR, irrespective of the actual intention of those using it. As underlined in various disciplinary decisions issued by the competent UEFA bodies, racism is in total contradiction with the values of football, notably tolerance, friendship and respect. Consequently, no sign whatsoever, which can be understood by a large number of spectators as having a racist connotation, is admissible in a stadium where UEFA matches are playing.

- d) The appellant also requests the Appeals Body to re-examine the case on the regards of the principle of “in dubio pro reo”, which concerns both the burden of proof and the assessment of evidences and forbids an authority to sanction an accused party if an objective assessment of all the evidence leaves serious and insurmountable doubt.

In the present case, and in view of the above, the panel has no doubt at all that the symbols appearing on litigious banner have gained a racist and discriminatory connotation since the Nazi Era. Some European state courts, such as the Germany Federal Court have even ruled, that the public use of a cross bar with a ring at the intersection (Celtic cross) is generally prohibited and punishable.

4.

- a) In view of the failings established and taking account of the full circumstances, the Appeals Body finds that Steaua violated Article 11bis of the Disciplinary Regulations, since no fascist or Nazi signs or symbols may be displayed at UEFA matches.
- b) The Control and Disciplinary Body rightly considered the offence serious and noted that this was not the first time the appellant had been brought to account for discriminatory conduct on the part of its supporters. Having taken all the circumstances into account, including the fact that the banner was quickly removed, the Control and Disciplinary Body rightly imposed the standard fine of €20,000. Its analysis is beyond criticism and must be upheld.

5.

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

In the present case, the costs to the proceedings (€6,000 in total) will be borne in full by the appellant, FC Steaua Bucuresti. The Football Federation of Romanian is jointly liable for any failure to pay these costs and the original fine.

Decision of 29 August 2013

Juventus

(Discriminatory and inappropriate behavior of supporters. Sale of alcohol in the stadium)

Circumstances of the case:

During the UEFA Champions League match Juventus vs. FC Bayern München on 10 April 2013, Juventus supporters ignited two Bengal lights and two smoke bombs. Furthermore, a banner was displayed with the words "Via Filadelfia 88" (the number 88 is considered a Nazi symbol). In addition, alcohol was sold and distributed to home supporters within the stadium.

Legal framework:

Art. 11bis(1) DR *Discrimination and similar conduct*. Art. 11(2)(c) DR *lighting of fireworks or any other objects*. Art. 6 DR *Strict liability*. Art. 36 Safety and Security Regulations *Distribution of alcohol*.

Decision:

CDB:

The CDB fined Juventus €50,000.

Appeals Body:

The appeal lodged by Juventus was partially admitted. The CDB decision of 25 May 2013 was overturned and the fine was reduced to €20,000.

Chairman: Pedro Tomás, Spain

Members: António Mortágua, Portugal
Michel Wuilleret, Switzerland

In fact:

A.

In a decision of 25 May 2013, the UEFA Control and Disciplinary Body fined Juventus €50,000, holding it responsible for its spectators' conduct at the UEFA Champions League quarter-final between Juventus and FC Bayern München on 10 April 2013, which was considered discriminatory under Article 11bis(1) of the UEFA Disciplinary Regulations in so far as one supporter displayed a banner containing the words "Via Filadelfia 88", which is considered a Nazi symbol. The club was also held responsible for the sale of alcohol and for the fact that its supporters blocked public passageways and used pyrotechnic devices during the above-mentioned match.

B.

On 2 July 2013, Juventus informed UEFA of its intention to appeal against the Control and Disciplinary Body's decision with grounds, which had been sent on 1 July 2013.

C.

The club submitted its appeal pleadings on 9 July 2013, requesting that the decision of 25 May 2013 be overturned and the fine cancelled. In the alternative, the club requested that the fine be reduced in proportion to the offences actually committed by Juventus and its supporters. It claimed, in substance, that:

- the pyrotechnic devices had not been used by its supporters and it could not be held responsible for the misbehaviour of FC Bayern München supporters;
- the sale of alcoholic beverages with alcohol content not exceeding 5% was allowed by the "Prefetto di Torino" (public authority of the city of Torino). Article 1(3) of the UEFA Safety and Security Regulations made provision for the application of national legislation. Therefore, the sale of alcohol did not contravene Article 36 of the UEFA Safety and Security Regulations;
- the stairs and passageways in the north stands had been blocked by firemen and members of the Red Cross. No emergencies or dangerous situations had arisen during the match. In fact, the club had not violated Article 38 of the UEFA Safety and Security Regulations.
- Regarding the alleged violation of Article 11bis of the Disciplinary Regulations, the appellant insisted that "Via Filadelfia 88" referred to nothing other than the location of

one of the entrances at the club's Comunale stadium, where the Juventus supporters used to meet before matches. The club produced evidence of this in the form of a book written by Beppe Franzo entitled "Via Filadelfia 88 Una Storia, Una Curva", which described Juventus fans attending matches played in the 1970s and 1980s. The appellant finally argued that the challenged decision should be overturned and the fine cancelled and, in the alternative, that the fine should be reduced in proportion to the offences actually committed.

D.

On 6 August 2013, the UEFA disciplinary inspector submitted his response to the appeal, requesting that it be rejected and the costs charged accordingly.

E.

At today's hearing, the appellant was represented by its lawyer and UEFA by its disciplinary inspector.

The chairman of the Appeals Body confirmed the composition of the panel and informed the parties of the procedure to be followed and that everything they and the panel said would be recorded.

The parties agreed to the procedure and raised no objections.

The witness called by the appellant, Marco Patania (the Juventus safety and security officer), confirmed that the "Via Filadelfia 88" banner displayed by the Juventus supporters referred only to the entrance where supporters used to meet before matches. At the panel's request, he confirmed the existence of "Via Filadelfia" with numbers 1, 2, 3, etc., and that number 88 was indeed situated at one of the entrances to the stadium.

The photographs of the stand were displayed and clearly showed that public passageways had been blocked by the Juventus supporters. Having initially denied this, the appellant finally admitted that passageways had been blocked by its supporters.

Since no additional evidence was provided, the floor was given to the parties, who confirmed their requests and presented broadly the same arguments as contained in their written submissions.

The more detailed arguments are set out and examined below, in so far as they are relevant.

With the debates concluded, the Appeals Body deliberated and decided as follows.

In law:

1.

The Appeals Body has jurisdiction to hear this case under Articles 34(3) of the UEFA Statutes and 24(4) of the UEFA Disciplinary Regulations.

Juventus lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeals fee was paid on time. The appeal is therefore admissible under the terms of Articles 53 and 54 of the Disciplinary Regulations. It is worth underlining that the previous Disciplinary Regulations (2012 edition) apply to all aspects of material law, while the current edition (2013) that entered into force on 1 June 2013 applies to all aspects of procedural law in this case.

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

2.

a) Under Article 52 of the UEFA Statutes and Article 8 of the Disciplinary Regulations, unsportsmanlike conduct, breaches of the Laws of the Game and infringements of the statutes, regulations, decisions and directives of UEFA are punished by means of disciplinary measures.

b) Article 11bis of the Disciplinary Regulations specifies that any person under the scope of Article 3 of the Disciplinary Regulations who insults the human dignity of a person or group of persons by whatever means, including on grounds of skin colour, race, religion or ethnic origin, will be suspended for five matches or a specified period of time (paragraph 1). If one or more supporters of a member association or club engage in the behaviour described in paragraph 1, the member association or club responsible is fined €20,000.

This provision is a special rule reflecting the principle of strict liability, enshrined in Article 6(1) of the Disciplinary Regulations. Member associations and clubs are responsible for the conduct of their supporters. This responsibility applies to offences committed by any person supporting the team before, during or after the match, irrespective of the fault of the club or association in question (strict liability).

c) The use of pyrotechnic devices in the stadium during matches organised by UEFA is strictly prohibited under Article 11(2) of the Disciplinary Regulations.

d) Article 36 of the UEFA Safety and Security Regulations (Edition 2006) prohibits match organisers from selling or distributing alcohol within the stadium or its private environs. According to Article 49 of the Safety and Security Regulations, any breach of the Safety and Security Regulations may be penalised by UEFA in accordance with the Disciplinary Regulations.

- e) The present case must be examined in the light of the above regulatory provisions and principles.

3.

As the club no longer denies that its supporters obstructed public passageways, this aspect requires no further examination. Accordingly, only the use of fireworks, the sale of alcohol in the stadium and the displaying of the disputed banner must be examined.

4.

Use of pyrotechnic devices

- a) The appellant denies that its supporters used pyrotechnic devices, as noted in the match official's report.

According to Article 45 of the Disciplinary Regulations, facts contained in match officials' reports are presumed to be accurate, unless proof of their inaccuracy is provided. In the present case, the appellant provides no substantial evidence to counter the accuracy of the facts related in the match official's report, but merely denies them. The Appeals Body must therefore consider that the match official's report satisfactorily establishes the facts.

Furthermore, having examined the photograph of the incident, this clearly shows smoke released by the use of pyrotechnic devices from the stand in which the Juventus supporters were located. The Appeals Body considers that this corroborates the facts described in the match official's report. Therefore, the argument put forward by the appellant must be dismissed.

- b) Article 11(2) of the Disciplinary Regulations lists a number of examples of inappropriate behaviour for which the club or national association concerned would be held responsible. This provision notably states that:

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

- a) (...);*
- b) (...);*
- c) the lighting of fireworks or any other object (...)"*.

As the Juventus supporters ignited five pyrotechnic devices, it is established that they violated Article 11(2) (c) of the Disciplinary Regulations.

According to this provision, the strict liability of the club applies and its responsibility for the misconduct of its supporters cannot be questioned. On this basis, the Control

and Disciplinary Body correctly held Juventus responsible for the improper conduct of its supporters, who ignited these devices.

5.

Sale of alcohol in the stadium

- a) The appellant argues that the Torino public authority allows the sale of alcoholic beverages in the party of the stadium occupied by local fans if the alcohol content does not exceed 5%. It claims that, since the alcohol content of the beverages sold at the match in question did not exceed this level, it did not violate Article 36 of the UEFA Safety and Security Regulations, in so far as Article 1(3) of the same Regulations states that national legislation should apply.

This argument is unfounded.

The appellant obviously misinterprets Article 1(3), which states as follows:

"They [measures intended to ensure safety and security] do not constitute an exhaustive list of the organisational measures to be taken by the match organiser and participating associations or clubs, and do not affect the legal obligations arising from the applicable national legislation".

This provision describes the complementary role of national legislation in a stadium. If state authorities impose additional safety and security measures in a stadium, they must be implemented in addition to those required by UEFA. National legislation, however, can never justify non-compliance with the UEFA Safety and Security Regulations, which apply to UEFA competitions.

- b) As an organiser of and participant in UEFA competition matches, Juventus is not subject to Italian law alone, but must also respect all UEFA regulations. Indeed, by entering the 2012/13 UEFA Champions League, the appellant agreed to comply with UEFA regulations, in accordance with paragraph 2.04 of the Regulations of the UEFA Champions League 2012/13, which states that:

"To be eligible to participate in the competition, a club must fulfil the following criteria: (...)

e) it must confirm in writing that the club itself, as well as its players and officials, agree to respect the statutes, regulations, directives and decisions of UEFA (...)".

Juventus therefore officially and voluntarily undertook to respect the UEFA Safety and Security Regulations and to submit to the authority of the UEFA disciplinary bodies.

- c) It emerges from the above that Juventus knew that the sale of alcohol was strictly prohibited, even if the Torino public authority permitted the sale of alcohol in the stadium.

Moreover, the Appeals Body notes that the appellant offers no proof that UEFA's prohibition of the sale of alcohol is in any way contrary to the relevant national legislation. Therefore, the appellant's argument can obviously not be considered founded.

Here again, the Control and Disciplinary Body was right to hold the appellant responsible for violating Article 36 of the UEFA Safety and Security Regulations.

7.

Inappropriate "Via Filadelfia 88" banner

According to UEFA case law and the list drafted by FARE, the number 88 is considered a racist symbol. Depending on the context, 88 is not a meaningless number, but a hidden code designed to demonstrate allegiance to Hitler and his discriminatory ideas. Among neo-Nazi groups and their opponents, 88 can be understood as standing for "Heil Hitler", since H is the eighth letter of the alphabet.

