



LEGAL DIVISION
DISCIPLINARY AND INTEGRITY UNIT

Case Law

Control and Disciplinary Body & Appeals Body

Season 2012/2013
January 2013 - June 2013

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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 January to June 2013.

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 27 February 2013

Galatasaray A.Ş. Didier Yves Drogba

(Player eligibility)

Circumstances of the case:

The player Didier Drogba was listed with the shirt number 12 in the team sheet of the UEFA Champions League match Galatasaray AS vs. FC Schalke 04 of 20 February 2013.

On 21 February 2013, one day after the match, FC Schalke 04 lodged a protest against Galatasaray AS based on the ineligible participation of Didier Yves Drogba in the above mentioned match.

Legal framework:

Art. 6 and Annex 6 FIFA Regulations on the Status and Transfer of Players; Art. 18.18 Regulations of the UEFA Champions League 2012/2013; UEFA Circular letter number 28 dated 15 May 2012 regarding 2012/2013 UEFA Champions League and 2012/2013 Europa League

Decision:

Reject the protest lodged by FC Schalke 04.

Chairman ad hoc: Sandor Berzi (HUN)

Members: Joël Wolff (LUX)
James Shaw (NIR)

In fact

On 28 January 2013, the Turkish Football Federation requested from the Chinese Football Federation to submit through the Transfer Matching System (TMS) the electronic International Transfer Certificate (ITC) of the player Didier Yves Drogba.

By 1 February 2013, Didier Yves Drogba was listed as new Galatasaray AS player in the UEFA Champions League Players List A, with shirt number 12.

On 1 February 2013, the Turkish Federation submitted to FIFA with correspondence of the same date from its affiliated club, Galatasaray AS, about the status of the contract between Didier Yves Drogba and his former club, Shanghai Shenshua FC, presumed to be terminated on 16 January 2013, and the request of Galatasaray AS to the competent body of FIFA to authorise a provisional registration of the player with Galatasaray AS.

On 5 February 2013 the Turkish Football Federation explicitly requested the intervention of FIFA with regard to the envisaged provisional registration of the player Didier Yves Drogba for its member club, Galatasaray AS.

On 8 February 2013, the Chinese Football Association rejected the relevant ITC request of the Turkish Football Federation through the Transfer Matching System.

On 8 February 2013 the Chinese Football Federation informed FIFA that they rejected the ITC request of the Turkish Football Federation in accordance with the instructions received from Shanghai Shenshua FC. The Chinese Football Association on behalf of Shanghai Shenshua FC argued before FIFA that the player's contract is still valid till 31 December 2014 and that no mutual agreement had been reached for an early termination.

On 11 February 2013, the FIFA's investigative phase of the case concluded. The file was submitted to the Single Judge of the FIFA Player's Status Committee.

On 11 February 2013, the Single Judge of the FIFA Player's Status Committee decided that the Turkish Football Federation is authorised to provisionally register the player. This decision was notified to all the parties on 12 February 2013. Subsequently, this decision was communicated by the Turkish Football Federation to UEFA on 14 February 2013.

The player Didier Drogba was listed with the shirt number 12 in the team sheet of the UEFA Champions League match Galatasaray AS vs. FC Schalke 04 of 20 February 2013.

On 20 February 2013, Galatasaray AS and FC Schalke 04 played their UEFA Champions League 2012/2013 match in Ali Sami Yen Spor Kompleksi (Istanbul, Turkey). Galatasaray AS player, Didier Yves Drogba, participated in the match.

On 21 February 2013, one day after the match, FC Schalke 04 lodged a protest against Galatasaray AS based on the ineligible participation of Didier Yves Drogba in the above mentioned match.

The club in its statements argues that the player was not authorised with a provisional registration as from 12 February 2013 and therefore does not comply with the deadline established in Article 18.18 of the Regulations of the UEFA Champions League (Season 2012/2013). Consequently, Didier Yves Drogba would not have been able to participate at the match between Galatasaray AS and FC Schalke 04 on 20 February 2013, due to the fact that he was not an eligible player.

Galatasaray AS and the disciplinary inspector, acting as parties in accordance with article 43 (1) of the UEFA Disciplinary Regulations, also submitted their statements concerning the eligibility of Didier Yves Drogba to participate in the above mentioned match.

Galatasaray AS reply to the protest refers, in substance, to the fact that the player's ITC request was submitted during the national registration period of the new association, the Turkish Football Federation, and that UEFA clearly stated to the Turkish Football Federation that the player was correctly registered on the player's list "A" of Galatasaray AS and eligible to participate in next UEFA Champions League 2012/2013 competition matches.

