



LEGAL DIVISION
DISCIPLINARY AND INTEGRITY UNIT

Case Law

Control and Disciplinary Body & Appeals Body

Season 2012/2013
July 2012 -December 2012

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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 2012.


According to Article 45 of the UEFA Disciplinary Regulations (2013 edition): "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."

A significant step forward has therefore been taken with the 2013 edition of the Disciplinary Regulations from the point of view of good governance and transparency. Every six months, the leading cases dealt with by the Control and Disciplinary Body and all the decisions taken by the Appeals Body will be published on UEFA.com.

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

Yours faithfully,

U E F A

A handwritten signature in blue ink, consisting of a stylized 'E' and 'G' intertwined.

Emilio Garcia
Head of Disciplinary and Integrity



Control and Disciplinary Body

Decision of 9 October 2012

Montpellier Hérault. SC René Girard

(Improper conduct of an official)

Circumstances of the case:

During the Europa League match between FC Schalke 04 vs. Montpellier Hérault SC on 3 October 2012, Montpellier's coach, René Girard, made an insulting gesture towards Schalke's coach. This incident was reported by the match delegate after having examined the video footages of the match.

Legal framework:

Art. 5 DR (ed. 2012) *Principles of conduct*; Art. 42 DR (ed. 2012) *Opening of a proceeding by means of protest*

Decision:

Suspend the player for two UEFA competition matches, the second of which is suspended for a probationary period of three years and fine the coach in the amount of €5,000.

Président: Thomas Partl (AUT);

Vice-présidents: Jim Hansen (DEN), Sandor Berzi (HUN);

En fait

Il ressort du rapport du délégué dudit match que : des supporters de l'équipe visiteuse, Montpellier, ont mis à feu deux feux de Bengale ; six joueurs de cette équipe ont été sanctionnés par l'arbitre : cinq ont été avertis et un a été expulsé.

Dans son rapport additionnel du 3.10.2012, le délégué dudit match rapporte encore que l'entraîneur du FC Schalke 04 lui a fait savoir après qu'il avait envoyé son rapport que l'entraîneur de Montpellier, René Girard, lui avait fait un doigt d'honneur. Le visionnage des images vidéo confirme les dires de l'entraîneur du FC Schalke 04.

Dans sa prise de position écrite du 5.10.2012, l'entraîneur Girard regrette son geste et dit l'avoir regretté le lendemain dans la presse. Il met son comportement sous le coup de provocation de la part de l'entraîneur de l'équipe adverse. Selon Girard, l'entraîneur du FC Schalke 04 n'aurait cessé de l'insulter. Il en veut pour preuve des images vidéo qu'il a mises à disposition de l'instance.

En droit

Conformément aux art. 52 des Statuts de l'UEFA et 27 du Règlement Disciplinaire de l'UEFA (ci-après : RD), l'Instance de contrôle de discipline de l'UEFA (ci-après : Instance) est compétente pour traiter le présent cas.

Conduite incorrecte de l'entraîneur René Girard

Selon l'art. 42 RD, les procédures disciplinaires sont ouvertes si des infractions tombant dans le champ d'application du présent règlement sont dénoncées par le biais d'une communication écrite aux parties (al. 1 let c).

S'agissant du doigt d'honneur rapporté au délégué, les déclarations de l'entraîneur peuvent être considérées comme une dénonciation au sens de l'art. 42 al. 1 let c RD précité. Par conséquent une procédure disciplinaire pouvait être ouverte sur cette base.

L'art. 5 RD interdit aux personnes visées à son al.1, notamment aux officiels, de se comporter de manière contraire aux principes de loyauté, d'intégrité et d'esprit sportif. Toute personne, hormis les joueurs, exerçant une activité relative au football au sein d'une association membre ou d'un club, est considérée comme officiel au sens de cette disposition, quel que soit son titre ou la nature de son activité. En tant qu'entraîneur René Girard est manifestement soumis à cette disposition.

Conformément à la réglementation de l'UEFA en la matière, que promeut la campagne de l'UEFA RESPECT, toute personne impliquée dans le football et dans les matches organisés par l'UEFA doit se comporter de manière à s'abstenir de tout comportement pouvant porter atteinte à l'intégrité physique ou mentale de tous les acteurs du jeu. RESPECT de l'adversaire, RESPECT des officiels de match, RESPECT du jeu.

En poursuivant à la fin du match l'entraîneur de l'équipe adverse pour lui faire ostensiblement un doigt d'honneur alors que le match était terminé, l'entraîneur en question a clairement violé cette obligation de respect et de fair-play fondée sur l'art. 5 RD. De plus, un tel comportement à la fin d'une partie, où les officiels du match n'ont plus le contrôle des personnes sur le terrain de jeu est propre à créer des troubles sérieux en provoquant des réactions imprévisibles des membres de chaque équipe, ce qui est une circonstance aggravante.

Cette réaction est d'autant plus inacceptable que l'entraîneur, s'il avait des raisons de penser que le comportement de son collègue entraîneur de l'équipe adverse était de nature insultante à son encontre, était comme tout entraîneur en mesure de savoir qu'il existe des moyens de contestation autorisés, tels que la dénonciation (art. 42 al. 1 let. c RD). L'on est en droit d'attendre d'un entraîneur mécontent qu'il prenne sur lui et agisse dans les règles, au lieu de se comporter de manière irrespectueuse envers un entraîneur adverse.

A cet égard, il importe peu de savoir si entraîneur de l'équipe adverse a proféré des insultes, ce qui n'a pas été démontré à satisfaction, et qui ne changerait pas la qualification des faits reprochés à l'entraîneur Girard. Les images qu'il a envoyées montrent certes l'entraîneur de l'équipe adverse s'emporter et l'intervention du 4^{ème} officiel pour calmer les deux entraîneurs, mais elles ne montrent pas l'entraîneur du FC Schalke 04 en train d'insulter Girard. La question de savoir si ces allégations peuvent être considérées comme une dénonciation au sens de l'art. 42 RD, peut ici rester ouverte.

Il est enfin de jurisprudence bien établie par les Instances disciplinaires de l'UEFA que l'on exige des officiels des équipes un comportement d'autant plus respectueux de la réglementation qu'ils sont des meneurs d'hommes exerçant une autorité. On exige ainsi d'eux qu'ils se comportent en modèles pour leurs joueurs, surtout pour les plus jeunes, et pour la jeunesse intéressée au football en particulier. A cet égard, le comportement irrespectueux que l'entraîneur Girard a démontré appelle une sanction exemplaire.

En tenant compte de toutes ces circonstances (art. 17 RD), le président estime qu'une suspension de fonction pour deux (2) le dernier match étant assorti d'un sursis pour une période probatoire de 3 ans, combinée d'une amende de €5,000 à l'encontre de l'entraîneur, est une sanction proportionnée.

Conformément à l'art. 70 RD la présence de l'entraîneur en cause avant et pendant le match dans les vestiaires, le tunnel, la surface technique ou sur le terrain est interdite, de même que toute communication avec son équipe.

Mise à feu de feux de Bengale par des supporters

La mise à feu d'engins pyrotechniques constitue une infraction grave dans la mesure où elle est de nature non seulement à perturber le déroulement correct d'une rencontre mais aussi et surtout à mettre en péril l'intégrité physique de leurs auteurs, des autres spectateurs, des officiels, voire des joueurs sur le terrain, cas échéant.

L'article 6 al. 1 RD prévoit la responsabilité générale des clubs pour le comportement de leurs supporters notamment. La responsabilité fondée sur l'article 6 al. 1 RD ne dépend que de la commission, par ces supporters, d'un acte contraire à la réglementation de l'UEFA. Cette responsabilité objective ou "causale" (strict liability) imposée aux associations membres et aux clubs pour le fait de tiers précisément désignés ne laisse à l'autorité disciplinaire aucune marge de manœuvre. L'association membre et le club répondent, même en l'absence de toute faute, du comportement répréhensible des personnes indiquées dans cette disposition, parmi lesquelles les supporters. Il suffit donc, selon cette disposition, qu'un comportement répréhensible de la part de supporters soit constaté pour que le club soit tenu automatiquement pour responsable et sanctionné de ce chef.

Dans le cas d'espèce, il est établi que des supporters du FC Montpellier ont mis à feu deux engins pyrotechniques.

Ils ont ainsi à deux reprises violé l'interdiction imposée à l'art. 11 al. 2 c RD et leur club doit en être tenu pour responsable, ce qu'il ne conteste pas.

Conduite incorrecte de l'équipe

Si l'arbitre a prononcé des sanctions disciplinaires à l'encontre d'au moins 5 joueurs d'une même équipe lors d'un même match, cela constitue une conduite incorrecte de l'équipe au sens l'article 11 al. 1 let. b du RD.

Dans le cas présent, 5 joueurs ont été avertis et un autre a été expulsé. Il n'y a dès lors aucun doute que le comportement de cette équipe durant le match en question a été incorrect au sens de cette disposition.

La sanction en cas de conduite incorrecte d'une équipe est le plus souvent une amende à l'encontre du club tenu pour responsable en vertu de l'article 11 al. 1 RD.

S'agissant de la sanction à prononcer pour les deux infractions ci-dessus au club, l'instance disciplinaire en détermine, selon l'art. 17 al. 1 RD, le type et l'étendue en vertu des éléments objectifs et subjectifs constitutifs des infractions en tenant compte d'éventuelles circonstances aggravantes et/ou atténuantes. En cas de concours d'infractions, la sanction sera celle correspondant à l'infraction la plus grave augmentée en fonction des circonstances propres au cas d'espèce (al. 3).

Les mesures disciplinaires à l'égard des associations membres et des clubs sont énumérées de manière exhaustive à l'art. 53 des Statuts. L'art. 14 RD reprend cette liste qui prévoit, entre autres, l'amende (let. c). L'alinéa 2 de l'art. 14 RD impose un montant minimum et maximum pour l'amende. C'est dire que l'autorité disciplinaire jouit sur cette fourchette d'une grande

liberté d'appréciation. Toutefois, elle devra tenir compte du fait que la récidive est une circonstance aggravante aux termes de l'art. 18 al. 2 RD. Aux termes de l'alinéa premier de cette disposition, il y a récidive si une mesure disciplinaire est prononcée une nouvelle fois dans un délai de 5 ans. Elle devra aussi et surtout respecter les principes consacrés par le droit ordinaire qui s'appliquent également au droit disciplinaire du sport. Il lui appartient ainsi de tenir compte des circonstances particulières du cas et de la gravité de l'infraction; elle devra également respecter les principes de la légalité, de l'égalité de traitement et de la proportionnalité. Enfin, elle n'excédera ni n'abusera de son pouvoir d'appréciation

Au vu de ce qui précède et de la pratique, l'Instance de contrôle et de disciplinaire n'a retenu ni circonstance aggravante ni circonstance atténuante et estimé qu'en l'espèce, une amende cumulée de €17,000 à l'encontre du club en cause pour la conduite incorrecte de son équipe et pour le comportement incorrect de ses supporters était proportionnée.

Le club et/ou l'entraîneur peut interjeter appel contre cette décision conformément aux articles 35, 49ss RD.

Decision of 18 October 2012

FC Basel. Alexander Frei

(Improper conduct of the player. Doping control)

Circumstances of the case:

After the UEFA Europa League 2012/2013 match Sporting Clube de Portugal vs. FC Basel 1893 on 20 September 2012, the Disciplinary Control Officer indicated the FC Basel player Alexander Frei to report directly to the doping control station. The player ignored the instructions and entered the dressing room. After discussing with some officials and the Doping Control Liaison Officer, the player arrived several minutes later. In the doping control station, the player began to smoke and ignored the warnings given by the Disciplinary Control Officer and the team doctor.

Legal framework:

Art. 5 (2) (f) DR (ed. 2012) *Principle of fair play*; Art. 7.10 UEFA Anti-Doping Regulations

Decision:

Suspend the player for one UEFA competition match and impose a fine on the player in the amount of €5,000.

<u>Vorsitzender:</u>	Thomas Partl (AUT)
<u>Vize-Vorsitzende:</u>	Jim Hansen (DEN) Sandor Berzi (HUN)
<u>Mitglieder:</u>	Joël Wolff (LUX) Hans Lorenz (GER) Rudolf Repka (CZE) Jim Shaw (NIR)

Tatsächliches:

Während obiger Begegnung wurde der Spieler von Basel Alexander Frei ausgelost sich nach dem Spiel einer Dopingkontrolle zu unterziehen. Als die Spieler nach dem Spiel das Feld verliessen, forderte der UEFA Doping Control Officer (DCO) Alexander Frei auf, sich reglementstreu direkt mit ihm zur Doping Kontrollstation zu begeben. Zu diesem Zeitpunkt befand sich kein Mitglied der Administration des FC Basel in der Nähe, das dem DCO seitens der Mannschaft hätte helfen können. Diese Aufforderung ignorierte der Spieler jedoch und lief ungeachtet weiterer Erklärungen des DCO's an diesem vorbei in Richtung Umkleide. In unfreundlicher Manier sagte der Spieler, er sei 33 Jahre alt, dies sei nicht seine erste Dopingkontrolle und dass er sich er duschen und umziehen gehen würde. Da sich der DCO folglich um die anderen Spieler, welche sich bereits in der Doping Kontrollstation eingefunden hatten, kümmern musste, schickte er den Doping Control Liaison Officer (DCLO) um dem Spieler nachzugehen und diesen zur Doping Kontrollstation zu bringen. Vor der Umkleidekabine redeten dann mehrere Offizielle und der Mannschaftsarzt auf den Spieler ein. Nach wenigen Minuten fand sich der Spieler, begleitet durch den DCLO in der Doping Kontrollstation ein, wobei er dort auf die Toilette ging und zu rauchen anfang. Der DCO erklärte ihm, dass das Rauchen im Stadion und insbesondere in der Doping Kontrollstation nicht gestattet ist. Jedoch ignorierte der Spieler die Aufforderung des DCOs das Rauchen einzustellen. Als ein Spieler der Heimmannschaft seinen Urin zur Kontrolle abgeben und dazu die Toilette aufsuchen wollte, war dies nicht möglich, da sich Alexander Frei weiter in dieser zum Rauchen befand. Der DCO wartet daraufhin auf den Mannschaftsarzt um die Situation zu lösen, dieser traf jedoch erst nach ca. weiteren zehn Minuten ein. Nach weiteren Diskussionen und Kommentaren des Spielers verlass dieser schliesslich doch die Toilette und rauchte seine Zigarre im Warteraum zu ende. Später öffnete der Spieler das Fenster in der Doping Kontrollstation und begann erneut zu rauchen. Auch die erneuten Erklärungsversuche des DCO, dass ein solches Verhalten allen Nichtraucher in der Doping Kontrollstation gegenüber unfair ist, hielten den Spieler nicht davon ab weiter zu rauchen.

In einer Stellungnahme vom 8. Oktober 2012, argumentiert der Verein, dass sich der Spieler vor dem Dopingraum in einer „Mixed Zone“ seiner Fussballutensilien entledigt hat und sich dann noch die ein oder andere Minute mit den UEFA Venue Directors unterhalten hat. Er war, so der Verein, zu keiner Zeit in der Umkleidekabine. Der Verein gibt an, dass sich der Spieler in keiner Art und Weise den Weisungen des Doping Arzt widersetzt hat, sondern diesen nur darauf hingewiesen haben, dass er 33 Jahre alt sei und wisse wie er sich bei einer Dopingkontrolle zu

verhalten habe. Bezüglich des Rauchens argumentiert der Verein, der Spieler habe dies nur nach vorheriger Absprache mit dem Dopingarzt und nach Zustimmung aller Anwesenden getan. Als der Spieler der Heimmannschaft die Toilette zur Urinabgabe betreten wollte, so sei Alexander Frei umgehend aus dieser herausgekommen und habe seine Zigarette am Fenster des Doping Kontrollraums zu Ende geraucht. Der Verein entschuldigt sich auch im Namen des Spielers für dieses dennoch unsportliche Verhalten.

Bezüglich eines Verstoss' gegen Artikel 7.10 des UEFA Dopingreglements argumentiert der Verein, dass der Mannschaftsphysiotherapeut als vom Verein ernannte Repräsentativperson beide ausgelosten Spieler vom Spielfeld direkt durch den Spielertunnel in den Bereich vor dem Dopingraum geführt hat. Während einer der beiden Spieler sich direkt in den Dopingraum begeben habe, so habe sich der Spieler Alexander Frei, wie bereits erwähnt ausserhalb des Doping Kontrollraums zuerst seiner Fussballutensilien entledigt und ist dann mit etwas Verspätung im Dopingraum zur Kontrolle erschienen. Danach habe der Mannschaftsarzt die Betreuung beider Spieler übernommen und den DCO bestmöglich bei seiner Arbeit unterstützt. Im Gegensatz zum Bericht des DCOs, gibt der Verein an, dass auch der Mannschaftsarzt während der Dopingkontrolle keinerlei negative Äusserungen oder Bemerkungen des DCO erhalten zu haben. Dieser habe sich ganz im Gegenteil nach Abschluss der Dopingkontrolle bei allen Beteiligten für die Zusammenarbeit bedankt. Schliesslich unterstreicht der Verein, auch im Namen seiner Spieler und Offiziellen, nochmals auf die von der UEFA vorgegebenen Verhaltensgrundsätze grossen Wert zu legen und gibt an, ähnliche Vorfälle in Zukunft vermeiden zu wollen.

Eine detailliertere Darstellung aller vom Verein angeführten Argumente findet im Nachfolgenden statt, insoweit diese von rechtlicher Relevanz sind.

Rechtliches:

Gemäss Artikel 52 der UEFA Statuten und Artikel 27 der UEFA Rechtspflegeordnung (RPO), ist die Kontroll- und Disziplinarkammer im vorliegenden Fall zuständig.

Im Rahmen der Beweismwürdigung geht die Kontroll- und Disziplinarkammer gemäss konstanter Praxis davon aus, dass auf die Berichte von UEFA Offiziellen abzustellen ist, sofern sie nicht überzeugend widerlegt werden (Art. 45 RPO). Vorliegend besteht kein Anlass, an der Richtigkeit des Berichts von Herrn George Razvan Pandelea-Dobrovicescu zu zweifeln. Seine exakte Beschreibung der Geschehnisse wirkt äusserst glaubwürdig. Demgegenüber erweist sich die Vorgangsschilderung des Vereins, zumindest in Teilen, als Schutzbehauptung. Es ist völlig unglaubwürdig, anzunehmen, Alexander Frei habe als einziger Spieler vom Dopingarzt die Erlaubnis erhalten, in einem Nichtraucher-Stadion und hier besonders im Dopingkontrollraum zu rauchen. Vielmehr hat der Spieler einseitig und entgegen mehrerer Ermahnungen des DCOs entschieden, in der Doping Kontrollstation zu rauchen. Auch spielt es keine Rolle, ob der Spieler sich wirklich vor der Umkleide nur bequemere Schuhe angezogen und noch mit den Venue

Directors gesprochen hat, der er aus Gründen der Transparenz des Dopingkontrollverfahrens dazu verpflichtet ist, sich direkt und umgehend in der Doping Kontrollstation einzufinden.

Die Kommission erachtet es demgemäss als erwiesen, dass sich der Spieler in der vom DCO geschilderten Art unkorrekt verhalten hat.

In rechtlicher Hinsicht hat der Spieler Alexander Frei mit seinem Verhalten unmittelbar vor und während der Dopingkontrolle in krasser Form elementare Anstandsregeln verletzt und damit gegen Art. 5 Abs. 2 lit. b, f RPO verstossen. Die ganze Bestimmung von Art. 5 RPO ist Ausfluss des über das gesamte Sportrecht krönenden Gedankens des Fairplay. Mit seiner Erfahrung aus mehreren internationalen Clubwettbewerbsspielen und einer Vielzahl von Spielen in der schweizer Fussballliga sollte Alexander Frei wissen, dass der Fairplaygedanke über das Spielfeld hinausreicht und sich insbesondere auch auf den Umgang mit Mitmenschen bezieht. Der Fussballer, der sich während 90 Minuten auf dem Spielfeld korrekt verhält und kurz danach im Rahmen einer mit dem Fussball im Zusammenhang stehenden Tätigkeit ein Verhalten an den Tag legt, das nicht zuletzt die Persönlichkeit eines anderen missachtet, bringt zum Ausdruck, dass er das Fairplay-Prinzip nicht verstanden hat. Fairplay im Sport ist wesentlich mehr als nur die durch Androhung von Sanktionen erzwungene Beachtung der sportsspezifischen Regeln. Es ist eine übergreifende, ethischen Prinzipien verpflichtende Geisteshaltung. Das Verhalten des Spielers zu Beginn und während der Kontrolle war ohne Zweifel äusserst flegelhaft und damit in krassem Widerspruch zum Fairplaygedanken.

Wie vom Verein bereits selbst eingeräumt, ist das Rauchen in der Doping Kontrollstation ein unsportliches Verhalten, welches so nicht an den Tag gelegt werden sollte. Auch räumt der Verein in seiner Stellungnahme gewissermassen ein, dass das Verhalten des Spieler gegenüber des DCO bei Verlassen des Spielfelds nicht von Respekt gezeichnet war. Objektiv hat der Spieler auch gegen Artikel 5 Abs. 2 lit. f RPO verstossen, weil er den Aufforderungen des DCOs sich umgehend zur Doping Kontrollstation zu begeben und im weiteren Verlauf das Rauchen zu unterlassen und einzustellen nicht Folge geleistet hat.

Gemäss Artikel 7.10 des UEFA Dopingreglements sind die Vereine dafür verantwortlich, dass ihre für die Dopingkontrolle ausgelosten Spieler vom jeweiligen Mannchaftsvertreter unmittelbar nach Spielende direkt vom Spielfeld zur Dopingkontrollstation geführt werden.

Im vorliegenden Fall legte der DCO in seinem Bericht glaubhaft nieder, dass sich zu fraglicher Situation nach dem Spiel am Spielfeld eben gerade niemand vom Verein FC Basel befand, der sich darum kümmerte die Spieler direkt zur Dopingkontrollstation zu bringen. Zwar argumentiert der Verein das Gegenteil, kann diesbezüglich aber keine überzeugenden Beweise erbringen. Der Bericht scheint in diesem Punkt auch insoweit stimmig, als dass Alexander Frei eben direkt zur Dopingkontrollstation gegangen ist, sondern erst in Richtung Umkleide gegangen und erst ca. fünf Minuten später in der Dopingkontrollstation eingetroffen ist. In diesem Zusammenhang ist es auch von keiner Relevanz wer, also ob Mannschaftsarzt oder Physiotherapeut, die Spieler vom Spielfeld zur Dopingkontrollstation begleitet. Angesichts obiger Ausführungen ist die Kommission daher von einer Verfehlung des FC Basels gemäss Artikels 7.10 des UEFA Anti-Doping Reglements überzeugt.

In Würdigung aller Umstände rund um das Verhalten des Spielers Alexander Frei, nämlich der objektiven Tathandlungen sowie der subjektiven Umstände- hier seine langjährigen Erfahrung und aber auch die Tatsache, dass er die Dopingkontrolle behindert hat, weil er einen anderen Spieler daran gehindert hat in der Toilette eine Urinprobe abzugeben- sieht sich die Kontroll- und Disziplinarkammer veranlasst, Alexander Frei in Übereinstimmung mit Art. 5 Abs. 2 lit b, f, Art. 8 Abs. 2 und Art. 15 lit. c und d RPO mit einer Sperre von einem (1) UEFA Klubwettbewerbsspiel zu belegen und diese Sperre mit einer Geldstrafe von € 5'000.- zu verbinden. Bezüglich der Strafzumessung des Vereins berücksichtigte die Kontroll- und Disziplinarkammer zum einen die objektive Tathandlung bzw. Unterlassen und zum anderen seine beachtliche Erfahrung in UEFA Klubwettbewerben und den damit einhergehenden Regularien und Gepflogenheiten. Im Rahmen dieser Erwägungen und im Einklang mit der ständigen Rechtsprechung der UEFA Disziplinarkörper hat die Kontroll- und Disziplinarkammer daher entschieden, den Verein mit einer Geldbusse von € 10'000 zu belegen.

Decision of 27 November 2012

FC Shakhtar Donetsk. Luis Adriano

(Fair play)

Circumstances of the case:

During the UEFA Champions League 2012/2013 FC Nordsjælland vs. FC Shakhtar Donetsk on 20 November 2012, the referee ordered a drop ball. The player No. 10, Borges Da Silva William, of FC Shakhtar Donetsk kicked the ball (long pass) to give it back to the goalkeeper of FC Nordsjælland. While all the players on the field were motionless, expecting the goalkeeper of FC Nordsjælland to catch the ball, Luis Adriano appeared, intercepted it and scored.

Legal framework:

Art. 5 (2) (k) DR (ed. 2012) *Conduct according to the principle of loyalty, integrity and sportsmanship*

Decision:

One-match suspension combined with community football service.

Chairman: Thomas Partl (AUT);

Vice-Chairmen: Jacques Antenen (SUI), Sandor Berzi (HUN);

In fact

On the basis of the UEFA match officials' reports and the video footage of the incident, the Control and Disciplinary Body established the following facts relating to player No. 9 Luis Adriano of FC Shakhtar Donetsk:

At around the 23rd minute of the match, the referee ordered a drop ball and the player No. 10, Borges Da Silva William, of FC Shakhtar Donetsk kicked the ball (long pass) to give it back to the goalkeeper of FC Nordsjælland. While all the players on the field were motionless, expecting the goalkeeper of FC Nordsjælland to catch the ball, Luis Adriano appeared, intercepted it and scored.

In addition, four players from FC Shakhtar Donetsk were displaying a manufacturer's logo on their shirt collars.

In its statement dated 23 November 2012, the club apologised for the action of its player, which it described as an unfair gesture.

The player, in his statement dated 23 November 2012, argued as follows:

"I haven't seen the beginning of the episode, because I was standing with my back to the ball and my face towards the opposition goal, I was in the attacking area and did not notice what had happened on our half. I was very focused on the game and, when the ball dropped near me and the defenders did not show any initiative, I picked up the ball, beat the goalkeeper and scored - I am a forward, in fact. Later, after analysing the replay of that episode and after talking to my teammates, I realized what had happened, I completely changed my view on the episode. I'm very sorry about what happened, I apologize to all the fans and UEFA. Nothing like this ever happened to me before, I always respected, do and will respect Fair Play rules. Once again, I apologize and I promise that this will never happen again- I will be more focused and attentive on the pitch and I will abide by the rules of fair play".

The more detailed arguments given by the club in support of its written submission are set out below, insofar as they are relevant.

In law

As laid down in Article 2(1) of its statutes, UEFA's objectives include that of promoting football in Europe in a spirit of fair play (letter b). Moreover, Article 5 of the UEFA Disciplinary Regulations provides that member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship (paragraph 1). A breach of these principles is committed by anyone who behaves in an unsporting manner to gain an advantage (letter k).

In its efforts to ensure respect for the principles of loyalty, integrity and sportsmanship, UEFA, through its Respect campaign, constantly urges associations, clubs, coaches and players to play the game honestly and correctly, with respect for the referee, supporters, opponents and the game itself.

According to an established unwritten rule of fair play, in case of an uncontested drop ball, the ball is given back to the team harmed by the incident that resulted in a drop ball being awarded. This is a part and parcel of the game of football and well known by players, officials, supporters and others football stakeholders. This is demonstrated by the fact that most of the time when the ball is given back in such circumstances, the player who returns the ball is applauded by the supporters in the stadium for his fair play.

Fair play means acting according to ethical principles which, in particular, oppose the concept of sporting success at any price, promote integrity and equal opportunities for all competitors, and emphasise respect of the personality and worth of everyone involved in a sporting event (UEFA statutes, I definition part 7).

Even if the role of the player on the field is to make every effort to win – but not at any cost – as respect for the rules of the game and of fair play are fundamentally important and in the interests of the game. The player also has a moral duty to set a positive example to others, particularly young players and supporters. A fair play attitude is one of the most important factors in a football match and, as such, players must always pay heed to the best interests of the game.

The present case must be examined in the light of the aforementioned regulatory provisions and considerations.

The video footage of the incident clearly shows – and this is not disputed by either the player or his club- that the Ukrainian team were trailing by a goal until the player Adriano intercepted the pass that his team-mate William had intended for the Nordsjaelland goalkeeper as a “fair play” gesture after a drop ball, offering the Danish side an opportunity to regroup as they had a player out of action through injury. Adriano dribbled past the bemused motionless opposing defenders and around an equally disbelieving Nordsjaelland goalkeeper and scored.

The footage proves beyond doubt that the player acted deliberately by interrupting the gesture of his team-mate who rightly wanted to give the ball back to the opposing goalkeeper.

It is important to underline that the referee had no choice but to allow the goal scored by Adriano as this is in accordance with the Laws of the Game. However, the context in which Adriano scored contravened an evident rule of fair play enshrined in the spirit of the game, and also contravened the sense of fairness felt by any supporter worthy of the name. By intercepting the ball intended for the opposing goalkeeper in a gesture of fair play and scoring in those circumstances, the player Adriano gained an unfair advantage, since others players had intentionally stopped challenging for the ball.

The player Adriano's behaviour is clearly in breach of the principle of loyalty, integrity and sportsmanship laid down in Article 5 of the UEFA Disciplinary Regulations. More specifically, it falls under the scope of Article 5(2)(k) of the UEFA Disciplinary Regulations, which states that: "1. *Member associations and clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship.*

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

a)(...);

k) who behaves in an unsporting manner to gain an advantage"

A referee cannot apply this provision, which does not form part of the Laws of the Game; it is up to the Control and Disciplinary Body to discipline the player on this basis.

In deciding what disciplinary measures to impose on him for the above-mentioned misconduct, the Control and Disciplinary Body has taken account of all the specific circumstances, in accordance with Article 17 of the UEFA Disciplinary Regulations, including the sincerity and good faith of the player and his club during the proceedings. However, in view of the fact that returning the ball to the opponent after a drop ball constitutes one of the pillars of fair play, any breach in this regard constitutes a serious offence and must be punished. The explanations and apologies of the player do not, therefore, release him from effective and serious disciplinary measures, which, to a certain extent, shall counterbalance the unfair situation he caused.

The purpose of Article 5(2)(k) of the UEFA Disciplinary Regulations is not to punish all cases of violation of the principles of fair play but those that constitute an outrageous violation of the sense of sporting justice and fairness to the extent that failure to take disciplinary action would be unjustifiable.

In view of the above, the Control and Disciplinary Body deems a one-match suspension combined with community football service to be the appropriate disciplinary measures in this case, in order to underline the importance of fair play

FC Shakhtar Donetsk

According to paragraph 41.01 of the UEFA Kit Regulations, the outside of the collar zone (the part that is visible when the shirt is worn) must be free of any manufacturer identification. For having worn shirts with a manufacturer's logo on the collar, the Shakhtar players concerned violated this provision. According to Article 11(2) of the UEFA Disciplinary Regulations, Shakhtar is to be held responsible for this misconduct by some of its players and must be penalised accordingly.

In view of the above, the Control and Disciplinary Body, in accordance with Art. 17 of the UEFA Disciplinary Regulations, deems a fine of €5,000 to be the appropriate disciplinary measure for this kit infringement by some of its players.

The club may appeal against the decision of the Control and Disciplinary Body, in accordance with the terms of Articles 49, 50 et seq. DR.

CONTENT

Decision of 13 December 2012

Club Atlético de Madrid SAD. Diego Costa

(Assault)

Circumstances of the case:

During the UEFA Europa League 2012/2013 match FC Viktoria Plzeň vs. Club Atlético de Madrid on 6 December 2012, the player Costa Diego Da Silva (no. 19 of Atlético Madrid) was sent off by the referee for violent conduct. He head-butted his opponent directly in the face.

Legal framework:

Art. 10 (1) (e) DR (ed. 2012) *Assault*; Art. 17 DR *Aggravating circumstance*

Decision:

Suspend the player for four UEFA competition matches.

Chairman: Thomas Partl (AUT)

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

Members: Joël Wolff (LUX)
Hans Lorenz (GER)
Rudolf Repka (CZE)
Jim Shaw (NIR)

In fact

In 91st minute of the above-mentioned match, the player Costa Diego Da Silva (n°19- Atlético Madrid) was sent off by the referee for violent conduct: He head-butted his opponent directly into the face.