For this reason, a steward rightly refused to allow a Legia Warszawa supporter to enter the stadium at his club's away match against The New Saints on 17 July 2013 because he was wearing a shirt displaying the number 88.

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

The fight against racism is a high priority for UEFA, which has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. However, this fight must be conducted with full respect for the law. In the present case, the only question that the Appeals Body must address is whether, according to the context of the case, the message "Via Filadelfia 88" is the same as the prohibited number 88 (meaning "Heil Hitler") and thus falls under the terms of Article 11bis of the Disciplinary Regulations.

In its decision against FC Zenit (25943_b), the UEFA Appeals Body provides further guidance on how to assess controversial symbols in relation to Article 11bis of the Disciplinary Regulations (Article 14 of the 2013 edition). It states that no symbol that is likely to be understood by a large number of spectators as a political reference to extremist and discriminatory ideologies is allowed. It does not matter whether the symbol displayed is identical to the symbol of a city or an inoffensive reference to a particular region's background.

In other words, if a large number of reasonable spectators or viewers would have considered such a symbol racist and concluded that the people who displayed it were promoting Nazi ideas, the symbol would contravene the above provision.

However, the case at hand is unusual for many reasons. Via Filadelfia actually exists, as does the address Via Filadelfia 88, which is the location of the stadium entrance where Juventus supporters used to meet before home matches. Given this fact, the direct connection with football history, as described in Beppe Franzo's book "Via Filadelfia Una Storia, Una Curva" and the use of this number together with the name of Via Filadelfia, the Appeals Body is satisfied that the use of the number 88 cannot be understood as discriminatory in this particular context.

Bearing in mind that such a message could nevertheless create confusion and be considered by certain persons an encouragement by neo-Nazi groups, the Appeals Body instructs the appellant to prevent its supporters from displaying it again during UEFA matches. Accordingly, the allegation of discriminatory behaviour is dismissed.

8.

In view of the failings established and taking account of the full circumstances of the case, the Appeals Body finds that Juventus violated Article 11(2) of the Disciplinary Regulations and Articles 36 and 38 of the Safety and Security Regulations. As far as the charge of discriminatory behaviour is concerned, the appeal is admitted. As a consequence, the fine imposed against the club must be reduced accordingly.

9.

The disciplinary measures which may be imposed on clubs are listed in Article 14(1) of the Disciplinary Regulations. Since a fine may be between €100 and €1,000,000 (Article 14(2)), the competent disciplinary body has extensive discretionary powers in this area.

According to Article 17(1) of the Disciplinary Regulations, the competent disciplinary body decides on the type and extent of the disciplinary measures to be imposed based on the objective and subjective elements of the offence, taking into account any aggravating and/or mitigating circumstances. If the party charged has committed multiple disciplinary offences, the disciplinary body imposes a punishment corresponding to the most serious offence and increases it accordingly (Article 17(3)).

The Appeals Body notes that safety and order in the stadium has always been a prime concern of UEFA. This is reflected in various UEFA regulations, notably the aforementioned Safety and Security Regulations. Without security in the stadium, there would be no spectators, and without spectators there would be no football.

In the present case the club appellant was held responsible for having sold alcohol (Art. 36 of the UEFA Safety and Security Regulations) in the stadium, for having let its supporters to obstruct the public passageways (Art. 38 of the UEFA Safety and Security Regulations) and for the improper conduct by its supporters who ignited 5 pyrotechnic devices (Art. 11(2) DR).

In view of the above, the Appeals Body deems a fine of €20,000 to be the appropriate disciplinary measure for the multiplicity of the offences committed (excluding discriminatory behaviour).

10.

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

In this case, the costs of the proceedings, totaling €6,000, are shared between the appellant and UEFA (two-thirds or €4,000 to be borne by the appellant and one-third or €2,000 by UEFA). The Italian Football Federation is jointly liable for any failure to pay the appellant's share of the costs and the fine.

Decision of 29 August 2013

GNK Dinamo Zagreb

(Racist behaviour of supporters)

Circumstances of the case:

During the UEFA Champions League match GNK Dinamo vs. CS Fola Esch on 23 July 2013, GNK Dinamo supporters sang on several occasions, "Mamicu cigane, odlazi iz svetinje" (Mamic, you gypsy, get out of our temple).

Legal framework:

Art. 14 DR *Racism, other discriminatory conduct and propaganda*. Art. 8 DR *Strict liability*.

Decision:

CDB:

The CDB fined GNK Dinamo €25,000, and also ordered the club to close the East section of the GNK Dinamo stadium for their next UEFA match.

Appeals Body:

The appeal lodged by GNK Dinamo Zagreb was rejected and the CDB's decision of 26 July 2013 was upheld.

Chairman: Pedro Tomás, Spain

Members: Michel Wuilleret, Switzerland
António J. Mortágua, Portugal

In fact

A.

By decision of 26 July 2013, the UEFA Control and Disciplinary Body fined GNK Dinamo €25,000 and imposed on it a partial stadium closure (closure of the East section of the GNK Dinamo stadium at the next UEFA club competition match it hosts), holding the club responsible for the behaviour of its fans who, at the above-mentioned match, chanted "Mamicu cigane, odlazi iz svetinje" (Mamic, you gypsy, get out of our temple) several times.

B.

The Control and Disciplinary Body's decision was sent to the club on 26 July 2013 and on 29 July 2013, GNK Dinamo informed UEFA of its intention to appeal.

In its statement of 2 August 2013, GNK Dinamo (hereafter: the club) essentially argues that no racist behaviour was demonstrated. According to the club, the phrase chanted by some supporters – which it confirms as having been "Mamicu cigane, odlazi iz svetinje" (Mamic, you gypsy, get out of our temple) – was aimed at Mr Zdravko Mamic, the club's executive chairman. As such it did not discriminate against or denigrate a particular ethnic group. No single word of this chanting was aimed at insulting the human dignity of anyone on the grounds of race, religion or ethnic origin in the sense of Article 14(1) DR. Gypsy, the club argues, was a common word used to refer to Romani people. In their language, the term meant "good man" and calling a person of this ethnic group a gypsy was in no way considered pejorative. The club further claims that calling someone a gypsy does not represent an infringement of the Swiss Criminal Code, and it requests that Mr Toti Dedic, president of World Romani Organisation, be called as a witness to corroborate that the term "gypsy" only highlights the ethnic origin of a person and does not represent any form of racist offence.

In any case, the club argues, the chanting was addressed at Mr Mamic by some of the radical group of Dinamo "fans" who contest the club's strict policy under which they are not allowed to take any control over the club's vital affairs. Possibly, the link between the club, Mr Mamic and Roma organisations, which lead Mr Mamic to be given "membership" of the Roma community, gave rise to these particular chants and their calling him a gypsy. Mr Mamic was allegedly not affected by this chanting and, according to the club, should the Control and Disciplinary Body decision be confirmed, the few people responsible

would have won their battle against the club. With one single chant, it is argued, they would ensure that the club pays for being strict against them and correct in its management.

Following the opening of the UEFA disciplinary procedure, the appellant also claims to have demonstrated perfect cooperation with the police authorities, informing them about the stance UEFA holds about such chants and asking them to firmly intervene should similar events occur again.

Based on this, the club requests that the Control and Disciplinary Body decision be cancelled due to a lack of any racist activity that could fall under Article 14 of the UEFA Disciplinary Regulations (hereafter: DR).

C.

On 12 August 2013, UEFA submitted its reply via its disciplinary inspector, requesting that the appeal be rejected and the costs of the proceedings charged accordingly.

D.

The chairman opened the appeal hearing, noted the presence of the parties and explained the procedure to be followed. He reminded the parties of the composition of the Appeals Body and told them that everything they and the Appeals Body said during the hearing would be recorded.

No objection was raised.

To begin, Mr Toti Dedic, the Roma witness called by the appellant, declared that “gypsy” in the Roma language meant “good man”. He further underlined that as a Roma, the chants performed by these supporters did not offend him.

In response to a question asked by the disciplinary inspector, Mr Dedic admitted that a significant number of the Roma community lived in kind of ghettos in Croatia and were not very highly appreciated.

After the witness had been cross-examined, the floor was given to the parties, who, in substance, reiterated the arguments given in their written pleadings and developed and maintained their requests.

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

In law

1.

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

GNK Dinamo lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeals fee paid on time. The appeal is therefore admissible under the terms of Article 53 DR.

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

2.

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

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

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

In this respect, the UEFA Executive Committee –as legislator- decided to strengthen the provisions of the latest UEFA Disciplinary Regulations (which enter into force in 1 June 2013) with regard to the discriminatory conduct.

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

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

3.

- a) In the case at hand, there is no doubt, and it is also uncontested, that supporters of GNK Dinamo performed the chant "*Mamicu Cigane, odlazi iz svetinje*" (Mamic, you gypsy, get out of our temple)".
- b) GNK Dinamo does not deny that such chants were performed by its supporters but stresses that these chants were directed only at Mr Zdravko Mamic (executive chairman of the club). They allegedly did not denigrate a particular ethnic group and no word of this chanting was aimed at insulting anyone's human dignity on racial grounds. For UEFA, however, and given the historical and social context, attacking a person by calling him a gypsy knowingly demonstrates a derogatory and discriminatory attitude. In the particular context of the club and the country in question, it is even more obvious that the word gypsy was used to insult Mr Mamic. The word "gypsy" was indeed clearly not neutral or positive in the eyes of the supporters who performed the chants. Even if the Roma community is accustomed to being stigmatised and not all of its members are offended every time the word "gypsy" is used to insult a person, it remains a sign of intolerant behaviour which cannot be accepted by UEFA in organised football. It runs contrary to the aforementioned Article 14 DR and the UEFA values conveyed by football.
- c) In UEFA disciplinary law, when it comes to deciding whether an act constitutes discriminatory conduct or not, the correct approach is to concentrate on the context of the incident.

In the present case, it is worth recalling that many of the millions of Roma in Europe face prejudice, intolerance, discrimination and social exclusion in their daily lives. They are marginalised and live in very poor socio-economic conditions. It is public knowledge that Roma are discriminated in Europe (cf. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: The social and economic integration of the Roma in Europe, COM/2010/0133 final).

For historical and social reason, "gypsy", which is an out-dated term used to designate members of the Roma community, has gained a connotation which is widely felt to be pejorative by Roma people even by no Roma. This word is often used as an insult, as demonstrated by the chants performed by those supporters who were calling Mr Mamic a "gypsy".

- d) During the 2011/12 UEFA Europa League match FC Rapid București v WKS Śląsk Wrocław of 25 August 2011, Wrocław supporters performed the chant "Cyganie, Cyganie" (Gypsy, gypsy). Proceedings were opened and the UEFA Control and

Disciplinary Body, in its decision of 22 September 2012, held WKS Śląsk Wrocław responsible for the behaviour of its supporters, which was held to be discriminatory.

WKS Śląsk Wrocław appealed against this decision, arguing – as GNK Dinamo now argues – that under Swiss law, such behaviour would not be considered as discriminatory.

This argument is unfounded.

Under the Swiss law of association, Article 63 of the Swiss Civil Code lays down the principle of autonomy. It emerges from this that UEFA, as an association governed by Swiss law, is competent to promulgate and apply its own rules for its competitions in order to achieve the objectives laid down in its statutes.

Due to the interests and values protected and promoted in the UEFA Statutes, UEFA's notion of discrimination and racism is wider than under Swiss criminal law. Indeed, under Article 2 of the UEFA Statutes, UEFA's objectives include to *"promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason"*. It must therefore be noted that one of UEFA's primary objectives is to combat all forms of discrimination in football in Europe. This provision also implies that if something is prohibited among some, it should not be tolerated among others.

In other words, within UEFA's jurisdiction, Article 261bis of the Swiss Criminal Code does not apply. Only the provisions on discrimination in the UEFA Disciplinary Regulations and UEFA strict jurisprudence apply in this regard.

According to UEFA practice, shouting the word "gypsy" constitutes clear discriminatory behaviour as it stigmatises the Roma ethnic group and has negative connotations in the eyes of those who shout it in a stadium, for example. When it is used as an insult against a particular person, as in the present case, this is even clearer.

- e) Furthermore, it must be recalled that when a club agrees to participate in a UEFA competition it accepts to comply with the relevant UEFA regulations (Article 2.04(e) of the Regulations of the UEFA Champions League 2013/14). In this respect, the notion of discrimination as applied by UEFA is the sole notion applicable.