The disciplinary inspector notes that the player was duly registered in the Turkish Football Federation during the transfer window, that the Turkish Football Federation requested the ITC on 28 January 2013 before the deadline set in Article 18.18 of the Regulations of the UEFA Champions League (Season 2012/2013), that the Single Judge of the FIFA Player's Status Committee authorised to provisionally register the player Didier Yves Drogba with Galatasaray AS and that, consequently, Didier Yves Drogba was eligible to participate in the match between Galatasaray AS and FC Schalke 04, on 20 February 2013.

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

In law

Pursuant to articles 52 and 57 (a) of the UEFA Statutes and article 27 of the UEFA Disciplinary Regulations (DR), the Control and Disciplinary Body was competent to deal with the present case.

According to Article 6 (Registration period) of the FIFA Regulations on the Status and Transfer of Players:

"1. Players may only be registered during one of the two annual registration periods fixed by the relevant association. As an exception to this rule, a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period. Associations are authorised to register such professionals provided due consideration is

given to the sporting integrity of the relevant competition. Where a contract has been terminated with just cause, FIFA may take provisional measures in order to avoid abuse, subject to article 22.

(...)

3. Players may only be registered – subject to the exception provided for in article 6 paragraph 1 – upon submission of a valid application from the club to the relevant association during a registration period.”

According Annex 3 Article 8.2 paragraph 7 of the FIFA Regulations on the Status and Transfer of Players:

“7. The former association shall not deliver an ITC if a contractual dispute on grounds of the circumstances stipulated in Annexe 3, article 8.2 paragraph 4 b) has arisen between the former club and the professional player. In such a case, upon request of the new association, FIFA may take provisional measures in exceptional circumstances. If the competent body authorises the provisional registration (cf. article 23 paragraph 3), the new association shall complete the relevant player registration information in TMS (cf. Annexe 3, article 5.2 paragraph 6). Furthermore, the professional player, the former club and/or the new club are entitled to lodge a claim with FIFA in accordance with article 22. FIFA shall then decide on the issue of the ITC and on sporting sanctions within 60 days. In any case, the decision on sporting sanctions shall be taken before the delivery of the ITC. The delivery of the ITC shall be without prejudice to compensation for breach of contract.

According to Article 18.18 of the Regulations of the UEFA Champions League (Season 2012/2013):

“For all matches from the start of the round of 16, a club may register a maximum of three new eligible players for the remaining matches in the current competition. Such registration must be completed by 1 February 2013 (24.00 CET) at the latest. This deadline cannot be extended.”

According to UEFA Circular letter number 28, dated 15 May 2012 regarding 2012/2013 UEFA Champions League and 2012/2013 Europa League (Player eligibility):

“8. International transfer certificate

In recent years, UEFA has regularly received questions from various clubs about how to interpret the rules governing player registration as contained in the UEFA club competition regulations, which actually refer in this respect to the national association’s own rules and to the FIFA Regulations on the Status and Transfer of Players (more specifically to those laid down in Annexe 3 thereto). We would therefore like to inform you that the UEFA administration has adopted the following approach:

a) The player lists to be submitted to the UEFA administration may include a player for whom an international transfer certificate (ITC) has not yet been created by his former association,

but for whom an ITC was requested during the national registration period of the new association and, at the very latest, by the deadline set in the UEFA club competition regulations for the submission of the player lists (see Article 8.1.2 of Annexe 3 to the FIFA regulations).

(...)

If, however, the FIFA Players' Status Committee decides to authorise the new association to provisionally register a player with his new club (in accordance with Article 8.2.7 of Annexe 3 to the FIFA regulations), the player in question is considered eligible to participate with his new club in a UEFA club competition as soon as written confirmation of the decision has been transmitted by the new club to the UEFA administration."

On 28 January 2013, the International Transfer Certificate was requested by the Turkish Football Federation to the Chinese Football Association in order to register the player for its member club, Galatasaray AS, based on an employment contract signed between the player and Galatasaray AS on this same date, and in accordance with Article 6 of the FIFA Regulations on the Status and Transfer of Players. Consequently, the request of the ITC was submitted before the deadline set in Article 18.18 Regulations of the UEFA Champions League (2012/2013) and in accordance with number 8 letter a) of the UEFA Circular letter number 28, dated 15 May 2012, regarding the player eligibility for the 2012/2013 UEFA Champions League and 2012/2013 Europa League.

By 1 February 2013 (24 CET), i.e. within the deadline established in Article 18.18 UEFA Champions League Regulations, Didier Yves Drogba was included into the players list "A" as a new player of Galatasaray AS for the remaining matches in UEFA Champions League 2012/2013 competition.

On 11 February 2013 the Single Judge of the FIFA Player's Status Committee decided to authorise to provisionally register the player Didier Yves Drogba with the club Galatasaray AS. Consequently and in accordance with number 8 penultimate paragraph of the UEFA Circular letter number 28, by authorising the new association to provisionally register Didier Yves Drogba with his new club, Galatasaray AS, the player is to be considered as eligible to participate in UEFA 2012/2013 Champions League competition matches with Galatasaray AS.