In law

According to Article 52 of the UEFA Statutes and Article 27 of the Disciplinary Regulations (DR), the Control and Disciplinary Body is competent to deal with the present case.

The act of the player Costa Diego Da Silva described above constitutes assault, which is punishable by a three-match suspension – as the standard – under the terms of Article 10(e) DR. Should the circumstances so dictate, the Control and Disciplinary Body can scale down or increase this punishment (Article 17 DR).

According to the constant practice of the UEFA disciplinary bodies, assault in the sense of the above provision consists of any act committed intentionally, deliberately or recklessly by which the opponent's physical or mental integrity is interfered with before, during or after the match. Such act would involve contact with aggressive intent, kicking, punching, shaking, pushing, pinching, hitting, spitting, throwing of objects, etc. In the case in hand, the Control and Disciplinary Body had no doubt as regards the legal determination of the facts as reported by the referee. As a result, it was established that the player Costa Diego Da Silva had assaulted his opponent.

As regards the fixing of the sanction, the existence of both aggravating and exonerating circumstances must be examined (Article 17 DR). Headbutting an opponent is a particularly serious and dangerous act of assault, which does not allow a plea of mitigation. It can cause serious injuries and pain to the opponent and is to be considered a particular brutal behaviour. In view of the above considerations as well as of the constant practice of the UEFA disciplinary bodies is similar cases involving head-butting, a four-match suspension was therefore considered to be the appropriate and justified to reflect the major wrong-doing of the players behaviour.

Decision of 13 December 2012

Levante UD. Sergio Ballesteros

(Yellow card on purpose)

Circumstances of the case:

During the UEFA Europa League 2012/2013 match Helsingborgs IF vs. Levante UD played on 22 November 2012, the player Sergio Martinez Ballesteros was shown a yellow card for delaying the restart of play at a free-kick. At the time when the player received the yellow card Levante UD was leading by 3-1. It is stated by the referee and the UEFA delegate in their official reports, that the player deliberately obtained the yellow card by blatantly delaying the restart of the match.

Legal framework:

Art. 5 (2) (k) DR (ed. 2012) *Principle of fair play*

Decision:

Suspend the player for one additional match.

Chairman: Thomas Partl (AUT)

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

Members: Joël Wolff (LUX)
Hans Lorenz (GER)
Rudolf Repka (CZE)
Jim Shaw (NIR)

In fact

In the 94th minute of the above-mentioned UEFA Europa League (UEL) group match the player Sergio Martinez Ballesteros was shown a yellow card for delaying the restart of play at a free-kick. At the time when the player received the yellow card Levante UD was leading by 3 -1.

It is stated by the referee and the UEFA delegate in their official reports, that the player deliberately obtained the yellow card by blatantly delaying the restart of the match. The player had already received two yellow cards during the two previous UEL matches on 25th October and 8th November 2012. According to the competition regulations with this third yellow card the player will be suspended for the next match and will therefore enter the next round, for which the club had already qualified at that point, without any cautions.

In his report, dated 28th November 2012, the UEFA Disciplinary Inspector finds the player guilty of having violated Article 5 (2)(k) of the UEFA Disciplinary Regulations (DR) and requests the Control and Disciplinary Body to suspend the player for one additional, on top of the one played against Hannover 96 on 6th December 2012.

In a statement, dated 8th December 2012, the club denied the allegations and findings of the disciplinary inspector, arguing that his actions right before taking the kick, when he was allegedly looking for an unmarked player as well as his behaviour right after having been shown the yellow card prove that he did not intentionally delayed the restart of the match. According to the club also the fact that the club was still playing for the first place in the group and for a significant amount of money does not match with the above-mentioned allegations. Amongst others the club also argued that because the match was about to be finished the player possibly did delay the restart of the match in order to have the referee blow the final whistle and to secure the score and therefore the qualification for the next round.

Together with its statement the club also provided the Control and Disciplinary Body with video evidence of the scene in question.

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 27 of the UEFA Disciplinary Regulations (hereinafter: DR), the Control and Disciplinary Body is competent to deal with the present case.

According to Article 5 (1) DR "member associations and clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship." Such principles are breached by anyone who inter alia "behaves in an unsporting manner to gain an advantage " (Art. 5(2)(k) DR).

In the present case it is clear from the official match reports of both, the referee and the delegate, that the player received this yellow card on purpose. The video footage of the scene also confirms this and even the club does not dispute it.

Given the particular circumstances, namely that the club had already qualified for the next round and the player having had received two yellow cards in the previous two matches it appears to be obvious that the player by receiving a third yellow card wanted "to play safe" as in being suspended in a match during which nothing is at stake and being free of any cautions for the next round.

Such conduct is in obvious contradiction with the principle of fair play and sportsmanship and solely served for the purpose to gain an advantage for the matches of the next round. Therefore such behaviour, which is violating Article 5 DR is to be punished accordingly.

The Control and Disciplinary Body noticed the arguments of the club. However after having reviewed the video footage of the scene the Control and Disciplinary Body considered that the player was determined to receive a yellow card. And taking into account what would be at stake in the next round, especially since the player as the captain is an important part of the performance of the team, the Control and Disciplinary Body is convinced that the player wanted to receive this caution with view to the next round. After all he could be almost sure that there was nothing to lose considering that it was the 94th minute and the match was to be terminated any moment. Therefore the arguments of the are to be dismissed.

Regarding the fixing of the sanction to be imposed on the player the Control and Disciplinary Body considers all circumstances of the case, both aggravating and exonerating (Article 17 DR). In the present case, in order to ensure that the player can not take advantage of the situation as he intended, a suspension for one additional match is justified, appropriate and in line with the UEFA's disciplinary bodies jurisprudence in previous cases (i.e. Real Madrid CF and the player Nilmar). Finally the Control and Disciplinary Body always considers that the captain of a team should play an exemplary role for the whole team; something which the player with his condemnable conduct failed to do.



APPEALS BODY

Decision of 30 July 2012

FC Schalke 04

(Throwing of missiles. Damage of stadium installations)

Circumstances of the case:

During UEFA Europa League match between Athletic Club and FC Schalke 04 of 5 April 2012, Schalke fans threw coins, cigarettes and plastic cups towards the home supporters. In the 21st minute, police entered the stand occupied by FC Schalke supporters and stayed there until the end of the game. In addition, the home club reported that 83 seats and a urinal had been damaged in the Schalke fans' sector.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 11 (2) DR (ed. 2012) *Lack of order or discipline*

Decision:

The CDB's decision is upheld and the club is fined €20,000. Furthermore, FC Schalke 04 has to pay compensation to Athletic Club for the damage caused.

Chairman: Barry W. Bright, England

Members: Ivaylo Ivkov, Bulgaria
Mario Gallavotti, Italy

In fact

A.

Based on the match delegate's report on the UEFA Europa League match between Athletic Club and FC Schalke 04 of 5 April 2012, Schalke fans committed the following offences:

- In the 14th minute of the match, Schalke fans began to throw coins, cigarettes and plastic cups at the home supporters.
- They also spat at the home support.
- In the 21st minute, the Schalke fans started throwing coins and cups again, at which point, police entered the stand and stayed there until the end of the game.
- In addition, the home club reported that 83 seats had been destroyed and an urinal broken in the Schalke fans' sector.

The UEFA Control and Disciplinary Body decided on 26 April 2012 to fine FC Schalke 04 €20,000 for these offences.

On 21 May 2012, FC Schalke 04, represented by attorney-at-law Stefan Bäune, lodged an appeal against this decision, submitting its grounds for appeal on 29 May 2012.

In its appeal, the club demanded a reduction of the fine and a removal of the order to pay compensation for the destroyed seats, based on the following arguments.

- While the club is not contesting that full plastic cups were thrown, the behaviour of the Schalke fans was in response to provocation and violence on the part of the Bilbao fans. It is alleged that Bilbao supporters tore down Schalke banners and beat them with leather belts.
- Without this provocation from the Bilbao fans, the Schalke supporters would never have misbehaved in the way that they did. This is not intended as an excuse, but as an explanation for the behaviour of the Schalke fans.
- The segregation of home and away fans was insufficient, as the Schalke fans found themselves above the Bilbao fans and not, as is usually the case, next to them. Although

this issue was raised by Schalke, Bilbao failed to do anything to change these arrangements.

- According to the club, the destruction of seats in the Schalke sector was a result not of the behaviour of the Schalke fans, but of the deployment of the local police armed with batons, which – according to Schalke – was completely disproportionate, particularly as none of their fans was involved in any violence. The club cannot therefore be held accountable for any misconduct in this area, because of this disproportionate use of police force and the damage it provoked. Furthermore, it is impossible to ascertain how many seats were damaged by the police and how many may already have been damaged.
- There is nothing in the match delegate's report to say whether or not he checked before kick-off that all seats were intact. This means that no proof can be provided as to whether some seats were damaged before the game, and because the delegate makes no mention of the police involvement in his report, FC Schalke 04 cannot be charged with having destroyed the seats.

B.

On 24 July 2012, the chief disciplinary inspector issued a reply to the appeal on behalf of UEFA, in which he requested that it be rejected, essentially because there was no proof of provocation and because UEFA does not have authority over the local Spanish police.

C.

At today's UEFA Appeals Body hearing, the appellant is represented by Stefan Bäune, attorney-at-law, and UEFA by its chief disciplinary inspector, Chris Georghiades, attorney-at-law.

The ad hoc chairman reminded the parties that the hearing would be recorded and of the composition of the UEFA Appeals Body.

The appellant was given the floor first, and set out once again the arguments used in the grounds for appeal. In particular, the appellant requested a reduction in the fine imposed and a change to point 2 of the decision issued by the UEFA Control and Disciplinary Body, to relieve Schalke of their obligation of compensation towards Athletic Club.

The chief disciplinary inspector was then allowed to respond, which he did by requesting a cross-examination of the match delegate by telephone, a request that was granted.

The delegate first confirmed the content of his report, in which he mentioned that he did not witness any provocation by the Athletic Club fans. He also said that the police deployment had focused on the Schalke supporters, and had helped to separate the fans and calm the situation.

According to the delegate, the behaviour of the police was in proportion to the incident, although he also admitted that he was unable to see from his seat whether they had used batons. In response to the question of the appellant as to whether he had checked the condition of the seats before the match, the delegate replied that all supporters had been sitting down when he checked this section of the stadium, but that he did not see any damaged seats. At the request of the chief disciplinary inspector, the match delegate confirmed once again that Schalke fans alone were responsible for throwing objects, and that this was not caused as a result of provocation by Bilbao fans.

As no additional evidence was brought forward, both parties made their closing statements, the content of which was based essentially on the written submissions.

The arguments put forward have been taken into account in the legal considerations of this decision, as far as this is required to reach a verdict in this case.

In law

1.

The appeal by FC Schalke 04 was submitted on time and in the correct form, and the €1,000 appeal fee was also paid on time. In addition, the grounds for appeal were submitted on time, which makes the appeal admissible in accordance with Articles 49, 50, 52 and 53 of the UEFA Disciplinary Regulations (DR).

2.

According to Article 52 of the UEFA Statutes and Article 8 DR, 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 6(1) DR enables UEFA to hold third parties to the same principles and obligations as its member associations and clubs, insofar as these member associations and clubs can be held responsible for the actions of such third parties. More specifically, this means that member associations and clubs are responsible for the conduct of their players, officials, members, supporters and all other persons fulfilling a role on behalf of the member association or club at a game. This responsibility comes into play with any offence committed by any such person. This is therefore a case of strict liability.

Article 11(2) DR states that disciplinary measures provided for in Articles 14 and 15 DR may be taken against member associations or clubs in case of inappropriate behaviour on the part of their supporters, including:

"b) the throwing of objects;

(...)

f) acts of damage;

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

Ultimately, the UEFA Appeals Body and the UEFA Control and Disciplinary Body rely on the content of official match reports to establish the truth. It is assumed that these reports are accurate, but they can be disproved by evidence to the contrary (Article 45 DR).

This case is therefore being treated under application of the above article.

3.

a) In this case, it is clear from the delegate's report that supporters of FC Schalke 04 threw coins and plastic cups at Athletic Club supporters and spat at them. There is no evidence in this report that there was any provocation on the part of the Bilbao fans. The pictures and report regarding the destroyed seats and broken urinal are also unambiguous. The match delegate clearly stated when questioned that Bilbao supporters did not provoke their Schalke counterparts. Furthermore, the match delegate saw no destroyed seats before the game, only seated supporters. As such, the delegate did not confirm the arguments put forward by the appellant. Moreover, the appellant was not able to provide further evidence of its arguments, such as video footage of the alleged provocation or destruction of seats by the police's use of batons. The Appeals Body is therefore acting on the basis of the facts presented by the delegate in his report and witness statement.

b) It therefore finds that the Control and Disciplinary Body was right to decide that Schalke supporters threw coins, plastic cups and cigarettes, spat at Bilbao supporters, and destroyed several seats and a urinal. The Control and Disciplinary Body was therefore also correct to hold Schalke responsible for the misconduct of its supporters in accordance with Article 6(1) DR.

c) According to Article 17(1) DR, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. If the party charged has committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly. Article 14(1) DR lists the disciplinary measures that can be taken against member associations and clubs for misconduct. According to Article 14(2) DR, a fine of no less than €100 and no more than €1 million may be imposed. It is up to the competent disciplinary body to decide the type and extent of the disciplinary measure, and such a body should consider recidivism – the imposition of disciplinary measures within five years of a previous offence of a similar nature – an aggravating circumstance (Article 18(2) DR). Furthermore, the disciplinary bodies must stay within the limits of generally applicable laws, should take into account the degree of guilt and wrongdoing involved, and should establish a punishment that is in proportion to the offence committed. Finally, the disciplinary bodies may neither misuse nor exceed their jurisdiction.

d) The throwing of plastic cups, cigarettes and especially coins, which could cause significant injury if used as projectiles, has been clearly proved. The offence of spitting at Bilbao fans could also not be disproved. Such conduct is not only inappropriate and prohibited under Article 11(2) DR; it also brings with it the risk of a chain reaction, i.e., a retaliation from Bilbao supporters which could develop into an uncontrollable situation. Furthermore, the behaviour described above, together with the destruction of parts of the stadium fittings, represents a form of hooliganism that should, in principle, be considered gross misconduct and be banished from football stadiums.

e) As it can be taken as proved that Schalke supporters destroyed seats in Athletic Club's stadium, the logical consequence is to hold the club to which the perpetrators are affiliated responsible for compensating for the damage. Therefore, the disciplinary measures imposed by the Control and Disciplinary Body are appropriate and incontestable.

f) Finally, the Control and Disciplinary Body took into account the club's previous record, a total of seven previous offences for incorrect behaviour by its supporters, as an aggravating circumstance in accordance with Article 18(2) DR. This also shows that the club must be aware of the problem of misconduct among its supporters, yet obviously no sufficiently effective action has been taken to prevent incidents such as this. Because the most recent fines imposed on the club for the misconduct of its supporters were for between €5,000 and €15,000, a higher amount seems justified, particularly given the severity of this most recent case.

g) Thus, the Control and Disciplinary Body exercised its discretionary powers rightfully, and properly applied the relevant provisions of the DR as well as the principle of proportionality. The decision of the UEFA Control and Disciplinary Body of 26 April 2012 to impose a fine of €20,000 and to pay compensation to Athletic Club for the damage caused, is confirmed, and the appeal of the appellant rejected.

4.

The costs of the appeal proceedings, including all expenses of the Appeals Body, are to be shared among the parties at fair discretion based on the outcome of the proceedings (Article 63 DR).

Because this appeal is rejected, all costs will be borne by the defendant, FC Schalke 04. In accordance with Article 73 DR, the German Football Association (DFB) is jointly and severally liable for these disciplinary measures.

Decision of 30 July 2012

Football Association of Serbia

(Displaying of an inappropriate symbol)

Circumstances of the case:

During the match between Serbia and Slovenia on 11 October 2011, Serbian supporters had held up three fingers – a symbol of the Serbian far right – and displayed a banner showing three fingers and the name “Patriot Boys”.

Legal framework:

Art. 11 (2) DR (ed. 2012) *Use of gestures, objects or any other means to transmit any message that is not fit for a sport event*

Decision:

CDB:

The CDB fined the Association of Serbia €10,000.

Appeals Body:

The offensive and/or discriminatory nature of the symbol is neither obvious nor demonstrated. The appeal of the Football Federation of Serbia is upheld and, consequently, the fine is lifted.

Chairman: Pedro Tomás, Spain,

Members: Mario Gallavotti, Italy
Barry Bright, England

In fact

A.

In its decision of 29 March 2012, the UEFA Control and Disciplinary Body fined the Football Association of Serbia €10,000 for the inappropriate behaviour of its supporters at the UEFA European Football Championship qualifying match between Serbia and Slovenia on 11 October 2011, under the terms of Article 11(2) (e) of the UEFA Disciplinary Regulations. During the match, Serbian supporters had held up three fingers – a symbol of the Serbian far right – and displayed a banner showing three fingers and the name “Patriot Boys”.

B.

On 9 November 2012, the Football Association of Serbia appealed against the Control and Disciplinary Body’s decision, requesting that the whole of the fine be lifted.

C.

On 24 July 2012, UEFA, through its disciplinary inspector, submitted its response to the appeal. The disciplinary inspector argued that the appeal should be rejected and the costs of the appeal procedure charged to the appellant.

D.

The chairman opened the appeal hearing.

He confirmed that the parties were present and informed them of the procedure that would be followed (Article 66 et seq. of the UEFA Disciplinary Regulations) and reminded them of the composition of the Appeals Body. He also informed them that everything they and the court said would be recorded.

No objection was raised.

Rafal Pankowski, a member of the FARE (Football Against Racism in Europe) network for eastern Europe and a Polish citizen living in Warsaw, was questioned by the panel and the parties regarding the meaning of the three-finger symbol. Mr Pankowski explained that the three-finger symbol was linked to the Serbian far right which the democratic parties in Serbia considered as a symbol of extremism and refused to be associated with.

The representative of the FA of Serbia disagreed with this explanation and showed different pictures of several personalities using the three-finger salute or symbol, among them former American president George Bush. He said that this symbol had nothing to do with the far right but was a Serbian Orthodox salute.

The arguments of the parties are set out and examined below, insofar as they are relevant.

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

In law

1.

The Appeals Body has the jurisdiction to rule on this appeal on the basis of Article 34(3) of the UEFA Statutes and Article 48 of the UEFA Disciplinary Regulations.

The appeal was lodged by the deadline and in the form required. It is therefore admissible under Articles 49, 50, 52 and 53 of the UEFA Disciplinary Regulations, and the Appeals Body may consider its merits.

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 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.

According to Article 11 (2)(e) DR

"The same disciplinary measures may be taken against member associations or clubs in case of inappropriate behaviour on the part of their supporters, including:

a) (...);

e) *the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, in particular if it is of a political, offensive or provocative nature (...);*

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 the grounds of colour, race, religion or ethnic origin, will be suspended for five matches or a specified period (paragraph 1).

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. However, this fight must be conducted in full deference to the legal framework. In the present case, the only question which the panel must address is whether three-finger salute or symbol constitutes a politic demonstration and subsequently, a discriminatory act or symbol.

c) Any member association or club whose supporters engage in the type of behaviour described in paragraph 1 of Article 11bis of the UEFA Disciplinary Regulations will be fined at least €20,000 (paragraph 2). Paragraph 2 of Article 11bis of the UEFA Disciplinary Regulations establishes the condition of strict liability such as set out in Article 6(1) of the UEFA Disciplinary Regulations, as the violation of Article 11(2)(e) which the punishment is foresaw under Article 14 DR.

d) According to the principle of strict liability, clubs and national associations are responsible for incidents caused by their supporters before, during or after a match, irrespective of the fault of the club/association. In order for the FA of Serbia to be sanctioned for the misbehaviour of its supporters, it has to be established that UEFA regulations were violated through an offence being committed by one or more supporters of the Serbian national team.

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

3.

In the case in hand, it has been established that the three-finger symbol was displayed during the above-mentioned match by supporters of the Serbian national team. The explanation given by Rafal Pankowski did not satisfy the panel that this gesture was a forbidden symbol. It looked for a more accurate description and noted that other literature describes the three-finger salute as an expression of Serbian Orthodoxism or simply a sign for Serbia, made by extending the thumb, index, and middle fingers of one or both hands.

Consequently, the panel considers that the offensive and/or discriminatory nature of this symbol is neither obvious nor demonstrated. In any case, and on the basis of the information available, it cannot consider it as a widely known symbol for the Serbian far right or as discriminatory symbol or politic demonstration. In such circumstances, there are no grounds for considering such a salute as a breach of the UEFA regulations. This gesture and the symbol and name on the banner do not fall – for the time being at least – neither under Article 11bis nor Article 11(2)(2) of the UEFA Disciplinary Regulations. Accordingly, no offence has been committed by the Serbian supporters.

As there is no convincing evidence of a violation of Articles 11(2)(e) and 11bis of the UEFA Disciplinary Regulations by the Serbian supporters, the FA of Serbia cannot be held responsible for misbehaviour on their part, even if it cannot be excluded that their behaviour was considered provocative or political by a number of people, depending how they understood it.

In view of the above, the panel decided to accept the appeal lodged by the FA of Serbia and to overturn the decision of the Control and Disciplinary Body of 29 March 2012.

4.

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

Based on the result of the appeal, all costs (€5,000) are charged to UEFA.

Decision of 31 July 2012

Football Association of Montenegro. Marco Jankovic

(Rough play)

Circumstances of the case:

During the European Under-19 Championship 2012 match between Montenegro and Slovenia played on 30 May 2012, the player Marco Jankovic was sent off by the referee for serious foul play, having committed a tackle with excessive force that endangered the safety of his opponent.

Legal framework:

Art. 10 (1) (a) DR (ed. 2012) *Rough play*

Decision:

The CDB's decision is upheld and the player Marco Jankovic is suspended for two UEFA competitions matches.

Chairman: Pedro Tomás, Spain,

Members: Mario Gallavotti, Italy
Barry Bright, England

In fact:

A.

By decision of 4 June 2012, the UEFA Control and Disciplinary Body (hereafter: COB) decided the suspension of the player Marko Jankovic (hereafter: the player), of the Football Association of Montenegro (hereafter: the FA), for two UEFA competition matches for national teams. It recalled in substance that in the 83rd minute of the European Under-19 Championship 2012 match between Montenegro and Slovenia, played on 30.05.2012, the player was sent off by the referee for serious foul play, having committed a tackle with excessive force that endangered the safety of his opponent.

As for the sanction, the COB considered that the act of the player constitutes rough play, punishable by a minimum sanction of a one-match suspension according to the standard set by Art. 10 (a) of the UEFA Disciplinary Regulations (hereafter: DR), but that "tackling an opponent with excessive force as the player did is a particularly rough play and thus a serious threat for the integrity of the opponent". The COB also considered the standing practice of the UEFA disciplinary bodies, according to which it therefore considered a two-match suspension as appropriate.

B.

On 8 June 2012, the FA and the player (hereinafter: the appellant) appealed against the COB decision. Additional grounds of appeal together with the player's consent to the appeal were submitted on 13 June 2012. The appellant requests to reduce the sanction of a two-match suspension, in order for the player to be able to play in the European Under-19 Championship 2013 qualifications. The player and the FA argue that the player's tackle was unintentional. Allegedly the player first kicked the ball and then stepped on his opponent's shoe which was taken off by this action. Because of this, his opponent lost balance and fell on the ground. The appellant highlights that he immediately apologized to the opponent and gave him his hand to help him get up and that the opponent didn't need any medical treatment, accepted his apology and continued playing. In this respect the appellant refers to a video of the match, which however was not submitted by the appellant, nor is UEFA in possession of any video footage of this match. Finally, it is argued that the European Under-19 Championship 2013 qualifications are a highlight in the player's career and that therefore a two-match suspension would be a too severe punishment.

C.

The UEFA disciplinary inspector submitted his reply on 17 July 2012. He concludes that the appeal is to be rejected, while noting that the appellant did submit any evidence or legal arguments which undermined the findings or the reasoning of the COB. Therefore he argues that there is no reason to reduce the sanction imposed by the COB.

D.

a) At today's hearing, UEFA is represented by David Casserly, disciplinary inspector. From the appellant's side no representative is present at the hearing. The chairman of the Appeals Body (hereafter: AB) confirms the composition of the panel, informs the disciplinary inspector of the procedure to be followed and of the fact that everything would be recorded. He also notes that even in the absence of one or all of the parties, the AB can still hold the hearing and take a decision.

b) As no further evidence has been submitted and in the absence of the appellant party, the disciplinary inspector holds his pleadings, in which he reaffirms his submissions, particularly to reject the appeal.

In law:

1.

The AB has the jurisdiction to hear an appeal against a COB decision and the appeal was submitted in the form and by the deadline required (Article 48, 49, 50, 52 DR).. The AB will therefore examine the merits of the case.

2.

As for the facts and their legal determination, the AB refers to the COB decision. The facts as described in the COB decision are basically admitted by both parties. The appellant only argues that the tackle wasn't done intentionally.

3.

a) The standard sanction for rough play is a one-match suspension (Article 10 (a) DR). However, as the COB rightly notes "tackling an opponent with excessive force (...) is a particularly rough play and thus a serious threat for the integrity of the opponent." Neither the COB nor the AB, after having read the submissions of the appellant, could find any exceptional circumstances which could be considered as mitigating. Consequently the increase of the standard sanction to a two-match suspension therefore seems appropriate and justified. Also with regards to the standing precedent of UEFA's disciplinary bodies in similar cases, the verdict of a two-match suspension is irreproachable.

b) The fact that the opponent player was not injured and could continue playing does not constitute a mitigating circumstance, which would allow a decrease of the sanction. On the contrary a serious injury of the opponent player could possibly have constituted an aggravating circumstance. Therefore this argument does not serve to reduce the sanction. And neither does the argument that the player will miss a- for him important- match, as the sanction is always solely determined according to the guilt and wrongdoing of the person.

The appeal must therefore be rejected and the decision of the CDB is to be confirmed.

4.

The cost of the proceedings, including the expenses of the AB, must be shared between the parties in an equitable manner, in accordance with the outcome of the procedure (Article 63 DR).

In this case, the costs must be charged in full to the appellant, the appeal being rejected.

5.

The Football Association of Montenegro is jointly liable for the costs (Article 73 DR).

6.

This decision is final, in accordance with Articles 64 (1) and 66 DR.

Decision of 9 August 2012

Football Union of Russian

(Throwing of fireworks. Displaying of illicit banners)

Circumstances of the case:

During UEFA European Football Championship final-round match between Russia and the Czech Republic on 8 June 2012, Russian supporters had ignited two Bengal lights, one of which was thrown onto the pitch. Furthermore, they displayed ten flags of the former Russian Empire, one of which, located behind the Czech team's goal, contained the word "Stalingrad", and, finally, they attacked two stewards.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 11 (2) (c) DR (ed. 2012) *Lightning of fireworks*; Art. 11 (2) (e) DR (ed. 2012) *Use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event*; Art. 11 (2) (g) DR (ed. 2012) *Lack of order or discipline*

Decision:

CDB:

The CDB decided to deduct six points from the Football Union of Russia in the qualifying round of the next UEFA European Football Championship. This sentence was suspended for a probationary period until the end of the play-offs of the next UEFA European Football Championship. In addition, the CDB imposed a fine on the Football Union of Russia in the amount of €120,000.

Appeals Body:

The appeal is partially admitted and the CDB's decision is altered as follows:

The Football Union of Russia is ordered to play the next three matches in the qualifying competition of the 2014–16 UEFA European Football Championship behind closed doors. The disciplinary measure is suspended for a probationary period lasting until the end of the qualifying competition of the 2014–16 UEFA European Football Championship). In addition, the Football Union of Russia is fined €120,000.

<u>Chairman:</u>	Pedro Tomás, Spain
<u>Members:</u>	Patricia Moyersoen, France Björn Ahlberg, Sweden Marion Gallavotti, Italy Michel Wuilleret, Switzerland

In fact:

A.

On 13 June 2012, the UEFA Control and Disciplinary Body punished the Football Union of Russia for its supporters' conduct, in accordance with Article 11(2) of the UEFA Disciplinary Regulations (DR).

On the basis of the report of the UEFA match delegate and video images of the 14th UEFA European Football Championship final-round match between Russia and the Czech Republic (4-1), played in Wroclaw (Poland) on 8 June 2012, the Control and Disciplinary Body found that the Russian supporters had ignited two Bengal lights, one of which they had thrown onto the pitch, that they had displayed ten flags of the former Russian Empire, one of which, located behind the Czech team's goal, had contained the word "Stalingrad", and, finally, that they had attacked two stewards.

It held the Football Union of Russia responsible for its supporters' conduct under the terms of Article 6(1) DR and therefore imposed the following disciplinary measures against it:

- To deduct six points from the Football Union of Russia in the qualifying round of the next UEFA European Football Championship. This sentence is suspended for a probationary period. The probationary period runs from now until the end of the play-offs of the next UEFA European Football Championship.
- To fine the Football Union of Russia €120,000.
- To warn the Football Union of Russia about the late handing-in of the match sheet.
- The above fine must be paid into the bank account below within 30 days of communication of this decision.

B.

On 19 June 2012, the Football Union of Russia (the appellant) lodged an appeal against the decision of the Control and Disciplinary Body (the respondent) of 13 June 2012.

On 26 June 2012, it submitted the grounds for its appeal, in which it drew the following conclusions:

- Lift the sanction imposed by the Control and Disciplinary Body.
- Impose a sanction(s) of economic nature that does not exceed sixty thousand euro (€ 60'000).

- In the case that the sanctions for each infractions are individualized, that they all consist in a fine that their joint amount do[e]s not exceed sixty thousand euro (€60,000).

In substance, the appellant accuses the respondent of imposing an inappropriate punishment, infringing the proportionality principle and failing to take into account, as a mitigating circumstance, the fact that the organisation of the event in general, and the maintenance of order and security in particular, were primarily the responsibility of the host associations, i.e. those of Poland and Ukraine. It also argues that the principle of equal treatment was violated, in view of the disciplinary measures imposed in other similar cases.

C.

On 13 July 2012, UEFA, through its disciplinary inspector, lodged its reply to the appeal, concluding that the appeal should be rejected, with the costs to be charged to the appellant.

D.

The Appeals Body chairman opened the session.

He noted the presence of the parties and informed them of the composition of the Appeals Body and of the procedure to be followed. He added that the debates would be recorded (Article 31(3) and (5) DR).

In so far as the deduction of points in a competition for which the qualifying matches will not begin until 2014 is a disciplinary measure which, as far as the Appeals Body is aware, had never previously been imposed, the Appeals Body chairman considered that the case should be examined by an expanded panel of five members, in accordance with Article 23(4) DR.

The parties raised no objections. The images provided by the parties were viewed several times. Since no additional evidence was called, the parties were then given the floor.

Their arguments are set out below, in so far as they are relevant to the decision.

In law:

1.

a) The Appeals Body may examine the merits of an appeal against a decision of the Control and Disciplinary Body in accordance with Article 48 DR.

The appeal was lodged by the deadline and in the form required. Grounds were provided and the appeal fee was paid by the deadline. The appeal is therefore admissible in procedural terms under Articles 49, 50, 52 and 53 DR.

b) Under the terms of Article 62 DR, the Appeals Body re-examines the case both factually and legally (para. 1). The appeal decision confirms, amends or lifts the contested decision (para. 2).

The appeal therefore has the effect of transferring jurisdiction to a higher court, which reviews all the factual and legal elements on which the first-instance decision was based. The higher court may therefore reconsider and examine the case on the merits for a second time, and, in principle, issue a new decision.

However, in accordance with legal doctrine and case law (G. PIQUEREZ, *Traité de procédure pénale suisse*, 2nd ed., 2006 p. 754/755 and quoted case law), the transfer of jurisdiction may be limited by the appellant, who may, if he wishes, only dispute certain parts of the judgment. The higher court's jurisdiction is therefore restricted by the grounds stated in the appeal pleadings. The powers of the appeal tribunal, in this case the Appeals Body, are therefore limited by the wording of the appeal, since it is the appellant who determines their scope. The appellant may contest the whole judgment (finding of guilt, disciplinary measure, third-party liability) or just certain parts of it (such as the disciplinary measure), in which case all the elements of the disputed decision that are not contested in the appeal enter into force. The Appeals Body can therefore only rule on the element(s) referred to it and note that the other parts of the judgment have entered into force. The fact that the appellant, rather than the Appeals Body, remains in control of the appeal is borne out by the fact that, if the main appeal is retracted, the cross-appeal is considered dropped, in accordance with Article 54(4) DR.

c) In the present case, the appellant concludes that the decision should be annulled and requests, principally, that a fine be imposed instead of a points deduction, and, in the alternative, that the Russian national team be ordered to play one match in a third country, a measure suspended for a probationary period.