UEFA's policy on racism and propaganda must be consistent. Therefore, any discriminatory conduct expressed in song, symbols or writing must be purely and simply eliminated from stadiums.

The fact that the witness Tito Dedic said he was not hurt personally by the chants performed by the Dinamo supporters during the match in question is irrelevant. It

remains that shouting “you gypsy” at someone is derogative and offensive to the Roma people (cf. Romanian Roma Community to Fight Discrimination through Dictionary Definition Change, in Novinite.com). Claiming that someone who was called this but knew the real meaning would understand it as a compliment, given that “gypsy” means “good man” in the Romani language, cannot seriously be taken into consideration.

The appellant’s argument that the word “gypsy” is not offensive but simply highlights the ethnic origin of a person is equally unacceptable. Even though the word can, in certain specific circumstances, be used in a non-offensive manner, in this case the context allows for only one interpretation: that the chanting in question was offensive and unfit for a football stadium. Therefore the club’s argument is to be ruled out.

There is no reason for the panel to question the neutrality of the FARE observer who reported on the discriminatory nature of the chants performed by Dinamo supporters at the match.

4.

For the reasons given above, the Appeals Body holds that it has been established to its satisfaction that GNK Dinamo supporters behaved in a discriminatory manner in breach of Article 14(2) DR by chanting discriminatory messages. The Control and Disciplinary Body was therefore right to punish the club on this count, in application of Article 8 and 14(2) DR.

Article 14(2) DR governs the application of sanctions where supporters’ conduct is concerned. According to this provision, the appropriate sanction is a minimum of a partial stadium closure.

Before applying this sanction, the competent body must assess whether there are any exceptional circumstances warranting an increase or decrease in the standard sanction (Article 17(3) DR). It is important to note that mitigating circumstances, as provided for in Article 17(1) DR, are not applicable to offences that fall under Article 14 DR, the standard sanction for which can be called into question **only** in exceptional circumstances Art. 17(3) DR.

In this respect, it is worth underlining, for instance, that a lack of previous (which does not in principle constitute a mitigating circumstance under paragraph 1 of Art. 17DR) offences does not constitute a fortiori an exceptional circumstance in the sense of Article 17(3) DR.

The fact that the appellant club cooperated well with the police after the opening of the disciplinary proceedings and explained to them UEFA’s policy on such chants may well be praiseworthy but this does not constitute an exceptional circumstance either. The

appellant, in fact, provides no elements that could be qualified as exceptional circumstances and thereby justify a decrease in the standard sanction.

It must also be pointed out that the appellant club has a previous record of racist incidents. In order to encourage and help the club to improve its situation, however, the Control and Disciplinary Body did not apply Article 14(3) DR, which would have led straight to a match behind closed doors. Instead it applied Article 14(2) DR, coupled with a fine, which was more favourable for the appellant. This approach is beyond criticism.

The Control and Disciplinary Body was therefore right to impose a partial stadium closure on account of the discriminatory chants and to fine the club €30,000.

5.

The Appeals Body decides at its own discretion how the costs of its proceedings, including all the expenses of the Appeals Body, are to be allocated based on the outcome of the proceedings (Article 44(2) DR).

In this case, the costs of the proceedings (€6,000 in total) will be borne in full by the appellant, GNK Dinamo. The Croatian FA is jointly liable for any failure to pay these costs and the original fine.

Decision of 15 October 2013

Cliftonville FC

(Displaying of inappropriate banner)

Circumstances of the case:

During the UEFA Champions League match Cliftonville FC vs. Celtic FC on 17 July 2013, a banner with the text "FREE BRADLEY MANNING" was displayed from the roof of the West Stand.

Legal framework:

Art. 16(2)(e) DR *use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event.* Art. 8 DR *Strict liability.*

Decision:

CDB:

The CDB fined Cliftonville FC €10,000.

Appeals Body:

The appeal lodged by Cliftonville FC was partially admitted. The decision of the CDB of 22 August 2013 was amended and the fine was reduced to €5,000.

Chairman: Pedro Tomás, Spain

Members: Levent Biçakci, Turkey
Yvalo Ivkov, Bulgaria

In fact:

A.

In its letter dated 18 July 2013, the UEFA Disciplinary Services informed Cliftonville FC that on the basis of the match officials reports disciplinary proceedings were opened against their club for the violation of Art.16(2) DR.

B.

In his decision of 22 August 2013, the Chairman of the UEFA Control and Disciplinary Body fined Cliftonville FC EUR 10,000 having found that its supporters, at the 2013/14 UEFA Champions League match Cliftonville FC v Celtic FC of 17 July 2013, were guilty of improper conduct under the terms of Article 16(2)(e) of the UEFA Disciplinary Regulations (hereafter: DR) for displaying a banner containing the message "FREE BRADLEY MANNING" at the roof of the stadium.

C.

On 25 September 2013, Cliftonville FC appealed against the Control and Disciplinary Body's decision. It requested primarily that the decision and procedural costs be overturned and replaced with a warning or reprimand. In substance, it does dispute the fact that the persons who erected the banner accessed the roof of the stadium from their own private property by means of a ladder. It argues however, that as they were not supporters of Cliftonville FC, Art. 16(2)(e) DR shall not apply.

D.

On 10 October 2013, UEFA submitted its response to the appeal via its disciplinary inspector, requesting that it be rejected and the costs charged accordingly.

E.

No hearing was held as the appellant requested the proceedings conduct in writing only. After examining the entire case file, in particular the challenged decision, the grounds for appeal and the disciplinary inspector's reply to the appeal, the UEFA Appeals Body deliberated and decided as follows.

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

In law:

1.

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

2.

- a) Under Article 52 of the UEFA Statutes, disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game, and contravention of UEFA's Statutes, regulations, decisions and directives.

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

In this respect it is important to recall that safety and order in the stadium has always been a prime concern of UEFA. This is reflected in different UEFA regulations, notably the afore-mentioned and the UEFA Safety and Security Regulations. Without security in the stadium, there will be no spectators, and no spectators means no football.

- b) According to Article 48 DR, procedures (before the Control and Disciplinary Body) are opened on the basis of official reports.

As a rule, the Control and Disciplinary Body clarifies the facts of the case in a summary manner, on the basis of the official reports, the contents of which are presumed to be accurate. The body can also consider any other pertinent documents in its possession. It can summon further evidence, provided that doing so will not delay the proceedings unduly (Art. 51(1) DR).

- c) The written notification from the Disciplinary Services is merely designed to inform the parties that the procedure has been opened. It has no binding effect on the Control and Disciplinary Body as far as the alleged offences and their legal qualification are concerned. The UEFA Disciplinary services are under no obligation to mention all applicable rules and regulations. Only the offence and/or factual incidents must be mentioned. Even if they deem useful to communicate a pre-qualification of the facts for

which the proceedings is opened, the judicial bodies keep all liberty to re qualify them (Art. 26 and 58 DR).

3.

- a) In the present case, it is not disputed, that supporters climbed the roof of the stadium. The appellant contests, that the perpetrators of this act would be its supporters and that it would not be answerable for their misbehaviour under Art. 16(2) DR. But this question does not necessarily exclude the appellant's responsibility. Indeed, as a host of the match here in question, Cliftonville FC had the duty to secure the stadium in accordance with Art. 16(1) DR, which states:

"Host associations and clubs are responsible for order and security both inside and around the stadium before, during and after the 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."

- b) After examining all information at hand, and in particular the security officer report, which mentioned the fact but did not designate the perpetrators, the Appeals Body comes to the conclusion that nothing allows to admit, that they supported Cliftonville FC. In the challenged decision, it appears that the Control and Disciplinary has presumed without evidence that these persons were supporters of Cliftonville FC. Even if the notion of "supporters" used in disciplinary law is broad and does not permit a distinction between official and unofficial supporters, objective signs of them supporting one club and not the other have to be observed, before a person can be considered the supporter of one particular club. In the present case, neither the (no-authorised) location of the perpetrators, nor other elements have been brought as evidence in this respect. As a consequence, the club is legitimate to contest any responsibility for the misbehaviour of its supporters as admitted by the Control and Disciplinary Body on the basis of Art. 16(2) DR.

Its responsibility as host of the match is however engaged on the basis of Art. 16(1) DR.

4.

- a) Article 1(3) of the UEFA Safety and Security Regulations imposes the organiser to take appropriate measures to ensure safety and security in and around the stadium during, before and after every UEFA competition match. Match organisers must carry out a range of duties to guarantee safety and security in the stadium, such as by conducting proper and adequate searches and assisting the visiting supporters and delegation, through efficient cooperation with the public authorities. These obligations obviously include securing the stadium and preventing access to unauthorised and dangerous

areas, notably the roof. The UEFA requirements in this area are meant to ensure that all persons (supporters, players and officials) attending the football match to be in a safer environment i.e. free of any danger or risk for their safety and security.

- b) According to Art. 16(1) DR, the existence of shortcomings in the organisation is presumed when incidents relating to security occur inside or around the stadium before, during and after an UEFA match it organises. The club can deny its responsibility only if it proves, that it has not been negligent in any way as it has complied with all its organisational duties and taken all measures that can reasonably be expected from an organiser.

In the present case, the club did obviously not take the appropriate measure (security personal) to prevent unauthorised people to access the roof. In any case, in the absence of evidence, that appropriate and reasonable measures have been taken to avoid the possible access to such a dangerous area as the roof, the club must be held responsible for this security incident according to Article 16(1) RD and sanctioned accordingly.

5.

- a) As regard the sanction to be imposed, the Appeal's body will examine whether or not the Control and Disciplinary Body abused its discretionary powers by fining the appellant club €10,000 for its responsibility in the incident in question.
- b) According to Article 17(1) DR, the competent disciplinary body decides on the type and extent of the disciplinary measures to be imposed based on the objective and subjective elements of the offence, taking into account any aggravating and/or mitigating circumstances. If the party charged has committed multiple disciplinary offences, the disciplinary body decides on a sanction on the basis of the most serious offence and increases it accordingly (Article 17(4) DR).

A full list of the disciplinary measures that may be imposed on member associations and clubs is provided in Article 53 of the UEFA Statutes.

Article 6 DR reproduces this list, which includes a fine (letter c) of anything from €100 to €1,000,000 (paragraph 2). The competent disciplinary body therefore has extensive discretionary powers when it comes to imposing fines. Nevertheless, it the disciplinary body must also respect the standard principles of ordinary law and therefore take account of the particular circumstances of the case and the seriousness of the offence. Finally, it must respect the principles of legality, equal treatment and proportionality and neither exceed nor abuse its discretionary powers.

- c) In this case, the Appeals Body believes that by imposing a €10,000 fine, the Control and Disciplinary Body did not take account of all circumstances in due proportion. In particular, the nature of the incident made it less expectable than other incidents and the club is a semi-professional club in Northern Ireland whose limited financial resources make a fine of €10'000.- disproportionate. Given the financial situation in the club's home country, and the club's own limited financial resources, it deems a fine of € 5'000.- to be more adequate and yet high enough to have the expected deterrent effect. The appeal shall therefore be admitted to this extent.

6.

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

In the present case, the costs of the proceedings (€2,000 in total) will be charged as follows: €1,000 to Cliftonville FC (the Football Association of the Northern Ireland is jointly liable for any failure to pay these costs, as well as the fine), and the rest to UEFA.

Decision of 15 October 2013

KKS Lech Poznań

(Use of objects to transmit a message that is not fit for a sports event)

Circumstances of the case:

Before the Europa League match KKS Lech Poznań vs. FC Honka Espoo on 25 July 2013, a group of KKS Lech Poznań supporters distributed some stickers promoting violence. The stickers contained the words "Good night left side" and the image of a man kicking his opponent.

Legal framework:

Art. 16(2)(e) DR *use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event.* Art. 8 DR *Strict liability.*

Decision:

CDB:

The CDB fined KKS Lech Poznań €10,000.

Appeals Body:

The appeal of KKS Lech Poznań was rejected and the CDB decision of 30 July 2013 was confirmed.

Chairman: Pedro Tomás, Spain

Members: Goetz Eilers, Germany
Michael Maessen, Netherlands

In fact:

A.