In the light of the above mentioned considerations, the Control and Disciplinary Body considers that the player Didier Yves Drogba was eligible and duly included in Galatasaray AS UEFA Champions League Players List A, and correctly incorporated to the team's sheet with the number 12 for the match between Galatasaray AS and FC Schalke 04, played on 20 February 2013.

Decision of 8 April 2013

Galatasaray A.Ş. Burak Yilmaz

(Protest against yellow card. Factual decision)

Circumstances of the case:

During the UEFA Champions League match Real Madrid C.F vs. Galatasaray A.Ş. on 3 April 2013 the referee showed Burak Yilmaz a yellow card for unsporting behaviour. This would be the third caution of the player during the competition which would impede him from participating in the next UEFA club competition match for which he would be eligible.

On 4 April 2013, Galatasaray AS lodged a protest against the above decision. In substance, Galatasaray AS requests the CDB that the caution shown to their player Burak Yilmaz may be retired, so that the player may be eligible to participate in the second leg match of the Quarter Finals of the UEFA Champions League 2012/2013.

Legal framework:

Art. 20 DR (ed. 2012) *Factual decision of the referee*; Art. 24 Regulations of the UEFA Champions League 2012/2013 *Protest*

Decision:

Reject the protest lodged by Galatasaray AS.

Chairman: Thomas Partl (AUT)

In fact

During the above mentioned match the referee showed Burak Yilmaz a yellow card for unsporting behaviour. This would be the third caution of the player during the competition which would impede him from participating in the next UEFA club competition match for which he would be eligible.

On 4 April 2013, Galatasaray AS lodged a protest against the above decision. In substance, Galatasaray AS requests the Control and Disciplinary Body that the caution shown to their player Burak Yilmaz may be retired, so that the player may be eligible to participate in the second leg match of the Quarter Finals of the UEFA Champions League 2012/2013.

On 5 April 2013, Real Madrid CF and the disciplinary inspector, as parties in accordance with article 43 (1) DR, were invited to submit their statements.

On 8 April 2013, the disciplinary inspector submitted her report. Real Madrid CF did not submit any statements regarding this issue.

In their statements, the club argues that from the video footage of the official broadcaster it is clear that the decision of the referee involved an obvious error since the opponent, the Real Madrid player Sergio Ramos, stepped on Burak Yilmaz's foot provoking the falling of the Galatasaray AS player.

The more detailed arguments given by the club and the disciplinary inspector in support of their written statements are set out below, insofar as they are relevant

In law

Pursuant to articles 52 and 57 (a) of the UEFA Statutes and article 27 of the UEFA Disciplinary Regulations (DR), the Control and Disciplinary Body was competent to deal with the present case.

According to Article 20 of the UEFA Disciplinary Regulations, decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies. Only the disciplinary consequences of a decision taken by the referee may be reviewed by the disciplinary bodies in cases where such a decision has involved an obvious error, such as mistaking the identity of the person penalised. In cases of mistaken identity, disciplinary proceedings may be opened in accordance with these regulations only against the person who was actually at fault.

According to Article 24.03 UEFA Champions League 2012/2013 Regulations protests cannot be lodged against factual decisions taken by the referee.

Furthermore, article 24.04 UEFA Champions League 2012/2013 Regulations contemplates that a protest against a caution or expulsion from the field of play after two cautions is admissible only if the referee's error was to mistake the identity of the player.

Moreover, the 5th Law of the Game establishes that each match is controlled by a referee who has full authority to enforce the Laws of the Game in connection with the match to which he has been appointed.

According to the above mentioned provisions, in particular Article 24.04 UEFA Champions League 2012/2013 Regulations, a protest against a caution is admissible only if the referee's error was to mistake the identity of the player. In this regard, the protest lodged by Galatasaray AS is thus not founded and shall be rejected.

Besides, the standing practice is clear concerning decisions taken by the referee during the course of a match. In this regard, the Control and Disciplinary Body in decisions rendered on 5 December 2005, 11 May 2009 and 28 February 2011, considered that the decisions taken by the referee are not subject to re-examination, prevailing by that the authority of match officials mainly over incidents of sporting nature that may occur during the match.

In this regard, the club sent supplementary submissions on 8 April 2013, referring to a previous decision of the Appeal Body rendered on 22 March 2012. Regrettably, these submissions shall be inadmitted since the principle of audi alteram partem and the deadline of 24H established in article 43 DR prevent from such a situation. However, the Control and Disciplinary Body considers that the circumstances of the case in hand are different from those concerning the referred decision.

Nevertheless, only in cases where an obvious error may have arisen, the decision of the referee has been modified. Here, it would be necessary to analyze the notion of the existence of an obvious error involving the referee's decision.