In view of the conclusions drawn, the Appeals Body is fully entitled to examine the case both factually and legally, and it can confirm, amend or lift the contested decision in accordance with Article 62(1) and (2) DR.

2.

a) Having examined its decision, the Appeals Body notes that the respondent correctly explained, in a judicious, detailed and convincing manner, the rules and principles applicable in this case, in particular the principle enshrined in Article 6(1) DR, under which member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the member association or club (so-called "strict liability").

This provision has a preventive and deterrent effect. Its objective is not to punish the association or club, which may have done nothing wrong, but to ensure that it assumes responsibility for offences committed by people associated with it in one way or another.

The legality and validity of the notion of strict liability in the sense of Article 6(1) DR have been confirmed many times by the Court of Arbitration for Sport (see in particular CAS 2002/A/423 PSV Eindhoven v UEFA, rec. 6.1.1.3 a) p. 12 § 3).

b) The appellant argument according to which the host associations was in charge of safety and security is to be held responsible due to a lack of organisation. However, the possible lack of organisation does not change the legal situation regarding objective responsibility based on Article

6 (1) DR and can in no case exonerate the visiting association's responsibility for the improper conduct of its supporters.

Possible shortcomings in the organisation of the match could, at the most, be considered as mitigating circumstances in deciding on the level of sanction to pronounce against the visiting association club. However, in this case, the appellant did not provide substantial evidence to demonstrate the shortcomings committed by the host association.

It must be also recalled that CDB can take disciplinary measure against the host association if considered responsible for lack of security, based on Article 6(2) DR, given that the match organiser is obliged to do all it can to guarantee order and security in and around the stadium. However, contrary to the legal situation mentioned in Article 6(1) DR, the simple fact that an incident occurs does not automatically lead to the sanctioning of the host association or club, as Article 6(2) does not imply strict liability; it has a different scope and presupposes the fulfillment of other conditions for a sanction to be able to be imposed.

In view of the above the argument of the appellant regarding the shortcomings on the part of the host association is unfounded.

3.

a) According to Article 11(2) DR, the disciplinary measures listed in Articles 14 and 15 DR may be taken against member associations or clubs, particularly in relation to:

- the lighting of fireworks or any other objects (letter c),
- the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, in particular if it is of a political, offensive or provocative nature (letter e),
- any other lack of order or discipline observed inside or around the stadium (letter g)

Further, according to Article 45DR and the well established Appeals Body case law that the referee's or match delegate's report should be considered as trustworthy and truthful unless its inaccuracy can be clearly proven beyond any doubt.

b) Having examined the case file, the parties' written pleadings and the video images, the Appeals Body considers that it is established, to the satisfaction of the law, that:

- Two pyrotechnic devices (Bengal lights) were lit by Russian supporters and one of them was thrown onto the pitch.

The appellant does not dispute this.

- Black, yellow and white flags, and one flag bearing the word "Stalingrad" were displayed in the ninth minute of the match by supporters of the Russian national team.

The appellant does not dispute this. However, it argues that these flags did not carry any political message.

- Russian supporters attacked and beat up two stewards.

The appellant does not dispute this. However, it claims that it bears less responsibility for its supporters' conduct than the host associations, which were responsible for organising the event.

c) Since offences of the types listed in Article 11(2)(c), (e) and (g) DR were clearly committed, the Control and Disciplinary Body was correct to hold the appellant responsible for its supporters' conduct, in accordance with Articles 11(2) and 6(1) DR. Associations and clubs are responsible for their supporters' conduct, regardless of fault (see section 2, above).

The type and extent of the disciplinary measures imposed is a different question altogether.

4.

a) In addition to a €120,000 fine, the respondent imposed a six-point deduction in the qualifying round of the next European Football Championship (2014-2016), a sentence suspended until the end of the play-offs of the said competition.

Following intensive deliberations, the Appeals Body finally concluded that this measure was inappropriate in this case.

b) Under Article 17(1) DR, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. If the party charged has committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly (paragraph 4).

The disciplinary measures that can be imposed against member associations and clubs are listed in full in Article 53 of the UEFA Statutes. Article 14 DR repeats this list, which includes, in order of increasing severity and depending on the type of offences committed, a warning, reprimand, fine, annulment of the result of a match, deduction of points, declaration of a match forfeit, playing of a match behind closed doors, full or partial stadium closure, playing of a match in a third country, and disqualification from competitions in progress and/or exclusion from future competitions.

According to well-established case law, where supporters commit the most serious types of offence, i.e. when the life or physical integrity of participants in a UEFA competition, whether players, officials or spectators, is endangered, the disciplinary bodies have considered that, for reasons of prevention, the disciplinary measure most likely not only to punish the association or club in view of its strict liability, but also to raise supporters' awareness, is to ban the latter from attending one or more matches involving their favourite team. The playing of a match behind closed doors, a full or partial stadium closure, and even the playing of matches in a third country are therefore the most appropriate measures. They have a direct impact on the supporters by preventing them from attending a match, while ensuring that the competition continues as normal.

In the present case, the Russian national team is threatened with a six-point deduction in its UEFA EURO 2016 qualifying campaign. In other words, it is primarily the team's players and staff, followed by the national association, who will be punished, since their participation in the final round is at risk. The Russian supporters as a whole will also be punished, while the hooligans responsible for the incidents will somehow have their ability to cause trouble reinforced. Another

problem with this punishment is that it would favour teams that lost points in their matches against the Russian national team, to the detriment of those that won points against them in the qualifying group matches or play-offs. Finally, although Article 14(n) DR provides for the possibility of disqualifying an association or club from competitions in progress or excluding them from future competitions, the particular nature of the European Football Championship, which only takes place every four years, means that the national team punished could participate in qualifying matches, and even the final round, of the FIFA World Cup before serving its punishment. The educational and preventive effects of the disciplinary measure would therefore be reduced.

For all the above reasons, the majority of the Appeals Body members consider that the six-point deduction is inappropriate in this case. If the UEFA disciplinary bodies wish, in future, to impose such a measure, which would certainly be a great deterrent, the Appeals Body believes that, under the principle of good faith, all the parties involved, i.e. the national associations and, through them, their teams, and, in particular, their supporters, should be made aware that, if the latter commit violent acts in the future, their team runs the risk of having points deducted.

In conclusion, the Appeals Body annuls the respondent's decision to deduct six points from the Russian national team in the qualifying competition of the 2014–16 UEFA European Football Championship.

It remains for the Appeals Body to decide what disciplinary measure should be imposed against the appellant for its supporters' misconduct.

5.

a) The seriousness of the offences committed by Russian supporters is in no doubt whatsoever. The ignition of pyrotechnic devices is a serious offence in itself. The violent, if not criminal, behaviour of some Russian hooligans endangered the physical integrity of two stewards. There is no need to describe at length the tragic consequences that the attack on victims lying on the floor could have had. The fact that nobody was killed or seriously injured is a miracle. However, it does not mean that the danger created was any less serious.

As for the flags that were displayed and the word "Stalingrad" that appeared on one of them, these were clearly objects used to transmit a message that is not fit for a sports event, in the sense of Article 11(2)(e) DR, since they insulted Poland and the Czech Republic, whose populations suffered under Russian imperialist and, later, communist rule.

Finally, contrary to the appellant's claim, an overall punishment is not only possible but, in this case, justified. Article 17(4) DR states that, if the party charged has committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly.

As the first-instance body stated, in addition to the seriousness and multiplicity of the offences committed by the Russian supporters, the national association's poor disciplinary record in this area must be taken into account.

b) In view of all the circumstances, the Appeals Body considers that the most appropriate punishment is to order the Russian national team to play its next three matches in the qualifying competition of the 2014–16 UEFA European Football Championship behind closed doors.

It would have liked to make this punishment immediately enforceable, i.e. without a probationary period. However, the disputed punishment would then have been increased, which is forbidden under Article 62(3) DR. The Russian national team will therefore be granted a probationary period until the end of the qualifying competition of the 2014–16 UEFA European Football Championship (including play-offs).

The €120,000 fine imposed by the respondent, however, is confirmed.

Finally, the Appeals Body notes that, in the grounds for its appeal, the Football Union of Russia does not dispute the warning issued against it for the late submission of the match sheet. It also did not challenge this measure or ask for it to be withdrawn during the Appeals Body hearing. This element of the appeal is therefore inadmissible.

6.

In the light of all the above, the appeal is partially admitted and the decision taken is amended accordingly.

The costs of the proceedings, which include all expenses of the Appeals Body, are shared among the parties at fair discretion, in accordance with the outcome of the proceedings (Art. 63 DR).

In view of the outcome of the dispute, the costs of the proceedings, which amount to €10,000, are shared equally between the parties, minus the appeal fee.

Decision of 9 August 2012

FC Chelsea. John Terry

(Assault)

Circumstances of the case:

During the UEFA Champions League 2011/2012 match FC Barcelona vs. Chelsea FC on 24 April 2012, the referee sent off the player John Terry from the field of play for having kicked his opponent without any justifiable reason while the ball was playing far from their position.

Legal framework:

Art. 10 (1) (e) DR (ed. 2012) *Assault*; Art. 17 DR (ed. 2012) *Mitigating circumstances: no previous record*

Decision:

CDB:

The CDB decided to suspend the FC Chelsea player John Terry for three UEFA competition matches.

Appeals Body:

The CDB's decision is overturned and the third match of suspension is suspended for a probationary period of three years.

Ad hoc chairman: Michel Wuilleret (Switzerland)

Members: Patricia Moyersoen (France)
Björn Ahlberg (Sweden)

In fact

A.

By decision rendered at its meeting on 31 May 2012, on the basis of the UEFA match delegate's reports, the UEFA Control and Disciplinary Body suspended the FC Chelsea player John Terry for three UEFA competition matches. As the player did not participate in the match between FC Bayern München and Chelsea FC, played on 19 May 2012, the remaining match suspensions apply to the next two UEFA competition matches for which the player would be eligible.

The Control and Disciplinary Body found, in substance, that the player's act constituted assault, which is punishable by a standard three-match suspension under the terms of Article 10(1)(e) of the UEFA Disciplinary Regulations (DR). It took into consideration the fact that the player had no previous record from the last five years, that his behaviour after the incident was exemplary and that his act did not cause an injury to the opponent. But given the nature of the act committed and according to the practice of the UEFA Disciplinary Bodies, it is not necessary for a player to be injured before a punishment can be handed out. Furthermore, John Terry's behaviour after the incident did not constitute enough to justify a reduction in the standard punishment, which was appropriate in this case.

The Control and Disciplinary Body also held the club Chelsea FC responsible for its team's misconduct (delaying the kick-off) and fined it €78,000.

B.

On 1 June 2012, John Terry announced his intention to appeal against his three-match ban.

On 11 June 2012, after having received the reasoned decision, he formally notified UEFA that he intended to appeal against the decision.

He lodged his appeal on 14 June 2012. The appellant referred to the case file.

His main argument is that, all things considered, a one-match ban, resulting in him missing the Champions League final, was in itself adequate punishment. A two-match ban based on the facts of this case would result in him missing two matches, one of which was the Champions League final. (The next game for which John Terry would ordinarily have been eligible for selection is the UEFA Super Cup, in which he has never previously played). In his appeal, John Terry argues that no more than a two-match ban is appropriate, bearing in mind his record and considerable comparable

cases. Given the obvious comparable case of Wayne Rooney, whose three-match ban was reduced on appeal to two, John Terry felt that a ban of three matches was excessive and disproportionate.

C.

UEFA, through its disciplinary inspector, submitted its reply to the appeal on 11 July 2012. It called for the appeal to be rejected and for the costs of the proceedings to be charged jointly to the appellant and his club, Chelsea FC.

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 Appeals Body also watched the footage of Wayne Rooney's act referred to by the appellant.

Asked about the incident, John Terry did not contest the facts, nor did he seek to justify his behaviour. He admitted that the foul he had committed was unacceptable and stupid. He said he was ashamed of what he had done, and did not understand the gesture, which he had since described as out of character. Now 31 years of age, Terry had been a professional with Chelsea FC since he was 17. At the time of the incident, he had 79 international caps with England, and had played in 169 UEFA competition matches to date without incident, except for a red card that he had picked up in an Under-21 match in 2001.

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 for reaching the decision.

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

In law

1.

The appeal was lodged by John Terry within the prescribed deadline and in the required form. The grounds for appeal were submitted and the appeal fee of €1,000 paid before the relevant deadline.

UEFA's response also complied with the deadline set by the chairman of the Appeals Body in accordance with Article 54(1) DR.

The Appeals Body was therefore competent to assess the merits of the appeal (Articles 23(4) and 24(2) DR).

2.

Under the terms of Article 52 of the UEFA Statutes and Article 8 DR, 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.

Under the terms of Article 10(1)(e) DR, a player who assaults another player or other person present at the match should be suspended for three competition matches or for a specified period.

The term assault covers any act by which the physical well-being 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.

Under the terms of Article 17 DR, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances.

The grievances were examined by the Appeals Body in the light of these principles.

3.

In this case, the Appeals Body had no reason whatsoever to question the accuracy of the referee's report. The facts as established by the Control and Disciplinary Body were thus the basis for further examination of the case. It is beyond any doubt that the conduct of the player John Terry constituted assault. Anyone who kicks an opponent without challenging the ball and hits him in the hip (or in the back of the thigh) without any reason – the way in which the Chelsea FC player did – demonstrates disdain towards the physical integrity of their opponent. A player in general and a professional player in particular should not behave like this. By displaying such misconduct, a player shows an obvious lack of good manners and oversteps the boundaries of sportsmanlike behaviour, as the player himself admitted in substance.

For the Appeals Body, it was also established that the offending player was aware of the risk of injuring his opponent. Consequently, the Control and Disciplinary Body was right to qualify the player's offence as violation of Article 10(1)(d) DR, a fact that is also not contested by the appellant.

The only question to be examined was whether the Control and Disciplinary Body abused its power of discretion by suspending the appellant for three matches.

4.

a) The Appeals Body finds that, in this case, it is necessary to examine the fact and its seriousness in a general context. The player did not contest that the act he committed constituted serious unsporting conduct classified under the general term "assault" in accordance with Article 10(1)(e) DR, which is punishable by a standard three-match suspension.

The disciplinary measures imposed must conform to the principles of legality and proportionality. They 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) DR).

Furthermore, the disciplinary authority must be able to punish all misconduct, from the slightest to the most serious. In order to abide by this principle, it must adopt the rule whereby a suspension is, in accordance with Article 10(1) DR, a standard decision, which, depending on the particular circumstances of the case, may be reduced or increased, as set out in Article 17(2) DR. It can thus, in assessing the specificities of a case in hand, reduce or increase the ordinary suspension period if the severity of the offence committed or the age or good track record of the accused demands that it deviates from the normal (standard) period of suspension.

At this point, it should be noted that in terms of the most recent case of this type, the lack of previous track record had no effect on the punishment imposed; it was not taken into account as a mitigating circumstance. In exceptional cases, however, it can be taken into consideration as a mitigating factor when assessing the character of the perpetrator, provided that his law-abiding behaviour is exceptional. This condition should be applied with caution in case it results in unequal treatment (ruling of the Swiss Federal Supreme Court of 14 January 2010 (ATF 136 IV 1 (6B_390/2009))).

b) The appellant refers in substance to the fact that he did not intend to injure his opponent, and that his conduct after the incident was exemplary. He did not contest the referee's decision to send him off, he apologised to his opponent and, ultimately, left the field as soon as he saw that he had been shown a red card. What is more, he brings to light his previous track record and his whole career as a professional footballer, notably in UEFA competitions.

c) First of all, the Appeals Body believes that the player's behaviour on having been shown the red card, while worthy of mention, does not constitute a mitigating circumstance. The appellant is confusing the existence of mitigating circumstances – which precede an infraction – with the absence of aggravating circumstances. If, hypothetically, John Terry had behaved reprehensibly after committing the foul in question, the disciplinary may have had the authority to increase the standard punishment.

Luckily, this is not the case here. John Terry abided by the basic rules of decorum and fair play that are to be expected of a professional player of his age and experience, in particular who is captaining his team. However, there is no reason to invoke Article 17(2) DR in order to reduce the standard sanction when a player has behaved in a manner to be expected of any player, amateur or professional, young or experienced. It is certainly not rare to see players insult their opponents and/or the referee under similar circumstances, and to take their time leaving the field of play. These are precisely the cases in which the standard punishment should be increased by the relevant disciplinary authority. But, when faced with an attitude which is ultimately to be expected from a professional player, there is no cause in this instance to reduce the suspension.

The player's previous track record warrants closer consideration.

Considering the fact that John Terry has no previous record from the last five years, that he has played in 169 UEFA competition matches (Wayne Rooney has played in 100), and has been sent off only once, in an Under-21 match in 2001, prior to the game in question here, the Appeals Body sees grounds for a mitigating circumstance. It is indeed a remarkable record, which deserves due consideration. In this respect, the Appeals Body considers the punishment pronounced by the Control and Disciplinary Body too harsh because it did not take proportionate account of the player's remarkable record in UEFA competitions, which is much more than the absence of a previous record as defined above, the sort of record that should have no effect on the sanction. It therefore appears justifiable to alter the decision taken by the first instance.

Consequently, the Control and Disciplinary Body decision of 31 May 2012 is overturned and the third match of the suspension is suspended for a probationary period of three years.

5.

The decision against the club was not contested. Consequently it remains.

6.

The costs of the proceedings, including all Appeals Body expenses, are to be shared among the parties at fair discretion based on the outcome of the proceedings (Article 63 DR).

In this case, the costs of the proceedings (€10,000 in total), will be borne in equal parts by both parties: €5,000 minus the appeal fee will be borne by the appellant John Terry, and the remaining €5,000 will be borne by UEFA.

Decision of 27 August 2012

FC Barcelona

(Late kick-off)

Circumstances of the case:

The UEFA Champions League 2011/2012 match FC Barcelona vs. AC Milan on 3 March 2012 started more than one minute late, due to the goalkeeper not being ready.

Legal framework:

Article 12.02 UEFA Champions league 2011/2012 Regulations

Decision:

The CDB's decision is upheld and, consequently, FC Barcelona is fined €110,000.

Ad hoc chairman: Michael Maessen (Netherlands)

Members: Michel Wuilleret (Switzerland)
Levent Biçakci (Turkey)

In fact

A.

By a decision taken at its meeting of 26 April 2012, the UEFA Control and Disciplinary Body fined FC Barcelona €110,000 for a breach of the Regulations of the UEFA Champions League 2011/12. It found that the club had failed to meet its obligations, as the match against AC Milan had begun more than one minute late because FC Barcelona's goalkeeper had not been ready. Neither the referee nor the UEFA administration had given permission for this late kick-off.

In accordance with Article 17 of the UEFA Disciplinary Regulations (DR), the Control and Disciplinary Body, in determining the sanction to be imposed, took into account the importance of the competition, as well as the fact that recidivism represents an aggravating circumstance (Article 18 DR). It recalled that this was the seventh time in the last five years that FC Barcelona had been punished for delaying the start of a match.

As the €80,000 fine in May 2011 and the €110,000 fine in August 2011 did not appear to have had any impact on the club in terms of improving its punctuality, the Control and Disciplinary Body decided to impose another fine of €110,000.

B.

On 14 May 2012, FC Barcelona announced their intention to appeal against the decision of 26 April 2012.

On 21 May 2012, having received the reasoned decision, they lodged their appeal, referring to the case file.

Their main argument was that the delay had been caused by an unexpected and urgent situation relating to the health and safety of their goalkeeper. During the warm-up, Víctor Valdés had felt pain in his wrist. As soon as he had finished warming up, the goalkeeper had told the doctor that he was feeling pain. It was decided that the wrist should be bound with tape. Just as he was about to go onto the field, Víctor Valdés turned back and told the doctor that the tape was bothering him, as it was too tight. So they decided to reapply the tape, but this unfortunately meant that the player went out onto the pitch late.

By means of a signed letter, Dr Ricard Pruna, the doctor who looked after the goalkeeper, confirmed these facts.

FC Barcelona do not agree that a delay of little more than a minute to the arrival of a single player should be punished in the same way as premeditated offences, with a fine of €110,000. In support of its assertion that this fine was disproportionate, the appellant gave examples of similar and identical offences committed by other clubs and the fines that they received.

FC Barcelona admitted that they had a history of delaying kick-offs, but pointed out that these delays had been caused by the whole team, not the emergency medical treatment of just one player. They asserted, therefore, that this could not be considered recidivism under Article 18 DR.

For all of these reasons, FC Barcelona requested that the penalty be adjusted in line with the regulations in place and the type of offence committed.

C.

UEFA, through its disciplinary inspector, submitted its reply to the appeal on 20 August 2012. 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 them of the procedure that would be followed and reminded them of the composition of the Appeals Body. He also pointed out that the hearing, held in French and English, would be recorded.

The parties raised no objections.

The appellant confirmed that the staff of FC Barcelona did not ask the referee or the UEFA administration for permission to alter the kick-off time. Consequently, it was not necessary to interview by phone the referee or the UEFA delegate at that match.

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

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

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

In law

1.

The appeal was lodged by FC Barcelona within the prescribed deadline and in the required form. The grounds for appeal were submitted and the appeal fee of €1,000 paid within the relevant deadline.

UEFA's response also complied with the deadline set by the ad hoc chairman of the Appeals Body in accordance with Article 54(1) DR.

The Appeals Body was therefore competent to assess the merits of the appeal (Articles 23(4) and 24(2) DR).

2.

Examining the decision taken, the Appeals Body noted that the Control and Disciplinary Body had correctly set out the rules and principles applicable to this case and has properly explained, in a thorough, detailed and convincing manner, the reasons for the punishment imposed.

Consequently, the Appeals Body can but concur with the considerations set out in the decision taken. For the most part, therefore, it is sufficient simply to refer to that decision.

As regards the remaining issues, the following should be noted.

3.

Under Article 12.02 of the Regulations of the UEFA Champions League 2011/12, all UEFA Champions League matches from the play-offs onwards begin at 20.45 CET. Changes to kick-off times can be made only with the consent of the referee or the organiser, which in this case was the UEFA administration.

Thus, under the terms of the above, it is immaterial whether the delay was caused by one or more players, by a member of staff or by a club official. For this provision to be infringed, it is sufficient for the match to fail to kick off at the precise time scheduled without the consent of either the referee or the organiser.

In the present case, FC Barcelona do not claim to have sought the consent of the referee or the UEFA administration and, a fortiori, do not claim that they were granted permission to alter the kick-off time owing to the urgent treatment required by the goalkeeper.

Consequently, the Control and Disciplinary Body was right to qualify the club's offence as a violation of Article 12.02 of the Regulations of the UEFA Champions League 2011/12. Moreover, the appellant did not contest the facts of the matter.

The Control and Disciplinary Body was therefore right to sanction the appellant accordingly.

The only issue to be examined is the question of whether the Control and Disciplinary Body abused its power of discretion in fining the appellant €110,000.

4.

a) Within the framework of the appeal, the Appeals Body re-examines the case both factually and legally (Art. 62,1 DR. However, it has been the Appeals Body's consistent practice to date to consider the power of discretion to have been abused or exceeded where the Control and Disciplinary Body based its decision on untrue or erroneous elements, notably by failing to apply fundamental legal principles, by taking account of irrelevant facts or by failing to take account of essential facts which needed to be considered. In other words, the Appeals Body will not overturn a verdict – even if it would, itself, have decided differently – as long as the contested decision is within the realms of what appears reasonable.

b) Under Article 17(1) DR, the disciplinary body determines the type and extent of the disciplinary sanction according to the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. Thus, in accordance with general legal principles, the punishment imposed should take account of the facts of the case, as well as both the degree of fault and the previous conduct of the party concerned. In addition to this punitive element, a disciplinary measure should also have a preventive and educational objective.

Under Article 18 DR, recidivism occurs if disciplinary measures have to be imposed within five years of a previous offence of a similar nature. Recidivism counts as an aggravating circumstance (Article 18(2) DR).

c) In the present case, as the Control and Disciplinary Body noted, FC Barcelona had already been punished six times in the last five years for causing delays to kick-offs. In other words, it does have a very poor disciplinary record for offences of this nature.

The argument that other clubs have been treated more leniently for similar/identical offences is not relevant. In the examples cited, the circumstances were not the same or the importance of the match was not comparable. In fact, for a similar offence, Real Madrid CF were fined €80,000 (see the UEFA Control and Disciplinary Body's decision of 20 January 2011).

Considering all of the circumstances of the case, especially the serious recidivism, and noting FC Barcelona's income from its participation in the 2011/12 UEFA Champions League (around €45m), the panel concluded that a €110,000 fine was an appropriate sanction.

5.

The appeal, which is unfounded, should be dismissed. Consequently, the decision of the Control and Disciplinary Body of 26 April 2012 should be upheld.

Under Article 63(1) DR, the costs of proceedings, which include all the expenses of the Appeals Body, are shared among the parties at fair discretion in accordance with the outcome of the proceedings.

The appeal was rejected, so FC Barcelona should justifiably pay the costs of the present proceedings. The Royal Spanish Football Federation will be jointly and severally liable for the share of the costs charged to the appellant (Article 73 DR).

Decision of 27 August 2012

Aleksandar Bozovic

(Match fixing)

Circumstances of the case:

Cvrtak approached Aleksandar Bozovic in Austria and later in Sarajevo openly with the intention to fix the match. While Cvrtak said that the fix was not successful because the goalkeeper coach and the players asked for too much money, Aleksandar Bozovic maintained that he rejected to become involved in match fixing in any way whatsoever.

Legal framework:

Art. 5 DR (ed. 2012) *Principles of conduct*; Art. 62 (3) DR (ed. 2012) *Lack of appeals to increase the punishment*

Decision:

The CDB's decision is upheld and, consequently, Aleksandar Bozovic is banned from any football-related activities until 31 December 2013.

Chairman: Pedro Tomás, Spain;
Vice-Chairman: Michael Maessen, Netherlands;
Member: Michel Wuilleret, Switzerland

In fact

A.

As part of its fight against all forms of fraud and corruption, UEFA established a system to detect suspicious betting on the course or result of football matches.

For their part, the public prosecutor's office and police in Bochum, Germany, launched a wide-ranging investigation into betting fraud in international football. UEFA, through its disciplinary services, cooperated with this investigation by providing the German police with all the information that it had gathered itself.

Telephone calls recorded by the German investigating authorities revealed, in particular, that Živko Budimir and Marijo Cvrtak, members of a criminal gang, had discussed the details of an attempt to fix a UEFA Europa League qualifying match between Aalborg BK and FK Slavija Sarajevo with a friend who knew some FK Slavija Sarajevo players.

As a result, Marijo Cvrtak was questioned on 12 January 2012 by UEFA disciplinary services.

Marijo Cvrtak described two personal meetings with a man called "Božo", who had introduced himself as the goalkeeping coach of FK Slavija Sarajevo. Cvrtak had been introduced to him by Živko Budimir. At the first meeting, at a training camp in Austria, the possibility of fixing a match had been discussed. At the second meeting in Sarajevo, "Božo" had said that he could talk to the goalkeeper and two or three defenders and that he (Cvrtak) could "have" the goalkeeper and two or three players. "Božo" had also said that these players were good friends of his and that he was sure nothing would go wrong. However, Cvrtak had thought the €100,000 requested was far too much.

When questioned in Sarajevo by the UEFA disciplinary inspector on 19 April 2012, Aleksandar Božović said that he had been the only goalkeeping coach for the FK Slavija Sarajevo first team in summer 2009. He was shown a photograph of Cvrtak, whom he thought he recognised as the man who had contacted him about the matches between FK Slavija Sarajevo and Aalborg BK. He said that he had not previously met this man, who had initially introduced himself as a players' agent interested in the club's players, and whom he had subsequently met twice. At the second meeting, the man had asked him to organise a meeting with all the players because he wanted to fix the matches against Aalborg BK. Aleksandar Božović said he had immediately rejected this request, but had been too afraid to tell anyone about it apart from his wife. He had subsequently received frequent telephone calls repeating this suggestion, but had always rejected it. Aleksandar Božović

firmly denied that he was the person whom Budimir had consulted, particularly since he did not know him at all. The telephone conversations between Budimir and Cvrtak (which were shown to him individually) could not, therefore, have been referring to him. Aleksandar Božović was invited to attend and participate in the meeting of the UEFA Control and Disciplinary Body.

In a statement dated 25 May 2012, Aleksandar Božović informed the Control and Disciplinary Body that he would not be able to obtain a visa by the date of the meeting and did not have the financial means to travel to Switzerland to attend the hearing. Furthermore, Aleksandar Božović did not deny the alleged violation of the UEFA Disciplinary Regulations (DR), instead arguing that at the time when he was approached with a view to fixing the match, his country was politically unstable, corrupt and unsafe. As a lot of people were murdered during that period, he was scared to tell anybody about the incident apart from his wife. Aleksandar Božović said he was convinced that, by not telling anybody that he had been approached and by refusing to fix the match, he had protected his family and upheld the reputation and integrity of football.

B.

In its decision of 31 May 2012, the Control and Disciplinary Body banned Aleksandar Božović from any involvement in football-related activity until 31 December 2013. It added that FIFA would be asked to extend the scope of the decision so as to give it worldwide effect.

On the basis of an examination of the evidence – particularly the statements made by Marijo Cvrtak, which were corroborated by Aleksandar Božović during his interrogation – the Control and Disciplinary Body concluded that Aleksandar Božović had not informed UEFA of these suspicious approaches, which were clearly aimed at influencing match results. Besides the fact that no concrete threat was made by anyone, being scared does not relieve a person of the obligation and legal responsibility that he/she has under Article 5(2)(a) and (j) DR (2008 edition).

C.

On 26 June 2012 Aleksandar Božović appealed against the UEFA Control and Disciplinary Body's decision of 31 May 2012. He submitted the following grounds for appeal:

"On 25 June 2012, I personally received the decision from the Bosnia and Herzegovina Football Federation sent by you on 22 June 2012. I lodge this complaint within the statutory deadline with the proposal that it shall be accepted, that the first instance court verdict shall be altered, that I shall be freed from any disciplinary responsibility and that the matter shall be abated and returned for new proceedings respectively.

Reasoning:

The quotations from the report are correct. However, the disciplinary body did not take into consideration that I come from a country that was war-ridden until 16 years ago, that this state, in all segments of society, does not function in accordance with any principles of regulation and that I, as a citizen and sportsman, did not have the opportunity, via the Football Federation of Bosnia and

Herzegovina or another club, to become familiar with the UEFA disciplinary regulations, and thus did not know that I was obliged to report the specific case I am charged with. On the other hand, since the mentioned incident and my negative response to those people, I fear for my safety and the safety of my family. In this situation, taking into account that I come from a smaller community and an unordered state without any international rating, unsure that my report would have any effects except negative ones for me and my family, I decided to keep this case to myself. Therefore, I am of the opinion that I have not, even though the UEFA disciplinary regulations state otherwise, committed any disciplinary offense."

D.

On 4 August 2012 the disciplinary inspector submitted his observations. He concluded that the appeal should be rejected and the appellant should be required to pay the costs.

E.

On 23 August 2012 the appellant wrote the following:

"I hereby inform you that I am not in a position to attend the referenced meeting due to the reasons mentioned in my letter dated 25 May 2012. The old passport is valid, but there is a visa problem, which I presented. Additionally, there is a lack of financial resources to cover the travel costs to Nion [Nyon]. For the same reasons, I am not in a position to get legal assistance and send a legal representative to Nion [Nyon]. I have shown my respect to you with my continuous written communication, as well as personal contacts in response to all your calls and letters when I was able to do so, that is, when I was in Bosnia and Herzegovina.

To avoid any confusion regarding my financial problems, my current club has helped me to cover the costs of the appeal.

Although I am defending myself, without any legal help, I must add something.