In its decision of 30 July 2013, the UEFA Control and Disciplinary Body fined KKS Lech Poznań €10,000, holding it responsible for its supporters' conduct at its 2013/14 UEFA Europa League qualifying match against FC Honka Espoo on 25 July 2013. The supporters concerned had transmitted a message that was not fit for a sports event under the terms of Article 16(2)(e) of the UEFA Disciplinary Regulations by distributing at the gate stickers containing the words "Good night left side" and the image of a man kicking his opponent.

B.

On 25 September 2013, KKS Lech Poznań informed UEFA of its intention to appeal against the Control and Disciplinary Body's decision.

It submitted its appeal pleadings on 30 September 2013, requesting that the decision of 30 July 2013 be overturned as the fine was too harsh on the club, which had not committed any fault or negligence.

It claimed, in substance, that the Control and Disciplinary Body had violated natural justice by basing its decision on false allegations and unproven facts. Moreover, the decision is based on nothing more than hearsay evidence, which in turn, makes the decision entirely arbitrary. The distribution of these stickers had not been noticed by either the police or the club and its stewards.

C.

On 10 October 2013, UEFA submitted its response to the appeal through its disciplinary inspector, who requested that the appeal be rejected and the procedural costs charged to the appellant.

D.

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

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

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

In law:

1.

The UEFA Appeals Body's jurisdiction in this matter is established by Article 24 of the UEFA Disciplinary Regulations. The appeal meets the formal requirements and deadline laid down (Articles 53 *et seq.* of the Disciplinary Regulations).

Consequently, the Appeals Body may examine its merits. It is therefore competent to examine the case in full, both factually and legally (Article 58(2) of the Disciplinary Regulations).

2.

a) Under Article 52 of the UEFA Statutes and Article 8 of the Disciplinary Regulations, disciplinary measures may be imposed for unsportsmanlike conduct, breaches of the Laws of the Game and contravention of UEFA's Statutes, regulations, decisions and directives.

Article 16 of the Disciplinary Regulations states that:

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

(...)

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 (...)"

b) According to Article 8 of the Disciplinary Regulations, 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 its supporters, even if the member association or the club concerned can prove the absence of any fault or negligence.

This provision empowers UEFA to ensure that its objectives and the obligations imposed on its members are respected not only by the latter, but also by third parties

for whose actions UEFA members are responsible. This responsibility, which applies to any breach of UEFA rules by one of the above-mentioned parties, is known as “strict liability”.

- c) Finally, it is well established in Appeals Body case law and in conformity with Article 38 of the Disciplinary Regulations that the match officials’ reports must be considered truthful and reliable unless and until they can be proved otherwise, clearly and beyond doubt.

This case must be examined on the basis of the Disciplinary Regulations and the above-mentioned principles.

3.

- a) In substance, the appellant contests the facts reported by the UEFA match delegate, which it considers to be hearsay. It believes the decision taken in this case is arbitrary and violates the basic rights of the club.

The appellant claims in particular that there is no proof that the stickers in question were distributed and that, even if they were, this was not its responsibility under Polish law.

- b) However, the appellant does not deny that the reported content of the stickers was violent and not fit for football.
- c) Consequently, the only question that the Appeals Body must address is whether, in this case, the Control and Disciplinary Body properly assessed the evidence before concluding that supporters of KKS Lech Poznań had distributed the stickers in the vicinity of the stadium before the match in question.

4.

- a) The disciplinary bodies not only can but must take into account evidence other than the official match reports when an offence is reported. According to Article 37 of the Disciplinary Regulations, the competent disciplinary body can examine witnesses if this helps to establish the facts. This provision establishes the freedom of evidence, which means that cases may be judged on the basis of more than just the official reports. The disciplinary bodies are obliged to take all necessary and useful steps to gather evidence in order to establish the facts and justify their decision. If there is no objective proof, they must, if necessary, base their decision on circumstantial evidence.
- b) In principle, an allegation is considered established if the panel is able to convince itself of the truth behind it. Exceptions to this standard of proof have, however, been

established by the law, legal doctrine and case law. A reduction in the standard of proof required is justified by a lack of evidence which arises when, by the very nature of the case, strict proof is not possible or cannot be reasonably required, in particular if the facts alleged by the party bearing the burden of proof can be established only indirectly or on the basis of circumstantial evidence. The standard of proof required in these cases is limited to a balance of probabilities, the requirements of which are, however, greater than *prima facie* evidence. The balance of probabilities presupposes that, from an objective perspective, there are serious reasons to believe in the accuracy of an allegation and no other possibilities which are material could reasonably be considered (Swiss Federal Supreme Court, ATF 133 III 81 rec. 4.2.2, p. 88/89 and the judgments cited; see also ATF 135 V 39, rec. 6.1, p. 45).

Sports disciplinary law is based on these notions. The Court of Arbitration for Sport has held that UEFA must establish the relevant facts "to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made" [sic] (see CAS 2009/A/1920 FK P, rec. 85, p. 17).

- c) In the present case, the FARE observer informed the match delegate, who reported the allegation and attached a sample of the sticker containing the words "Good night left side" and the image of one man kicking another. The UEFA delegate's report is an official report.

The panel considers the content of the delegate's report sufficiently serious and credible to constitute proof of the alleged facts. Hence, the first-instance body did not abuse its powers of discretion when it accepted these facts as reported.

In the absence of evidence to the contrary, the Appeals Body also finds that it has been established to its satisfaction that KKS Lech Poznań supporters distributed stickers containing a violent message at the gate before the UEFA competition match in question.

5.

Distributing stickers containing a violent message contradicts UEFA's objectives, which are clearly laid down in its Statutes, i.e. to "*promote football in Europe in a spirit of peace, understanding and fair play (...)*" (Article 2(1)(b) of the UEFA Statutes). The freedom of expression claimed by the appellant is limited by the rules applicable to the matches that UEFA organises. These include Article 16(2)(e) of the Disciplinary Regulations, which prohibits the transmission of messages that are not fit for a sports event. It is obvious to the Appeals Body that the stickers in question do not promote the values of fair play, tolerance and peace, and that they are therefore not fit for a football match.

6.

- a) The appellant argues that it did not commit any fault or negligence. However, it did not question the violent nature of the message contained in the stickers, or the fact that it would infringe the Disciplinary Regulations.
- b) Indeed, under Article 16(2) of the Disciplinary Regulations, member associations and clubs are responsible for the conduct of their supporters. This principle is also mentioned in paragraph 6.02 of the 2013/14 UEFA Europa League Regulations. By entering the UEFA Europa League competition, the appellant agreed to respect UEFA's regulations, including the above-mentioned provision (see paragraph 2.07(e) of the 2013/14 UEFA Europa League Regulations).

UEFA member associations and clubs are liable for any breach of the regulations by any person listed, even if they commit no fault themselves. This strict liability (also known as objective or causal responsibility) is imposed on member associations and clubs for the actions of third parties, including their supporters. This rule leaves the Control and Disciplinary Body absolutely no room for manoeuvre as far as its application is concerned. Member associations and clubs are answerable for the misconduct of their supporters, even if they are not at fault themselves. Clubs are automatically held responsible and can be punished once such misconduct has been established. Accordingly, the appellant's argument that it did not commit any fault or negligence must be ruled out.

7.

- a) Based on the above, the Control and Disciplinary Body was clearly right to consider that sufficient evidence had been offered to prove that the appellant's supporters had used a football match to transmit a violent message and, by doing so, had violated Article 16(2) (e) of the Disciplinary Regulations. It was therefore right to punish KKS Lech Poznań for improper conduct by its supporters.
- b) A full list of the disciplinary measures that may be imposed against member associations and clubs is provided in Article 53 of the UEFA Statutes. As far as national associations and clubs are concerned, Article 6(1) of the Disciplinary Regulations reproduces this list, which includes a fine (c), ordering that a match be played behind closed doors (h) and a ban on the use of a stadium (j). Article 6(3) states that fines may be between €100 and €1,000,000. The Control and Disciplinary Body therefore has extensive discretionary powers, which it must neither exceed nor abuse. It must respect the standard principles of ordinary law, take account of the particular circumstances of the case and the seriousness of the offence, and respect the principles of legality, equality and proportionality (Article 17(1) of the Disciplinary Regulations). Finally, it

must take account of the fact that a repeat offence is an aggravating circumstance under Article 19 of the Disciplinary Regulations.

- c) In the present case, the Control and Disciplinary Body neither exceeded nor abused its extensive discretionary powers and its decision respected the principles of legality and proportionality. In fact, the stickers that were distributed warranted a serious penalty, especially in view of the club's extremely poor previous disciplinary record. In light of the overall circumstances, a €10,000 fine appears to be an appropriate and proportionate measure to send a clear message to the club's supporters who distributed such stickers that this is not an admissible way of encouraging their club. The Control and Disciplinary Body's analysis is beyond reproach and must be upheld.

8.

Since the case was judged on its merits before the appeal fee had to be paid, the request for the appeal to have delaying effect is irrelevant and it can be struck off the list of cases.

9.

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

In the present case, the costs of the proceedings (€2,000 in total) are charged to KKS Lech Poznań, whose appeal is rejected (the Polish Football Federation is jointly liable for any failure to pay these costs, as well as the fine).

Decision of 15 October 2013

GNK Dinamo Zagreb

(Racist behaviour of supporters. Lighting of fireworks)

Circumstances of the case:

During the UEFA Champions League match GNK Dinamo vs. FC Sheriff played on 30 July 2013, and the UEFA Champions League match FK Austria Wien vs. GNK Dinamo played on 27 August 2013, GNK Dinamo supporters sang "*Mamicu cigane odlazi iz svetinje*" (translated as "*Mamic gypsy go away from holy club*").

In addition, during the match FK Austria Wien vs. GNK Dinamo on 27 August 2013, GNK Dinamo supporters ignited 11 Bengal lights, two of which were thrown onto the field of play. GNK Dinamo supporters outside the stadium also launched pyrotechnic devices that landed inside the stadium.

Legal framework:

Art. 14 DR *Racism, other discriminatory conduct and propaganda*. Art. 16(2) DR *Inappropriate behaviour of supporters*. Art. 8 DR *Strict liability*.

Decision:

CDB:

The CDB ordered GNK Dinamo to play the next UEFA competition home match behind closed doors. The CDB also ordered GNK Dinamo to play one additional match behind closed doors, suspended for a probationary period of five years. The CDB also fined GNK Dinamo €65.000.

Appeals Body:

The appeal of GNK Dinamo was rejected and the CDB decision of 12 September 2013 was confirmed.

Chairman: Pedro Tomás, Spain

Members: Levent Biçakci, Turkey
Ivaylo Ivkov, Bulgaria

In fact:

A.

According to the UEFA match delegate's report on the 2013/14 UEFA Champions League match between GNK Dinamo (the appellant) and FC Sheriff, played on 30 July 2013, when the west stand was closed (partial stadium closure) in accordance with the UEFA Control and Disciplinary Body's decision of 26 July 2013, confirmed by the Appeal Body's decision of 29 August 2013, home supporters chanted "*Mamicu cigane, odlazi iz svetinje*" ("*Mamicu gypsy, get out of the temple*") on several occasions. They repeated this chant despite being asked to stop through the public address system.

The police managed to eject the troublemakers from the stadium, after which the chanting more or less stopped.

A FARE observer also reported that home supporters chanted "*Mamicu cigane odlazi iz svetinje*" (translated as "*Mamic gypsy go away from holy club*") several times at the above-mentioned match.

B.

According to the UEFA match delegate's report on the 2013/14 UEFA Champions League match between FK Austria Wien and GNK Dinamo on 27 August 2013, 11 Bengal lights were ignited, two of which were thrown by GNK Dinamo supporters onto the field of play. Some GNK Dinamo supporters outside the stadium launched pyrotechnic devices that landed inside the stadium. Other incidents relating to players were reported. As the decision taken in this respect is not challenged in the present proceedings, there is no need to mention it here.

According to the UEFA delegate report concerning this match, GNK Dinamo supporters chanted "*Mamicu cigane odlazi iz svetinje*" (translated as "*Mamic gypsy go away from holy club*").

C.

In its decision of 12 September 2013, the UEFA Control and Disciplinary Body joined both cases. It issued one single decision, ordering GNK Dinamo to play one UEFA club competition home match behind closed doors and fining it €65,000 in connection with the misconduct of its supporters.

In accordance with Articles 14 and 16 of the UEFA Disciplinary Regulations, the Control and Disciplinary Body held GNK Dinamo responsible for its supporters' misbehaviour (ignition and throwing of Bengal lights and discriminatory conduct). In determining the sanction, it took into account the club's previous record, which included the very same discriminatory offence.