Firstly, the definition of this notion involves a strict and rigorous approach. The example of an obvious error provided by Article 20 of the Disciplinary Regulations (i.e an error towards the identity of a person) must be understood as the minimum standard. Thus, the obvious error to be committed by the referee shall be understood as an extraordinary and undoubtful error beyond any failure of interpretation regarding the examination of an action during the course of the game. In this sense, an obvious error is not attached to the interpretation of the referee, but more likely to the elements and circumstances that surround this interpretation and could provoke the existence of such an error.

Briefly, even in the case the referee may have committed an error of appreciation, it won't be enough to modify his decision. Consequently, in cases concerning an obvious error, the existence of a situation which in itself is an erroneous appreciation shall rely on clearly and objective elements that would render the decision totally and without any hesitation as wrong given.

In the case in hand, the protesting party failed to furnish substantial evidence in order to proof the obvious error involving the decision concerning the unsporting behaviour of Galatasaray AS player Burak Yilmaz. The club argued in its statements that from the footage of the official broadcaster it

was “crystal clear” that the Real Madrid player stepped on Burak Yilmaz foot in a quite hard way provoking him to fall down. However, the club did not provide any video nor exact extract of the official broadcaster’s video footage of the match that could support their argument. Consequently, the existence of an obvious error involving the decision taken by the referee has not been proved by the club.

In the light of the above mentioned considerations, the Control and Disciplinary Body considers that the protest shall be rejected in accordance with Article 24.04 UEFA Champions League Regulations 2012/2013. Furthermore, the contested decision against Galatasaray AS player Barak Yilmaz for unsporting behaviour falls within the authority of the referee in accordance with the 5th Law of the game and with the standing practice of the disciplinary bodies, which may not be subject to reexamination. Finally, Galatasaray AS did not give any sufficient evidence that could allow the Control and Disciplinary Body to conclude that the referee took a decision involving an obvious error during the above mentioned match.

As a result, it can be reasonably concluded that there was no breach of the Laws of the Game or other regulations by the referee. Consequently, the protest must be rejected for being unfounded.



APPEALS BODY

Decision of 31 January 2013

SC Braga. Douglas Ferreira

(Assault)

Circumstances of the case:

According to the referee's report of the UEFA Champions League match between CFR 1907 Cluj and SC Braga on 20 November 2012 and the video footage of the incident, SC Braga player No. 44, Douglas Ferreira elbowed his opponent, who was marking him in the penalty area. After the corner kick, Ferreira repeated his act and elbowed the same opponent in the face. As shown by the video footage, the two players in question were not in the vicinity of the ball.

Legal framework:

Art. 10 (1) (e) DR (ed. 2012) *Assault*

Decision:

The CDB's decision is upheld and the player Ferreira is suspended for four UEFA competition matches.

Chairman: Pedro Tomás, Spain

Members: Levent Biçakci, Turkey
Patricia Moyersoen, France

In fact:

A.

According to the referee's report on the UEFA Champions League match between CFR 1907 Cluj and SC Braga on 20 November 2012 and the video footage of the incident, the SC Braga No44, Douglas Ferreira (hereinafter: Ferreira) elbowed his opponent, who was marking him in the penalty area. After the corner kick, Ferreira repeated his act and elbowed the same opponent in the face. As shown by the video footage, the two players in question were not in the vicinity of the ball.

B.

In a decision notified on 27 November 2012, the UEFA Control and Disciplinary Body suspended Ferreira for four UEFA competition matches. Having consulted the video images, it held, in substance, that the player's misconduct constituted an act of assault as described in Article 10(1)(e) of the UEFA Disciplinary Regulations (hereinafter: DR). The first-instance disciplinary body held that this was a dangerous act committed with no regard for the physical safety of the opponent, since Ferreira had hit his opponent with his fist. The Control and Disciplinary Body concluded that Ferreira's action had to be qualified as intentional.

C.

On 30 November 2012, Ferreira and SC Braga appealed against the Control and Disciplinary Body's decision. On 6 December 2012, the appellant submitted his grounds of appeal. The player concluded that he should be suspended for two matches. In support of his appeal, Ferreira argued, in substance, that the Control and Disciplinary Body had not taken into account mitigating circumstances, i.e. that he had participated in two UEFA competitions (2011/12 and 2012/13), in which he had played eight matches and received only two yellow cards. He also requested that it be taken into account that defenders usually commit more offences. Finally, the player claimed inequality of treatment, as Sergio Busquets, who had committed an act of assault during the UEFA Champions League match SL Benfica v FC Barcelona on 02.10.2012, had received a two-match suspension. He expressed regret for his action and requested that the same disciplinary measure be applied to him.

D.

On 17 December 2012, UEFA submitted its response to the appeal through its disciplinary inspector, who requested that the sanction issued by the first-instance body be upheld.

E.