As I have followed similar cases throughout Europe, I have observed that Mr. Antonio Conte and others in Italy, for the same offense ... /translator's note: incomplete sentence, verb missing, probably "charged with the same offense"/ whereby various manipulations were proven. They were either ordered reduced disciplinary measures or acquitted, and allowed to take part in training and lead their teams during UEFA matches. This very fact proves, as I have stated in my appeal, that I originate from a small country, which does not have any international rating. As stated in the investigation report and your letter dated 15 May 2012, 9.51: "There are no circumstances that could be held against Božović and there was no manipulation whatsoever". This makes me a very happy man and sportsperson.

Additionally, I believe that by refusing any conversation with the referenced Mr. Cvrtak and remaining silent about that, I have saved both my reputation and UEFA's reputation and kept my children and family safe.

Therefore, as a man with stainless reputation in terms of my personal life as well as football, I hereby ask you to revise the decision of the Disciplinary Commission and render full acquittal."

F.

The chairman of the Appeals Body opened the hearing.

He noted the absence of the appellant, despite the appellant not having been excused on valid grounds.

He therefore gave the disciplinary inspector permission not to appear at the session initially scheduled for 28 August 2012.

Under Article 56(3) DR, the Appeals Body may hold hearings and take decisions in the absence of the parties.

In the light of the above, the Appeals Body decided to proceed directly to an examination of the arguments set out by the parties in their written submissions, to deliberate and to rule on the substance of the case.

In law

1.

a) First of all, the Appeals Body would like to express its displeasure at the casual attitude of the appellant, who, for somewhat unconvincing reasons and without permission being granted, has failed to appear before the Appeals Body, which wanted him to be heard.

b) The appeal was submitted in accordance with the formal requirements and within the given deadline. It contains the grounds for appeal, and the appeal fee was paid by the relevant deadline. The appeal is therefore admissible in procedural terms under Articles 49, 50, 52 and 53 DR.

2.

Examining the decision taken, the Appeals Body noted that the Control and Disciplinary Body had correctly set out the rules and principles applicable to this case, had properly explained in a thorough, detailed and convincing manner the reasons why the appellant's objections were not taken into account, and had indicated the reasons why his conclusions were rejected.

It also notes that Aleksandar Božović's appeal pleadings merely repeat the arguments presented to the Control and Disciplinary Body. He does not contest the charges brought against him and does not explain how the decision taken infringes the law or is arbitrary. He repeats, in essence, that he kept quiet out of fear for his own safety and that of his family.

The Control and Disciplinary Body has responded to his arguments in a convincing manner and the Appeals Body can but concur with the considerations set out in the decision taken. For the most part, therefore, it is sufficient simply to refer to that decision.

As regards the remaining issues, the following should be noted.

3.

The Appeals Body considers that the transcripts of telephone recordings, Marijo Cvrtak's statements to the German police (provided by the public prosecutor's office in Bochum), the interview with Marijo Cvrtak conducted on 12 January 2012 by UEFA disciplinary services (Pierre Cornu) and the interview with the appellant conducted on 19 April 2012 by the disciplinary inspector (Josef Geisler) are sufficient to establish on the balance of probability that Aleksandar Božović was approached by members of a criminal network with a view to manipulating a UEFA Europa League match. He failed to inform UEFA, the Bosnia and Herzegovina Football Federation or officials at FK Slavija Sarajevo that he had been approached in this way.

Consequently, in view of the aforementioned documents, the Appeals Body considers the evidence submitted sufficient to conclude that the appellant violated the principles of conduct that he is required to respect under Article 5 DR (2008 edition) and the duty to report such events. The panel has rarely seen records of conversations and interviews where the involvement of an individual in a criminal network is established so clearly. Moreover, the appellant did not contest the facts.

The Control and Disciplinary Body was therefore right to sanction Aleksandar Božović accordingly.

4.

It has been the Appeals Body's consistent practice to date to consider the power of discretion to have been abused or exceeded where the Control and Disciplinary Body based its decision on untrue or erroneous elements, notably by failing to apply fundamental legal principles, by taking account of irrelevant facts or by failing to take account of essential facts which needed to be considered. In other words, the Appeals Body will not overturn a verdict – even if it would, itself, have decided differently – as long as the contested decision is within the realms of what appears reasonable.

Under Article 17(1) DR, the disciplinary body determines the type and extent of the disciplinary sanction according to the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. Thus, in accordance with general legal principles, the punishment imposed should take account of the facts of the case, as well as both the degree of fault and the previous conduct of the party concerned. In addition to this punitive element, a disciplinary measure should also have a preventive and educational objective.

In the present case, it is true that the appellant had a previously unblemished disciplinary record. However, that is the least that can be expected of a coach and has very little relevance in view of the seriousness of the offences committed. His position was certainly not an easy one, but by having contact with people involved in organised crime with a view to influencing the course of a UEFA Europa League match in return for payment, in order to enable others to win bets illegally, the appellant immediately endangered the very essence of football. This relies on matches taking

place in a spirit of loyalty, integrity and sportsmanship, free from all constraints except the Laws of the Game.

UEFA is quite right to believe that it should apply a policy of zero tolerance towards any player, member or official who is involved in criminal activities aimed at influencing the course and/or result of a competition for financial gain.

In view of the above, the panel concluded that a ban on all football-related activity was the appropriate sanction, bearing in mind the particular circumstances of the case and the seriousness of the offence.

By only banning Aleksandar Božović until 31 December 2013, the first-instance decision was very lenient. However, as the accused is the only party to have lodged an appeal, the Appeals Body cannot increase the punishment (Article 62(3) DR).

5.

The appeal, which is unfounded, should be dismissed. Consequently, the decision of the Control and Disciplinary Body of 31 May 2012 should be upheld.

Under Article 63(1) DR, the costs of proceedings, which include all the expenses of the Appeals Body, are shared among the parties at fair discretion in accordance with the outcome of the proceedings.

The appeal was rejected, so Aleksandar Božović should justifiably pay the costs of the present proceedings. FK Slavija Sarajevo will be jointly liable for the collection of those costs (Article 73 DR).

Decision of 27 August 2012

Nicklas Bendtner

(Illegal act of advertising)

Circumstances of the case:

During the UEFA EURO 2012 match between Denmark and Portugal on 13 June 2012, when the player Nicklas Bendtner was celebrating his second goal, he lifted his shirt and pulled down his shorts to reveal the words "Paddy Power" on his underwear. Paddy Power is an Irish online betting company which is well known for ambush marketing. A couple of minutes after Bendtner's celebration, the Irish bookmaker sent a Twitter message with a photograph claiming that Bendtner was wearing his lucky underwear.

Legal framework:

Law 4 of the Laws of the Games *No reveal undergarments showing advertising*

Decision:

The CDB's decision is upheld and, consequently, the player is suspended for one UEFA competition match and fined €100,000.

Chairman: Pedro Tomás, Spain
Vice-chairman: Michael Maessen, Netherlands,
Member: Michel Wuilleret, Switzerland

In fact:

A.

Following the UEFA EURO 2012 match between Denmark and Portugal on 13 June 2012 (which Portugal won 3-2), the UEFA Control and Disciplinary Body issued the following decision at its session on 18 June 2012:

To suspend the player Nicklas Bendtner for one UEFA competition match.

This suspension applies to the next 2014 FIFA World Cup match (including qualifying) for which the player is eligible.

To fine the player Nicklas Bendtner €100,000.

The above fine must be paid into the bank account indicated below within 30 days of communication of this decision.

The first-instance decision found the player Bendtner guilty of violating the principles of conduct laid down in Article 5(1) of the UEFA Disciplinary Regulations (DR) and Law 4 of the Laws of the Game promulgated by the International Football Association Board, applicable in accordance with paragraph 14.01 of the Regulations of the UEFA European Football Championship 2010–12 (EURO 2012 Regulations). It found that:

In the 80th minute of the aforementioned match, when the player Nicklas Bendtner was celebrating his second goal, he lifted his shirt and pulled down his shorts to reveal the words "Paddy Power" on his underwear. Paddy Power is an Irish online betting company which is well known for ambush marketing: during the Rugby World Cup in 2007, one of the Tonga players changed his name to Paddy Power for the duration of the competition as part of a sponsorship contract with this company.

A couple of minutes after Bendtner's celebration, the Irish bookmaker sent a Twitter message with a photograph claiming that Bendtner was wearing his lucky underwear.

B.

On 1 July 2012, the Danish Football Association (DBU) announced its intention to appeal against the Control and Disciplinary Body's decision.

On 2 August 2012, the DBU submitted its grounds for appeal, accompanied by an "Authority to Appeal" document signed by the player Bendtner. The appellants concluded, principally, that the

suspension should be lifted and, alternatively, that this measure should be suspended for a probationary period to be determined by the UEFA Appeals Body. However, they did not contest either the principle or the extent of the €100,000 fine. They requested that the Appeals Body in this case should comprise five judges. They claimed that, if the Appeals Body rejected the appeal and upheld the decision, it would confirm that “sporting” sanctions could be imposed for “commercial” offences. In the appellants’ opinion, this would set a precedent in the sense of Article 23(4) DR, which would justify the expansion of the quorum of the Appeals Body to five judges.

With regard to the decision of 18 June 2012, the appellants did not dispute the facts established by the Control and Disciplinary Body. However, they criticised the Control and Disciplinary Body for imposing a double punishment even though the player Bendtner had acted in good faith. He claimed he had no knowledge of the betting company “Paddy Power”, which had sent him, as well as other English Premier League players participating in UEFA EURO 2012, a package of green underwear bearing the words “Paddy Power”. Nicklas Bendtner had followed the advice of his numerologist, who had told him that wearing green would bring him luck. When he had celebrated his second goal in the 80th minute, he had simply wanted to show the public that the green underpants had indeed brought him luck.

The appellants categorically denied that there had been any financial arrangement between the player Bendtner and the “Paddy Power” betting company. They accused the first-instance body of failing to provide proof – even though it bore the burden of proof – and of relying on press cuttings and TV footage to establish that the event had been planned and had been the subject of a financial agreement between the parties.

C.

In its reply to the appeal, submitted on 20 August 2012, UEFA, through its disciplinary inspector, concluded that the appeal should be rejected and the decision confirmed, with the costs to be paid by the appellants.

D.

In a decision of 21 August 2012, the chairman of the Appeals Body rejected the DBU’s request that the appeal be heard by five judges on the grounds that *“the case is neither complex (difficult) and nor will set an important precedent”* (Art. 23(4) DR).

E.

On 27 July 2012, the UEFA administration wrote to the DBU and the player, informing them that the hearing would take place at 14.00 on 27 August 2012 and formally summoning them to attend, in accordance with Article 56(2) DR.

On Friday 24 August 2012, the DBU’s legal representative informed UEFA disciplinary services that the appellant Bendtner could not attend the Appeals Body hearing on Monday 27 August 2012. The former therefore requested that the Appeals Body rule on the basis of the written submissions and notify its decision to the DBU on the Monday evening. To justify the appellant Bendtner’s

absence, he enclosed a letter dated 24 August 2012 and signed by Nicklas Bendtner, stating that the latter had until the end of the month to find a new club and that the intense negotiations currently under way were his priority.

However, the DBU's lawyer failed to state that neither he nor the DBU would participate in the hearing on 27 August 2012.

F.

The chairman opened the hearing and noted that UEFA was the only party represented, in the person of its disciplinary inspector. He informed the latter of the procedure that would be followed and reminded him of the composition of the Appeals Body. He also said that the hearing, held in French and English, would be recorded.

According to Article 56(3) DR, in the absence of the appellants, the Appeals Body can still hold the hearing and take a decision.

The disciplinary inspector raised no objection and was given the floor to plead.

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

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

In law

1.

a) The appeal was lodged by the DBU with the written consent of Nicklas Bendtner within the prescribed deadline and in the required form. The grounds of appeal were submitted and the fee paid before the relevant deadline (Arts. 50, 52 and 53 DR).

The response of UEFA also complied with the deadline set by the chairman of the Appeals Body in accordance with Article 54(1) DR.

The Appeals Body was therefore competent to deal with the merits of the appeal (Arts. 23(4) and 24(2) DR).

b) According to Article 56 DR, the chairman sets a date for the hearing and summons the parties without delay (para. 1). The parties attend the hearing until the verdict is discussed. The chairman may, upon reasoned request, exempt a party from participation (para. 2). In the absence of one or all of the parties, the Appeals Body can still hold the hearing and take a decision (para. 3).

c) In the present case, UEFA disciplinary services acknowledged receipt of the appeal in a letter dated 27 July 2012 and gave the appellants six days (i.e. until 2 August 2012) in which to submit their appeal pleadings, in accordance with Article 52(1) DR. In the same letter, the DBU was advised that, in accordance with Article 50(2) DR, the written consent of the player should be produced with the appeal pleadings at the latest, and that, pursuant to Article 56(2) DR, the presence of the party charged in the hearing is mandatory. However, a party can be exempt from the hearing upon reasoned request.

d) The Appeals Body notes that the UEFA administration not only respected the appeal procedure laid down in Article 52(1) DR, but also made a point of drawing the appellants' attention to their obligations, particularly their duty to attend the appeal hearing until the verdict was discussed, unless an exemption was granted (Art. 56(2) DR).

Neither the player Bendtner nor the DBU deemed it necessary to comply with the aforementioned provisions.

Indeed, the appellant Bendtner, although he had been informed of the hearing date on 27 July 2012, did not ask to be excused from attending the Appeals Body hearing, but rather presented the Appeals Body with a *fait accompli*.

The DBU's attitude is even more outrageous in so far as, without explanation, it simply failed to turn up at today's hearing and its lawyer did not consider it necessary to represent his client in the discussions.

Even so, in spite of the appellants' absence, the Appeals Body can still hold the hearing and take a decision, in accordance with Article 56(3) DR.

2.

According to paragraph 14.01 of the EURO 2012 Regulations:

Matches are played in conformity with the Laws of the Game promulgated by the International Football Association Board (IFAB).

According to Law 4 of the Laws of the Game, Decision 1:

Players must not reveal undergarments showing slogans or advertising. The basic compulsory equipment must not have any political, religious or personal statements.

A player removing his jersey or shirt to reveal slogans or advertising will be sanctioned by the competition organiser.

In the case at hand, there is absolutely no doubt – and it is not contested – that the player Bendtner, by lifting his shirt and lowering his shorts after scoring for the second time in the 80th minute, revealed the name of the "Paddy Power" betting company at the top of the undergarment (underpants) that he was wearing.

However, the appellants deny that he intended to advertise "Paddy Power" and criticise the first-instance body for establishing the existence of a financial agreement between the parties without providing any proof of such an agreement.

3.

The Appeals Body would have liked to hear the appellant Bendtner explain the circumstances that led him to wear the disputed undergarment and show it off to millions of television viewers, as the photograph contained in the case file clearly demonstrates. It would also have liked to ask him why he paid the sum of €100,000 without batting an eyelid if, as he claims, he did not receive any financial reward for the publicity that was generated for Paddy Power. Finally, it would have liked to ask him how a professional player who, between 2005 and 2011, played for a prestigious English Premier League club that competed regularly in the UEFA Champions League and therefore attracted a high level of media attention (Arsenal FC), as well as being a member of the Danish national team, could agree to wear undergarments bearing a name that was not a brand of underwear, of whose origins he claims to have been unaware, which were allegedly sent to him by post, and which he did not mention to the DBU.

Since it is unable to put these questions to the appellant, the Appeals Body will rule on the basis of the established facts, which it will examine in the light of the written arguments, as the DBU's legal representative suggests with a flippancy that borders on arrogance.

4.

Under the terms of Law 4 of the Laws of the Game, it is irrelevant whether or not Nicklas Bendtner had an agreement with Paddy Power and whether he acted intentionally or not. For the offence to be committed, it is sufficient that the player reveals advertising on his undergarment.

In this case, this fact is proven and undisputed. Moreover, Paddy Power benefited from this unwarranted publicity since, a few minutes after the incident involving the player Bendtner, the betting company posted a message on Twitter with a photograph claiming that Bendtner was wearing his lucky underwear.

Even supposing that the undergarment had simply been generously given to him by the betting company, Nicklas Bendtner, as a professional player, must have known that it is forbidden to exhibit slogans or advertising on underwear. Having played for Arsenal FC for several years, he must have been aware of the economic stakes linked to the exploitation of commercial rights in relation to the matches in which he played. Failing that, he showed a completely incomprehensible level of naivety, especially bearing in mind that he did not deem it necessary to explain his actions to the Appeals Body.

It is therefore immaterial whether, as the first-instance body claimed without any formal proof, the parties had concluded a financial agreement, whether Nicklas Bendtner knew what he was doing or whether he acted in good faith. The violation of the Law 4 of the Laws of the Game is not in doubt.

Finally, it is also irrelevant that the player Bendtner did not reveal his undergarment after his first goal, but only after scoring for the second time in the 80th minute. Only he can explain why he did not infringe Law 4 of the Laws of the Game before scoring his second goal. However, he is still guilty of the offence and the Control and Disciplinary Body was therefore right to punish him for it.

5.

a) The only question that remains is whether the first-instance body abused its discretionary powers by imposing a double punishment against the appellant, i.e., by suspending him for one UEFA competition match as well as fining him €100,000.

b) Contrary to the impression given by the appellants, the UEFA Disciplinary Regulations do not prohibit punishments comprising two or more separate measures. On the contrary, the combination of disciplinary measures is expressly provided for in Article 13(2) DR.

The applicable disciplinary measures are listed in Articles 15 (disciplinary measures against individuals) and 14 (disciplinary measures against member associations and clubs) DR. The disciplinary bodies often impose both a suspension and a fine. Similarly, it is not unusual, for example, for a club or association to be ordered to play matches behind closed doors as well as fined. The type and extent of the disciplinary measures to be imposed are determined by the disciplinary body according to the objective and subjective elements of the offence, in accordance with Article 17 DR.

In this respect, a double punishment comprising financial and sporting elements is particularly justified when advertising rules are broken not by a club or its supporters but, as in the present case, by a player. On its own, a fine, which cannot exceed €100,000 (see Art. 15(3) DR), may not be a sufficient deterrent, in view of the financial interests at stake and the compensation that may be offered by companies that benefit from such offences.

c) In the case at hand, as the first-instance body rightly pointed out, Nicklas Bendtner committed the offence during a match at the UEFA European Football Championship final round. In terms of audience, this is the third largest sports event in the world, after the Olympic Games and the FIFA World Cup. This means that the financial rewards for broadcasting images of the event are colossal. Therefore, any fine, even of the maximum €100,000, is derisory. In other words, for infringements of Law 4 of the Laws of the Game, a suspension appears to be the most suitable way of dissuading a player from reoffending and sending a clear signal to all players participating in UEFA competitions.

The Appeals Body notes that the appellants do not contest either the principle or the extent of the fine imposed against Nicklas Bendtner in addition to his suspension. It therefore does not need to examine the validity of this financial penalty.

It should be remembered that the first-instance disciplinary body has broad discretionary powers. For its part, the Appeals Body re-examines the case both factually and legally, in accordance with Article 62(1) DR. Its role essentially consists of examining whether the respondent, when taking its decision, respected the principles of legality, equal treatment and proportionality, whether it took into account the particular circumstances of the case and the seriousness of the offence, and finally, whether it exceeded or abused its discretionary powers. On the other hand, it is not within the Appeals Body's remit to judge whether the disciplinary measure(s) imposed by the first-instance body in a particular case are appropriate or not.

d) In the present case, by suspending the player Nicklas Bendtner for one UEFA competition match and fining him €100,000, the Control and Disciplinary Body took into account all the circumstances of the case. At the very least, the measure is not arbitrary. It should therefore be confirmed.

6.

For the reasons set out above, the appeal, which is entirely groundless, must be rejected.

According to Article 63 DR, the costs of the proceedings, which include all expenses of the Appeals Body, are to be shared among the parties at fair discretion based on the outcome of the proceedings.

In view of the outcome of the appeal, the costs of the present proceedings, totaling €7,000, are charged to the appellants. The DBU is jointly and severally liable for the share of the costs charged to the appellant Bendtner (Art. 73 DR).

Decision of 14 September 2012

Sk Rapid Wien

(Throwing of missiles and fireworks. Crowd disturbances)

Circumstances of the case:

At the UEFA Europa League match between PAOK FC and SK Rapid Wien played on 23 August 2012, SK Rapid Wien supporters began to attack the home supporters in sector 7 with between 15 and 20 flares and broken seats which they had ripped off their bases. The situation deteriorated as "fans" of both teams threw various objects at each other.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 17 (1) DR (ed. 2012) *Principle of proportionality*

Decision:

The CDB's decision is upheld and, consequently, SK Rapid Wien is disqualified from one (current or future) UEFA competition for which it would normally qualify within the next five years. This ban is suspended for a probationary period of three years. In addition, SK Rapid Wien is ordered to play its next UEFA competition match behind closed doors. SK Rapid Wien is fined €75,000. Furthermore, SK Rapid Wien is ordered to contact PAOK FC concerning reimbursement of the cost of replacing the seats destroyed by its supporters.

Chairman: Pedro Tomás, Spain

Members: Barry Bright, England,
Michel Wuilleret, Switzerland

In fact:

A.

According to the report of the match delegate at the UEFA Europa League match between PAOK FC and SK Rapid Wien, played at the Toumba stadium in Thessaloniki (Greece) on 23 August 2012, trouble initially broke out in the city centre. Then, at around 20.15, supporters of the Greek team tried to attack the SK Rapid Wien supporters as they travelled to the stadium in specially chartered buses. At around 21.05, the 13 buses arrived at the stadium and the Austrian supporters were able to disembark, not without difficulty, and were taken directly to sector 8, which was reserved for them. At 21.10, the SK Rapid Wien supporters began to attack the home supporters in sector 7 with between 15 and 20 flares, rocket launchers used to fire these flares and broken seats which they had ripped off their bases. The PAOK FC "ultras", situated in sector 4 at the other end of the stadium, then invaded the pitch, where the players were still warming up. The situation deteriorated as "fans" of both teams threw various objects at each other, to the extent that it is hard to believe that nobody was injured. The police ultimately managed to restore order.

The match delegate concluded his report by noting that the home club's organisation of the match had been good, but that the security services had failed to conduct body searches properly.

B.

Ruling on 27 August 2012, the UEFA Control and Disciplinary Body imposed the following disciplinary measures against SK Rapid Wien:

SK Rapid Wien is disqualified from one (current or future) UEFA competition for which it would normally qualify within the next five years. This ban is suspended for a probationary period of three years.

SK Rapid Wien is ordered to play its next UEFA competition match behind closed doors, i.e., with no spectators present. This punishment does not apply to the return match between SK Rapid Wien and PAOK FC on 30 August 2012.

SK Rapid Wien is fined €75,000.

SK Rapid Wien is ordered to contact PAOK FC concerning reimbursement of the cost of replacing the seats destroyed by its supporters.

The above fine must be paid into the bank account indicated below within 30 days of communication of the grounds for this decision.

In substance, the first-instance disciplinary body considered that SK Rapid Wien was liable for the conduct of its supporters in accordance with Article 6 of the UEFA Disciplinary Regulations (DR). It found that the lighting of pyrotechnic devices and the throwing of other objects had endangered the safety of the spectators and players and constituted highly unsporting behaviour. It considered the fact that the players had been warming up on the pitch an aggravating circumstance and, in view of the club's disciplinary record in this area, ruled that this was a case of recidivism (Art. 18 DR).

C.

In an appeal statement submitted on 6 September 2012 and pleadings filed the following day, SK Rapid Wien appealed against the Control and Disciplinary Body's decision, which it had received, along with the grounds, on 5 September 2012. It concluded as follows:

The UEFA Appeals Body should amend the decision of the Control and Disciplinary Body of 27 August 2012 as follows:

- a) Point 1 of the disputed decision (disqualification from a competition, albeit suspended for a probationary period) is completely removed.*
- b) Point 2 of the disputed decision (playing of the next UEFA competition match behind closed doors, i.e., with no spectators present) is also completely removed, or in the alternative, the measure is suspended for a probationary period.*
- c) The fine of €75,000 imposed in point 3 of the disputed decision is reduced to €50,000.*

SK Rapid Wien does not dispute the offences committed by its supporters, nor its liability for those offences under Article 6(1) DR. However, it criticises the Control and Disciplinary Body for failing to take into account a number of mitigating circumstances which, it claims, should have counted in its favour. It argues that the disciplinary measures imposed are therefore far too severe and are disproportionate. The appellant also claims to be the victim of unequal treatment in view of the punishments imposed by the first-instance body in similar cases against other clubs (Beşiktaş JK) or associations (Serbia).

D.

On 10 September 2012, UEFA, through its disciplinary inspector, submitted its reply to the appeal. It concluded that the appeal should be rejected and the decision confirmed, with the costs to be charged to the appellant.

E.

At today's hearing, SK Rapid Wien was represented by its president, Rudolf Edlinger, who was assisted by Nikolaus Rosenauer, lawyer in Vienna. Andreas Marek, "Leiter des Klub Services" was also present.

UEFA was represented by its disciplinary inspector, Jean-Samuel Leuba.

The chairman informed the parties of the composition of the Appeals Body and of the procedure to be followed.

The parties said they were happy with the procedural arrangements. They asked no preliminary questions and raised no objections. However, the appellant requested that images of the pre-match incidents be shown and that Andreas Marek be allowed to comment on them. The disciplinary inspector had no objections.

The video images of the disputed incidents and those filmed during the SK Rapid Wien supporters' bus journey to and arrival at the stadium were viewed and then commented on by Andreas Marek.

The UEFA match delegate was questioned by teleconference. The Appeals Body and the parties asked him numerous questions. In substance, he confirmed the contents of his report.

Since no additional evidence was called, the parties were then given the floor to plead, reply and rejoinder.

To conclude, the SK Rapid Wien president asked to speak.

Once the hearing was closed, the chairman asked the parties to leave the chamber so the Appeals Body could deliberate.

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

The following was established.

In law:

1.

The Appeals Body's jurisdiction to hear this case is established under Article 48 DR.

The appeal was lodged by SK Rapid Wien by the deadline and in the form required. Grounds were provided and the appeal fee was paid by the deadline. The appeal is therefore admissible in procedural terms under Articles 49, 50, 52 and 53 DR.

The Appeals Body may therefore examine the merits of the appeal.

2.

Having examined the decision, the Appeals Body notes that the Control and Disciplinary Body explains in a judicious, detailed and convincing manner the reasons why, on the basis of the match delegate's report and the numerous video images, it found that the SK Rapid Wien supporters had thrown objects, lit fireworks, committed acts of damage and, generally speaking, lacked order and discipline inside the stadium, within the meaning of Article 11(2)(b), (c), (f) and (g) DR.

The Appeals Body also notes that the Control and Disciplinary Body correctly explains the principle of Article 6(1) DR, under which the associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other person exercising a function at a match on their behalf ("strict liability").

This provision has a preventive and deterrent effect. Its objective is not to punish the club as such, which may have done nothing wrong, but to ensure that the club assumes responsibility for offences committed by its supporters (CAS 2002/A/423 PSV Eindhoven v UEFA, rec. 6.1.1.3 a) p. 12 § 3).

It is noted that the appellant does not dispute the fact that its supporters were guilty of inappropriate behaviour in the sense of Article 11(2) DR and that it is liable for this behaviour under Article 6(1) DR.

3.

a) The appellant criticises the Control and Disciplinary Body for failing, when determining the disciplinary measures, to take into account certain aspects which, it claims, constitute mitigating circumstances (Art. 17(1) DR). These include organisational failings, particularly relating to security. The appellant argues that the SK Rapid Wien supporters were attacked by PAOK FC supporters in the city centre, during their subsequent journey to the stadium and, finally, inside the stadium. The police had to intervene using tear gas – outside and inside the stadium – in order to quell the trouble. Furthermore, it claims that the SK Rapid Wien supporters were provoked by the PAOK FC "ultras", who were the first to throw flares into their sector.

The appellant submits that, compared with other cases, the disciplinary measures imposed against it are therefore too harsh and inappropriate, and that the Control and Disciplinary Body therefore violated the principle of proportionality.

This accusation is unfounded.

b) Admittedly, there is no absolutely doubt that the home club neglected its duties with regard to security. PAOK FC was heavily punished for this by the Control and Disciplinary Body on 27 August 2012 and is not on trial in the present procedure.

Nevertheless, SK Rapid Wien cannot deny all or part of its responsibility on the grounds that the home club failed to meet its obligations, since to do so would deprive Article 6(1) DR of any substance.

Firstly, strict liability specifically applies where the party charged bears no fault or negligence. Secondly, the fault of a third party, particularly of the home club, is irrelevant. This can only have an impact on the disciplinary measure to be imposed against the home club, in accordance with Article 6(2) DR (CAS 2007/A/1217 Feyenoord Rotterdam v UEFA, rec. 11.12 to 11.21, p. 12/13). For example, the uncontrolled sale of tickets by the home club or the fact that the police allowed supporters under the influence of alcohol to enter the stadium do not constitute mitigating circumstances as far as the away club is concerned. However, they may have an effect on the disciplinary measure imposed against the home club (CAS 2007/A/1217 Feyenoord Rotterdam v UEFA, rec. 11.19 and 11.20, p. 13).

Therefore, the inadequacy of PAOK FC's security arrangements does not constitute a mitigating circumstance in relation to the conduct of the SK Rapid Wien supporters.

This argument must therefore be rejected.

The appellant also claims that it was the PAOK FC supporters who provoked the SK Rapid Wien fans, who merely retaliated.

This claim is categorically refuted by the UEFA match delegate who, when questioned, confirmed that the first flares were thrown from sector 8, which was reserved for the SK Rapid Wien supporters, towards sector 7, which was occupied by "normal" Greek supporters.

In this case, the Appeals Body has no reason to doubt the match delegate's statements, in which his description of the facts has not changed, whether in his initial report, his additional explanations or his testimony at today's hearing. The report, which contains a clear, detailed list of the nature and number of incidents that he witnessed, is a perfect example of how such a report should be presented. His replies to questions from the Appeals Body and the parties were clear, well balanced and related only to events that he had witnessed in person.

The Appeals Body therefore considers it to be established to the satisfaction of the law that it was the SK Rapid Wien supporters situated in sector 8 who instigated the trouble. There is therefore no question of provocation.

This argument must also, therefore, be rejected.

4.

a) According to Article 17(1) 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 offence, taking account of both aggravating and mitigating circumstances. If the party charged has

committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly (para. 4).

An exhaustive list of the disciplinary measures that can be taken against member associations and clubs is set out in Article 53 of the UEFA Statutes. Article 14 DR contains the same list, which includes a fine (c), playing of a match behind closed doors (h), and disqualification from competitions in progress and/or exclusion from future competitions. In other words, the disciplinary body can choose from a very wide range of possible measures. It must respect the usual principles of ordinary law. For example, it must take into account the particular circumstances of the case and the seriousness of the offence, as well as respecting the principles of legality, equal treatment and proportionality.

In ordinary law, the principle of proportionality encompasses three aspects: in order to be considered proportionate, the measure must be appropriate, necessary and demonstrate a reasonable balance between the objective pursued and the means used to achieve it (proportionality in its narrow sense). In order to respect the principle of proportionality, a judge must weigh the risk of the offender reoffending against the breach of personality rights represented by the measure. The measure must also be likely to avert the danger of the offender reoffending.

In sports law, these principles are applicable *mutatis mutandis* when disciplinary measures need to be imposed against individuals (players, coaches and other members of the team or club, officials).

For disciplinary measures against member associations and clubs, sports disciplinary bodies must also respect the principle of proportionality, taking account of the particular circumstances of the case. For example, when a club is liable for the actions of third parties despite bearing no fault or negligence itself (Art. 6(1) DR), the disciplinary body must take the most appropriate measures to ensure that the competitions that it organises take place in a spirit of peace and understanding, in accordance with Article 2 of the UEFA Statutes.

b) The Appeals Body only amends the first-instance body's decision if it is clearly unlawful or excessively harsh or lenient, to the extent that discretionary powers have clearly been exceeded or abused. Its role therefore essentially consists of examining whether the respondent, when taking its decision, respected the principles of legality, equal treatment and proportionality, whether it took into account the particular circumstances of the case and the seriousness of the offence, and finally, whether it exceeded or abused its discretionary powers. On the other hand, it is not within the Appeals Body's remit to judge whether the disciplinary measure(s) imposed by the first-instance body in a particular case are suitable or not.

c) In the case at hand, the first-instance body took into account the seriousness and number of the incidents caused by the SK Rapid Wien supporters, the fact that the objects thrown were pyrotechnic devices, that rocket launchers were also thrown onto the pitch or its surroundings, that these fireworks were aimed at the PAOK FC supporters, that seats were also ripped out and used as missiles, thereby creating obvious danger, the risks and consequences of such conduct, the club's poor disciplinary record in this area and, finally, the fact that the match kick-off was delayed.