D.

On 30 September 2013 (as the deadline fell on Sunday 29.10.2013), GNK Dinamo appealed against the Control and Disciplinary Body's decision of 12 September 2013. It substantiated its appeal in a statement of claim dated 4 October 2013. It requested, primarily, that the execution of the Control and Disciplinary Body's decision be stayed until the Court of Arbitration for Sport (CAS) had issued its award on the pending case CAS 2013/A/3324, GNK Dinamo v UEFA, which concerned a similar offence, or that the case be referred back to the first-instance body for reconsideration based on an appropriate assessment of the underlying facts. Failing that, it called for the decision to be set aside in its entirety.

On 14 October 2013, the CAS issued an award following GNK Dinamo's request that the UEFA Appeals Body be ordered to postpone its decision until the CAS had issued its final decision in the above-mentioned case (CAS 2013/A/3324, GNK Dinamo v UEFA). This request was rejected.

In the present proceedings, GNK Dinamo disputed, in substance, its responsibility for the use of pyrotechnic devices by its supporters and the suggestion that the chant aimed by its supporters at its board member was discriminatory.

The appellant's arguments can be summarised as follows:

Pyrotechnic devices

The appellant claims that the Control and Disciplinary Body's decision was erroneous as it designated GNK Dinamo as "host" in the challenged decision. It argues that, since the match on 27 August 2013 was not played at its own stadium but in Vienna, FK Austria Wien, as the home club, should be held responsible under Article 16 of the Disciplinary Regulations, since the security measures designed to prevent supporters using pyrotechnic devices had failed.

Discriminatory conduct by its supporters (Art. 14 of the Disciplinary Regulations)

GNK Dinamo denies that the conditions of Article 14 of the Disciplinary Regulations are met on the grounds that the chanting by its radical group of supporters did not constitute an act of racism or nationalism as it was neither discriminatory nor defamatory. It argues that:

- the Croatian text of the chant in question was wrongly retranscribed on page 3 of the decision;
- *"calling someone a gypsy the sole meaning of it, is that such a person is only a member of a wandering population mostly located in Romania and the Balkan region"..."Gypsies do not consider the term gypsy as racism or otherwise any affront to their ethnic origins. In the gypsy language, the term gypsy means good man";*
- under Swiss criminal law, being called a gypsy does not represent an offence;
- the chant was aimed at Zdravko Mamic (the club president) by people who cannot be categorised as fans but as "anti-fans". The chanting was linked to the club's failure to allow them to participate in its commercial activities (ticketing, hospitality, merchandising, etc.);
- if the club were punished, the supporters who had opposed its president would have won, which would send out a poor message throughout Europe;
- it has endeavoured to combat racism and all forms of discrimination, including by asking the police to act if there was any expression of racism or violence at the stadium during the match against FC Sheriff. During this match, the police intervened by removing the troublemakers from the stands and holding them outside the stadium.

E.

On 10 October 2013, UEFA submitted its reply to the appeal through its disciplinary inspector. It called for the appeal to be rejected and the costs of the proceedings to be charged to the appellant.

F.

At today's hearing, the appellant was represented by its legal counsel and UEFA by its disciplinary inspector.

The chairman confirmed the composition of the Appeals Body. He then informed the parties of the procedure to be followed and that the proceedings were being recorded.

The parties agreed to the procedure to be followed and raised no objections.

G.

Regarding the preliminary question, the appellant reiterated its request for a stay of execution. Indeed, as a provisional measure, it had asked the CAS to order the UEFA Appeals Body to postpone the current procedure until the CAS had issued its award on the pending appeal filed by the appellant with the CAS against the Appeals Body's decision of 29 September 2013, since the facts of both cases (the case before the CAS and the current case) were similar, involving the same chants and the same club. On 14 October 2013, the CAS issued its award, in which it rejected GNK Dinamo Zagreb's request that the UEFA Appeals Body be ordered to postpone these proceedings.

The floor was then given to the parties, who confirmed their claims and more or less repeated the arguments set out in their written submissions.

With the debates concluded, the Appeals Body deliberated and decided as follows.

In law:

1.

- a) The Appeals Body's jurisdiction in this matter is established by Article 24 of the UEFA Disciplinary Regulations. It is therefore competent to examine the case in full, both factually and legally (Article 58(2) of the Disciplinary Regulations).
- b) The appeal meets the formal requirements and deadline laid down (Article 53 *et seq.* of the Disciplinary Regulations). Consequently, the Appeals Body may examine its merits.

2.

- a) Regarding the appellant's request for a stay of execution in its appeal statement, the Appeals Body considers that, under the UEFA Disciplinary Regulations, an appeal has no staying effect unless the chairman of the Appeals Body, on request, considers there to be compelling reasons for making an exception to this rule. To reach such a conclusion, the Appeals Body must examine whether the action has any chance of success on the merits (1), whether the measure would help to protect the appellant from irreparable harm (2), and whether the interests of the appellant outweigh those of the respondent (3). All three of these conditions must be met.
- b) The disputed Control and Disciplinary Body decision was taken on the basis of material evidence and in line with the Appeals Body's decision of 29 August 2013 against the same club on the same subject, in which the club was held responsible for its supporters' discriminatory chants. In view of the above, the club's request fails to demonstrate that its action has any chance of success on the merits. For this reason alone, since all three conditions need to be met, the request for a stay of execution should be rejected.

3.

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

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

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

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

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

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

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

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

4.

Lighting of fireworks

In this case, the facts reported by the UEFA match officials regarding the use of pyrotechnic devices are not contested by the appellant, who only denies its responsibility. It argues that FK Austria Wien should be held responsible as it was in charge of supporter checks and failed to prevent supporters from bringing and using pyrotechnic devices inside the stadium.

However, the lack of organisation does not change the legal situation regarding the aforementioned principle of strict liability based on Articles 8 and 16(2) of the Disciplinary Regulations and can in no case exonerate the visiting club from its responsibility for the improper conduct of its supporters (see CAS 2007/A/1217, Feyenoord Rotterdam v UEFA).

Possible shortcomings in the organisation of the match could, at the most, be considered as mitigating circumstances when determining the severity of the sanction to be imposed against the visiting club. The Control and Disciplinary Body may also take measures against the home club if it considers that it has not fulfilled its obligations in terms of order and security (Article 16(1) of the Disciplinary Regulations). However, contrary to the legal situation mentioned in Article 16(2), the simple fact that an incident occurs does not automatically lead to the sanctioning of the host association or club. In the present case, FK Austria Wien was punished for its lack of organisation.

Moreover, the notion of "anti-fans" used by the appellant to try to limit or deny its responsibility for the behaviour of people who were obviously supporting their team is irrelevant. According to a well-established principle adopted by the UEFA disciplinary bodies in general and by the CAS in particular, the notion of "supporter" (or fan) referred to in Article 6(2) of the Disciplinary Regulations allows no distinction between "official" and "unofficial" supporters (see CAS 2007/A/1217, Feyenoord Rotterdam v UEFA, page 9). In this award, the CAS also confirmed the strict liability of the visiting club for offences committed by its supporters.

It can be added that the fact that GNK Dinamo was mistakenly designated as "host club" in the challenged decision of 12 September 2013 has no legal consequence with regard to its strict liability for the misbehaviour of its supporters.

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

For the rest, in light of the match delegate's report, the photographs in the case file, the facts described, the regulatory provisions cited and the club's poor previous record, the Control and Disciplinary Body was right to hold GNK Dinamo liable for its supporters' behaviour, in accordance with the principle of strict liability established by Articles 8 and 16(2) of the Disciplinary Regulations. Accordingly, the appellant's argument regarding the application of Article 16(2) must be rejected.

Based on the above, it is acknowledged and legally established that fireworks were lit by GNK Dinamo supporters during the match against FK Austria Wien and that the club is to be held responsible for their misbehaviour.

5.

Discriminatory conduct by GNK Dinamo supporters

In the case at hand, there is no doubt, and it is also uncontested, that GNK Dinamo supporters chanted “Mamicu Cigane, odlazi iz svetinje”) several times at both matches.

GNK Dinamo does not deny that such chants were performed by its supporters but stresses that they were directed only at Zdravko Mamic (the club president) and were not racist or nationalist. Therefore, it claims that the condition of application of Article 14 is not met.

The arguments that it submitted to the Control and Disciplinary Body were the same as those brought in the very recent disciplinary procedure opened after the same chants were heard at a match against CS Fola Esch played on 23 July 2013 and ruled on by the Appeals Body on 29 August 2013.

As the club already knows the UEFA Appeals Body’s position on its arguments, which are not similar but identical to those brought in the present case, the Appeals Body refers to the “In law” section of its decision against GNK Dinamo of 29 August 2013 (d_26236), which should be considered reproduced in full here.

All the reasons for considering the chanting in question as discriminatory in the sense of Article 14 of the Disciplinary Regulations have already been explained very clearly to the club. The club is fully aware of the inadmissible character of the chanting in question and repeating the very same arguments, as if the decision of 29 August 2013 had never been issued, could almost be described as reprehensible behaviour in itself.

6.

Articles 14 and 17 of the Disciplinary Regulations govern the system of sanctions to be imposed for discriminatory conduct. Article 14 provides for a very specific scale of sanctions. For example, Article 14(3) makes provision for various disciplinary measures in the event of recidivism.

Article 17(3) states that the disciplinary measures enumerated in Article 14 are standard measures that can be reduced or increased by the competent disciplinary body only under exceptional circumstances. There are no exceptional circumstances in the case at hand. Article 14(3) therefore applies.

According to this provision, a second offence is punished with one match played behind closed doors and a fine of €50,000. GNK Dinamo Zagreb's recidivism occurred very soon after its previous offence, since the second offence took place at the club's next match following the previous decision. The UEFA Control and Disciplinary Body had punished the appellant on 26 July 2013 by ordering a partial stadium closure. At the match on 30 July 2013, one of the stands at GNK Dinamo Zagreb's stadium had therefore been closed. It was at this very match that the appellant's supporters began chanting once again. It is hard to imagine a more blatant case of recidivism.

Indeed, even though the supporters could see with their own eyes the effect of the first decision (closure of a stand); some of them did not hesitate to repeat the same reprehensible behaviour (by chanting the same words as before). This shows that the first sanction had absolutely no effect on these supporters and therefore fully justifies the application of the disciplinary measures laid down in Article 14(3) of the Disciplinary Regulations. The fact that the supporters misbehaved not only at the match on 30 July 2013, but also at the match on 27 August 2013, must also be taken into consideration. Taking into account all the offences committed in this case, as well as the previous offences, the sanction imposed therefore seems perfectly suitable and proportionate.

The argument that this is not a case of recidivism on the grounds that GNK Dinamo had appealed against the decision of 26 July 2013 cannot be accepted. Firstly, as mentioned above, at the match on 30 July 2013, the appellant was already serving the punishment that had been imposed. In addition, however, the Control and Disciplinary Body's decision was enforceable, even though it was not final. It was therefore fully effective, including where recidivism was concerned. By analogy, reference is made to certain provisions of the Swiss Criminal Code (see *Commentaire romand du Code pénal*, volume I, André Kuhn, Note 21 ad Art. 42 and Daniel Stoll, Note 84 ad Art. 508).

The crucial date is that on which the decision was notified to the appellant. From that date onwards, the club is considered to have been informed of the enforceable sanction. This sanction is therefore fully effective, including where recidivism is concerned. Clearly, certain GNK Dinamo supporters, even though they were aware of the sanction imposed, which was clearly visible (closed stand), took no account of it whatsoever. This serves to justify the application of the provisions on recidivism.

In this case, the Appeals Body believes that by ordering a match to be played behind closed doors, the Control and Disciplinary Body showed it had taken account of all the circumstances in proper proportion. In addition, following similar incidents, the club had already had a previous discriminatory infringement lead to a partial stadium closure a little over a month previously.

In these circumstances and in light of the case law in this area, the Appeals Body believes that the playing of a match behind closed doors and a €65,000 fine is proportional to the seriousness and repetitive nature of the offence committed. The fact that the appellant's supporters repeated the offence at a match affected by a partial stadium closure proves that these supporters failed to attach sufficient importance to the matter.

7.