In a fax sent on 29 January 2013, i.e. two days before the hearing, the club informed the UEFA Appeals Body that neither the player nor the club representative would be present at the hearing, despite having been duly summoned. No credible reason was submitted to justify their absence. UEFA's representative, the disciplinary inspector, was due to participate via teleconference, but on account of the appellant's absence, the panel deemed her participation unnecessary. Despite the appellant's absence, the Appeals Body was able to hold the hearing and take a decision, in accordance with Article 56(3) DR.

For the purposes of the recording, the chairman reminded those present of the composition of the Appeals Body (Art. 31(3) DR).

Footage of the disputed incident was viewed by the Appeals Body.

The arguments given in support of the parties' written submissions are set out below, in so far as they are relevant to the decision.

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

In law:

1.

First of all, the Appeals Body would like to denounce the attitude of the player and of SC Braga, who only informed it that they would not attend the hearing two days before the hearing, without submitting any credible justification. This attitude shows a lack of respect on the part of the player and the club.

2.

The Appeals Body has the jurisdiction to hear an appeal against a decision of the Control and Disciplinary Body under the terms of Articles 49 et seq. and 54 DR.

The appeal was lodged by the player Ferreira and the club by the deadline and in the form required and the appeals fee was paid on time, in accordance with Articles 49, 50, 52 and 53 DR.

The Appeals Body is therefore competent to deal with the merits of the appeal.

3.

a) Under 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.

The Appeals Body has stipulated on several occasions that any act committed intentionally or through *dolus eventualis*, through which the physical or psychological well-being of the referee, a player or any other person present at a match is harmed or threatened before, during or after the

match, constitutes serious unsporting conduct classified under the general term “assault” in accordance with Article 10(1)(e) DR. A particularly serious attack on a person’s physical or psychological well-being is therefore considered “serious assault” in the sense of letter f of the same provision.

b) Upon examination of the images, it is established in this case that Ferreira elbowed his opponent twice. This act obviously falls under Article 10(1) DR. The only question to be examined, therefore, is whether the Control and Disciplinary Body abused its powers of discretion by suspending the appellant for four matches.

4.

It has been the Appeals Body’s constant practice so far to consider the power of discretion to be abused or exceeded if the first-instance body based its decision on untrue or erroneous elements, notably by failing to apply fundamental legal principles, by considering irrelevant facts or by failing to consider essential circumstances whose evaluation was compelling. In other words, the Appeals Body does not overturn the verdict, even if it would have decided differently itself, as long as the challenged decision is within the scope of what appears reasonable.

5.

Given the appellant’s arguments, the Appeals Body deems it necessary to comment on the following alleged mitigating circumstances:

a) Prior to the contested suspension, having played eight UEFA competition matches in two seasons and received two yellow cards in two different matches, the player asked the Appeals Body to consider his good record. At this point, it should be noted that, according to the practice of the Control and Disciplinary Body, a clean disciplinary record has no effect on the punishment imposed, since it is 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. In John Terry’s case (decision 25046_Terry), the absence of previous offences was considered a mitigating circumstance because Terry had played more than 150 UEFA competition matches without even being cautioned. This cannot be compared to Ferreira’s record, which cannot be considered exceptionally good. Consequently, there is no mitigating circumstance in this respect.

b) The fact that Ferreira’s position on the field of play is defender does not excuse him for committing offences, as he suggests.

c) Ferreira also alleges inequality of treatment with Busquets, who was punished with a two-match suspension for the same offence (assault). 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.

d) In view of the above, the arguments put forward by Ferreira are in no way to be considered as mitigating circumstances.

6.

a) According to Article 10(1)(e) DR, assault is punished by a suspension for three competition matches or for a specified period. This, however, is a standard sanction that, in particular circumstances, can be scaled down or increased (Article 17(2) DR). Indeed, in accordance with the general rules of law, the punishment is fixed according to the circumstances, the severity of the offence and the reputation of the accused. In addition to its function of enforcing the rules, a punishment should pursue a preventative and educational aim. The disciplinary body must, moreover, reserve the right to punish all misconduct, from the slightest to the most serious. It can thus, in assessing the specificities of a particular case, reduce or increase the standard sanction if the severity of the offence committed or the age or track record of the accused demands that it deviates from the normal (standard) punishment.

b) The following circumstances:

- use of the elbow (even if, in its decision, the Control and Disciplinary Body held that a fist was used) is physically dangerous and shocking in terms of the public's perception;
- Ferreira used his elbow as a weapon twice in order to commit the assault, which showed his strong intention;

are among the reasons why the Control and Disciplinary Body ruled that the standard sanction described in Article 10(1)(e) DR should be increased by one match. This decision rests on the extensive discretionary power of the first-instance body and there is nothing to justify a deviation from this original verdict by the Appeals Body.

7.