The Appeals Body can only agree with this analysis and conclude that SK Rapid Wien cannot claim any mitigating circumstance. Its supporters' behaviour in this case was extremely dangerous, shameful and damaging for football.

5.

The appellant refers to other cases in which it claims the UEFA disciplinary bodies were more lenient.

Comparing two punishments 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 (see Nicolas Queloz/Valérie Humbert in *Commentaire Romand, Code pénal I*, Art. 1-10 CP, Roth-Moreillon [ed.], ad art. 47, no 10 p. 459 and quoted doctrine and case law; see also ATF 116 IV 292 rec. 2 p. 294).

In this case, the appellant fails to demonstrate that the two cases mentioned, about which it provides no further details, are similar to the present case in every respect, including with regard to the number of incidents, the people responsible, the context and the clubs' previous disciplinary record.

Finally, it should not be forgotten that SK Rapid Wien's previous record in this area is very poor. Since September 2007, the club has been punished seven times for offences of this nature committed by its supporters. This is definitely, therefore, an aggravating circumstance under the terms of Article 18 DR.

6.

For all the above reasons, it is clear that, by imposing the disputed disciplinary measures on 27 August 2012, the Control and Disciplinary Body took into account all the circumstances of the case, in particular the seriousness, dangerousness and number of incidents caused by the SK Rapid Wien supporters. The disciplinary measures are suitable and proportionate: the "supporters" know that, for three years at least, their club's participation in UEFA competitions depends on their behaviour. Furthermore, they will be unable to attend their club's next match, which will be played behind closed doors, and finally, they are punishing their club, which must pay a fine.

The Control and Disciplinary Body neither abused nor exceeded its discretionary powers and its decision respects the principles of legality and proportionality. It should also be sufficient to attain the objectives pursued, which are, in this case, to punish both the club responsible and, indirectly, its supporters, in order to prevent further offences while allowing SK Rapid Wien to continue to compete in the 2012/13 UEFA Europa League.

The decision should therefore be confirmed and the appeal rejected.

7.

The costs of the proceedings include all expenses of the Appeals Body. They are to be shared among the parties at fair discretion based on the outcome of the proceedings (Art. 63 DR).

In this case, it is appropriate to charge all the costs of the proceedings, which amount to €8,000, to the appellant, whose appeal is rejected.

The Austrian Football Association (ÖFB) is jointly and severally liable for the payment of the costs of the proceedings (Art. 73 DR).

8.

The chairman notified the parties of this decision orally, providing a summary of the grounds for the decision. The full grounds will be communicated at a later date (Art. 64 and 66 DR).

Decision of 29 October 2012

Paok FC

(Throwing of missiles. Field invasion. Crowd disturbances)

Circumstances of the case

Before the UEFA Europa League match between PAOK FC and SK Rapid Wien played on 23 August 2012, supporters of the Greek team tried to attack the SK Rapid Wien supporters as they travelled to the stadium in specially chartered buses. The PAOK FC "ultras" then invaded the pitch, where the players were still warming up. The situation deteriorated as "fans" of both teams threw various objects at each other.

Legal framework:

Art. 6 (2) DR (ed. 2012) *Security issues*; Art. 11 (2) DR (ed. 2012) *Lack of order or discipline*; Art. 8 and 33 Safety and Security Regulations *Breach of security standards*

Decision:

The CDB's decision is upheld and, consequently, 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. In addition, PAOK FC is ordered to play its next three UEFA competition home matches behind closed doors. PAOK FC is fined €150,000.

Chairman: Pedro Tomás, Spain

Members: Barry Bright, England
Michel Wuilleret, Switzerland

In fact:

A.

According to the report of the match delegate at the UEFA Europa League match between PAOK FC and SK Rapid Wien, played at the Toumba Stadium in Thessaloniki (Greece) on 23 August 2012, clashes between the two teams' supporters initially broke out in the city centre. Then, at around 20.15, fans of the Greek team tried to attack the SK Rapid Wien supporters as they travelled to the stadium in specially chartered buses. At approximately 21.05, the 13 buses arrived at the stadium and the Austrian supporters disembarked, not without difficulty, and were escorted directly to sector 8, which was reserved for them. At 21.10, the SK Rapid Wien supporters began to attack the home supporters in sector 7 by throwing around 20 flares and other objects, including seats which they had ripped off their bases. Seeing this, the PAOK FC "ultras", situated in sector 4 at the other end of the stadium, invaded the pitch, where the players were still warming up. One supporter spat at an SK Rapid Wien player. The situation deteriorated as "fans" of both teams threw various objects at each other, to the extent that, according to the match delegate, it is hard to believe that nobody was injured. The police ultimately managed to restore order. As a result of these incidents, the kick-off was delayed by several minutes.

During the match, the home supporters set off numerous pyrotechnic devices and, in the 32nd minute, an object was thrown onto the pitch, towards the SK Rapid Wien goalkeeper, from the home sector. It subsequently transpired that the object in question was a lump of concrete.

The match delegate concluded his report by noting that the home club's organisation of the match had been good, but that the security services had failed to conduct body searches properly.

B.

Ruling on 27 August 2012, the UEFA Control and Disciplinary Body imposed the following disciplinary measures against PAOK 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.

PAOK FC is ordered to play its next three UEFA competition home matches behind closed doors, i.e. with no spectators present.

PAOK FC is fined €150,000.

The above fine must be paid into the bank account indicated below within 30 days of the dispatch of the reasoned decision.

In substance, the first-instance disciplinary body considered that PAOK FC, as the home club, was responsible for order and security inside the stadium and that it had clearly failed to meet its obligations in this area. It was also liable for its supporters' conduct. It took into account, as aggravating circumstances, the seriousness and multiplicity of the offences committed, the fact that players were warming up on the pitch when the trouble broke out, the throwing of a lump of concrete towards the opposing goalkeeper, the fact that the supporters in the stadium were out of control for a certain period of time, the duration of the incidents and the apparent lack of organisation inside the stadium, the delay to the kick-off and, finally, the fact that, in view of the club's disciplinary record in this area, this was a case of recidivism.

It should be remembered that, in a decision issued the same day, the Control and Disciplinary Body ruled that SK Rapid Wien was responsible for its own supporters' conduct and imposed the following disciplinary measures against it:

1. *SK Rapid Wien is disqualified from one (current or future) UEFA competition for which it would normally qualify within the next five years. This ban is suspended for a probationary period of three years.*
2. *SK Rapid Wien is ordered to play its next UEFA competition match behind closed doors, i.e. with no spectators present. This punishment does not apply to the return match between SK Rapid Wien and PAOK FC on 30 August 2012.*
3. *SK Rapid Wien is fined €75,000.*

Ruling on 14 August 2012, the UEFA Appeals Body rejected the appeal lodged by SK Rapid Wien and confirmed the disciplinary measures imposed against the Viennese club.

C.

In a letter of 31 August 2012, PAOK FC requested to see the decision with grounds in accordance with Article 46bis(2) of the UEFA Disciplinary Regulations (DR). This request was met on 13 September 2012.

On 17 September 2012, PAOK FC officially announced its intention to appeal against the decision of 27 August 2012.

On 1 October 2012, PAOK FC lodged the grounds for its appeal, concluding, principally, that the decision should be lifted and, in the alternative, that only one match should be held behind closed doors and a fine of €50,000 should be imposed.

The appellant claims that its right to a fair hearing was breached and that the Control and Disciplinary Body illegally extended the charges against it. It contests the notion that the official reports can be presumed to be accurate and, in substance, accuses the Control and Disciplinary Body of exceeding or even abusing its discretionary powers and of failing to establish all the relevant facts accurately. It also claims that the Control and Disciplinary Body did not take into account certain mitigating circumstances which should have counted in its favour, particularly the fact that the home supporters had been provoked by the SK Rapid Wien fans. PAOK FC also disputes that it was guilty of recidivism and argues that the principle of legality was violated in this case in so far as the UEFA Disciplinary Regulations do not specify which disciplinary measure applies to which offence. Finally, it claims that the disciplinary measures imposed against it are much too harsh and disproportionate, taking all the circumstances into account, and that it has been treated unfairly in view of punishments imposed in similar cases against other clubs, such as Beşiktaş JK and Dundee United FC.

D.

On 19 October 2012, UEFA, through its disciplinary inspector, submitted its observations on the appeal. It concluded that the appeal should be rejected and the decision confirmed, with the costs to be paid by the appellant.

E.

At today's hearing, PAOK FC was represented by its president, Zisis Vryzas, as well as by Achilleas Mavromatis and Andreas Zaglis, attorneys-at-law in Athens. Maria Goncharova was also present.

UEFA was represented by its disciplinary inspector Jean-Samuel Leuba.

The chairman informed the parties of the composition of the Appeals Body and of the procedure to be followed. He said that the debates would be recorded for the preservation of evidence (Articles 26 and 31(3) and (5) DR).

The parties said they were happy with the procedural arrangements. However, the appellant raised an objection on which the Appeals Body decided to rule immediately (see paragraphs 1(a) and (b), below).

The appellant also requested that images of the pre-match incidents be shown and that Andreas Marek be allowed to comment on them. The disciplinary inspector had no objections.

The video images of the disputed incidents and those filmed during the SK Rapid Wien supporters' bus journey to and arrival at the stadium were viewed and then commented on by the parties.

The UEFA match delegate was questioned by teleconference. The Appeals Body and the parties asked him numerous questions. In substance, he confirmed the contents of his report, in particular that a PAOK FC supporter had spat at one of the Austrian club's players. He explained that the

player concerned had been wearing a tracksuit and bib during the pre-match warm-up, so he had been unable to see which number he was wearing or to formally identify him.

Since no additional evidence was called, the parties were then given the floor to plead, reply and rejoinder.

To conclude, the floor was given to the PAOK FC president, who regretted the incidents that had taken place. He explained, in substance, that the club had a new president and board of directors, who had already taken steps to ensure that such events were not repeated. He asked the UEFA disciplinary bodies to take this into account and to show leniency.

Once the hearing was closed, the chairman asked the parties to leave the chamber so the Appeals Body could deliberate.

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

In law:

1.

a) Raising a preliminary procedural objection, the appellant argued that the Control and Disciplinary Body should have allowed the club's delegation, which had been present at the UEFA headquarters in Nyon on 27 August 2012, to express its point of view orally before deliberating and taking its decision. The Control and Disciplinary Body had also violated its right to a fair hearing by extending the charges against it, which had been listed in the letter sent to it on 24 August 2012. The Control and Disciplinary Body had added to this list, and found the club guilty of, a violation of Article 40 of the UEFA Safety and Security Regulations, which had not been included in the aforementioned letter of 24 August 2012.

The appellant therefore requested that this charge be withdrawn and omitted from the discussions at the Appeals Body hearing.

The Appeals Body decided to rule on this issue immediately, *in camera*.

b) According to Article 42(1) DR, procedures (before the Control and Disciplinary Body) are opened when the parties are notified in writing, in particular on the basis of official reports (letter a).

According to Article 45 DR, 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 considers any other pertinent documents in its possession. It can summon further evidence, provided that doing so will not delay the proceedings unduly (para. 1). If it considers this necessary in view of the circumstances, it may exceptionally hear the parties (para. 2).

In other words, the written notification described in Article 42(1) DR is merely designed to inform the parties that the procedure has been opened. It has no binding effect on the Control and Disciplinary Body, which is solely responsible for deciding whether to hold a hearing (see Art. 42(3) DR). It is therefore not bound by the written notification that a procedure has been opened, nor, *a fortiori*, required to only deal with the offences mentioned therein and their legal classification. Otherwise, it would no longer be able to issue decisions in accordance with the principle of the separation of powers, enshrined in Article 57 of the UEFA Statutes, and its members would not be able to claim to be independent, in contravention of Article 25 DR.

Now that these basic legal principles have been clarified, it should be added that, in the case at hand, PAOK FC is particularly accused, as the home club, of failing to meet its obligations concerning the maintenance of order and security. It therefore stands to reason that the Control and Disciplinary Body had a duty to clarify the facts in a summary manner, on the basis of the official reports and video footage (Art. 45(1) DR), to handle the offences falling within the scope of application of the Disciplinary Regulations (Art. 27 DR) and the Safety and Security Regulations (Art. 49) and, if appropriate, to decide on a conviction (Art. 46(1)(c) DR).

All of the above suggests that the Control and Disciplinary Body did not act illegally by examining the case in the light of Article 40 of the Safety and Security Regulations, even though this provision was not mentioned in the letter of 24 August 2012, but, on the contrary, that it was its duty to do so. Incidentally, the letter expressly states: *"Please also note that the Body will be free in the evaluation of the facts..."*.

The complaint that the charges were extended without due notification is therefore clearly unfounded and could possibly even be considered rash.

As for the alleged violation of the right to a fair hearing, the appellant fails to demonstrate why the circumstances of the case justified a hearing of the appellant, in accordance with Article 45(2) DR. The disputed match took place on Thursday 23 August 2012. The following day, the club was informed that a procedure had been opened, invited to submit its written observations by Monday 27 August 2012 and told that the Control and Disciplinary Body would examine the case that day, i.e. three days before the return leg between SK Rapid Wien and PAOK FC on Thursday 30 August 2012.

In view of the urgency of the case and the serious incidents that had taken place at the first leg, the appellant should have foreseen that a disciplinary procedure would be opened and taken the necessary steps to defend its interests. In any case, having received the letter of 24 August 2012 in the afternoon of 25 August 2012, it had plenty of time to submit its observations by midday on 27 August 2012, given that the facts were to be clarified in a summary manner (Art. 45(1) DR).

The appellant's claim that its right to an oral hearing before the Control and Disciplinary Body was violated is therefore unfounded.

c) Otherwise, the Appeals Body notes that the appeal was lodged by PAOK FC by the deadline and in the form required. Grounds were provided and the appeal fee was paid by the deadline. The appeal is therefore admissible in procedural terms under Articles 46bis, 49, 50, 52 and 53 DR.

The Appeals Body may therefore examine the merits of the appeal, in accordance with Article 48 DR.

2.

a) Under the terms of Article 30(3) DR, the UEFA Executive Committee, the UEFA President, the UEFA General Secretary or the disciplinary bodies may commission disciplinary inspectors to conduct investigations. According to Article 38 DR, the disciplinary inspector investigates violations of the statutes, regulations, directives and decisions of UEFA (para. 1). Such investigations are conducted by means of written inquiries and, if necessary, the questioning of individuals. Other investigatory procedures may also be resorted to, such as expert opinions, on-site inspections and document requests (para. 2). If the disciplinary inspector thinks an offence has been committed, he refers the case to the Control and Disciplinary Body, in application of Articles 39(1), *a contrario*, and 42(1)(c) DR. The Control and Disciplinary Body notifies the parties if a procedure is opened (Art. 42(1) DR).

As mentioned above, 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. It can summon further evidence, provided that doing so will not delay the proceedings unduly (Art. 45(1) DR).

Meanwhile, the Appeals Body re-examines the case both factually and legally (Art. 62(1)). The appeal decision confirms, amends or lifts the contested decision (para. 2). If the accused is the only party to have lodged an appeal or if the disciplinary inspector appeals in favour of the accused, the punishment cannot be increased (para. 3). If new disciplinary offences come to light while appeal proceedings are pending, they may be judged in the course of the same proceedings. Different types of evidence on relevant facts are listed in Article 57(2) DR, although this list is not exhaustive.

b) The facts contained in the official reports are presumed to be accurate. However, if evidence is found to show that they are untrue, or at least partly inaccurate, the disciplinary body may ignore them. In other words, the first-instance body bases its decision not only on the official reports, but on all the evidence gathered during the investigation. It should be remembered that any party claiming that an official report is inaccurate must prove this to be the case.

c) In the current case, a disciplinary inspector was appointed following the incidents that occurred at the match concerned (Art. 30(3) DR).

In accordance with Article 38 DR, the appointed disciplinary inspector, on the basis of the reports of the match delegate and referee, and the images available on the Internet, concluded that offences had been committed and submitted his report to the first-instance disciplinary body. He concluded as follows:

Based on the above, I the undersigned disciplinary inspector request, on behalf of UEFA, that the UEFA Control and Disciplinary Body decide as follows:

I.- PAOK FC is disqualified from one UEFA competition (present or future) for which it would normally qualify within the next five years. This ban is suspended for a probationary period of three years.

II.- PAOK FC is ordered to play its next three UEFA competition matches behind closed doors, i.e. with no spectators present.

III.- PAOK FC is fined €150,000.

The Control and Disciplinary Body examined the facts, based on the official reports, the disciplinary inspector's report and PAOK FC's statement of 27 August 2012. However, it did not consider it necessary to go against the normal procedure by hearing the parties.

d) Therefore, contrary to the appellant's claims, the first-instance body did not violate the regulatory provisions governing evidence in any way. Without delaying the proceedings, it compiled a case file based not only on the official reports, but also on the results of the appointed disciplinary inspector's investigation and, finally, on the evidence submitted by PAOK FC.

The evidence was therefore gathered in accordance with the procedural rules. Finally, the club's right to a fair hearing was respected, since it was able to submit its observations in writing. The fact that the Control and Disciplinary Body considered that the circumstances of the case did not justify the hearing of the parties is not open to criticism.

The implied claim that the evidence used by the first-instance body to justify the disciplinary measure was inadmissible is therefore entirely unfounded.

3.

According to Article 2(d) of its Statutes, one of UEFA's objectives is to organise and conduct international football competitions and tournaments at European level. More specifically, with regard to the competition involved in the present case, the "Regulations of the UEFA Europa League 2012–15 Cycle, 2012/13 Season" (hereinafter: the Europa League regulations) list the respective responsibilities of UEFA, the associations and the clubs.

In its own area of responsibility, UEFA gives the necessary assurances (para. 6.01 of the Europa League regulations).

The responsibilities of the associations and clubs are different. On entering the competition, the participating clubs and their respective national associations agree, *inter alia*, to stage all matches in the competition in accordance with the Europa League Regulations and to respect the UEFA Safety and Security Regulations (para. 4.01(e) and (g) of the Europa League regulations).

They therefore accept responsibility for the behaviour of their players, officials, members, supporters and any person carrying out a function at a match on their behalf (para. 6.02 of the Europa League regulations). The home club (or the host association) is responsible for order and security before, during and after the match. It may be called to account for incidents of any kind and may be disciplined (para. 6.03 of the Europa League regulations). The club considered the "home" club must stage the relevant matches at the ground in accordance with the instructions of UEFA (or of a third party acting on UEFA's behalf) and in cooperation with the association concerned. However, the club is considered solely accountable for all of its obligations in this respect, unless the relevant body or bodies decide(s) otherwise (para. 6.04 of the Europa League regulations).

By entering the 2012/13 UEFA Europa League, PAOK FC agreed to assume its responsibilities under paragraph 4.01 of the aforementioned Europa League regulations. It was therefore aware of its security-related obligations and of its responsibility not only for its own actions, but also for those of its players, officials, members and supporters. It does not claim that UEFA freed it from its obligations (see para. 6.04 of the Europa League regulations *in fine*). As for whether the police services can be held responsible, such matters are not within the remit of the UEFA disciplinary bodies.

4.

a) Under the terms of Article 52 of the UEFA Statutes and Article 8 DR, disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game and contraventions of UEFA's Statutes, regulations, decisions and directives.

b) Article 6 DR constitutes the legal basis on which UEFA, through its disciplinary bodies, can ensure that not only its members, but also third parties for whom they are responsible, respect its objectives and the obligations it imposes.

According to the first paragraph of Article 6 DR, the content of which is repeated in paragraph 6.02 of the Europa League regulations, member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the member association or club. This rule also applies to teams participating in the 2012/13 UEFA Europa League, in accordance with paragraph 6.02 of the competition regulations.

Under this rule, UEFA member associations and clubs are responsible for any violation of UEFA regulations committed by any of the people concerned, regardless of fault. This strict liability imposed on member associations and clubs applies to offences committed by a specific list of third parties. The disciplinary body has no room for manoeuvre when it comes to applying this rule. Even

if they have committed no fault, the member association and club are responsible for the misbehaviour of their supporters. Once it is established that such incidents have occurred, the club is automatically held responsible and punished accordingly.

c) The scope of Article 6(2) DR is different, since it requires other conditions to be met before a disciplinary measure can be imposed.

Under this provision, host associations or clubs are responsible for order and security both inside and around the stadium before, during and after the match. They are liable for incidents of any kind, and may be rendered subject to disciplinary measures and directives. Match organisers (UEFA member associations or clubs) must therefore do all they can to ensure that order and security are maintained in and around the stadium. However, contrary to the situation provided for in Article 6(1) DR, the simple fact that incidents have taken place does not automatically mean that the host association or club should be punished. In other words, if the latter can prove that it took all the measures that it could be reasonably expected to take, and if it did not commit any fault in relation to the organisation and maintenance of order and security at the match, it cannot be held responsible, or punished, for such incidents. Article 6(2) DR does not, therefore, impose strict liability (concerning this whole issue, see CAS 2002/A/423 PSV Eindhoven v UEFA, 3 June 2003 p. 10-13; see also M. Wuilleret, Strict liability, in UEFA-direct, 12/03).

The Europa League regulations refer to these notions concerning the responsibilities of clubs in general (para. 6.02) and of home clubs in particular (para. 6.03).

5.

a) The Control and Disciplinary Body found PAOK responsible for its supporters' actions (pitch invasion, spitting at an opposing player, use of pyrotechnic devices) in accordance with Article 6(1) DR and paragraph 6.02 of the Europa League Regulations, as well as for security-related failings in application of Article 6(2) DR and paragraph 6.03 of the Europa League regulations.

b) According to Article 11(2) DR, the disciplinary measures provided for in Articles 14 and 15 DR may be taken against member associations or clubs in case of inappropriate behaviour on the part of their supporters, including the invasion of the field of play (letter a), the lighting of fireworks or any other objects (letter c), and any other lack of order or discipline observed inside or around the stadium (letter g). This provision is also clearly applicable in the UEFA Europa League, under the terms of paragraph 21.01 of the Europa League Regulations.

According to Article 8 of the UEFA Safety and Security Regulations, in cooperation with the public authorities, the match organiser must ensure that there are sufficient police officers, assisted where appropriate by stewards, to counter any possible outbreaks of violence or public disorder and to ensure the safety of the general public and the match participants within the stadium, in its surrounding environs and along the routes leading to and from the stadium. Article 33 describes the measures that should be taken to screen and search spectators and, finally, Article 40 sets out the steps that are required to ensure that players and match officials are protected against the intrusion of spectators into the playing area.

c) In the case at hand, the video footage is clearly sufficient to establish, to the satisfaction of the law, that numerous very serious incidents took place before and during the match. There is no doubt whatsoever that the home supporters threw pyrotechnic devices and various other objects, and invaded the area around the pitch and then the pitch itself.

Although there is no video footage of the incident in which a PAOK FC supporter spat at an SK Rapid Wien player as he retreated to the dressing rooms following the pitch invasion, the Appeals Body also considers this incident established.

Under its case law, the Appeals Body considers the reports of the referee and match delegate to be trustworthy and accurate, unless it can be clearly and irrefutably proven otherwise. This principle is now formally enshrined in Article 45(1) DR, according to which the contents of the official reports are presumed to be accurate.

In this case, the Appeals Body has no reason to doubt the match delegate's statements, in which his description of the facts has not changed, whether in his initial report, his additional written explanations submitted on 24 August 2012 or his testimony at today's hearing. The report, which contains a clear, detailed list of the nature and number of incidents that he witnessed, is a perfect example of how such a report should be presented. His replies to questions from the Appeals Body and the parties were clear, well balanced and related only to events that he had witnessed in person.

d) There is also no doubt that security standards were breached. It is established that Greek and Austrian spectators managed to take pyrotechnic devices into the stadium despite the searches. More seriously, it is also clear that home supporters were able to invade the pitch, approach the sector reserved for the Austrian fans and throw various objects towards them before the security services finally managed to restore order. Incidents also occurred when the visiting spectators arrived at the stadium. In view of the number of protagonists and the multiplicity of offences committed by both sides, it is truly impossible to determine whether the trouble was started by the home or the away supporters. In this connection, it is also impossible to establish provocation since, in such circumstances, even a slight glare can be considered a provocative act that justifies a reaction.

This argument must therefore also be rejected.

d) In view of the established facts described above, the Appeals Body concludes that PAOK FC, as the home club, failed to take, or ensure that third parties took, the necessary measures required to maintain order and security in the stands and ensure that the match could take place without incident. The violent scenes that occurred were clearly a consequence of organisational shortcomings and inappropriate measures. It is particularly hard to understand why spectators were allowed to invade the pitch, approach the sector opposite, in which the visiting supporters were located, and then hurl abuse and various objects at them for several minutes, and why it was so long before the security services were deployed. Finally, although it is clear that the two sets of

supporters provoked one another, it is irrelevant, in view of the strict liability of both clubs for their supporters' actions, whether the trouble was started by the Greek or the Austrian fans.

6.

Taking all the circumstances into account and in view of the aforementioned regulatory provisions, the Appeals Body finds that PAOK FC failed to meet its obligations with regard to security. It cannot deny its responsibility, as the home club, on the grounds that the Austrian supporters sparked off the trouble that resulted in police intervention and that it had no influence on the measures taken by the police. The Control and Disciplinary Body was therefore right to punish it in accordance with Article 11(2) DR.

7.

a) According to Article 17(1) 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 offence, taking account of both aggravating and mitigating circumstances. If the party charged has committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly (para. 4).

An exhaustive list of the disciplinary measures that can be taken against member associations and clubs is set out in Article 53 of the UEFA Statutes. Article 14 DR contains the same list, which includes a fine (letter c), playing of a match behind closed doors (letter h), and disqualification from competitions in progress and/or exclusion from future competitions. In other words, the disciplinary body can choose from a very wide range of possible measures. It must respect the usual principles of ordinary law. For example, it must take into account the particular circumstances of the case and the seriousness of the offence, as well as respecting the principles of legality, equal treatment and proportionality.

In ordinary law, the principle of proportionality encompasses three aspects: in order to be considered proportionate, the measure must be appropriate, necessary and demonstrate a reasonable balance between the objective pursued and the means used to achieve it (proportionality in its narrow sense). In order to respect the principle of proportionality, a judge must weigh the risk of the offender reoffending against the breach of personality rights represented by the measure. The measure must also be likely to avert the danger of reoffending.

In sports law, these principles are applicable *mutatis mutandis* when disciplinary measures need to be imposed against individuals (players, coaches, other members of the team or club or officials).

For disciplinary measures against member associations and clubs, sports disciplinary bodies must also respect the principle of proportionality, taking account of the particular circumstances of the case. For example, when a club is liable for the actions of third parties despite bearing no fault or negligence itself (Art. 6(1) DR), the disciplinary body must take the most appropriate measures to ensure that the competitions that it organises take place in a spirit of peace and understanding, in accordance with Article 2 of the UEFA Statutes.

b) The Appeals Body only amends the first-instance body's decision if it is clearly unlawful or excessively harsh or lenient, to the extent that discretionary powers have clearly been exceeded or abused. Its role therefore essentially consists of examining whether the respondent, when taking its decision, respected the principles of legality, equal treatment and proportionality, whether it took into account the particular circumstances of the case and the seriousness of the offence, and finally, whether it exceeded or abused its discretionary powers. On the other hand, it is not within the Appeals Body's remit to judge whether the disciplinary measure(s) imposed by the first-instance body in a particular case are suitable or not.

c) In the case at hand, the first-instance body took into account the seriousness and number of the incidents caused by the PAOK FC supporters, who invaded the pitch, spat at an opposing player, and lit and threw pyrotechnic devices towards the SK Rapid Wien goalkeeper, the risks and consequences of such conduct, the club's very poor disciplinary record in this area and, finally, the fact that the match kick-off was delayed.

The Appeals Body can only agree with this analysis and conclude that PAOK FC cannot claim any mitigating circumstance. Its supporters' behaviour on this occasion was extremely dangerous, shameful and damaging for football.

8.

The appellant refers to other cases in which it claims the UEFA disciplinary bodies were more lenient.

Comparing two punishments 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 (see Nicolas Queloz/Valérie Humbert in *Commentaire Romand, Code pénal I, Art. 1-10 CP, Roth-Moreillon [ed.], ad art. 47, no 10 p. 459 and quoted doctrine and case law; see also ATF 116 IV 292 rec. 2 p. 294*).

In this case, the appellant fails to demonstrate that the two cases mentioned, about which it provides no further details, are similar to the present case in every respect, including with regard to the number of incidents, the people responsible, the context and the clubs' previous disciplinary record. Furthermore, the disciplinary measures imposed against the appellant are very similar to those imposed against SK Rapid Wien (see section B, above). Since the appellant was the home club, it bore additional responsibility under the terms of Article 6(2) DR. It is therefore only fair that it should be punished more heavily than the visiting club.

Finally, in addition to the gravity of the offences committed, PAOK FC's previous record in this area must be taken into account. Examined over a period of just five years, it can only be described as atrocious: since 30 July 2009, PAOK FC has been punished 24 times for the misbehaviour of its supporters and/or inadequate organisation. This is definitely, therefore, an aggravating circumstance under the terms of Article 18 DR, as the Control and Disciplinary Body rightly pointed out.

9.

For all the above reasons, it is clear that, by imposing the disputed disciplinary measures on 27 August 2012, the Control and Disciplinary Body took into account all the circumstances of the case, in particular the seriousness, dangerousness and number of incidents caused by the PAOK FC supporters on the one hand, and the club's serious failings, as the home club, in terms of ensuring order and security on the other. The disciplinary measures are suitable and proportionate: the "supporters" know that, for three years at least, their club's participation in UEFA competitions depends on their behaviour. Furthermore, they will be unable to attend their club's next three matches, which will be played behind closed doors, and finally, their club must pay a fine.

The Control and Disciplinary Body neither abused nor exceeded its discretionary powers and its decision respects the principles of legality and proportionality. It should also be sufficient to attain the objectives pursued, which are, in this case, to punish both the club responsible and its supporters, in order to prevent further offences, while allowing PAOK FC to continue to compete in future UEFA competitions.

The decision issued on 27 August 2012 should therefore be confirmed and the appeal rejected.

10.

The costs of the proceedings include all expenses of the Appeals Body. They are to be shared among the parties at fair discretion based on the outcome of the proceedings (Art. 63 DR).

In this case, it is appropriate to charge all the costs of the proceedings, which amount to €8,000, to the appellant, whose appeal is rejected.

The Hellenic Football Federation (EPO) is jointly and severally liable for the payment of the costs of the proceedings (Art. 73 DR).

11.

The chairman notified the parties of this decision orally, providing a summary of the grounds. These will be communicated in full at a later date (Art. 64 and 66 DR).

Decision of 29 October 2012

FK Partizan

(Stadium invasion. Display of political banner)

Circumstances of the case:

During the 2012/13 UEFA Champions League match between Valletta FC and FK Partizan on 17 July 2012, four Serbian supporters climbed over the stadium wall, invaded the stadium and showed a banner, as a result of which the match was interrupted for two minutes. Also during the first half, 35–40 Serbian supporters tried to enter the stadium by force, injuring two policemen and damaging vehicles.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 6 (2) DR (ed. 2012) *Responsibility for order and security*; Art. 11 (2) DR (ed. 2012) *Lack of order or discipline*

Decision:

CDB:

The CDB fined FK Partizan €15,000 for its supporters' conduct.

Appeals Body:

The appeal of FK Partizan is partially admitted and the fine is reduced from €15,000 to €7,500.

Chairman: Pedro Tomás, Spain

Members: Barry Bright, England
Michel Wuilleret, Switzerland

In fact:

A.

The UEFA delegate at the 2012/13 UEFA Champions League match between Valletta FC and FK Partizan on 17 July 2012 sent his report to UEFA disciplinary services on 18 July 2012. It states that, in the 27th minute of the match, four Serbian supporters climbed over the stadium wall, invaded the stadium and showed a banner, as a result of which the match was interrupted for two minutes. Also during the first half, 35–40 Serbian supporters tried to enter the stadium by force, injuring two policemen and damaging vehicles.

B.

In a decision of 23 August 2012, the UEFA Control and Disciplinary Body fined FK Partizan €15,000 for its supporters' conduct.