- a) On the basis of the above, the appeal is considered unfounded and must be rejected. The Control and Disciplinary Body's decision is therefore upheld.
- b) The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties in accordance with the outcome of the proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated (Article 44(2) of the Disciplinary Regulations).

In the present case, the costs of the proceedings (€6,000 in total) will be borne in full by the appellant, GNK Dinamo. The Croatian Football Federation is jointly liable for any failure to pay these costs and the original fine.

Decision of 15 October 2013

PAOK FC

(Infringement of the conditions of a match behind closed doors)

Circumstances of the case:

Regarding the UEFA Champions League match PAOK FC vs. FC Schalke 04 on 27 August 2013, although the match was declared by UEFA as a match behind closed doors, a number of ultras supporters managed to enter the stadium. The total number of approximately 125 PAOK supporters exceeded the 75 person limit, and included approximately 40 ultras fans.

Legal framework:

Art. 11(2)(e) DR *Not abiding by decisions or directives of the UEFA Organs for the Administration of Justice.*

Decision:

CDB:

The CDB ordered PAOK FC to play the next UEFA home match behind closed doors.

Appeals Body:

The appeal was partially admitted and the decision to order PAOK to play one UEFA home match behind closed doors was overturned. Instead, PAOK was given a fine of €30,000.

Chairman: Pedro Tomás, Spain

Members: Levent Biçakci, Turkey
Ivaylo Ivkov, Bulgaria

In fact:

A.

Following the incident that occurred during the 2012/13 UEFA Europa League match between PAOK FC and SK Rapid Wien, played at the Toumba Stadium in Thessaloniki (Greece) on 23 August 2012, the UEFA Control and Disciplinary Body, ruling on 27 August 2012, imposed various disciplinary measures against PAOK FC, including an order to play its next three UEFA competition home matches behind closed doors, i.e. with no spectators present.

This decision was confirmed by the UEFA Appeals Body on 29 October 2012.

B.

a) On 5 July 2013, i.e. before the first match that PAOK FC had to play behind closed doors on 30 July 2013, UEFA Disciplinary Services sent PAOK FC an email (with a copy to the opposing team, FC Metalist Kharkiv), explaining who was allowed to attend the match. This email stated in substance that:

- "1. No supporters are allowed to enter the stadium*
2. Only the following persons or groups of persons may enter the stadium:
- a) a maximum of 75 persons from PAOK delegation, including the players;*
 - b) accredited journalists, provided that the accreditation list with all details concerning the journalists identity has been submitted to UEFA (...);*
 - c) police officers and security staff with specific tasks related to the security at the match;*
 - d) persons carrying out function related to the stadium infrastructure*
 - e) the delegation of the visiting team and its VIP"*

b) The match against FC Metalist Kharkiv was played behind closed doors and no incidents were reported.

c) Before the 2013/14 UEFA Champions League match against FC Schalke 04 on 27 August 2013, i.e. the second match that PAOK FC had to play behind closed doors, UEFA Disciplinary Services sent the same letter to PAOK FC, adding 60 UEFA guests and 200 VIPs from the visiting team to the list of authorised spectators.

C.

- a) According to the reports of the UEFA match officials (delegate and venue director) on the 2013/14 UEFA Champions League play-off match between PAOK FC and FC Schalke 04 on 27 August 2013, about 40 PAOK FC supporters were present at this match. They were holding UEFA guest tickets or UEFA media accreditation and, according to PAOK FC, some of them seemed to have obtained tickets from FC Schalke 04. Noting – with surprise, the report mentions – the presence of these PAOK FC supporters in the stand of the visiting supporters, the home club decided to move them to another part of the stadium.
- b) A banner containing the words “Ultra Gelsenkirchen” was displayed under the stand reserved for the 200 FC Schalke 04 VIP supporters. It was obvious that the people who displayed it were not VIP guests, but FC Schalke 04 ultra-supporters.
- c) Another incident relating to the PAOK FC coach was reported. As the decision taken in this respect is not challenged in the present proceedings, there is no need to mention it here.

D.

- a) On 12 September 2013, ruling that PAOK FC had committed a new offence and violated the UEFA regulations by failing to comply with the decision ordering it to play the above-mentioned match behind closed doors, the UEFA Control and Disciplinary Body ordered PAOK FC to play one additional UEFA club competition home match behind closed doors.
- b) It reminded the club of the aim of the sanction “match to be played behind closed doors” and stated that, by defying this order, the PAOK FC supporters present at the match had violated the UEFA Disciplinary Regulations and the sanction had therefore not had the desired deterrent effect.

E.

- a) On 27 September 2013, PAOK FC appealed against the Control and Disciplinary Body's decision of 12 September 2013. It substantiated its appeal in a statement of appeal of 3 October 2013.
- b) In summary, the appellant submits that the Control and Disciplinary Body did not take into consideration the mitigating circumstances that could have resulted in a lighter sanction and its minimal level of fault, and that consequently the sanction appears disproportionate.

Six mitigating circumstances claimed by PAOK FC

- The good cooperation between the appellant and the UEFA administration in terms of match organisation, which lowered the risk of an infringement being committed. The UEFA official at the stadium did not inform PAOK FC that the presence of these supporters constituted a violation of the sanction of the match to be played behind closed doors.
- PAOK FC was legitimately surprised by the presence of these supporters. This shows that PAOK FC was not responsible for their presence inside the stadium.
- The appellant's quick reaction by moving these supporters in order to separate them from the FC Schalke 04 supporters.
- The ban on spectators had a profound impact on the result, as PAOK FC lost the match 3-2. It also cost PAOK FC millions of euros of potential revenue, beyond just ticket income, and must already be viewed as a severe sanction.
- During the debrief meeting, the UEFA venue director reported that PAOK FC's preparation for and collaboration during the match had been good.
- If the appellant had removed these PAOK FC supporters from the stadium even though they had been in possession of a valid ticket and had not misbehaved, it could have breached its contract with the spectators concerned.

Minimal level of fault

- PAOK FC claims that the Control and Disciplinary Body did not take into account its lack of fault for the unexpected presence of these supporters inside the stadium.
- The appellant concludes that the Control and Disciplinary Body's decision of 12 September 2013 should be set aside or, in the alternative, that a more lenient sanction should be imposed, as a result of which it would be able to play its next UEFA competition home matches in the presence of fans and would not be required to bear the costs of the proceedings.

F.

On 9 October 2013, UEFA submitted its response to the appeal through its disciplinary inspector. It called for the appeal to be rejected and for the costs of the proceedings to be charged to the appellant.

G.

At today's hearing, the appellant was represented by its legal counsel and UEFA by its disciplinary inspector. The chairman confirmed the composition of the Appeals Body. He then informed the parties of the procedure to be followed and that the proceedings were

being recorded. The parties agreed to the procedure to be followed and raised no objections.

The Appeals Body examined the documents in the case file, in particular the photographs submitted by the UEFA match delegate and the appellant.

The floor was then given to the parties, who confirmed their claims and more or less repeated the arguments set out in their written submissions.

With the debates concluded, the Appeals Body deliberated and decided as follows.

In law:

1.

- a) The Appeals Body's jurisdiction in this matter is established by Articles 48 and 54 of the UEFA Disciplinary Regulations. It is therefore competent to examine the case in full, both factually and legally (Article 62(1) of the Disciplinary Regulations).
- b) The appeal meets the formal requirements and deadline laid down (Article 49 *et seq.* of the Disciplinary Regulations).

Consequently, the Appeals Body may examine its merits.

2.

Under Article 52 of the UEFA Statutes and Article 8 of the Disciplinary Regulations, unsporting conduct, breaches of the Laws of the Game and infringements of UEFA's Statutes, regulations, decisions and directives are punished by means of disciplinary measures.

Article 11 of the Disciplinary Regulations states that:

- "1 *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.*
- 2 *For example, a breach of these principles is committed by anyone:*
 - (...)
 - 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 (...)"*

According to Article 8 of the Disciplinary Regulations, 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.

This provision empowers UEFA to ensure that its objectives and the obligations imposed on its members are respected not only by the latter, but also by third parties for whose actions UEFA members are responsible. This responsibility, which applies to any breach of UEFA rules by one of the above-mentioned parties, is known as "strict liability".

Finally, it is well established in Appeals Body case law and in conformity with Article 38 of the Disciplinary Regulations that the match officials' reports must be considered truthful and reliable unless and until they can be proved otherwise, clearly and beyond doubt.

This case must be examined on the basis of the regulations and above-mentioned principles.

3.

- a) The Appeals Body has no reason to doubt the presence of PAOK FC supporters at the match in question, which was meant to be played behind closed doors. Not only was it reported by the match officials present at the match, but the photographs submitted by the appellant do not contradict their description of the incident.
- b) The mere presence of PAOK FC supporters at this match was strictly forbidden. This was the aim and purpose of the sanction imposed against their club. A match behind closed doors must be played without any supporters of the club sanctioned inside the stadium, not with a limited number of supporters present. Consequently, PAOK FC's argument that the authorised number of people inside the stadium was not exceeded is irrelevant. Even if those PAOK supporters managed to obtain their tickets or accreditations from the authorised contingent, this must at least be considered an abuse of law.

By entering the stadium, by whatever means, including the acquisition of valid tickets or accreditations made available to the opposing team, the supporters present at this match violated a UEFA directive and decision and, therefore, Article 11(2) (e) of the Disciplinary Regulations. The Control and Disciplinary Body was right to hold the club responsible for their misbehaviour on the basis of Article 8 of the Disciplinary Regulations.

4.

- a) The only question to consider is whether or not the Control and Disciplinary Body abused its discretionary power by ordering PAOK FC to play an additional match behind closed doors in this case.

According to Article 17(1) of the Disciplinary Regulations, the disciplinary bodies determine the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the case, taking into account any aggravating and mitigating circumstances.

It is the Appeals Body's constant practice to consider the Control 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. None of this applies here.

- b) The string of "mitigating circumstances" put forward by the appellant did not have to be considered as such.

Under the strict liability principle, the club's level of fault is irrelevant when it comes to qualify the supporter misconduct. Only under exceptional conditions could evidence that the opposing team was at fault (rather than the individuals for whose conduct the club is responsible) constitute a mitigating circumstance. There is no such evidence here. In the Appeals Body's opinion, even though it makes no difference to whether the club should be punished, it is highly likely that the club is, in some way, linked to these supporters' presence inside the stadium. The fact that some or all of the PAOK FC delegation present at the match were surprised cannot, in any case, be considered a mitigating circumstance. It might, at the most, indicate the absence of any intention or fault on the part of the individuals concerned, but this subjective element is irrelevant under the strict liability principle.

Moreover, the fact that the club reacted by moving the supporters instead of ejecting them from the stadium can obviously not be considered a mitigating circumstance. This was a normal response imposed by safety and security regulations governing supporter segregation. In this particular case, the club should have ejected the supporters from the stadium in accordance with the sanction imposed. Its explanations in this respect are not only irrelevant, but also unconvincing: if the club had not helped some of its supporters to obtain tickets, it would have had no liability towards them, since it was their entry in the stadium that had led to the club being punished in the first place. Therefore, ejecting them from the stadium would not have caused any damage to the club, contrary to its claim.

- c) The Appeals Body notes that the Control and Disciplinary Body was right not to consider any of the circumstances mentioned by the club as “mitigating circumstances”. It also notes that it did not take any aggravating circumstances into account. However, the club does not seem to have taken all possible precautions to avoid the presence of PAOK FC supporters in the stadium. Due to the very limited number of persons allowed, it should have been very easy to check tickets at the entrance and identify the PAOK FC supporters. The club’s level of fault is higher than it claims and it should have shown greater respect for a sanction that was meant to punish its supporters and prevent a repetition of their offences.

It was the home club’s duty to make sure that UEFA accreditation was given to the right people; and VIP tickets should only have been held by FC Schalke 04 supporters. This lack of control at the gate could have been considered an aggravating circumstance.

5.

- a) Nevertheless, the Appeals Body considers that the club’s behaviour appears to have been more negligent than malicious. Considering also that UEFA’s exceptional decision to allocate 200 VIP tickets to FC Schalke 04 might have confused the public and the home club about the meaning of a match played behind closed doors, the panel believes that the additional sanction of one match to be played behind closed doors is too harsh in the present case.

Indeed, it is clear that the 200 VIP tickets allocated to FC Schalke 04 were not all used for their original purpose (i.e. to enable the club’s board members and sponsors to attend the match, even though it was meant to be played behind closed doors), since both PAOK FC supporters and FC Schalke 04 ultras were in the VIP stand.