On the basis of all the above, the Appeals Body deems that a four-match suspension is entirely justified, taking into consideration the particular circumstances of the case and the severity and repetition of the offence committed. Consequently, the Control and Disciplinary Body has neither exceeded nor abused its discretionary power and its judgment conforms to the principles of legality and proportionality. This suspension should further enable the aims of punishment to be achieved, namely to reform the player and prevent a repetition of the offence. Consequently, the first-instance decision must be upheld and the appeal rejected.

8.

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

It is considered justified to charge all the costs of this case to the appellant, whose appeal is rejected on all counts. The club and the Portuguese Football Federation are jointly liable for paying these costs (Art. 73 DR), which amount to €6,000.

Decision of 31 January 2013

FC København

(Improper conduct of supporters: Acts of damage)

Circumstances of the case:

By a decision of 18 October 2012, the CDB fined FC København €10,000 and instructed them to contact Club Brugge KV in order to make good the damage caused by their supporters.

København were held responsible for their spectators, whose conduct at the UEFA Champions League qualifying match on 8 August 2012 was deemed inappropriate, as those spectators damaged seats in the sector of the stadium reserved for them.

Legal framework:

Art. 11 (2) (f) DR (ed. 2012) *Acts of damage*

Decision:

The Appeals Body holds that it has not been established to its satisfaction that the København supporters committed an act of damage under Article 11 (2) (f) DR. Consequently, the CDB's decision is overturned and the fine is cancelled.

Chairman: Pedro Tomás (Spain)

Members: Levent Biçakci (Turkey)
Patricia Moyersoen (France)

In fact

A.

By a decision of 18 October 2012, the UEFA Control and Disciplinary Body fined FC København €10,000 and instructed them to contact Club Brugge KV in order to make good the damage caused by their supporters. København were held responsible for their spectators, whose conduct at the aforementioned UEFA Champions League qualifying match on 8 August 2012 was deemed inappropriate under Article 11(2)(f) of the UEFA Disciplinary Regulations (DR), as those spectators damaged seats in the sector of the stadium reserved for them.

B.

On 13 December 2012, København informed UEFA of their intention to appeal against the Control and Disciplinary Body's decision, which they had been sent on 10 December 2012.

In its appeal pleadings, the club requested that the decision of 18 October 2012 be overturned and the fine cancelled. It claimed, in substance, that there was no evidence that the seats had been broken by its supporters, that UEFA had no jurisdiction to handle the case because it was an invoicing matter for Club Brugge and København, and that the match delegate had not reported that damage. The club also argued that any damage caused by supporters should be repaired only if that was foreseen by both the home and visiting clubs prior to the match or was part of UEFA's regulations.

C.

On 22 January 2013, UEFA submitted its response to the appeal through one of its disciplinary inspectors. The disciplinary inspector found that the argument put forward by the appellant was unfounded, since the principle of strict liability applies where a club's supporters commit offences (as was the case here). She noted that the relevant principle had been confirmed by several awards from the Court of Arbitration (CAS). She added that the absence of a report by the match delegate regarding the broken seats did not mean that the incident had not taken place, as a disciplinary panel is able to rely on other evidence in order to determine the facts of the matter. In her findings, the disciplinary inspector requested that the appeal be dismissed and the procedural costs charged to the appellant.

D.

a) The chairman opened the appeal hearing, noting the presence of the appellant (with the disciplinary inspector participating by means of a conference call) and explaining the procedure to be followed (Articles 60 et seq. DR). He informed the parties that everything they and the UEFA

Appeals Body said would be recorded. Finally, he reminded them of the composition of the Appeals Body.

No objections were raised.

b) The floor was given to the parties, who, in substance, reiterated the arguments contained in their written statements. The disciplinary inspector suggested the possibility of gathering more evidence, which was not approved by the panel. The parties then laid out their arguments and requested that the Appeals Body rule in their favour.

The parties' arguments are set out and examined below insofar as they are relevant.

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

In law

1.

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

The appeal was lodged within the relevant deadline and in the form required. It is therefore admissible under Articles 49, 50, 52 and 53 DR.

The Appeals Body may therefore consider its merits.

2.

Under Article 52 of the UEFA Statutes and Article 8 DR, unsporting conduct, violations of the Laws of the Game and infringements of UEFA's statutes, regulations, decisions and directives 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"*.

Article 11(2) DR states that *"disciplinary measures may be taken against member associations or clubs in case of inappropriate behaviour on the part of their supporters, including: ... f) acts of damage"*.

That provision specifies that acts of damage constitute inappropriate conduct. In other words, disciplinary proceedings can be initiated against anyone who commits an act of damage. The aim of that provision is to protect the home club's stadium facilities from visiting supporters.

3.

a) In substance, the appellant club contests the facts of the matter, arguing that the incident was not included in the various officials' reports. This argument is unfounded.