It found, in substance, that the club had failed to prove that the troublemakers were not FK Partizan supporters and that it was therefore responsible for their behaviour, in accordance with Articles 11(2) and 6(1) of the UEFA Disciplinary Regulations (DR). When determining the punishment, it took into account the multiplicity and seriousness of the offences (hooliganism), which had forced the referee to interrupt the match for two minutes, and the club's very poor disciplinary record in relation to its supporters' conduct, which meant that this was a case of recidivism within the meaning of Article 18 DR.

The operative provisions of the decision of 23 August 2012 were communicated to the parties on 19 September 2012.

C.

On 21 September 2012, FK Partizan requested the full decision with grounds, which it duly received on 25 September 2012.

On 27 September 2012, FK Partizan formally lodged an appeal against the decision of 23 August 2012.

On 1 October 2012, FK Partizan lodged the grounds for its appeal. In substance, it claims that the troublemakers cannot be considered as supporters of the club and accuses the Control and Disciplinary Body of adopting an excessively broad interpretation of the notion of "supporter". It says that it took every possible precaution, that it cannot be held responsible for the conduct of

people living abroad, to whom it did not sell any tickets for the match. Although it does not say so clearly, it concludes, at least implicitly, that the decision should be lifted and, in the alternative, it expressly claims that the fine imposed against it should be reduced.

D.

On 17 October 2012, UEFA, through its disciplinary inspector, filed its reply to the appeal, which it said should be rejected, with the costs to be charged to the appellant.

E.

The Appeals Body chairman opened the session.

He noted the presence of the parties. He informed them of the composition of the Appeals Body and of the procedure to be followed. He said that the debates would be recorded for the preservation of evidence (Articles 26 and 31(2) and (5) DR).

The parties raised no objections. Since no additional evidence was called, the parties were then given the floor.

Their arguments are set out below, in so far as they are relevant to the decision.

In law:

1.

The Appeals Body may examine the merits of an appeal against a decision of the Control and Disciplinary Body in accordance with Article 48 DR.

The appeal was lodged by the deadline and in the form required. Grounds were provided and the appeal fee was paid by the deadline. The appeal is therefore admissible under Articles 46bis, 49, 50, 52 and 53 DR.

2.

Having examined the decision, the Appeals Body finds that it correctly explains, in a judicious, detailed and convincing manner, the rules and principles applicable in this case, in particular the principle enshrined in Article 6(1) DR, under which member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the member association or club (so-called "strict liability").

This provision has a preventive and deterrent effect. Its objective is not to punish the club as such, which may have done nothing wrong, but to ensure that the club assumes responsibility for

offences committed by its supporters (CAS 2002/A/423 PSV Eindhoven v UEFA, rec. 6.1.1.3 a) p. 12 § 3).

3.

a) The Appeals Body notes that the appellant does not question the facts as established by the Control and Disciplinary Body. However, it argues that the troublemakers cannot be considered as supporters of the club, since they did not obtain tickets from FK Partizan and, generally speaking, did not even have any contact with the club. If, by some remote chance, the Appeals Body disagrees, it claims that the fine is too harsh.

b) The notion of supporters in the sense of Articles 6(1) and 11(2) DR is not specifically defined in UEFA regulations. In particular, they make no reference to the nationality, race, religion or place of residence of a person who “supports” a team. Neither is any connection made between this notion and the contract that such a person enters into with the association or club by purchasing a ticket. Finally, UEFA regulations do not distinguish between “official” supporters, who are recognised by and obtain their tickets from the association or club, and “unofficial” supporters who obtain tickets from other sources, such as the internet or simply from the stadium on the day of the match (regarding this whole issue, see the Appeals Body’s judgment of 19 January 2007 in the case Feyenoord Rotterdam v UEFA, a decision confirmed by the CAS [CAS 2007/A/1217]).

c) In the present case, the fact that those responsible for the incidents did not obtain their tickets from the appellant but bought them on the open market, whether they are Serbian nationals or not, and whether they travelled from Belgrade or reside in Malta or elsewhere, does not affect their status as FK Partizan supporters.

The delegate’s report states that the four people who climbed over the stadium wall in order to invade the stadium work and live in Malta, and that they were carrying a banner with a Serbian slogan.

Although some of the 35–40 people who tried to enter the stadium by force showed the UEFA delegate Maltese identity cards, their Serbian origins are not in any doubt. Others wore FK Partizan shirts or shouted “Partizan” or “Serbia Serbia”.

d) In the light of the above and in accordance with UEFA’s established case law, the four people who entered the stadium by climbing over the wall, and the 35–40 troublemakers who tried to force their way into the stadium, must be considered as FK Partizan supporters. The appellant’s attempt to deny responsibility under the pretext that they are not its supporters within the meaning of Articles 11(2) and 6(1) DR is therefore futile.

4.

a) According to Article 11(2) DR, the disciplinary measures provided for in Articles 14 and 15 DR may be taken against member associations or clubs in case of inappropriate behaviour on the part of their supporters, including the lighting of fireworks or any other objects (letter c), acts of

damage (letter f) and any other lack of order or discipline observed inside or around the stadium (letter g).

It is also established in Appeals Body case law that the referee's or match delegate's report should be considered as trustworthy and truthful unless its inaccuracy can be clearly proven beyond any doubt.

b) Having examined the case file and the parties' written and oral pleadings, the Appeals Body considers that it is established, to the satisfaction of the law, that: in the 27th minute of the match, four Serbian supporters invaded the stadium by climbing over the stadium wall and showed a banner, as a result of which the match was interrupted for two minutes; and during the first half, 35–40 Serbian supporters tried to enter the stadium by force, injuring two policemen and damaging vehicles.

c) Since offences of the type listed in Article 11(2)(g) DR were clearly committed, the Control and Disciplinary Body was correct to hold FK Partizan responsible for its supporters' conduct, in accordance with Articles 11(2) and 6(1) DR.

5.

a) Under Article 17(1) DR, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. If the party charged has committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly (paragraph 3).

The disciplinary measures that can be imposed against member associations and clubs are listed in full in Article 53 of the UEFA Statutes. Article 14 DR repeats this list, which includes a fine (letter c), playing of a match behind closed doors (letter h) and stadium closure. However, there is no regulatory provision setting out minimum and maximum fines. In other words, the disciplinary body has broad discretion in this area. Nevertheless, it must take into account that recidivism is an aggravating circumstance under the terms of Article 18(2) DR. According to Article 18(1) DR, recidivism occurs if disciplinary measures have to be imposed within five years of a previous offence of a similar nature. The disciplinary body must also, and in particular, respect the principles enshrined in ordinary law, which also apply to disciplinary law in sport. For example, it must take account of the particular circumstances of the case and the seriousness of the offence; it must also respect the principles of legality, equal treatment and proportionality. Finally, it must not exceed or abuse its discretionary powers.

b) The supporters' misconduct, which required police intervention, their aggressive behaviour and the damage they caused amount to acts of hooliganism. There is no need to explain the tragic consequences that the resulting crowd movements could have had. It is fortuitous that there were no victims. However, this does not mean that the danger created was any less serious.

In addition to the seriousness of the offences committed by the FK Partizan supporters, the club's very poor disciplinary record in this area must be taken into account, as the first-instance body noted. It correctly took recidivism into account as an aggravating circumstance (Article 18 DR) when determining the nature of the disciplinary measure and the size of the fine.

c) In the light of the above, the Appeals Body finds that the Control and Disciplinary Body correctly interpreted the provisions and case law applicable in this case. Since the club must be held responsible for its supporters' conduct at the away match concerned, a fine is the appropriate punishment.

As regards the size of the fine, it is true that this falls under the broad discretionary powers of the first-instance body, according to Article 14(2) DR (minimum €100, maximum €1,000,000).

In this case, however, the Appeals Body finds that the Control and Disciplinary Body did not take sufficiently into account the fact that, in spite of Article 11(2)(g) DR, the home club holds the primary responsibility for order and security in and around the stadium, under the terms of Article 6(2) DR and, in this case, paragraphs 6.03 and 6.04 of the Regulations of the UEFA Champions League, 2012-15 Cycle. The Appeals Body also considers that the club's very precarious financial situation should be taken into account.

Therefore, in view of all the circumstances of the case, the Appeals Body considers that a fine of €7,500 is sufficient to punish the club for the conduct of its supporters who live in Malta.

6.

In the light of the above, FK Partizan's appeal is partially admitted and the fine is reduced from €15,000 to €7,500.

The costs of proceedings, which include all expenses of the Appeals Body, are shared among the parties at fair discretion in accordance with the outcome of the proceedings (Article 63 DR).

In view of the outcome of the appeal, the costs are charged equally to the appellant and UEFA. The Football Association of Serbia is jointly liable, in accordance with Article 73 DR.

Decision of 30 October 2012

Real Madrid

(Anti-doping whereabouts)

Circumstances of the case:

On 29 March 2012, UEFA's anti-doping unit conducted an out-of-competition control on Real Madrid CF's team at a training session that it had been told would take place from 10.30 to 12.30. The player Képler Laveran De Lima Ferreira ("Pepe") was found not to be present, as he had been granted a day's leave without UEFA being notified of that fact.

Real Madrid CF had already been warned on 24 February 2011 for failing to report the absence of a player in relation to an anti-doping control carried out on 28 January 2011.

Legal framework:

Appendix E: Whereabouts regulations Anti-doping Regulations

Decision:

The CDB's decision is upheld and, consequently, Real Madrid is fined €30,000.

Ad hoc chairman: Goetz Eilers (Germany)

Members: Michel Wuilleret (Switzerland)
Ivaylo Ivkov (Bulgaria)

In fact:

A.

On 29 March 2012, UEFA's anti-doping unit conducted an out-of-competition control on Real Madrid CF's team at a training session that it had been told would take place from 10.30 to 12.30. The player Képler Laveran De Lima Ferreira (hereinafter "Pepe") was found not to be present, as he had been granted a day's leave without UEFA being notified of that fact.

Real Madrid CF had already been warned on 24 February 2011 for failing to report the absence of a player in relation to an anti-doping control carried out on 28 January 2011.

B.

By its decision of 19 July 2012, the UEFA Control and Disciplinary Body fined Real Madrid CF €30,000 for a breach of the UEFA Anti-Doping Regulations. It considered that the club had failed to comply with its obligations regarding the fight against doping within the meaning of Article 6 of the UEFA Anti-Doping Regulations (hereinafter "the Anti-Doping Regulations") and Appendix E thereof.

In accordance with Article 17 of the UEFA Disciplinary Regulations (DR), it took account, when deciding on the size of the fine, of (i) the nonchalance demonstrated by the club as regards its obligation to provide whereabouts information, (ii) the significance of the provision infringed by the club in terms of UEFA's fight against doping and (iii) the fact that this was the second time that the club had failed to comply with its obligations.

The decision of 19 July 2012 was communicated to the parties on 10 August 2012.

C.

On 13 August 2012, Real Madrid CF declared its intention to appeal against the decision of 19 July 2012.

On 21 August 2012, it submitted grounds for appeal. Its conclusions were as follows:

The first alleged non-compliance should be declared null and void.

In the event that the first non-compliance is not declared null and void, the second non-compliance cannot be regarded as recidivism since no sanction was imposed at the time of the first offence.

The second non-compliance should also be declared null and void. In the alternative, the fine should be reduced to €2,000.

The appellant contested the first breach of the whereabouts requirements in February 2011. (In reality, the breach occurred on 28 January 2011.) It claimed, in this regard, that its right to be heard had been infringed. As a result, it asserted that the alleged first infringement should be ruled null and void.

The appellant contested the second non-compliance on the basis that the player Pepe Ferreira had arrived at the training ground at 12.30 on the day of the control (i.e. 29 March 2012).

The appellant also rejected the claim that it had been nonchalant in its management of whereabouts information and denied any recidivism in that respect.

Finally, the appellant claimed that the principle of proportionality had been infringed as regards the sanction imposed.

D.

On 18 October 2012, UEFA, through a disciplinary inspector, submitted its reply to the appeal. It concluded that the appeal should be dismissed and the decision of the Control and Disciplinary Body upheld, with the costs borne by the appellant.

E.

The ad hoc chairman opened the hearing. He noted the presence of the parties.

Real Madrid CF were represented by Alvaro García-Alamán de la Calle. UEFA was represented by disciplinary inspector Jean-Samuel Leuba.

The ad hoc chairman informed the parties of the composition of the Appeals Body, of the procedure that he proposed to follow, and that the hearing would be recorded in order to ensure that all evidence was captured (see Articles 26 and 31(2) and (5) DR).

The parties indicated their consent and did not require any other information.

Dr José Antonio Casajus, a UEFA doping control officer, was heard. He is a professor at the University of Zaragoza and a medical doctor. He carried out the two controls at issue on 28 January 2011 and 29 March 2012. He confirmed the facts reported regarding those two controls, particularly (i) the fact that the player Xabier Alonso Olano was not present at the training session on 28 January 2011 and his absence had not been reported in advance, and (ii) the fact that on 29

March 2012 it was not until he arrived on the premises that he was informed that the player Pepe had been granted leave. He indicated that the player nevertheless arrived after the training session, at 12.30, but that the control had by then already been carried out.

With no other evidence requested, the parties were given the floor to plead, reply and rejoinder.

The arguments set out by the parties in support of their conclusions – both written and oral – are detailed in the legal considerations below insofar as they are relevant to the resolution of this dispute.

With the oral arguments concluded, the Appeals Body began its deliberations. The following was established.

In law:

1.

The Appeals Body is competent to hear an appeal against a decision by the Control and Disciplinary Body under Article 48 DR.

The appeal was lodged within the prescribed deadline and in the required form. Grounds for appeal were submitted, and the appeal fee was paid within the relevant deadline. Consequently, the appeal is admissible under Articles 46 *bis*, 49, 50, 52 and 53 DR.

2.

a) Doping is a constant preoccupation of international sports bodies and national governments. The fundamental aims of anti-doping controls are to uphold and preserve the ethics of sport, to safeguard the physical health and mental integrity of football players, and to ensure that all competitors have an equal chance. Doping controls were introduced to ensure that the results of matches in UEFA's competitions are a fair reflection of the strength of the contenders (see the preamble to the Anti-Doping Regulations).

b) Under Article 5 of the Anti-Doping Regulations, 2011 edition – which is applicable to this case pursuant to Article 23.07 of the 2011 edition and Article 23.07 of the 2012 edition – the UEFA administration, through its anti-doping unit, deals, among other things, with the planning and organisation of in-competition and out-of-competition controls. No advance notice is given of such controls. The unit may also order target testing to be conducted (see Article 5.01).

Article 6 of the Anti-Doping Regulations sets out the obligations that national associations, clubs and players must comply with.

Under Article 6.06 of the Anti-Doping Regulations, players from national associations and clubs participating in UEFA competitions must provide whereabouts information at UEFA's request. The ultimate responsibility for providing whereabouts information rests with each player. UEFA issues

a circular in due course to notify national associations and clubs participating in UEFA competitions which players form part of the UEFA out-of-competition testing pool. Teams and/or players in the UEFA out-of-competition testing pool are required to provide up-to-date whereabouts information and, in the case of teams, an up-to-date list of players if requested. Full details of whereabouts information requirements are given in Appendix E: Whereabouts rules.

Under paragraph 4 of Appendix E of the Anti-Doping Regulations, teams and/or players remain in the UEFA testing pool and continue to be required to provide up-to-date whereabouts information to UEFA until they have been informed otherwise by UEFA.

Under paragraph 9 of Appendix E, all teams and/or players in the UEFA testing pool must send their whereabouts information to UEFA on forms provided by UEFA, specifying where the teams and/or players will be on a daily basis and when they will be training and competing.

Teams and/or players must be present and available for testing at the times and locations indicated in the whereabouts information provided to UEFA (see paragraph 10).

Should a team's and/or player's plans change from those originally submitted in their whereabouts information, the team and/or player must immediately send updates of all information required on the form so that it remains accurate at all times (see paragraph 11).

Teams and/or players must send whereabouts information and updates by fax to UEFA using the confidential number +41 22 990 31 31. They may also provide whereabouts information and updates by email to anti-doping@uefa.ch (see paragraph 14).

c) The relevant procedure and the consequences of breaches of whereabouts requirements are set out in paragraphs 15 to 19 of Appendix E.

The unannounced absence of a player from a doping control is one of the four categories of non-compliance with whereabouts requirements (see paragraph 15(b)).

Under paragraph 16 of Appendix E, there are two parallel systems of non-compliance: team non-compliance and player non-compliance. Teams are considered to have committed a non-compliance if they submit late, incomplete or inaccurate team whereabouts, or if one or more of their players is absent without advance notice from a doping control.

Under paragraph 17 of Appendix E, UEFA notifies teams and/or players of any non-compliance they have committed and explains the consequences.

It should be noted, here, that a first non-compliance by a team or a player results in UEFA sending a warning letter to the team or player (see paragraph 17(a)), and all subsequent non-compliances

are referred to the UEFA Control and Disciplinary Body, which will take a decision in accordance with the UEFA Disciplinary Regulations (see paragraph 17(b)).

3.

a) In this case, UEFA's anti-doping unit, in a letter dated 8 September 2010, informed each club participating in the 2010/11 UEFA Champions League of its obligation to provide weekly whereabouts information for the purposes of out-of-competition controls, with information to be provided by 12.00CET each Friday for the following week.

Real Madrid CF do not deny having received that instruction.

On 24 February 2011, Real Madrid CF received an initial warning from UEFA's anti-doping unit entitled *"Inaccurate whereabouts (unannounced absence of players, Xabier Alonso Olano and Marcelo Vieira Da Silva Junior from training on 28.01.2011)"*.

That contained the following:

"As the player Marcelo Vieira Da Silva Junior reached the training ground when drawn for testing, the UEFA Anti-Doping Panel has decided not to take his absence into account. However, after a review, the UEFA Anti-Doping Panel informs you that this non-compliance is your club's first failure and it will remain valid for five years from the time it was committed."

In the event of a second failure within a rolling five-year period, the case will be forwarded to the Disciplinary bodies and your club will be submitted to target testing in and out-of-competition. [...] Furthermore, we remain at your disposal should you require any additional information."

Thus, contrary to what the appellant appears to assert, Real Madrid CF were given an initial warning, and the club did not contest that warning. It is clear that UEFA followed the procedure laid down in paragraph 17(a) of Appendix E.

That first non-compliance, which was committed on 28 January 2011, expires after five years, pursuant to paragraph 18 of Appendix E.

b) On 21 March 2012, UEFA received from Real Madrid CF whereabouts information for the week of 26 March to 1 April 2012. On the basis of the information contained therein, UEFA conducted an out-of-competition control at a training session on 29 March 2012 between 10.30 and 12.30. The player Pepe, who was subject to the obligation to provide whereabouts information, was not present. He had been granted leave by his club, which had not immediately informed UEFA. It is clear, therefore, that there was a breach of the whereabouts requirements. The fact that the player arrived on the premises at the end of the training session does not alter the assessment that the player was not present and available for testing at the time indicated by the club and no changes to that information had been communicated to UEFA.

c) In the light of the foregoing, following an examination of the case file, and taking account of the statements made by the doping control officer and the explanations provided by the appellant club, there is no doubt, in the eyes of the Appeals Body, that Real Madrid CF were in breach of rules relating to doping, specifically the obligation to provide information within the meaning of Article 6.06 of the UEFA Anti-Doping Regulations. As this was the second non-compliance in less than five years, it was necessary to refer the matter to the Control and Disciplinary Body for a decision, pursuant to paragraph 17(b) of Appendix E.

The first instance body was therefore right to sanction the club under paragraph 10 of Appendix E and Article 12 of the Disciplinary Regulations.

4.

a) Under Article 8 DR, infringements of the regulations, decisions and directives of UEFA are punishable by means of disciplinary measures.

Under Article 17(1) DR, the disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the offence, taking account of aggravating and/or mitigating circumstances. If the party has committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly (see Article 17(4) DR).

The sanctions provided for with regard to clubs are listed in Article 14(1) DR. A fine may not be less than €100 or more than €1,000,000 (see Article 14(2) DR). Thus, the disciplinary body has considerable discretion in this respect. It must, however, bear in mind that recidivism counts as an aggravating circumstance (see Article 18(2) DR). Under Article 18(1) DR, recidivism occurs if disciplinary measures have to be imposed again within five years. The competent authority must, above all, also respect the principles of ordinary law, which are applicable also to disciplinary law governing sport. Thus, it falls to that authority to take account of the specific circumstances of the case and the seriousness of the infringement. It must also respect the principles of legality, equal treatment and proportionality. Finally, it may not exceed or abuse its powers of discretion.

b) Out-of-competition controls are an essential preventive tool in the fight against doping. For them to function correctly, total cooperation is required on the part of clubs and players.

In this case, Real Madrid CF failed on two occasions – on 28 January 2011 and 21 March 2012 – to comply with their whereabouts requirements. They were given an initial warning on 24 February 2011, but did not heed it, as 13 months later they again infringed the relevant rules. Moreover, the club had already been fined CHF 10,000 on 11 January 2008 for the infringement of anti-doping rules. This appears to be a recurrent problem, and the club needs to take all necessary steps to improve the situation. Otherwise, heavier sanctions will be imposed.

c) The Appeals Body notes that the respondent authority correctly interpreted the provisions applicable to this case. It took appropriate account of all the facts of the case. The repeated failure

to comply with the rules on players' whereabouts information deserves to be punished. Given the previous conduct of the club and the significant revenue that it achieved as a result of its participation in the 2011/12 UEFA Champions League (more than €22,000,000, not including the 50% of the "market pool"), the size of the fine could even appear derisory.

Consequently, the decision of the Control and Disciplinary Body of 19 July 2012 should be upheld and the appeal dismissed.

5.

Under Article 63 DR, the costs of the proceedings, which include all the expenses of the Appeals Body, are shared among the parties at fair discretion in accordance with the outcome of the proceedings.

Given the outcome of the appeal, all of the costs should be borne by the appellant, whose conclusions have been rejected in their entirety. The Royal Spanish Football Federation is jointly and severally liable for the fine and the procedural costs in accordance with Article 73 DR.

Decision of 30 November 2012

Kevin Sammut

(Match fixing)

Circumstances of the case:

The public prosecutor's office and police in Bochum (Germany) opened a vast investigation into international football-related betting fraud. UEFA, through its disciplinary services, contributed to this investigation by providing the German criminal authorities with all the information that it had gathered itself. After irregularities were reported in the Maltese press, the Malta Football Association opened a disciplinary procedure. UEFA did likewise. On 27 March 2012, the head of UEFA disciplinary services, Pierre Cornu, and UEFA disciplinary inspector Karl Dhont, accompanied by Björn Vassallo and Franz Tabone, the Malta Football Association's CEO and integrity officer respectively, interviewed Marijo Cvrtak, who was assisted by his lawyer. A number of Maltese national team players, including Kevin Sammut, Stephen Wellman and Kenneth Scicluna, were also questioned.

Legal framework:

Art. 5 DR (ed. 2012) *Principles of conduct*; Art. 21 DR (ed. 2012) *Burden of proof*; Art. 17 (ed. 2012) *Aggravating circumstances*

Decision:

CDB:

The CDB suspended the player Kevin Sammut from all football-related activities for ten years and said that FIFA would be asked to extend the ban so as to give it worldwide effect.

Appeals Body:

UEFA's appeal is partially admitted and the player Kevin Sammut is banned from all football-related activities for life.

Chairman: Pedro Tomás, Spain,

Members: Michael Maessen, Netherlands
Björn Ahlberg, Sweden
Olga Zhukovska, Ukraine
Michel Wuilleret, Switzerland

In fact:

A.

The public prosecutor's office and police in Bochum (Germany) opened a vast investigation into international football-related betting fraud. UEFA, through its disciplinary services, contributed to this investigation by providing the German criminal authorities with all the information that it had gathered itself.

Telephone conversations tapped by the German investigators revealed that Ante Sapina and Marijo Cvrtak, members of an international criminal gang, apparently with branches all over the world, influenced or tried to influence the course of numerous domestic championship as well as international competition matches, including UEFA matches.

During the numerous interviews conducted by the German police, Ante Sapina and Marijo Cvrtak explained, among other things, how they had fixed the UEFA EURO 2008 qualifying match between Norway and Malta (4-0) in Oslo on 2 June 2007. Ante Sapina said, in substance, that he had been approached by a certain "Amir", who said he knew four Maltese players who were willing to help fix the match. Ante Sapina had subsequently asked Marijo Cvrtak to travel to the Maltese national team's hotel in Oslo to make contact with the players concerned and finalise the details.

After irregularities were reported in the Maltese press, the Malta Football Association opened a disciplinary procedure. UEFA did likewise.

On 27 March 2012, the head of UEFA disciplinary services, Pierre Cornu, and UEFA disciplinary inspector Karl Dhont, accompanied by Björn Vassallo and Franz Tabone, the Malta Football Association's CEO and integrity officer respectively, interviewed Marijo Cvrtak, who was assisted by his lawyer.

A number of Maltese national team players, including Kevin Sammut, Stephen Wellman and Kenneth Scicluna, were also questioned.

B.

On 30 April 2012, the disciplinary inspector submitted his report to the UEFA Control and Disciplinary Body. At the latter's request, he then carried out further investigations.

On 10 August 2012, he submitted an additional report, which concluded that the players Kevin Sammut, Stephen Wellman and Kenneth Scicluna had helped to fix the match between Norway and Malta on 2 June 2007, thus violating Article 5 of the UEFA Disciplinary Regulations, 2006 edition (DR 2006). The disciplinary inspector therefore requested that the Control and Disciplinary Body suspend all three players from all football-related activities for a period to be determined, and ask FIFA to extend the punishment so as to give it worldwide effect.

C.

UEFA disciplinary services informed the players concerned that a procedure had been opened, in accordance with Articles 42 et seq. DR.

The players submitted their observations to the Control and Disciplinary Body through their legal representatives.

D.

In a decision of 17 August 2012, the Control and Disciplinary Body, having questioned the players and Marijo Cvrtak, suspended the player Kevin Sammut from all football-related activities for ten years and said that FIFA would be asked to extend the ban so as to give it worldwide effect.

However, with regard to the players Stephan Wellman and Kenneth Scicluna, the first-instance body considered that the evidence uncovered by the disciplinary inspector was insufficient to justify disciplinary measures against them.

The first-instance body found, in substance, that all of the evidence and Marijo Cvrtak's testimony were sufficient, to its "comfortable satisfaction" and "on the balance of probability", to prove that Kevin Sammut had helped to fix the result of the match in question. However, although there was a considerable amount of evidence that other players were involved, it thought it was not sufficient to establish, to its "comfortable satisfaction", that Stephen Wellman and Kenneth Scicluna had helped to fix the match.

E.

On 14 September 2012, Kevin Sammut appealed against the Control and Disciplinary Body's decision. He submitted the grounds of his appeal on 1 October 2012, concluding principally that the part of the decision of 17 August 2012 that concerned him should be lifted, and in the alternative, that the disciplinary measure imposed against him should be reduced.

F.

On 14 September 2012, UEFA, through its disciplinary inspector, also appealed against the decision of 17 August 2012. It submitted the grounds of its appeal on 2 October 2012, concluding as follows:

a) The player Kevin Sammut is banned from any football-related activity for life.

b) The players Stephen Wellman and Kenneth Scicluna are banned from any football-related activity for five years.

c) FIFA is asked to extend these bans, so as to give them a worldwide effect.

G.

At 08.30 on 30 November 2012, an hour before the session began, the Appeals Body members, in the absence of the parties, spoke to Kathleen Saliba, former girlfriend of the player Kenneth Scicluna, via tele-conference. She was told that her identity had been revealed during the preliminary investigation and that, in view of the questions that had been asked and the replies given, her anonymity could not be protected.

Kathleen Saliba then asked to be excused from giving evidence, a request that was granted by the Appeals Body.

H.

At 09.30 on 30 November 2012, the chairman of the Appeals Body opened the session.

He noted the presence of Kevin Sammut, assisted by his three lawyers, and of UEFA, represented by its disciplinary inspector. The two accused players Stephen Wellman and Kenneth Scicluna were also present, accompanied by their legal representatives.

The chairman informed the parties of the procedure to be followed (Articles 60 *et seq.* DR) and said that the debates would be recorded for the preservation of evidence (Article 31(3) DR).

He said that the Appeals Body had decided not to question Kathleen Saliba as a witness (see section G, above). Consequently, all her statements in the case file were withdrawn and neither the appellants nor the respondents could use them to support their case. The Appeals Body would also be unable to base its decision on them.

The chairman said that he had summoned Marijo Cvrtak, Ante Sapina, Björn Vassallo and Franz Tabone to appear as witnesses. The parties and their legal representatives would be able to ask them any questions they deemed relevant. He explained that Ante Sapina's lawyer would attend the questioning of his client and might advise him not to reply in order to prevent his testimony being used against him in the pending procedure following his appeal against the decision issued against him by the first-instance criminal court in Bochum.

The parties said they agreed with the proposed procedure and raised no objections.

The testimony given by the four witnesses, evidence contained in the case file and the arguments set out by the parties in support of their conclusions are set out below, in so far as they are relevant to the decision.

In law:

1.

The Appeals Body may examine the merits of an appeal against a decision of the Control and Disciplinary Body in accordance with Article 48 DR.

The appeals lodged by Kevin Sammut and UEFA were submitted by the deadline and in the form required. They are therefore admissible under Articles 49, 50, 52 and 53 DR.

The Appeals Body may therefore examine their respective merits.

2.

According to Article 2 of its Statutes, the objectives of UEFA 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 (letter b), to prevent all methods or practices which might jeopardise the regularity of matches or competitions or give rise to the abuse of football (letter e), and to ensure that the needs of the different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account (letter j).

Article 5 DR (Edition 2006) states that member associations and clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship (paragraph 1). For example, a breach of these principles is committed by anyone who engages in or attempts to engage in active or passive bribery and/or corruption (paragraph 2(a)), or who commits any other act likely to exert an improper influence on the progress and/or the result of a match (paragraph 2(j)).

3.

Kevin Sammut

3.1 Investigation and procedure before the Control and Disciplinary Body

3.1.1 Kevin Sammut claims that his right to a fair hearing was breached. He argues, in substance, that he was unable to attend the hearings organised by UEFA, that he was therefore unable to cross-examine and that, consequently, he was arbitrarily denied the opportunity to defend himself.

3.1.2 Under the terms of Article 30(3) DR 2006, the UEFA Executive Committee, the UEFA President, the UEFA Chief Executive (since 2012: the General Secretary) or the disciplinary bodies can commission disciplinary inspectors to conduct investigations. According to Article 38 DR, the disciplinary inspector investigates violations of the UEFA Statutes, regulations and decisions

(paragraph 1). He conducts his investigations by written inquiries and the examination of individuals. Other investigatory procedures can also be resorted to, such as expert opinions, close inspection and documents (paragraph 2). If he believes an offence has been committed, he refers the case to the Control and Disciplinary Body, in application of Articles 39(1), *a contrario*, and 42(1)(c) DR. The latter informs the parties that a procedure has been opened (Art. 42(1) DR).

In this first phase of the investigation, the procedure does not involve the hearing of both parties.

According to Article 42(1) DR 2006, the Control and Disciplinary Body opens a disciplinary procedure on the basis of official reports (letter a), if a protest has been lodged (letter b), for reported violations of UEFA's Statutes, regulations and decisions (letter c), or at the request of the UEFA President or the UEFA Chief Executive. The decision to instigate Control and Disciplinary Body proceedings is announced in writing to the parties concerned (Art. 42(1) DR).

Even though the parties' right to be heard during the procedure before the Control and Disciplinary Body was not expressly mentioned in the 2006 edition of the Disciplinary Regulations, the parties were invited to submit statements. This omission has since been corrected, since Article 31(4) DR (2012 edition) stipulates that "Unless specified otherwise in these regulations, the parties are entitled to submit written statements, examine the case file and order copies of the case file at their own expense before any decision is reached".

Finally, Article 45 DR states that, 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. It can summon further evidence, provided that doing so will not delay the proceedings unduly (paragraph 1). If it considers it necessary in view of the circumstances, it may exceptionally hear the parties (paragraph 2).

Therefore, contrary to the preliminary phase of the investigation by the disciplinary inspector, the procedure before the Control and Disciplinary Body gives the parties concerned the opportunity to examine the case file and submit a statement before any decision is reached.