- b) For these reasons, the Appeals Body considers that the order that one match be played behind closed doors should be replaced with a fine of €30,000 on account of the appellant’s negligence. On the basis of the above, the appeal is partially admitted.
- c) In addition and for the future, UEFA will make it clear that a match played behind closed doors must not be attended by any supporter of either of the teams, the only exceptions being players, technical staff of the teams, police, stadium employees and media representatives.

6.

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

In the present case, the costs of the proceedings (€6,000 in total) will be charged as follows: €3,000 to PAOK FC (the Hellenic Football Federation is jointly liable for any failure to pay these costs, as well as the fine), and the rest to UEFA.

Decision of 22 October 2013

S.S. Lazio

(Racist behaviour of supporters)

Circumstances of the case:

During the UEFA Europa League match S.S. Lazio vs. Legia Warszawa on 19 September 2013, Lazio supporters chanted "*Slavo puzzi di merda*" (translated: "You Slavic smell of shit").

Legal framework:

Art. 14 DR *Racism, other discriminatory conduct and propaganda.*

Decision:

CDB:

The CDB ordered S.S. Lazio to play one UEFA competition home match behind closed doors and fined the club €40,000.

Appeals Body:

The appeal lodged by Lazio was partially admitted and the decision of the CDB was amended. Lazio was ordered to close the Curva Nord at the Stadio Olimpico for one UEFA home match. The remaining part of the CDB's decision of 2 October 2013 was confirmed.

Chairman: Pedro Tomás, Spain

Members: Goetz Eilers, Germany
Michael Maessen, Netherlands

In fact:

A.

In its decision of 2 October 2013, the UEFA Control and Disciplinary Body ordered SS Lazio ("the appellant") to play one UEFA club competition home match behind closed doors and fined it €40,000 after holding it responsible for the discriminatory conduct, as defined in Article 14 of the UEFA Disciplinary Regulations, of its supporters, who had chanted "*Slavo puzzi di merda*" (translated: "You Slavic smell of shit") at its UEFA Europa League match against Legia Warszawa on 19 September 2013.

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

B.

On 6 October 2013, SS Lazio submitted a statement of appeal against the Control and Disciplinary Body's decision of 2 October 2013 and paid the appeal fee of €1,000.

On 14 October 2013, SS Lazio filed its grounds of appeal, in which it denied the discriminatory nature of the chants performed by its supporters, underlined that the FARE report describing the incident was not an official report in the sense of Article 38 of the Disciplinary Regulations and, finally, contested the treatment of the case as recidivism. The appellant's written pleadings can be summarised as follows:

Facts are different from those described by FARE

The alleged chants were neither heard nor reported by the UEFA delegate, but only by FARE. FARE reported that the words "You Slavic smell of shit" were initially chanted in sector AD 47 and subsequently by the majority of the home supporters in the stadium.

The FARE report cannot be considered an official report in the sense of Article 38 of the UEFA Disciplinary Regulations. SS Lazio provides footage of the match as evidence of the inaccuracy of this report. This footage shows that the chants were performed by a tiny minority of SS Lazio supporters, that they only lasted a few seconds (10 or 15 seconds), and that the supporters responsible had been provoked by the Legia Warszawa supporters. SS Lazio also claims that FARE failed to report the fact that Legia Warszawa

supporters had audibly chanted "*Lazio Lazio Vaffanculo*" (translated: Lazio fuck off) in Italian for 20 minutes.

No discriminatory conduct

Not all offensive messages or chants fall under the scope of Article 14 of the UEFA Disciplinary Regulations. An offensive and insulting chant does not necessarily harm human dignity or have any discriminatory purpose. Although the appellant adheres to UEFA's policy of zero tolerance of racism, it contests the Control and Disciplinary Body's analysis and evaluation of the chants in question, arguing that Article 16 rather than Article 14 of the Disciplinary Regulations should apply.

The appellant submits that the word "Slavic" used by the SS Lazio supporters does not have any negative connotation. The SS Lazio supporters merely meant to identify the Polish supporters of Legia Warszawa as the target of their insult. Similarly, the words "You smell of shit" was not meant to insult human dignity. In other words, the offensive chants performed by SS Lazio supporters should be considered generic insults aimed at the opposing supporters in the sense of Article 16(2) of the Disciplinary Regulations, with no discriminatory purpose.

Absence of recidivism

As this case does not fall under Article 14 of the UEFA Disciplinary Regulations, there is no recidivism.

Nevertheless, even if the chants in question were to be considered discriminatory, they would constitute the club's first offence of this nature since the new Disciplinary Regulations entered into force in June 2013. As the initial sanction was imposed under the 2012 edition, Article 14(3) of the new Disciplinary Regulations does not apply in this case.

The appellant requests that the Control and Disciplinary Body's decision be overturned, that SS Lazio be punished according to Article 16 of the Disciplinary Regulations without recidivism, or that any sanction be suspended in accordance with Article 20 of the Disciplinary Regulations.

C.

The UEFA disciplinary inspector replied on 18 October 2013. He concluded that the appeal should be rejected, the Control and Disciplinary Body's decision of 2 October 2013 confirmed and the costs of the proceedings charged to the appellant.

D.

The chairman opened the appeal hearing, noted the presence of the parties and explained the procedure to be followed. He reminded the parties of the composition of the Appeals

Body and told them that everything they and the Appeals Body said during the hearing would be recorded.

No objection was raised.

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

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

In law:

1.

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

2.

- a) Under Article 52 of the UEFA Statutes and Article 11(3) of the UEFA Disciplinary Regulations, disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game, and contravention of UEFA's Statutes, regulations, decisions and directives.

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

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

In this respect, the UEFA Executive Committee, as legislator, decided to strengthen the provisions with regard to discriminatory conduct in the latest edition of the UEFA Disciplinary Regulations, which entered into force on 1 June 2013.

- b) Article 14(1) of the Disciplinary Regulations specifies that any person under the scope of Article 3 who insults the human dignity of a person or group of persons by whatever means, including on the grounds of skin colour, race, religion or ethnic origin, will be

suspended for at least ten matches or a specified period of time. If one or more of a member association or club's supporters engage in the behaviour described in Article 14(1), the member association or club responsible is punished with a minimum of a partial stadium closure (Article 14(2)).

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

3.

- a) In the case at hand, there is no doubt, and it is also uncontested, that supporters of SS Lazio chanted "*Slavo puzzi di merda*" (translated: "You Slavic smell of shit").
- b) Contrary to what the club tries to argue, this message is clearly both offensive and discriminatory. Indeed, the insult, which is uncontested, refers to a specific ethnic origin and therefore to an undefined number of people who might feel targeted by it. The chants insult the dignity of all Slavic people, who are compared to "shit", which means that they have no value. Such words are not only insulting but also fall under Article 14 of the UEFA Disciplinary Regulations. As the SS Lazio supporters who performed these chants violated Article 14, their club is, in any case, responsible under the principle of strict liability explained above.
- c) Articles 14 and 16(2) of the Disciplinary Regulations both punish the offensive conduct of supporters, but whereas Article 16(2) prohibits any offensive message displayed by supporters, Article 14 punishes such messages more severely if they are discriminatory.

The application of Article 14 of the Disciplinary Regulations does not depend on the real or presumed intentions of the supporters. The key question when applying this provision is the possible perception of the message by people present in the stadium or watching the match on television. Any violation of the dignity of a person or group of people on the grounds of skin colour, race, religion or ethnic origin therefore falls under the scope of this provision.

- d) FARE is an official UEFA partner, for which ridding football of racism and discrimination is a priority. Chosen from among various state and private bodies dealing with this problem at European level, FARE is an umbrella group of more than 100 NGOs, fan groups, migrant and ethnic minority organisations, individuals and members of the football family, including former players and representatives of

professional clubs and players' unions, with representatives in around 40 countries around Europe. These necessarily include supporters of various clubs, including SS Lazio.

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

FARE has been a UEFA partner for more than ten years and experience has shown that it does not report incidents unless they have been directly observed by one of its neutral observers appointed and present at the match in question. UEFA does not leave it to FARE to legally qualify the facts reported and does not necessarily feel bound by its assessment of them, but based on the above, it considers that FARE was right to consider the chants reported as racist insults, as this is actually what they are according to UEFA's regulations and practice.

- e) As the facts (but not their legal qualification) reported by FARE, namely the wording and origin of the chants, are not denied by the appellant, its argument that a FARE report is not an official report in the sense of Article 37 of the Disciplinary Regulations warrants no further discussion.

Nevertheless, for clarification purposes, the panel notes that a FARE report is, indeed, not presumed to be accurate in the same way as official UEFA reports. However, Article 37 of the Disciplinary Regulations does not mean that the competent disciplinary body has to rely solely on the official reports and, as the appellants seem to think, ignore any other evidence if the official post-match reports fail to mention a contentious situation that subsequently comes to light. On the contrary, insofar as it is able and provided the case is not delayed unduly, it is responsible for establishing the facts as thoroughly as possible. If it could only take the official reports into account, it would not be able to punish offences that the referee, for example, had omitted from his report.

4.

Mitigating circumstances

Article 14 of the UEFA Disciplinary Regulations provides for a very specific scale of sanctions. For example, Article 14(3) makes provision for various disciplinary measures in the event of recidivism.

Article 17(3) of the Disciplinary Regulations states that the disciplinary measures enumerated in Article 14 are standard measures that can be reduced or increased by the

competent disciplinary body only under exceptional circumstances. There are no exceptional circumstances in the case at hand. Indeed, the fact that “only” a minority of SS Lazio supporters performed the chants, and that they did so for only a few seconds, is not an exceptional circumstance in this sense. The offensive attitude of the visiting supporters, who shouted “*Lazio Va fa...*”, for which their club has also been sanctioned, also does not constitute an exceptional and mitigating circumstance.

Recidivism

The appellant argues that Article 14(3) of the Disciplinary Regulations does not apply, as this would constitute its first infringement of this provision since it entered into force on 1 June 2013.

According to Article 14(3), a second offence is punished with one match played behind closed doors and a fine of €50,000. In the present case, SS Lazio committed a previous offence on 21 February 2013, i.e. within five years of the new offence. According to Article 19(1) (d) of the Disciplinary Regulations, this is therefore a case of recidivism.

The conditions of application of the provision relating to recidivism now in force, i.e. Article 14(3) of the Disciplinary Regulations, are basically met. However, in the spirit of Article 70 of the Disciplinary Regulations, which lays down the principle of *lex mitior*, the Control and Disciplinary Body has, in previous cases, decided not to take into consideration previous infringements that occurred under Article 11bis of the previous edition of the Disciplinary Regulations, i.e. before 1 June 2013. It did so in order that previous infringements committed under the old Article 11bis were not taken into account under the new Article 14, which provides for much harsher sanctions for recidivism than the previous version.

In the present case, the Control and Disciplinary Body decided not to apply this principle on the grounds that SS Lazio had committed more than one previous offence and had a generally poor previous record in terms of racism, which was sufficient to justify the harsher sanction laid down in Article 14(3) of the Disciplinary Regulations. The Appeals Body does not share this view and sees no legal reason for the Control and Disciplinary Body to depart from the principle established in June. The Control and Disciplinary Body did not attach any exceptions when it established this principle in June and the Appeals Body therefore sees no reason for it do so now.

In other words, and despite its poor record in terms of racist offences, which UEFA and its partner FARE will follow up with the necessary attention, the Appeals Body considers that SS Lazio should benefit, as others have in the past, from the practice established by the Control and Disciplinary Body according to which previous infringements that occurred

under the old Disciplinary Regulations are not taken into account. Therefore, only paragraph 2 of Article 14 applies in this case.

5.

- a) In view of the FARE report and the statements presented by the appellant, the Control and Disciplinary Body was clearly right to consider that SS Lazio supporters performed discriminatory chants. It was therefore right to punish their club for this offence.
- b) Since the appellant was right to contest the application of Article 14(3) of the Disciplinary Regulations, the appeal lodged by SS Lazio is partially admitted and the Appeals Body limits the sanction to a partial stadium closure. Therefore, only the north stand will be closed under the terms of Article 14(2) of the Disciplinary Regulations. On the other hand, the remaining operative provisions of the challenged decision are unchanged.

6.