Under Article 45 DR, the Control and Disciplinary Body, as a rule, clarifies the facts of a 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). Exceptionally, it can also hear

the parties (paragraph 2). It is therefore invited to issue a decision as promptly as possible after swift investigations.

If an appeal is then lodged against that decision, the Appeals Body may have to conduct additional investigative measures and examine the facts in more detail (Article 57 DR). This is not to say that the Control and Disciplinary Body should content itself with the referee's report, or even those of other officials. On the contrary, acting within its means and without unduly delaying proceedings, it must establish the facts as comprehensively as possible. Were it only able to take account of the reports by the referee, the match delegate and the security officer, for example, it would be unable to impose disciplinary measures with regard to any incidents omitted from those reports.

As a result, the Control and Disciplinary Body may consider other elements in addition to those reports when an offence is reported. It can, for example, summon video footage or hear witnesses if this could usefully help to establish the facts of the matter. This course of action is not limited to the Appeals Body under Article 57 DR; it is also open to the Control and Disciplinary Body, as long as summoning additional evidence does not take too long or delay the decision unduly (Article 45(1) DR).

Article 45(1) DR, like Article 57(1) DR, thereby establishes the disciplinary bodies' freedom to admit evidence. They must employ all the investigative measures that they consider useful and necessary in order to establish the facts and justify their decisions. In the absence of objective proof, they must, where necessary, base their decisions on the body of circumstantial evidence available.

b) In principle, an allegation is considered proven if the chairman is able to convince himself that it is true. Exceptions to this standard of proof have, however, been established by law, legal doctrine and case law. A reduction in the standard of proof required is justified by a lack of evidence where, by the very nature of the case, proof in the strict sense is not possible or cannot be reasonably required, particularly where the facts alleged by the party bearing the burden of proof can be established only indirectly or on the basis of circumstantial evidence. The standard of proof required in these cases is limited to a balance of probabilities, but the requirements are then greater than in the case of *prima facie* evidence. The balance of probabilities presupposes that, from an objective perspective, there are serious reasons to believe in the accuracy of an allegation and there are no other possibilities which are relevant or could reasonably be considered (see ATF 133 III 81, paragraph 4.2.2, pp. 88–89, and the judgments cited; see also ATF 135 V 39, paragraph 6.1, p. 45).

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

c) The appellant also claims that UEFA has no jurisdiction to deal with such cases of damage to stadium facilities, as this is simply an invoicing matter for Club Brugge and København. This argument is also unfounded.

The competence of the Control and Disciplinary Body is governed by Article 33(3) of the UEFA Statutes, which provides that it has jurisdiction to rule on disciplinary issues and all other matters. Article 52 of the UEFA Statutes provides: *"Disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game, and contravention of UEFA's Statutes, regulations, decisions and directives as shall be in force from time to time."* Seats broken by supporters constitute a violation of Article 11(2)(f) DR, so under the above provision, the Control

and Disciplinary Body is competent to deal with this case. Moreover, it is even competent to instruct the responsible club to contact the other club in order to make good the damage caused by its supporters (Article 13 DR).

Whenever, on the occasion of a UEFA competition match, a club reports a fact to UEFA which falls within the scope of its regulations, the Control and Disciplinary Body is competent to deal with the matter. Contrary to what the appellant argues, the mere fact that an invoice was presented does not prevent the Control and Disciplinary Body from being competent to deal with the violation of Article 11(2)(f) DR.

d) Now that the competence of the Appeals Body has been established, together with its right to examine the merits of the case on the basis of evidence other than the match delegate's report, the panel has to determine whether or not the club is responsible for the misconduct of its supporters.

Before a club is held responsible for the improper conduct of its supporters under Article 11 DR (which implements Article 6(1) DR), two cumulative conditions must be met: 1) the supporters must be identified as supporting the club in question and 2) those supporters must have violated UEFA regulations. The accuser bears the burden of proof in this regard.

In the present case, the only evidence submitted in order to prove that København supporters broke seats is an invoice from Club Brugge showing that broken seats have been repaired.

That invoice does not, however, prove that the visiting København supporters broke those seats.

In such circumstances, the Appeals Body cannot accept the invoice submitted by Club Brugge and provided by the disciplinary inspector as sufficient evidence.

In the absence of other convincing evidence that would support the allegation that Danish supporters broke those seats during the match in question and justify postponing the hearing in order to try to gather more evidence, the Appeals Body can only state that neither Club Brugge nor the disciplinary inspector have provided sufficient evidence in support of their allegations.

In these circumstances, the benefit of the doubt must be given to the appellant as far as disciplinary action is concerned, as the conditions governing the implementation of Articles 6(1) and 11(2) DR have not been met. Consequently, the Appeals Body cannot hold København responsible for the broken seats in Club Brugge's stadium and cannot uphold the disciplinary action taken.

4.