Finally, the Appeals Body deals with appeals lodged against decisions by the Control and Disciplinary Body (Article 48 DR). In accordance with Article 57 DR, the chairman takes evidence on relevant facts (paragraph 1). A list of evidence is contained in paragraph 2, but this is not exhaustive (paragraph 3). According to Article 62 DR, the Appeals Body re-examines the case both factually and legally (paragraph 1). The appeal decision confirms, amends or lifts the contested decision (paragraph 2). If the accused is the only party to have lodged an appeal or if the disciplinary inspector appeals in favour of the accused, the punishment cannot be increased (paragraph 3). If new disciplinary offences come to light while appeal proceedings are pending, they may be judged in the course of the same proceedings.

3.1.3 The aforementioned provisions show that, if an offence is established, a disciplinary measure imposed and an appeal lodged against that disciplinary measure, the investigation is divided into three separate stages, conducted by the three Organs for the Administration of Justice (Article 21

DR 2006). Each of these organs can use any method it deems necessary to discover the truth. It goes without saying that the Control and Disciplinary Body and, if appropriate, the Appeals Body examine the facts on the basis of the different evidence presented at each stage of the investigation.

As a rule, the facts contained in the official reports are presumed to be accurate. However, if there is evidence that they do not reflect the truth, or only reflect part of it, the disciplinary body may disregard them. In other words, the Control and Disciplinary Body draws its conclusions not only on the basis of the official reports, but also on the basis of the results of the investigation conducted by either the disciplinary inspector or itself.

3.1.4 UEFA, on the basis of the results of the investigation conducted by the German public prosecutor's office, opened several disciplinary procedures regarding the fixing of UEFA matches. Some of these resulted in disciplinary measures, while others came to nothing.

In the present case, the information provided by the Bochum public prosecutor's office and the Malta Football Association prompted UEFA to open its own investigation into the UEFA EURO 2008 qualifier between Norway and Malta.

Marijo Cvrtak was interviewed on 27 March 2012. Then, on 11 April 2012, six Maltese national team players (Kevin Sammut, Kenneth Scicluna, Jamie Pace, Stephen Wellman, Roderick Briffa and Justin Haber), who had been in Oslo in June 2007, were questioned. They did not raise any objections and, in particular, did not ask to be assisted by a lawyer or refuse to testify without one present.

On 30 April 2012, the disciplinary inspector submitted a report against the players Kevin Sammut and Stephen Wellman to the Control and Disciplinary Body. The latter formally opened a disciplinary procedure against them and invited them to submit written statements. In view of the seriousness of the allegations, it decided to question the parties concerned. However, since only Stephen Wellman attended the hearing on 31 May 2012, the Control and Disciplinary Body postponed its deliberations and instructed the disciplinary inspector to conduct further investigations.

On 10 August 2012, disciplinary inspector Jean-Samuel Leuba submitted an additional report. As well as the players Kevin Sammut and Stephen Wellman, who had already been accused, he proposed that a disciplinary procedure be opened against the player Kenneth Scicluna, also for violating Article 5 DR 2006.

The Control and Disciplinary Body examined the reports of the two disciplinary inspectors, including the documents on which they were based, the written submissions of the parties and the oral testimony given by the three players, assisted by their legal representatives, at its session on 17 August 2012.

All the above facts show that, contrary to the appellant's claim, the first-instance body respected the investigative procedure set out in Article 38 DR 2006 and did not breach the appellant's right to a fair hearing. It based its decision not only on the two disciplinary inspectors' reports, but also on the results of the investigation conducted by the Bochum public prosecutor's office and on the written and oral submissions of Marijo Cvrtak and the players concerned.

3.1.5 In the light of the above, the Appeals Body considers that the appellant Kevin Sammut's complaint that his right to a fair hearing was breached during the preliminary investigation conducted by UEFA disciplinary services, and subsequently by the Control and Disciplinary Body, is totally unfounded. The evidence on which the disciplinary measure imposed by the Control and Disciplinary Body is based is therefore admissible.

3.2 Procedure before the Appeals Body

3.2.1 At today's hearing, Kevin Sammut again claimed that his right to a fair hearing had been breached, this time by the Appeals Body, which he accused of preventing him from bringing certain evidence, more specifically of deeming it unnecessary to call a witness (Ian Joseph Abdilla).

3.2.2 The European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights of 16 December 1966 (RS 0.103.2) both protect the right to bring evidence, guaranteeing anyone charged with a criminal offence the right *"to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"* (Articles 6(3)(d) ECHR and 14(3)(e) of the Covenant). This rule is designed to protect the right to a fair trial and the equality of arms between the public prosecutor and the defendant.

As guaranteed under international law and Swiss constitutional law, the right to a fair hearing entitles the parties to produce relevant evidence, and to have their offer of essential evidence accepted, or at least to comment on the outcome of such evidence, if it is likely to influence the decision. However, this right only applies to evidence on which the decision is based, which implies that the fact to be proven must be relevant, that the evidence offered must be necessary to establish that fact and that the request to produce evidence is submitted in the current form and by the deadline, if appropriate. It follows that the judge is entitled to reject the offer of certain evidence and to pre-evaluate the evidence if the fact that the parties hope to prove is not important for the solution of the case, or if the judge concludes that the evidence concerned is not crucial for the settlement of the dispute, or that it would not cause him to change his opinion. This refusal to accept evidence does not breach the right to a fair hearing unless the judge's pre-evaluation of the relevance of the evidence offered is arbitrary. These principles apply both to expert opinions and to the hearing of witnesses. A judge who refuses to accept evidence should, in principle, give reasons for that decision, in order that the party concerned may weigh it up and be in a position to dispute it (G. Piquerez, *Traité de procédure pénale suisse*, 2nd ed., revised and enlarged, 2006, p. 221 no. 337 and quoted judgments).

3.2.3 The Appeals Body deals with appeals lodged against decisions by the Control and Disciplinary Body (Article 48 DR). In accordance with Article 57 DR, the chairman takes evidence on relevant facts (paragraph 1). A list of evidence is contained in paragraph 2 and particularly includes the examination of witnesses (letter c). This list is not exhaustive (paragraph 3). The chairman decides in the preliminary proceedings on the examination of witnesses (paragraph 4). Finally, according to Article 62 DR, the Appeals Body re-examines the case both factually and legally (paragraph 1). The appeal decision confirms, amends or lifts the contested decision (paragraph 2). If the accused is the only party to have lodged an appeal or if the disciplinary inspector appeals in favour of the accused, the punishment cannot be increased (paragraph 3). If new disciplinary offences come to light while appeal proceedings are pending, they may be judged in the course of the same proceedings.

The rules and principles of ordinary law, described in paragraph 3.2.2, above, in particular the possibility for the chairman to refuse to accept certain evidence (pre-evaluation), are clearly applicable to UEFA disciplinary law.

3.2.4 In the present case, the appellant requested the hearing of Ian Joseph Abdilla, a Maltese police inspector who had participated in the Maltese authorities' investigation of the disputed match. He had interviewed all the members of the national team who had played in the match concerned, including the appellant, who had been held in police custody.

3.2.5 In accordance with Article 57(4) DR, the chairman of the Appeals Body decided in the preliminary proceedings that Kathleen Saliba, Marijo Cvrtak, Ante Sapina, Björn Vassallo and Franz Tabone should be examined as witnesses.

Before today's session began, the Appeals Body decided not to question Kathleen Saliba.

At the start of today's session, the chairman informed the parties of the identity of the four witnesses who would be appearing and whom they would be able to question. The parties raised no objections (see section H). It was not until the end of the taking of evidence, before the pleadings of the parties, that the appellant reiterated his request for the police inspector Ian Joseph Abdilla to be called as a witness.

After deliberating, the Appeals Body decided, for the following reasons, to adhere to the decision taken by its chairman under the terms of Article 57(1) and (2)(c) DR 2006 to refuse the appellant's request to call Ian Joseph Abdilla as a witness.

The Appeals Body notes that the Control and Disciplinary Body found the appellant guilty of violating Article 5 DR by helping to fix the match between Norway and Malta. It based its decision on the examination of the evidence provided by the Bochum criminal authorities, particularly the minutes of the interviews conducted by the German police, and the reports provided by the Malta Football Association and UEFA disciplinary services.

However, in its decision, the Control and Disciplinary Body does not refer to the investigation conducted by the Maltese criminal authorities. In particular, it did not base its decision on the minutes of the police interviews with players who participated in the disputed match. Incidentally, the appellant failed to demonstrate how the questioning of the police inspector Ian Joseph Abdilla would help to prove relevant facts.

Also it should be noted that the references of the appellant to the alleged obligation of the UEFA to pay expenses for travel and accommodation of witness are not correct as not supported by any applicable legislation. No legal provision places upon UEFA the burden to pay for transportation and accommodation of witnesses, as claimed by the appellant. Consequently, his involvement in the hearing is unnecessary and UEFA is therefore not obliged to pay his travel expenses, as claimed by the appellant.

In the light of the above, the argument that the appellant's right to a fair hearing has been breached by the Appeals Body is therefore unfounded.

3.3. Degree of proof

3.3.1 In the case of alleged breaches of the UEFA Statutes and its other regulations, the burden of proof is carried by UEFA's Organs for the Administration of Justice, as described in Article 21 DR.

In principle, a fact is considered established if the judge is convinced that an allegation is true. Legislation, legal opinion and case law have made exceptions to this rule on the assessment of evidence. The burden of proof may be reduced if there is a "lack of evidence" (*Beweisnot*), which may occur if, by the very nature of the case, strict proof is impossible or cannot be reasonably demanded, particularly if the facts alleged by the party that carries the burden of proof can only be established indirectly or by means of circumstantial evidence. The standard of proof required is then limited to a balance of probability (*die überwiegende Wahrscheinlichkeit*), which is subject to higher demands than simple probability (*die Glaubhaftmachung*). A balance of probability depends, from an objective point of view, on the existence of significant grounds to support the accuracy of an allegation, together with the absence of other possibilities of significant importance or that might reasonably be taken into consideration (ATF 133 III 81 rec. 4.2.2 p. 88/89 and the quoted judgments; see also ATF 135 V 39 rec. 6.1 p. 45).

Disciplinary rules in sport are inspired by these notions. For example, in relation to doping, Article 3.1 of the World Anti-Doping Code stipulates as follows:

"The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-

doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability...".

In the case of a fixed UEFA competition match concerning which the disciplinary bodies were only able to base their decision on indirect witness statements (FK Pobeda; CAS 2009/A/1920) or on telephone recordings (Oriekhov; CAS 2010/A/2172), the Court of Arbitration for Sport (CAS) essentially confirmed the charges established by the UEFA disciplinary bodies.

The CAS said that it had taken into account the nature of the conduct in question, the importance of fighting corruption and of taking into consideration the nature and restricted investigative powers of the governing bodies of sport. It also noted that it should be borne in mind that corruption is, by its very nature, hidden and that those guilty of it are careful not to leave any trace of their wrongdoing. Regarding the degree of proof, the CAS held that the disciplinary body could be convinced that an allegation was true if, on the balance of probability, the occurrence of the circumstances relied on was more probable than their non-occurrence (see aforementioned CAS 2010/A/2266, p. 17 rec. 67). Also, the CAS explained : "... Therefore, the UEFA must establish the relevant facts to the comfortable satisfaction of the Court..." (CAS 2009/A/1920).

3.3.2 In the current case, UEFA disciplinary services, the Control and Disciplinary Body and, today, the Appeals Body can base their decisions on evidence that, although not absolute, is certainly more solid than telephone recordings or indirect witness statements.

Indeed, the German criminal authorities sent to UEFA the minutes of the interviews with Ante Sapina and Marijo Cvrtak who, as we all know, were found guilty of match-fixing and given prison sentences. They admitted being involved in match-fixing on a huge scale and, in particular, fixing the UEFA EURO 2008 qualifier between Norway and Malta.

Having examined all the evidence, the Appeals Body is certain that this match was fixed. The appellant does not dispute it. However, he denies playing any part in fixing the match.

3.4 Involvement of Kevin Sammut

3.4.1 Having examined the case file and their submissions to the Bochum public prosecutor's office, to UEFA and at today's hearing, the Appeals Body notes that the testimony of Ante Sapina and Marijo Cvrtak has, essentially, remained consistent throughout. They have confirmed many times that they helped to fix the match between Norway and Malta. During the Bochum investigation, Marijo Cvrtak said that he was 99% sure that Kevin Sammut was the player he had met and spoken to in a hotel room in Oslo on the day of the match (see minutes of the interview of 20 October 2011, page 1, lines 9 to 14). When questioned by UEFA on 27 March 2012, he was shown photographs of various players. When he saw the photograph of Kevin Sammut, Marijo Cvrtak said: *"... dass soll Kevin Sammut, das ist die Person, die im Zimmer war und Name ist ihm im Gedächtnis geblieben"*.

At the Control and Disciplinary Body hearing on 17 August 2012, Kevin Sammut, Stephen Wellman and Kenneth Scicluna came face to face with Marijo Cvrtak without having been introduced to him by name. The chairman then asked the witness Cvrtak to point to the person he had met in his room in Oslo. Without hesitation, he pointed to the player Kevin Sammut (see decision of 17 August 2012, page 6, line 25).

Finally, at today's Appeals Body hearing, Marijo Cvrtak was again confronted with Kevin Sammut. He said that the player he had spoken to in a room at the hotel strongly resembled Kevin Sammut, and that he was "*fast ganz sicher*" that it was the same person.

It is true that some discrepancies have emerged, particularly in relation to whether Kevin Sammut and Marijo Cvrtak met in the player's hotel room or that of the witness. Nevertheless, as far as the essential point is concerned, i.e. the Maltese player's identity as the person with whom he finalised the details of fixing the match, Marijo Cvrtak's testimony has remained consistent.

The appellant's explanations and repeated denials do not convince the Appeals Body. From an objective point of view, he has failed to cast doubt on the statements of Ante Sapina and Marijo Cvrtak. He has not provided any explanation for the reference made to him by the latter when he was interviewed by the police and UEFA. Furthermore, it is hard to see what Marijo Cvrtak has to gain by suggesting that Kevin Sammut was the representative of the corrupt players, if that is not the case. His testimony is all the more plausible because he has consistently repeated that he could not be sure that Stephen Wellman and Kenneth Scicluna were the other players involved.

3.4.2 In conclusion, the Appeals Body considers that both Ante Sapina and Marijo Cvrtak are credible witnesses and that their statements are reliable (see sections D and H).

Therefore, having examined the minutes of interviews with Ante Sapina and Marijo Cvrtak, and having heard the witnesses and the parties, the Appeals Body considers that the evidence gathered proves that, by playing an active role in the fixing of the UEFA EURO 2008 qualifier between Norway and Malta on 2 June 2007, the appellant violated the principles of conduct that he is required to uphold under Article 5 DR 2006. The Control and Disciplinary Body was therefore right to find the appellant guilty of violating the principles of conduct set out in Article 5 DR and to punish him accordingly.

The principal conclusion of Kevin Sammut's appeal, in which he requests that the Control and Disciplinary Body's decision be lifted and, therefore, that all disciplinary measures against him be dropped, must therefore be rejected.

3.5 The disciplinary measure

3.5.1 In the alternative, Kevin Sammut concludes, without any further clarification, that the disciplinary measure imposed against him should be reduced.

UEFA, for its part, appealed against the first-instance decision because it thought the disciplinary measure imposed against Kevin Sammut was too lenient. It therefore requested that it be amended to the effect that the appellant should be banned from all football-related activities for life, with the ban to be extended by FIFA so as to give it worldwide effect.

3.5.2 According to Article 17(1) 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 offence, taking account of both aggravating and mitigating circumstances. If the party charged has committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly (paragraph 5).

An exhaustive list of the disciplinary measures that can be taken against individuals is set out in Article 54 of the UEFA Statutes. Article 15 DR 2006 contains the same list of measures, the heaviest of which is a ban on exercising any football-related activity (letter f). In other words, the disciplinary body can choose from a very wide range of possible measures. It must respect the usual principles of ordinary law. For example, it must take into account the particular circumstances of the case and the seriousness of the offence, as well as respecting the principles of legality, equal treatment and proportionality.

In ordinary law, the principle of proportionality encompasses three aspects: in order to be considered proportionate, the measure must be appropriate, necessary and demonstrate a reasonable balance between the objective pursued and the means used to achieve it (proportionality in its narrow sense). In order to respect the principle of proportionality, a judge must weigh the risk of the offender reoffending against the breach of personality rights represented by the measure. The measure must also be likely to avert the danger of reoffending.

In sports law, these principles are applicable *mutatis mutandis* when disciplinary measures need to be imposed against individuals (players, coaches, other members of the team or club, or officials).

The Appeals Body only amends the first-instance body's decision if it is clearly unlawful or excessively harsh or lenient, to the extent that discretionary powers have clearly been exceeded or abused. Its role therefore essentially consists of examining whether the Control and Disciplinary Body, when taking its decision, respected the principles of legality, equal treatment and proportionality, whether it took into account the particular circumstances of the case and the seriousness of the offence, and finally, whether it exceeded or abused its discretionary powers. On the other hand, it is not within the Appeals Body's remit to judge whether the disciplinary measure(s) imposed by the first-instance body in a particular case are suitable or not.

3.5.3 In the case at hand, the Control and Disciplinary Body rightly noted the absence of any mitigating circumstances and the seriousness of the facts. In order to prevent any repetition of this case and to re-establish the reputation of UEFA and confidence in its competitions, the Control and Disciplinary Body considered a ten-year ban from any football-related activities as appropriate, and requested FIFA to extend this decision to give it worldwide effect.

The Appeals Body agrees with the Control and Disciplinary Body's assessment of the seriousness of the offence and its consequences for sport in general and football in particular. It also agrees with the nature of the disciplinary measure imposed. However, in view of the nature and seriousness of the offences committed by Kevin Sammut, it considers the punishment too lenient.

3.5.4 Since UEFA has been confronted with cases of match-fixing in its competitions, it has consistently applied a policy of zero tolerance towards any player, member or official who is involved in such activities for the sole purpose of financial gain. Those who have contact with people involved in organised crime aimed at influencing the course of a UEFA competition in return for payment and who thus enable others to win bets illegally endanger the very essence of sport in general and football in particular. Players and spectators should be confident that matches take place in a spirit of loyalty, integrity and sportsmanship, free from all constraints except the laws of the game. If they are not, they will turn their backs on the game.

Based on the principle of zero tolerance, the disciplinary bodies have developed case law which has seen, *inter alia*, a club president and a referee banned for life. The football family would therefore find it hard to understand how a player who had played an active role as an intermediary and negotiator with criminals, particularly in relation to a match between national teams, could be treated more leniently and be allowed to return to a football-related activity after serving his punishment.

Such an outcome would be outrageous and unjust. It would give the impression that, although organised cheating for the purposes of financial gain would result in a suspension, a return to the fold would still be possible. This is not the opinion of the UEFA organs, whose policy in this area has been clearly explained by senior UEFA officials. Its disciplinary bodies must conform to this policy, unless there are mitigating circumstances, which is not the case here.

3.5.5 The appellant refers to other cases in which national disciplinary bodies were more lenient.

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 (see Nicolas Queloz/Valérie Humbert in *Commentaire Romand*, Code pénal I, Art. 1-10 CP, Roth-Moreillon [ed.], ad art. 47, no 10 p. 459 and quoted doctrine and case law; see also ATF 116 IV 292 rec. 2 p. 294).

In other words, a comparison with disciplinary measures imposed by national associations is futile. Incidentally, the appellant fails to demonstrate that the cases to which he refers, and about which he provides no further details, are similar to the present case.

In any case, Kevin Sammut cannot benefit from any mitigating circumstances. Under these conditions, there is no reason to depart from the rule under which a lifetime ban from all activities

falling under UEFA's jurisdiction should be imposed in such cases. On the other hand, it is up to FIFA to extend such a ban so as to give it worldwide effect.

3.5.6 In the light of the above, it is clear that, by banning Kevin Sammut from all football-related activities for ten years, the Control and Disciplinary Body failed to take into account all the circumstances of the case, in particular the seriousness of the violation of the principles of conduct committed by the player. Such behaviour threatens the very existence of football in so far as, in essence, a competition's integrity is indispensable.

The disciplinary measure must therefore be amended to the effect that Kevin Sammut is banned from all football-related activities **for life**.

UEFA must ask FIFA to extend the measure so as to give it worldwide effect.

4.

Stephen Wellman and Kenneth Scicluna

4.1. **Stephen Wellman**

UEFA also appealed against the part of the Control and Disciplinary Body's decision concerning the player Stephen Wellman. It argues, in substance, that the information obtained by the Malta Football Association and the testimony of the player's former girlfriend, Kathleen Saliba, implicate him.

The reasons for the Appeals Body's decision to withdraw all Kathleen Saliba's statements from the case file are explained above. Her testimony cannot therefore be relied on (see section H).

Björn Vassallo and Franz Tabore, CEO and integrity officer of the Malta Football Association respectively, were questioned by the Appeals Body. It should be noted that their replies to the questions put to them and the explanations that they provided were vague. Their sources are anonymous and their statements were not written down.

In the light of the above, the Appeals Body considers that the Malta Football Association's suspicions are not sufficient to establish Stephen Wellman's involvement in the fixing of the match between Norway and Malta on 2 June 2007.

UEFA's conclusion that Stephen Wellman should be banned from all football-related activities for five years is therefore rejected.

4.2 Kenneth Scicluna

UEFA also appealed against the part of the Control and Disciplinary Body's decision concerning the player Kenneth Scicluna. It claims that the player was repeatedly and consistently implicated during the Malta Football Association's investigation.

The reasons for which the Appeals Body did not consider the Malta Football Association's suspicions sufficient to establish the player Stephen Wellman's involvement also apply to Kenneth Scicluna.

Furthermore, even if Kenneth Scicluna is the only player in the Maltese national team to wear glasses, that is not enough to prove that he was one of the three or four people seen by Marijo Cvrtak in the lift (see, in particular, the interview of 27 March 2012, pages 5 and 24). When faced with Kenneth Scicluna at the Control and Disciplinary Body hearing on 17 August 2012, and at today's Appeals Body hearing, Marijo Cvrtak did not point him out as one of the players he saw in the lift.

Finally, Roderick Briffa's submission on 11 April 2012 that Kenneth Scicluna had, on one occasion, received a telephone call and had left the room he was sharing with him, "probably" to go to another bedroom, proves nothing. There is nothing unusual about receiving a telephone call and wanting to be alone and, in his report on the interview with the player Roderick Briffa, the disciplinary inspector does not state when this call was received.

The Appeals Body considers the above evidence insufficient to establish Kenneth Scicluna's involvement in the fixing of the match between Norway and Malta on 2 June 2007.

UEFA's conclusion that Kenneth Scicluna should be banned from all football-related activities for five years is therefore rejected.

5.

For all the above reasons, the Appeals Body concludes that Kevin Sammut's appeal should be rejected and UEFA's appeal partially admitted.

The costs of proceedings include all expenses of the Appeals Body. They are to be shared among the parties at fair discretion based on the outcome of the proceedings (Article 63 DR).

In view of the outcome of the two appeals, the costs of the present procedure, which amount to €15,000, are divided as follows: one-third (€5,000) is charged to Kevin Sammut and two-thirds (€10,000) to UEFA.

Decision of 3 December 2012

SCC Napoli

(Stadium inspection. Throwing of missiles and fireworks. Blocked passageways)

Circumstances of the case:

Following the UEFA Europa League match between SSC Napoli and AIK Solna on 20 September 2012, the report of the match delegate pointed out that no obvious changes have been noted regarding the problem with the stands and the soundness of their construction in particular. In addition, the report of the security officer at the UEFA Europa League match between SSC Napoli and AIK Solna on 20 September 2012, "the safety operation in this stadium does not meet the high standards expected of a top European club. Stadium is in a poor state of repair and in my opinion is unsafe". Finally, the official reports on this match also showed that a huge number of pyrotechnic devices were lit in the stands, that at the final whistle, around 30 supporters went over to the sector reserved for away supporters and threw various projectiles towards them, that home supporters brought bags into the north stand and were not searched at all and that a lack of stewards in the north and south stands led home supporters obstructing public passageways.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 11 (2) DR (ed. 2012) *Lack of order or discipline*; Art. 13.05 UEFA Europa League 2012/2013 Regulations *Stadium inspections at any time*; Art. 8 UEFA Safety and Security Regulations

Decision:

The CDB's decision is upheld and, consequently, SCC Napoli is ordered to play one UEFA competition match behind closed doors and fined €150,000.

Chairman: Pedro Tomás, Spain

Members: Goetz Eilers, Germany
Ivaylo IVKOV, Bulgaria

In fact

A.

On 23 July 2012 the UEFA stadium inspector reported several concerns about the condition of San Paolo Stadium. In particular, the inspector pointed out that the stands were in very poor state and that in many places the concrete coating was disintegrating and therefore creating a risk of pieces falling down.

On 16 August 2012, the UEFA stadium manager wrote to the Italian Football Federation (FIGC), informing it of the results of the stadium inspection and the problems that needed to be rectified. The stadium was classified in category 4 (in the sense of Article 1(1) of the UEFA Stadium Infrastructure Regulations), on condition that all the improvements mentioned in the aforementioned document were actually carried out.

According to the report of the match delegate at the UEFA Europa League match between SSC Napoli and AIK Solna on 20 September 2012, no obvious changes have been noted regarding the problem with the stands and the soundness of their construction in particular.

According to the report of the security officer at the UEFA Europa League match between SSC Napoli and AIK Solna on 20 September 2012, "the safety operation in this stadium does not meet the high standards expected of a top European club. Stadium is in a poor state of repair and in my opinion is unsafe"

Furthermore, the official reports on this match also showed that a huge number of pyrotechnic devices were lit in the stands, that at the final whistle, around 30 supporters went over to the sector reserved for away supporters and threw various projectiles towards them, that home supporters brought bags into the north stand and were not searched at all and that a lack of stewards in the north and south stands led home supporters obstructing public passageways.

B.

On 22 August 2012, SSC Napoli was informed that disciplinary proceedings had been instigated concerning organizational failings during the match, in particular, the blocking of stairs and passageways in the north and south stands and the setting off of fireworks and the throwing of projectiles.

C.

On 11 October 2012, SSC Napoli lodged its statements with regard to the disciplinary proceedings.

Regarding the blocking of stairs and passageways in the North and South Stands, SSC Napoli argued that the stadium evacuation plan was accepted by the police, that no incidents happened, despite of those remarked by the delegate's report which in any case weren't serious in nature and that no contact between opposite fans was established.

Regarding the setting off of fireworks and the throwing of projectiles, the club did not dispute this infringement, but noted the efforts adopted by the club in order to avoid these situations. Finally, the club argued that its will to satisfy UEFA's requests should be considered at least as a mitigating circumstance.

D.

On 12 October 2012, UEFA, through its disciplinary inspector, submitted a report concerning violation of stadium security provisions, organisational failings and supporters misconduct.

E.

On 21 October 2012, SSC Napoli lodged its statements with regard to the disciplinary proceedings opened on 16 October 2012.

Regarding the report of the disciplinary inspector, the club argued that it should be considered out of time in order to open a disciplinary proceeding.

Regarding the violation of stadium security provisions, the club argues that it has respected and trusted, as always, the instruction of the competent authorities which gave their consent to play the match after a valuation of the condition of the structure.

With regard to the other incidents, the club repeats the aforementioned grounds submitted on its statements of 11 October 2012.

F.

On 26 October 2012, following the UEFA Europa League match between SSC Napoli and AIK Solna on 20 September 2012, the UEFA Control and Disciplinary Body prohibited SSC Napoli from selling tickets for sectors 3,4,5,8,9,10,11,12, 17, 18,23 and 24 and the sector for disabled spectators at the north end of the main stand, of the San Paolo stadium for its next UEFA Europa League match against FC Dnipro Dnipropetrovsk on 8 November 2012, unless it can provide, before 6 November 2012, a report from an independent construction company, confirming, that the necessary repair work has been carried out and that the aforementioned stands meet all relevant spectator safety standards. If such report is submitted, the ban on ticket sales could be suspended for a probationary period of five years.

G.

On 6 November 2012, the chairman of the Control and Disciplinary Body, on the basis of the report submitted by SSCN Napoli, suspended the ban on ticket sales for a probationary period of five years, and uphold both the order to play one UEFA competition match behind closed doors and the fine of 150.000€.

H.

On 6 November 2012, SSC Napoli officially announced its intention to appeal against the decision of 26 October 2012. They also requested staying effect.

I.

On 7 November 2012, the chairman of the Appeals Body informed the appellant that the request for staying effect is rejected since the decision of the Control and Disciplinary Body would not cause irreparable damage, as the club is allowed to sell tickets and will play in front of its supporters throughout the probationary period.

J.

On 12 November 2012, SSC Napoli lodged the grounds for its appeal. In substance, the appellant argues that the disciplinary inspector's report of 12 October 2012 should not be admissible for two reasons, the first relating to the disciplinary inspector's lack of power of attorney and the second to the date on which his report was submitted.

In the alternative, the appellant sets out a number of arguments on the merits. Regarding stadium non-compliance with UEFA demands and Safety and Security Regulations, SSC Napoli argues that the sanction is groundless because the bona fide of the club is clear, as well as the will to satisfy the request of UEFA. Regarding the organization of the match and the conduct of supporters, Napoli asks the Appeals Body to value all the circumstances, especially the attempt of the club to correctly reach a high level of control and organization investing in human resource, in technical tools and cooperation with Public Force.

In conclusion, SCC Napoli ask the decision should be revoked and, in the first alternative, that the ban on tickets sales and the dispute of match behind closed doors should be revoked and that the fine should be revoked or reduced in equitable way, in the second alternative, that the dispute of match behind closed doors should be revoked, that the fine should be revoked or reduced in equitable manner and that the probationary period of the ban on ticket sales should be reduced, and, finally, in the third alternative, that the fine should be revoked or reduced in equitable manner and that the probationary period of the aforementioned sanctions should be reduced.

K.

On 21 November 2012, UEFA, through its disciplinary inspector, submitted its reply to the appeal. It concluded that the appeal should be rejected and the decision confirmed, with the costs to be charged to the appellant.

L.

At today's session, SSC Napoli was represented by Luigi Carlutti.

UEFA was represented by its disciplinary inspector, Jean-Samuel Leuba.

The chairman informed the parties of the procedure to be followed and confirmed the composition of the Appeals Body. He added that the proceedings were being recorded, in accordance with Article 31(3) DR.

SSC Napoli objected that the disciplinary inspector didn't proof his authority by means of a signed power of attorney. The Appeals Body agreed to evaluate this issue on the merits of the case.

Furthermore, SSC Napoli pointed out that it didn't receive the disciplinary inspector's reply to the appeal. Consequently, the Appeals Body allowed SSC Napoli sufficient time to read the inspector's reply.

The parties said they were in agreement with the procedure to be followed and raised no further objections.

After the pause, the parties were then given the floor to plead, reply and rejoinder.

Once the hearing was closed, the chairman asked the parties to leave the chamber so the Appeals Body could deliberate.

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

The following was established.

In law

1.

The Appeals Body's jurisdiction to hear both the appeal against a Control and Disciplinary Body decision is established under Articles 48 and 54 DR.

The appeal was lodged by SSC Napoli before the deadline and in the required form. It is reasoned and the appeals fee was paid before the deadline. It is therefore admissible under Articles 49, 50, 52 and 53 DR.

The Appeals Body may therefore examine them on their respective merits.

2.

According to Article 52 of the UEFA Statutes and Article 8 DR, 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.

According to paragraph 13.05 of the Regulations of the UEFA Europa League 2012/2013, the UEFA administration may carry out stadium inspections at any time to check whether the required structural criteria are met. Cases of non-conformity with an applicable structural criterion may be referred to the UEFA Control and Disciplinary Body, which decides on appropriate in accordance with the UEFA Disciplinary Regulations (DR).

Furthermore, the Appeals Body deemed it essential to recall the objective of Article 6 of the DR, as set forth in various precedents (DAB XVIII 1996 Standard de Liège; DAB XI 1998 Wisla Krakow; DAB IX 2001 Paris Saint-Germain). According to this clause, the responsibility of associations and clubs does not depend at all on their fault. As such, this responsibility is in no way identical with the criminal law model. On the contrary, clubs and associations are responsible for incidents of any kind that occur in the stadium before, during or after the match, irrespective of their own fault.