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

In the present case, the costs of the proceedings (€8,000 in total) are charged as follows: €3,000 to SS Lazio (the Italian Football Federation is jointly liable for any failure to pay these costs, as well as the fine), and the rest to UEFA.

Decision of 1 November 2013

Celtic FC. Scott Brown

(Assaulting another player)

Circumstances of the case:

During the UEFA Champions League match Celtic FC vs. FC Barcelona on 1 October 2013, Celtic player Scott Brown was sent off for kicking his opponent in the back while he was on the ground.

Legal framework:

Article 15(1)(e) DR *Assaulting another player*.

Decision:

CDB:

The CDB suspended Scott Brown for three UEFA club competition matches.

Appeals Body:

The appeal lodged by Scott Brown and Celtic FC was rejected and the decision of the CDB of 17 October 2013 was upheld.

Ad hoc Chairman: Michel Wuilleret, Switzerland

Members: Björn Ahlberg, Sweden
Antonio Mortágua, Portugal

In fact:

A.

In its decision of 17 October 2013, the UEFA Control and Disciplinary Body suspended the Celtic FC player Scott Brown for three UEFA club competition matches.

The Control and Disciplinary Body found the player guilty of assaulting an opponent under the terms of Article 15(1)(e) of the UEFA Disciplinary Regulations. It did not find any mitigating circumstances to justify a reduction of the standard three-match suspension for this offence, which it therefore deemed appropriate in this case.

B.

On 18 October 2013, Celtic FC and the player Scott Brown appealed against the decision of 17 October 2013. They submitted their pleadings, including grounds for appeal, on 25 October 2013, requesting, in substance, that the Control and Disciplinary Body's decision of 17 October 2013 be overturned on the following grounds:

- the Control and Disciplinary Body wrongly classified the incident as an "assault"; it should be considered as "rough play" or "unsporting conduct" because it occurred when Scott Brown and his opponent were involved in a challenge for the ball, during which Scott Brown flicked his foot at his opponent;
- in view of previous cases (John Terry, Wayne Rooney, Diego Costa, César González Navas and José Trinidad Meireles), the Control and Disciplinary Body should have taken Scott Brown's excellent past record into account as a mitigating circumstance, since he has participated in approximately 50 UEFA competition matches without previously being sent off;
- Scott Brown publicly admitted at the first available opportunity that he had behaved wrongly and deserved to receive a sanction;
- Scott Brown's opponent Neymar did not face any real threat of harm. Suspending Scott Brown for three matches for an incident in which his opponent was not endangered would be disproportionate;
- Scott Brown was sent off when the score was 0-0. His sending off was a major contributory factor to his side losing this crucial game. Therefore, the sending off and a one-match suspension already constitute an extremely significant sanction. Any additional punishment would therefore be disproportionate.

C.

UEFA, through its disciplinary inspector, submitted its reply to the appeal on 30 October 2013. It called for the appeal to be rejected and for the costs of the proceedings to be charged to the appellant.

D.

The ad hoc chairman opened the hearing and noted the parties' presence. He informed the parties of the procedure that would be followed and reminded them of the composition of the Appeals Body. He also said that the hearing, held in French and English, would be recorded. The parties raised no objection.

The video footage of the disputed incident was shown to the parties several times.

The match referee was interviewed by telephone. He explained that the player Neymar had been leading a promising attack, having gained an advantage over his direct opponent, Scott Brown. In order to stop him, Scott Brown had committed a foul. As he had been about to show Scott Brown a yellow card for the foul (illegally preventing a promising attack), the referee had seen him kick his opponent Neymar in the back. He had therefore shown him the red card. Responding to a question from the panel, the referee made it clear that he had whistled for the foul first. The referee's whistle could also be heard in the footage of the incident. In addition, the referee confirmed the content of his report.

Asked about the incident, the player did not contest the facts or seek to justify his behaviour. He admitted that he had committed a mistake but had only flicked his opponent with his foot. He said he had apologised afterwards. Now 28 years of age, Brown had been a professional since the age of 17 and was captain of both Celtic FC and the Scottish national team. He had played about 70 UEFA competition matches to date without being shown any red cards or being involved in any such incidents.

Since no further evidence was submitted, the parties were given the floor to plead, reply and rejoinder.

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

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

In law:

1.

- a) The Appeals Body's jurisdiction in this matter is established by Articles 24 and 54 of the UEFA Disciplinary Regulations. It is therefore competent to examine the case in full, both factually and legally (Article 58(2) of the Disciplinary Regulations).
- b) The appeal meets the formal requirements and deadline laid down (Articles 49 et seq. of the Disciplinary Regulations). Consequently, the Appeals Body may examine its merits.

2.

- a) Under the terms of Article 52 of the UEFA Statutes, disciplinary measures may be imposed for unsportsmanlike conduct, breaches of the Laws of the Game and contravention of UEFA's Statutes, regulations, decisions and directives.
- b) Under the terms of Article 15(1)(a)(2) of the Disciplinary Regulations, a suspension for one competition match or a specified period is imposed for **rough play**. According to Article 15(1)(e) of the Disciplinary Regulations, a suspension for three competition matches or a specified period is imposed for **assaulting** another player or another person present at the match.
- c) The appellant, who does not deny the facts, only questioned their classification as assault. The Appeals Body will therefore proceed to clarify the distinction between rough play and assault and then examine whether the Control and Disciplinary Body abused its discretionary powers by suspending the appellant for three matches.

3.

- a) The UEFA disciplinary bodies have had many opportunities to define under what circumstances an attack on an opponent's physical integrity is to be considered an assault or rough play. The main criterion when determining whether such an incident is to be classified as "rough play" or "assault" is whether the player's attack or tackle formed part of a challenge for a playable ball. In particular, the ball is considered unplayable if it is too far away from the player concerned, if it is outside the field of play or if the referee has whistled to stop the game.

In this respect, the referee's whistle, which either stops or restarts play, can usually be used to determine whether the offence was committed in a challenge for the ball or whether, on the contrary, the ball was no longer in play. In the latter case, it cannot be considered rough play in the sense of Article 15(1)(a)(2) of the Disciplinary Regulations.

Similarly, depending on the circumstances, an assault may even be committed in a challenge for the ball.

- b) The decisive elements when distinguishing between the two types of offence are therefore the challenge for the ball and/or the dangerousness of the act.

4.

- a) In the present case, after examining the referee's report and viewing the footage of the incident, the Appeals Body is comfortably satisfied that the ball was not playable. Not only had the referee stopped the game by whistling for the foul committed by Scott Brown in order to prevent a promising attack, but the ball was too far from the players involved to be playable by either of them. Therefore, the appellant was wrong to claim that he had been challenging for the ball. Accordingly, his argument that his act was rough play must be ruled out.

In view of the above, it is clear from examination of the video images that the appellant, by kicking his opponent's arm, attacked his physical integrity. His action was therefore rightly classified as assault under the terms of Article 15(1)(e) of the Disciplinary Regulations and there is no reason to amend the legal classification of the appellant's action provided by the first-instance body. Therefore, the Control and Disciplinary Body was right to find Scott Brown guilty of assault and to punish him accordingly.

- b) In view of the above, Scott Brown's conduct therefore constituted an assault in the sense of Article 15(1)(e) of the Disciplinary Regulations. There is, furthermore, no doubt of his guilt. Although it is true that the incident happened relatively quickly, the images show that the ball was no longer playable for either player and that the referee had already whistled for the foul committed by Scott Brown in order to stop the promising attack being led by Neymar. Therefore, Scott Brown cannot reasonably claim anything to the contrary.

5.

- a) The sanction to be imposed against the appellant for his misbehaviour must respect the principles of legality and proportionality. It must also achieve the aims of player suspensions, which are to punish the player and act as a deterrent.

When determining the type and extent of the disciplinary measures to be imposed, the disciplinary body must take account of both aggravating and mitigating circumstances (Article 17(1) of the Disciplinary Regulations). In order to abide by this principle, it must adopt the rule whereby a suspension is, in accordance with Article 15(1)(e) DR, a standard sanction which, depending on the specific circumstances of the case, may be reduced or increased, as set out in Article 17(1) DR. The Appeals Body can, therefore,

when assessing the specific elements of a case, reduce or increase the standard sanction if the circumstances so require.

In this respect, it is important to recall that a player's lack of previous disciplinary offences generally has no effect on the punishment to be imposed, as it is considered normal for a player to have no past disciplinary record. Only very exceptionally can the disciplinary body take this into consideration as a mitigating factor when assessing the character of the person to be punished, and only if this law-abiding behaviour is exceptional. Such an exception should be granted with caution in case it results in unequal treatment.

- b) In the present case, the appellant refers to his previous disciplinary record, arguing that he has committed no previous offences in the last five years and has played 72 UEFA competition matches (at club and international levels) without ever being sent off prior to the above-mentioned match. He compares his situation with those of the players John Terry and Wayne Rooney in particular, whose excellent past record has previously been taken into account as an exceptional mitigating circumstance.
- c) In this respect, the Appeals Body recalls that comparing two punishments imposed by the UEFA disciplinary bodies is usually a fruitless exercise. It is very difficult to base a claim on the principle of equal treatment because of differences in circumstances and the number of both objective and subjective elements that are taken into account when determining punishments, which are therefore tailored to the individual case.

In the present case, although the appellant does indeed have a good disciplinary record, the Appeals Body shares the Control and Disciplinary Body's view that this is not exceptional to the extent that it deserves to be considered an exceptional mitigating circumstance. The disciplinary body has broad discretionary powers to decide whether or not a player's disciplinary record is exceptional enough to justify departing from the standard sanction provided for by the Disciplinary Regulations. The Appeals Body notes that an exception must remain an exception and that admitting any good disciplinary record as an exceptional mitigating circumstance would send out a bad signal as far as respect for the Disciplinary Regulations is concerned.

That being said, it can be underlined that, in the cases to which the appellant refers, John Terry had an unblemished past record of around 169 UEFA competition matches while Wayne Rooney's exceeded 100 UEFA competition matches. Their disciplinary records, which were considered remarkable enough to justify replacing the third match of the suspension with a community service order, are far more impressive than that of Scott Brown.

- d) The appellant also tries to argue that the absence of physical danger caused to his opponent should be considered a mitigating circumstance. However, the fact that his opponent's physical integrity was, thankfully, not harmed is fortuitous, as he could easily have been injured. This does not reduce the appellant's level of fault.

On the contrary, the appellant's level of fault can be considered rather high in the present case. Indeed, examination of the images shows that he could and should have realised the risk that he took by kicking his opponent on the arm. Since he did not do so in a challenge for the ball or as an instinctive reaction in an attempt to play the ball, it appears to be a deliberate gesture, which could clearly have caused injury. In other words, the appellant accepted the probability of injuring his opponent's physical integrity and chose to kick him rather than withdraw his foot. Moreover, the appellant admitted this in page 2, paragraph 4 of his statement, which reads: "(...) *I flicked my boots towards him without any force in order to tap him so that he knew that I was aware that he had gone to ground easily (..)*". This shows that the player acted intentionally, which also means that he could have avoided the incident. This constitutes an aggravating factor that could have justified increasing the standard sanction. As the UEFA Disciplinary Regulations do not permit *reformatio in peius* and the disciplinary inspector did not file a cross-appeal, this question can remain open.

- e) Finally, the fact that the player left the field of play without contesting the referee's decision to send him off, and subsequently apologised and expressed regret for his conduct, also does not constitute a mitigating circumstance. These are basic rules of decorum and fair play that are expected of a professional player and, in particular, a team captain. It is important to underline that, if Scott Brown had not left the pitch immediately, this would have constituted an aggravating factor that would have justified increasing the standard three-match suspension.

6.

In view of the above, the Appeals Body considers that the appellant has failed to justify his appeal against the Control and Disciplinary Body's decision.

It is therefore clear that the Control and Disciplinary Body neither abused nor exceeded its broad powers of discretion. Its decision complies with the principles of legality and proportionality. Consequently, the Appeals Body deems that the three-match suspension imposed is entirely justified. This sanction should further enable the aims of the suspension to be achieved, namely to reform the player and prevent repeat offences. Accordingly, the sanction imposed against the player must be upheld and the appeal rejected.

7.

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

In the present case, the costs of the proceedings (€6,000 in total) are charged to the player and the Celtic FC (the Scottish Football Association is jointly liable for any failure to pay these costs, as well as the fine), and the rest to UEFA.



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