In the present case, the Appeals Body has no reason to question the Control and Disciplinary Body's legal classification of the facts.

The present case was examined by the Appeals Body in the light of these principles and provisions.

3.

a) Regarding the procedural issues argued by the appellant, SSC Napoli, firstly, as was the case before the Control and Disciplinary Bod, contests the failure of the disciplinary inspector to submit a power of attorney.

The appellant misinterprets Article 30 of the DR which is a general rule governing the appointment of disciplinary inspectors for a five year terms and expressly provides them to open disciplinary investigations and lodge appeals and cross-appeals. It shows that contrary to SSC Napoli's argument, disciplinary inspectors do not need power of attorney in order to act. According to Article 34 UEFA Statutes they are appointed by the Executive Committee, representing UEFA in proceedings before the Control and Disciplinary Body and Appeals Body.

Moreover, the established and systematic practice of the UEFA disciplinary bodies shows that disciplinary inspectors were never required to submit a power of attorney.

This complaint is unfounded and must be rejected.

b) Secondly, the appellant claims that the report of the disciplinary inspector was submitted out of time in order to open a disciplinary proceeding regarding the conduct of supporters and other alleged violations related to the Europa League's match at hand.

It has to be highlighted that the disciplinary inspector did not open a disciplinary procedure. Different disciplinary proceedings had been opened against the club by means of a letter sent by the UEFA Administration to the appellant on 2 October 2012 and on 16 October 2012. In particular, the disciplinary proceeding in which reference was made to Article 8 DR and Articles 13.05 of the Competition Regulations had been opened on 16 October 2012 in accordance with the statute of limitations provided in Article 7 DR.

This complaint is unfounded and must be rejected.

c) Finally, according to Article 42 DR, proceedings are opened when the parties are notified in writing and in particular, among others, on the basis of official reports. It shows that the Control and Disciplinary Body is perfectly entitled to rule on disciplinary offences even in the absence of a disciplinary inspector's report. In fact, this procedure had been opened by means of a letters sent to the appellant on 2 and 16 October 2012.

In this sense, the first instance decision cannot be called into question and the argument must be rejected.

4.

a) According to Art. 11 of the DR, the disciplinary measures provided for in the DR may be taken against member associations or clubs, notably for lack of order and discipline inside or in the immediate vicinity of the stadium.

The Appeals Body complies with its constant practice by considering the reports and declarations submitted by the match officials trustworthy and veracious, unless there was conclusive evidence at hand that would render the said documents to be in contradiction with the reality.

b) Regarding the problems presented by the San Paolo stadium, it should be noticed that, Article 13.05 of the Regulations of the UEFA Europa League 2012/2013 authorises stadium inspections at any time. According to the result of these inspections, the approval obtained by the stadium may be called into question.

In the case in hand, the authorisation obtained by SSC Napoli's stadium was conditional. The use of the stadium was approved, among others, on condition that the required work was carried out. This was regrettably not the case since the work had not been completed when the Control and Disciplinary Body issued its decision.

In addition, as already stated by the Control and Disciplinary Body, a certificate issued by the Naples public authorities declaring the stadium safe does not prevent UEFA from taking additional measures to enforce its own regulations when it appears necessary to protect supporters at matches played under its auspices.

Furthermore, at the time of the first instance decision the offences had been already committed. As mentioned above, the appellant did not to comply with the directives and instructions issued by UEFA concerning, among others, the required work at the stadium.

Consequently, Article 8 DR and paragraph 13.05 of the Regulations of the UEFA Europa League 2012/2013 had been violated. SSC Napoli was therefore rightly disciplinary punished by the Control and Disciplinary Body on its decision issued 26 October 2012.

The arguments put forward by the appellant are therefore unfounded and must be rejected.

c) Regarding the improper conduct of supporters, the appellant disputes the seriousness of the incident that occurred at the end of the match.

According to Article 6 (1) DR, clubs are responsible for the conduct of their officials, members and supporters. In addition, Article 11 (2) DR disposes that disciplinary measures may be taken against member association or clubs in case of inappropriate behaviour on the part of their supporters, including by that the throwing of objects and the lightning of fireworks or any other objects.

On this regard, a situation involving more than 70 pyrotechnic devices and the throwing of objects is serious enough to be considered as organisational failing in accordance with the DR.

Taking all the circumstances into account and in view of the aforementioned regulatory provisions, the Appeals Body finds that SSC Napoli failed to meet its obligations with regard to security. Consequently, the Control and Disciplinary Body was therefore right to punish it in accordance with Article 6 (1) and 11(2) DR.

d) Regarding the organization of the match, SSC Napoli argues that the organization, with the cooperation of the public and competent authorities was adequate and showed an important effort made by the club involving all source available to prevent disciplinary violations.

According to Article 8 of the UEFA Safety and Security Regulations, in cooperation with the public authorities, the match organiser must ensure that there are sufficient police officers, assisted where appropriate by stewards, to counter any possible outbreaks of violence or public disorder and to ensure the safety of the general public and the match participants within the stadium, in its surrounding environs and along the routes leading to and from the stadium.

The Appeals Body considers, as did so the Control and Disciplinary Body, that the incidents reported by the security officer involving the admission of supporters without being checked beforehand and the large number pyrotechnic devices, were clearly a consequence of organisational shortcomings and inappropriate measures. It is irrelevant whether the number of stewards deployed was high or the planning was approved at preparatory meetings with the public authorities. The offence was committed and therefore rightfully punished by the Control and Disciplinary Body.

The argument is unfounded and rejected.

5.

For all the above reasons, it is clear that, by imposing the disputed disciplinary measures on 26 October 2012, the Control and Disciplinary Body took into account all the circumstances of the case, in particular the seriousness, dangerousness and number of incidents caused by SCC Napoli supporters, on the one hand, and the club's serious failings, as the home club, in terms of ensuring order and security on the other. The disciplinary measures are suitable and proportionate.

The Control and Disciplinary Body neither abused nor exceeded its discretionary powers and its decision respects the principles of legality and proportionality.

The decision issued on 26 October 2012, in the sense of the decision issued by the Control and Disciplinary Body on 6 November 2012, should therefore be confirmed and the appeal rejected.

6.

The costs of the proceedings include all expenses of the Appeals Body. They are to be shared among the parties at fair discretion based on the outcome of the proceedings (Art. 63 DR).

In this case, it is appropriate to charge all the costs of the proceedings, which amount to € 7.000, to the appellant, whose appeal is rejected.

The Italian Football Federation (FIGC) is jointly and severally liable for the payment of the costs of the proceedings (Art. 73 DR).

Decision of 3 December 2012

Legia Warszawa

(Throwing of missiles and fireworks. Blocked passageways)

Circumstances of the case:

During UEFA Europa League match between Legia Warszawa and Rosenborg BK on 23 August, projectiles, mainly paper rolls, were thrown onto the pitch from the North stand before and during the match, delaying the start of the game and stopping it on several occasions (42nd minute, 54th minute and 63rd minute). Furthermore, fireworks were ignited before and during the match (51st minute, 52nd minute and 57th minute). In addition, a large banner obstructed all eight pitch-perimeter emergency gates in the North Stand. Finally, stairways were obstructed in the North Stand by standing supporters.

Legal framework:

Art. 11 (2) DR (ed. 2012) *Lack of order or discipline*; Art. 38 UEFA Safety and Security Regulations *Free public passageways, corridors, stairs, doors, gates and emergency exits*

Decision:

The CDB's decision is upheld and, consequently, the club is fined €75,000.

Chairman: Pedro Tomás, Spain

Members: Goetz Eilers, Germany
Ivaylo Ivkov, Bulgaria

In fact

A.

According to the delegate's report and the security officer's report at the UEFA Europa League match between Legia Warszawa and Rosenborg BK on 23 August, projectiles, mainly paper rolls, were thrown onto the pitch from the North stand before and during the match, delaying the start of the game and stopping it on several occasions (42nd minute, 54th minute and 63rd minute). Furthermore, fireworks were ignited before and during the match (51st minute, 52nd minute and 57th minute). In addition, a large banner obstructed all eight pitch-perimeter emergency gates in the North Stand. Finally, stairways were obstructed in the North Stand by standing supporters.

B.

On 29 August 2012, Legia Warszawa was informed that disciplinary proceedings had been instigated concerning, on the one hand, the setting off of fireworks and the throwing of projectiles, and, on the other hand, organisational failings, in particular, the blocking of stairs and passageways in the north stand and the covering of emergency exit gates with banners.

C.

By decision rendered at its meeting on 20 September 2012, on the basis of the UEFA official reports, the UEFA Control and Disciplinary Body fined Legia Warszawa with 75.000€.

The Control and Disciplinary Body found, in substance, that the fact that projectiles were thrown before and during the match delaying the start of the game and stopping it on several occasions constituted an offense in accordance to Article 6 (1) DR and Article 11 (2) DR. Furthermore, the ignition of fireworks in the North Stand and the locking of stairs and passageways by the home supporters constituted a violation of the Article 38 of the UEFA Safety and Security Regulations. It took into consideration the number of incidents and their seriousness and deemed a fine of 75.000€ as the appropriate disciplinary measure.

D.

On 26 October 2012, Legia Warszawa officially announced its intention to appeal against the decision of 20 September 2012. They also requested staying effect.

On 6 November 2012, Legia Warszawa lodged grounds for its appeal. In substance, the appellant argues that the lack of fault of the club, due to its constant efforts to undertake efficient security

measures, excludes its liability in the present case. Moreover, Legia Warszawa questions the applicability of the strict liability principle embodied in the DR, which in its view is unjust to the club. In the alternative, the appellant insists that its diligence shall at least be considered as a mitigating circumstance.

In addition, Legia Warszawa requested to be exempted from participating in the hearing in accordance with Article 56 (2) DR.

E.

On 7 November 2012, the chairman of the Appeals Body informed the appellant that the request for staying effect is rejected since the fine imposed by the Control and Disciplinary Body would not cause irreparable damage, as the club is entitled to receive 300.000€ due to its participation in the UEFA Europaleague qualifying and play-off rounds.

Moreover, the Head of Disciplinary and Integrity Unit, on behalf of the chairman of the Appeals Body, informed the club that the Appeals Body has decided to accept the request and to proceed without holding the hearing.

F.

On 11 November 2012, UEFA, through its disciplinary inspector, submitted its reply to the appeal. It concluded that the appeal should be rejected and the decision confirmed, with the costs to be charged to the appellant.

G.

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

The following was established.

In law

1.

The Appeals Body's jurisdiction to hear the appeal against a Control and Disciplinary Body decision is established under Articles 48 and 54 DR.

The appeal was lodged by Legia Warszawa before the deadline and in the required form. It is reasoned and the appeals fee was paid before the deadline. It is therefore admissible under Articles 49, 50, 52 and 53 DR.

The Appeals Body may therefore examine them on their respective merits.

2.

According to Article 52 of the UEFA Statutes and Article 8 DR, 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.

Furthermore, the Appeals Body deemed it essential to recall the objective of Article 6 of the DR, as set forth in various precedents (DAB XVIII 1996 Standard de Liège; DAB XI 1998 Wisla Krakow; DAB IX 2001 Paris Saint-Germain). According to this clause, the responsibility of associations and clubs does not depend at all on their fault. As such, this responsibility is in no way identical with the criminal law model. On the contrary, clubs and associations are responsible for incidents of any kind that occur in the stadium before, during or after the match, irrespective of their own fault.

According to Art. 11 of the DR, the disciplinary measures provided for in the DR may be taken against member associations or clubs, notably for lack of order and discipline inside or in the immediate vicinity of the stadium.

According to Article 38 of the 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.

According to Article 17 DR, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances.

The present case was examined by the Appeals Body in the light of these principles and provisions.

3.

The Appeals Body complies with its constant practice by considering the reports and declarations submitted by the match officials trustworthy and veracious, unless there was conclusive evidence at hand that would render the said documents to be in contradiction with the reality.

In the case in hand, Legia Warszawa has failed to prove the inaccuracy of the contents both of the delegate's report and of the security officer's report. The evidence provided by the club, mainly by video footages of the game, which has been examined several times by the Appeals Body, were not enough to dispute that, on the one hand, the game was delayed and stopped in several occasions by the throwing of projectiles onto the pitch, and, on the other hand, fireworks were ignited and stairways and emergency exits were obstructed by home supporters. Therefore both reports should be upheld.

4.

Regarding the improper conduct of supporters, the appellant disputes its liability in the present case, due to its diligence and efforts to apply all possible measures to confront the misconduct of the supporters.

Related to it, Article 6 DR constitutes the legal basis on which UEFA, through its disciplinary bodies, can ensure that not only its members, but also third parties for whom they are responsible, respect its objectives and the obligations it imposes.

According to the first paragraph of Article 6 DR, the content of which is repeated in paragraph 6.02 of the Europa League regulations, member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the member association or club. This rule also applies to teams participating in the 2012/13 UEFA Europa League, in accordance with paragraph 6.02 of the competition regulations.

Under this rule, UEFA member associations and clubs are responsible for any violation of UEFA regulations committed by any of the people concerned, regardless of fault. This strict liability imposed on member associations and clubs applies to offences committed by a specific list of third parties. The disciplinary body has no room for manoeuvre when it comes to applying this rule. Even if they have committed no fault, the member association and club are responsible for the misbehaviour of their supporters. Once it is established that such incidents have occurred, the club is automatically held responsible and punished accordingly.

In addition, Article 11 (2) DR disposes that disciplinary measures may be taken against member association or clubs in case of inappropriate behaviour on the part of their supporters, including by that the throwing of objects and the lighting of fireworks or any other objects.

On this regard, a situation involving the throwing of projectiles onto the pitch, which in addition delayed the start of the game and provoked several stoppages, and the ignition of fireworks before and during the match are serious enough to be considered as offenses in accordance with the Article 6 (1) DR.

Taking all the circumstances into account and in view of the aforementioned regulatory provisions, the Appeals Body finds that Legia Warszawa is liable concerning the misconduct of its supporters. Consequently, the Control and Disciplinary Body was therefore right to punish it in accordance with Article 6 (1) and 11(2) DR. In addition, this misconduct also implies that the club is liable for breaching Article 6 (2) DR in relation with Article 33 Safety and Security Regulations.

5.

Regarding the organization of the match, Legia Warszawa argues that the club showed an important effort involving all source available to prevent disciplinary violations.

According to Article 38 of the 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.

The Appeals Body considers, as did so the Control and Disciplinary Body, that the incidents reported by the security officer and the delegate's report, involving the obstruction of emergency exits and stairways in the North Stand were clearly a consequence of organisational shortcomings and inappropriate measures. The offence was committed and therefore rightfully punished by the Control and Disciplinary Body.

6.

For all the above reasons, it is clear that, by imposing the disputed disciplinary measures on 20 September 2012, the Control and Disciplinary Body took into account all the circumstances of the case, in particular the seriousness, dangerousness and number of incidents caused by Legia Warszawa's supporters, on the one hand, and the club's serious failings, as the home club, in terms of ensuring order and security on the other. The disciplinary measures are suitable and proportionate.

The Control and Disciplinary Body neither abused nor exceeded its discretionary powers and its decision respects the principles of legality and proportionality.

The decision issued on 20 September 2012 should therefore be confirmed and the appeal rejected.

7.

The costs of the proceedings include all expenses of the Appeals Body. They are to be shared among the parties at fair discretion based on the outcome of the proceedings (Art. 63 DR).

In this case, it is appropriate to charge all the costs of the proceedings, which amount to € 3.000, to the appellant, whose appeal is rejected.

The Polish Football Federation is jointly and severally liable for the payment of the costs of the proceedings (Art. 73 DR).

Decision of 6 December 2012

VfL Borussia Mönchengladbach

(Blocked passageways)

Circumstances of the case:

During UEFA Champions League match between VfL Borussia Mönchengladbach and FC Dynamo Kyiv, played on 21 August 2012, in the north stand, stairs and passageways were blocked by standing supporters. A large banner was also hung in front of all emergency exits.

Legal framework:

Art. 38 and Art. 40 (2) UEFA Safety and Security Regulations.

Decision:

CDB:

The CDB fined VfL Borussia Mönchengladbach €15,000.

Appeals Body:

The CDB's decision is amended and, consequently, the fine is reduced to €5,000.

Chairman: Pedro Tomás, Spain.

Members: Antonio Mortagua, Portugal.
Mario Gallavotti, Italy.

In fact

A.

According to the delegate's report at the UEFA Champions League match between VfL Borussia Mönchengladbach and FC Dynamo Kyiv, played at the Borussia Park in Mönchengladbach (Germany) on 21 August 2012, in the north stand, stairs and passageways were blocked by standing supporters. A large banner was also hung in front of all emergency exits.

B.

On 22 August 2012, VfL Borussia Mönchengladbach was informed that disciplinary proceedings had been instigated concerning organisational failings during the match, in particular, the blocking of stairs and passageways in the north stand, sector 16, and the covering of emergency exit gates with banners.

C.

On 12 September 2012, VfL Borussia Mönchengladbach lodged its statements with regard to the disciplinary proceedings. Regarding the blocking of stairs and passageways in the north stand, the appellant does not dispute this infringement. Regarding the covering of emergency exits, the appellant argues that the stadium evacuation plan accepted by the fire, police and security services did include a second evacuation route in accordance with Article 40 (2) Security and Safety Regulations.

By decision rendered at its meeting on 20 September 2012, on the basis of the UEFA match delegate's reports, the UEFA Control and Disciplinary Body fined VfL Borussia Mönchengladbach with 15.000€.

The Control and Disciplinary Body found, in substance, that the fact that in the north stand, stairs and passageways were blocked by the home supporters and that any plan included an evacuation route onto the pitch constituted an offense in accordance to Article 38 Security and Safety Regulations. It took into consideration the number of incidents and their seriousness and deemed a fine of 15.000€ as the appropriate disciplinary measure.

D.

On 19 October 2012, VfL Borussia Mönchengladbach officially announced its intention to appeal against the decision of 20 September 2012.

On 23 October 2012, VfL Borussia Mönchengladbach lodged grounds for its appeal. It insisted on the same arguments given on 12 September 2012. Regarding the blocking of stairs and passageways in the north stand, the appellant does not dispute this infringement. Regarding the covering of emergency exits, the appellant argues that the stadium evacuation plan accepted by the fire, police and security services did include a second evacuation route in accordance with Article 40 (2) Security and Safety Regulations.

E.

On 9 November 2012, UEFA, through its disciplinary inspector, submitted its reply to the appeal. It called for the appeal to be rejected and for the costs of the proceedings to be charged to the club.

F.

On 6 December, 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 would be recorded.

The parties raised no objection.

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 for reaching the decision.

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

In law

1.

The appeal was lodged by VfL Borussia Mönchengladbach within the prescribed deadline and in the required form. The grounds for appeal were submitted and the appeal fee of €1,000 paid before the relevant deadline.

UEFA's response also complied with the deadline set by the chairman of the Appeals Body in accordance with Article 54(1) DR.

The Appeals Body was therefore competent to assess the merits of the appeal (Articles 23(4) and 24(2) DR).

2.

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

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

Under the terms of Article 40 (2) of the Safety and Security Regulations, whichever form of protection against intrusion is used, it must incorporate adequate means for spectators to escape into the playing area in an emergency, unless, in the certified opinion of the public authorities, adequate means of emergency evacuation backwards and/or sideways out of the stands exist, which would be sufficient to render the use of the playing area unnecessary for such a purpose.

According to Article 17 DR, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances.

The grievances were examined by the Appeals Body in the light of these provisions and principles.

3.

Regarding the blocking of stairs and passageways in the north stand, the Appeals Body had no reason whatsoever to question the accuracy of UEFA delegate's report. Moreover, VfL Borussia Mönchengladbach does not dispute the infringement.

Accordingly, the Control and Disciplinary Body was right to qualify the club's offence as violation of Article 38 of the Safety and Security Regulations.

4.

Regarding the covering of emergency exits, the stadium evacuation plan adopted by the fire, police and security services and provided by the club did include a second evacuation route, which was sufficient to render the use of the playing area unnecessary, and, therefore, in accordance with Article 40 (2) Security and Safety Regulations.

In this sense, and under the evidences provided in this case by the club, the Appeals Body considers that VfL Borussia Mönchengladbach conduct was in accordance with the UEFA Safety and Security Regulations, and, consequently, the appeal must be partially admitted.

5.

The only question to be examined, was whether the Control and Disciplinary Body abused its power of discretion by fining the club with 15.000€.

The Appeals Body finds that, in this case, it is necessary to examine the fact and its seriousness in a general context.

The disciplinary measures imposed must conform to the principles of legality and proportionality.

When determining the type and extent of the disciplinary measures to be imposed, the disciplinary body must take into account both aggravating and mitigating circumstances (Article 17(1) DR).

In this respect, the Appeals Body considers the punishment pronounced by the Control and Disciplinary Body too harsh, due to the fact that the second alleged offence has been upheld in this instance. It therefore appears justifiable to alter the decision taken by the first instance and reduce the fine 5.000€.

6.

The costs of the proceedings, including all Appeals Body expenses, are to be shared among the parties at fair discretion based on the outcome of the proceedings (Article 63 DR).

In this case the costs, totaling € 5.000, should be borne by both parties on an equal, 50:50 basis.

Decision of 6 December 2012

Bursaspor

(Insulting the referee)

Circumstances of the case:

During the UEFA Europa League match between FC Twente and Bursaspor played on 30 August 2012, the referee had to send off Bursaspor coach Ertügl Saglan for coming towards the main referee, leaving his technical area and showing clear and blatant dissent. After that, when he was leaving, he passed behind the 4th official and said "you are a racist". At the end of the match, the player n°. 35 of Bursasport, Musa Cagiran, went to the 4th official and showed clear and blatant dissent and clapped his hands sarcastically and said "fuck off" to him. In addition, another Bursaspor official, who could not be identified, came on the pitch to sarcastically applaud the referee team. Finally, during the course of the match, five players were sanctioned by the referee.

Legal framework:

Art. 5 DR (ed. 2012) *Principles of conduct*; Art. 10 (1) (b) DR (ed. 2012) *Insulting the referee*; Art. 11 (1) (b) DR (ed. 2012) *Improper conduct of the team*

Decision:

The CDB's decision is upheld and, consequently, the coach Ertügl Saglam is suspended for four UEFA competition matches, the player Musa Cagiran is suspended for three UEFA competition matches and the club is fined €10,250.

Chairman: Pedro Tomás, Spain.

Members: Antonio Mortagua, Portugal.
Mario Gallavotti, Italy.

In fact

A.

According to the referee's report on the UEFA Europa League match between FC Twente and Bursaspor, played at the Twente Stadium in Enschede (Netherlands) on 30 August 2012, the referee had to send off Bursaspor coach Ertügl Saglan for coming towards the main referee, leaving his technical area and showing clear and blatant dissent. After that, when he was leaving, he passed behind the 4th official and said "you are a racist". At the end of the match, the player n°. 35 of Bursaspor, Musa Cagiran, went to the 4th official and showed clear and blatant dissent and clapped his hands sarcastically and said "fuck off" to him. In addition, another Bursaspor official, who could not be identified, came on the pitch to sarcastically applaud the referee team. Finally, during the course of the match, five players have been sanctioned by the referee.

B.

On 31 August 2012, Bursaspor was informed that disciplinary proceedings had been instigated concerning the improper conduct of the coach, Ertügl Saglan, the improper conduct of the player, Musa Cagiran, the improper conduct of an official of Bursaspor and the improper conduct of the team.

C.

By decision rendered at its meeting on 20 September 2012, on the basis of the referee's report, the UEFA Control and Disciplinary Body suspended the Bursaspor player Musa Cagiran for three UEFA competitions matches and the Bursaspor coach Ertügl Saglan from carrying out his function for four UEFA competition matches.

The Control and Disciplinary Body found, in substance, that in the case of Ertügl Saglan, his acts constituted offences under the terms of Article 10(1)(a) and 10 (1) (b) of the UEFA Disciplinary Regulations (DR). It took into consideration the fact that the coach had previous record from the last five years, October 2007, and deemed a suspension of four matches as the appropriate disciplinary measure.

The Control and Disciplinary Body found, in substance, that in the case of Musa Cagiran, his conduct constituted an offence under the terms of Article 10(1)(b) of the UEFA Disciplinary Regulations (DR). It took into consideration the fact that the player had previous record from July 2012, which appeared not to have had impact on the player and his behaviour, and deemed a suspension of three matches as the appropriate disciplinary measure.

The Control and Disciplinary Body also held the club Bursaspor for its team's misconduct (individual disciplinary sanctions on five players) and fined it €10.250.

D.

On 4 October 2012, Bursaspor officially announced its intention to appeal against the decision of 20 September 2012.

On 22 October 2012, Bursaspor lodged the grounds for its appeal. In substance, the appellant argues that the team's behaviour was not intentional and therefore the fine imposed is unfair, that the coach didn't use the word "racist" since he doesn't speak English and that the player's act was not a sign of criticism and disrespect whilst the word "fuck off" was not used and therefore the three match suspension disproportionate.

E.

On 9 November 2012, UEFA, through its disciplinary inspector, submitted its reply to the appeal. It called for the appeal to be rejected and for the costs of the proceedings to be charged to the club, Bursaspor.

F.

On 6 December, 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 English, would be recorded.

The parties raised no objection.

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 for reaching the decision.

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

In law

1.

The Appeals Body is competent to hear an appeal against a Control and Disciplinary Body decision under Articles 48 and 54 DR.

The appeal was lodged by Bursaspor within the prescribed deadline and in the required form. The grounds for appeal were submitted and the appeal fee of €1,000 paid before the relevant deadline.

UEFA's response also complied with the deadline set by the chairman of the Appeals Body in accordance with Article 54(1) DR.

The Appeals Body was therefore competent to assess the merits of the appeal (Articles 23(4) and 24(2) DR).

2.

Under the terms of Article 52 of the UEFA Statutes and Article 8 DR, 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. In addition, under Article 45 DR, referees' reports must be considered as being truthful and reliable unless they can be proved otherwise, clearly and beyond doubt. In this case, the Appeals Body has no reason to doubt the facts as reported by the referee.

According to Article 5 DR, member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship.

According to Article 10 (1) (a), a player who repeatedly protests against or fails to comply with the referee's orders should be suspended for one competition match.

Under the terms of Article 10(1) (b) DR, a player who pesters or insults any match official should be suspended for two competition matches or for a specified period.

Under the terms of Article 11 (1) (b) DR, disciplinary measures may be taken against member associations or clubs if a team conducts itself improperly, for example if individual disciplinary sanctions have been imposed by the referee on at least five players during the same match.

According to Article 17 DR, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances.

Finally, according to Article 18 DR, recidivism occurs when disciplinary measures have to be imposed within five years of a previous offence of similar nature. Recidivism counts as an aggravating circumstance.

The grievances were examined by the Appeals Body in the light of these provisions and principles.

3.

Regarding the coach's suspension, the Appeals Body had no reason whatsoever to question the accuracy of the referee's report. As for Musa Cagiran, Bursaspor has failed to prove the inaccuracy of the contents of the referee's report and therefore the referee's report should be upheld.

In this sense, continuously contesting the referee's decision and calling the 4th official a racist, is a conduct against the principles of loyalty, integrity and sportsmanship contemplated in Article 5 DR.

Accordingly, the Control and Disciplinary Body was right to qualify the coach's offence as violation of Article 10 (1) (b) DR

Regarding the player's suspension, the Appeals Body had no reason whatsoever to question the accuracy of the referee's report. In this sense, Bursaspor has failed to prove the inaccuracy of the contents of the referee's report. Moreover, Bursaspor has failed to prove that the player didn't say "fuck off" to the 4th official, since it didn't provide any evidence that proves it otherwise.

Consequently, at the comfortable satisfaction of the Appeals Body, the conduct of Musa Cagiran constituted an offence in accordance to Article 10 (1) (b) DR. Anyone that shows blatant dissent by clapping his hands and saying "fuck off" to the 4th official, shows an improper conduct that should be punished in accordance to Article 10 (1) (b). A player in general and a professional player in particular should not behave like this. By displaying such misconduct, a player shows an obvious lack of good manners and oversteps the boundaries of sportsmanlike behaviour.

Accordingly, the Control and Disciplinary Body was right to qualify the player's offence as violation of Article 10 (1) (b) DR.

5.

According to Article 11 (1) (b), a sanction can be taken against an association or a club, if individual disciplinary sanctions have been imposed by the referee on at least five players during the match. This article contemplates a strict liability offence, which is established in order to help unsportsmanlike conduct to be punished. It is irrelevant that the conduct of Bursaspor's players was not intentional, since the act is enough to be guilty.

In the case in hand, state individual disciplinary sanctions have been imposed by the referee on 5 players during the match. Consequently, the Control and Disciplinary Body was right to qualify the coach's offence as violation of Article 11 (1) (b) DR.

The only question to be examined, regarding the player's and the coach's conduct, and the improper conduct of the team, was whether the Control and Disciplinary Body abused its power of discretion by suspending the player for three matches, the coach for four matches and by fining the club with 10.250€.

a) The Appeals Body finds that, in this case, it is necessary to examine the fact and its seriousness in a general context.

The disciplinary measures imposed must conform to the principles of legality and proportionality. They 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 into account both aggravating and mitigating circumstances (Article 17(1) DR).

Furthermore, the disciplinary authority must be able to punish all misconduct, from the slightest to the most serious. In order to abide by this principle, it must adopt the rule whereby a suspension is, in accordance with Article 10(1) DR, a standard decision, which, depending on the particular circumstances of the case, may be reduced or increased, as set out in Article 17(2) DR. It can thus, in assessing the specificities of a case in hand, reduce or increase the ordinary suspension period if the severity of the offence committed or the age or good track record of the accused demands that it deviates from the normal (standard) period of suspension.

b) Referring to the coach's suspension, the improper conduct of the player fits perfectly well with the offences contemplated in Article 10 (1) (a) DR, 10 (1) (b) and Article 18, and should be punished accordingly.

Firstly, as per the referee's report, the coach was sent off for leaving his technical area and showing clear and blatant dissent. The Appeals Body sees well-founded the decision taken by the Control and Disciplinary Body punishing this conduct with one-match suspension.

Secondly, as per the referee's report, the coach insulted the 4th Official calling him racist, which is considered to be a severe offence. The Appeals Body sees well-founded the decision taken by the Control and Disciplinary Body punishing this conduct with two-match suspension.

Thirdly, considering the fact that the coach has previous record from October 2007 and that, in accordance with Article 18 DR, recidivism counts as an aggravating circumstance, the Appeals Body sees well-founded the decision taken by the Control and Disciplinary Body increasing in one match the suspension.

Accordingly, the Control and Disciplinary Body didn't abuse its power of discretion.

c) Referring to the player's three-match suspension, the improper conduct of the player fits perfectly well with the offence contemplated in Article 10 (1) (b) DR and should be punished accordingly.

It is irrelevant if the player had a psychological break down or if he was disappointed with the result of the match. The appellant is confusing the existence of a mitigating circumstance with the

existence of a previous circumstance that may explain, but not justify, the clear and blatant dissent, and the use of the words “fuck off” addressed by the player to the 4th official.

Furthermore, the player's previous track record warrants closer consideration. Considering the fact that Musa Cagiran has previous record from July 2012, and that, in accordance with Article 18 DR, recidivism counts as an aggravating circumstance, the Appeals Body sees well-founded the decision taken by the Control and Disciplinary Body increasing in one match the standard suspension.

Accordingly, the Control and Disciplinary Body didn't abuse its power of discretion.

d) Referring the fine imposed to the club, the conduct of the team fits perfectly well with the offence contemplated in Article 11 1) (b)

Considering the fact that the team has previous record for the improper conduct of its team within the last five years and the improper conduct of Bursaspor official (which was not contested by Bursaspor in this proceedings), the Appeal Body sees well-founded the fine of 10.250€ imposed by the Control and Disciplinary Body.

Accordingly, the Control and Disciplinary Body didn't abuse its power of discretion.

7.

The costs of the proceedings, including all Appeals Body expenses, are to be shared among the parties at fair discretion based on the outcome of the proceedings (Article 63 DR).

It is considered justified to charge all of the costs of this case to the appellant, whose appeal is rejected on all counts.

In this case, the costs of the proceedings are € 5.000.

8.

The chairman notified orally this decision to the parties (Article 64(1) DR), which is final subject to the provisions of Article 66 of the UEFA Statutes, and explained that the full judgment would be communicated to them in due course (Article 64(2) DR).



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