For the reasons given above, the Appeals Body holds that it has not been established to its satisfaction that the København supporters committed an act of damage under Article 11(2)(f) DR. The Control and Disciplinary Body was therefore wrong to impose disciplinary measures on the club under Articles 8 and 14 DR.

Consequently, the appeal is upheld and the Control and Disciplinary Body's decision is overturned.

5.

Under Article 63 DR, the costs of proceedings, including all the expenses of the Appeals Body, are to be shared between the parties in an equitable manner, in accordance with the outcome of the proceedings.

In view of the outcome of the appeal, the costs of the proceedings will be charged to UEFA.

Decision of 14 February 2013

Fenerbahçe SK

(Setting off of fireworks. Throwing of missiles. Blocked evacuation routes and passageways. Revocation of suspension)

Circumstances of the case:

During the 2012/13 UEFA Europa League match between Fenerbahçe SK and VfL Borussia Mönchengladbach on 6 December 2012, home supporters had ignited at least 37 fireworks, gangways had been blocked throughout the match, spectators had not been screened properly by the police and private security service.

In a decision of 18 October 2012, the Turkish team have been ordered to play their next UEFA competition match behind closed doors after similar incidents occurred at its match against FC Spartak Moskva on 29 August 2012. The measure was suspended for a probationary period of three years.

Legal framework:

Art. 6 DR (ed. 2012) *Strict liability*; Art. 11 (2) DR (ed. 2012) *Lack of order or discipline*; Art. 15bis (3) DR (ed. 2012) *Suspended sanction*

Decision:

CDB:

In a decision of 24 January 2013, the CDB imposed the following disciplinary measures against Fenerbahçe SK:

1. To revoke the suspended sanction against Fenerbahçe SK of playing one UEFA club competition match behind closed doors as stated in the CDB's decision of 18 October 2012.
2. To order Fenerbahçe SK to play its next UEFA Europa League match as host club behind closed doors.
3. To fine Fenerbahçe SK €40,000.

Appeals Body:

The appeal is rejected. The CDB's decision of 24 January 2013 is therefore confirmed.

Chairman: Pedro Tomás, Spain

Members: Barry Bright, England
Michel Wuilleret, Switzerland

In fact:

A.

In a decision of 18 October 2012, the UEFA Control and Disciplinary Body fined Fenerbahçe SK €80,000 and ordered the club to play one UEFA competition match behind closed doors, the latter measure being suspended for a probationary period of three years.

The first-instance body had established that around 20 Bengal lights and flares had been ignited, mainly by home supporters, during and after the 2012/13 UEFA Champions League match between Fenerbahçe SK and FC Spartak Moskva on 29 August 2012, and that the home supporters had thrown an unspecified number of objects onto the pitch, two of which had injured an assistant referee and an FC Spartak Moskva player. It had found that, before the match, home supporters had tried to attack two official buses transporting visiting supporters near the stadium entrance. Finally, it had held the club responsible for the obstruction of most of the stadium entrances and exits.

Since Fenerbahçe SK did not appeal against this decision, the disciplinary measures imposed by the Control and Disciplinary Body on 18 October 2012 entered into force and are final.

B.

In a decision of 24 January 2013, the Control and Disciplinary Body imposed the following disciplinary measures against Fenerbahçe SK:

1. *To revoke the suspended sanction against Fenerbahçe SK of playing one UEFA club competition match behind closed doors as stated in the Control and Disciplinary Body's decision of 18 October 2012 (ref. 25421).*
2. *To order Fenerbahçe SK to play its next UEFA Europa League match as host club behind closed doors. This applies to the following match:*

Fenerbahçe SK v FC BATE Borisov, 21 February 2013.

3. *To fine Fenerbahçe SK €40,000.*
4. *The above fine must be paid into the bank account indicated below within 30 days of communication of this decision.*
5. *The following conditions apply to the match behind closed doors:*
No supporters are allowed to enter the stadium.

Only the following persons or groups of persons may enter the stadium:

- a) a maximum of 75 persons from the Fenerbahçe delegation, including the players;*
- b) accredited journalists, provided that the accreditation list with all details concerning the journalists' identity has been submitted to UEFA (fax: +41 22 707 28 97) 24 hours before kick-off;*
- c) police officers and security staff with specific tasks related to security at the match;*
- d) persons carrying out functions related to the stadium infrastructure (lighting, etc.);*
- e) the delegation of the visiting team and its VIP support".*

The Control and Disciplinary Body held that, during the 2012/13 UEFA Europa League match between Fenerbahçe SK and VfL Borussia Mönchengladbach on 6 December 2012, home supporters had ignited at least 37 fireworks, that the gangways in sectors D and E had been blocked throughout the match, that the spectators had not been screened properly by the police and private security service and, finally, that a Fenerbahçe SK player had worn an undershirt with an adidas logo on the collar.

Considering the seriousness and multiplicity of the offences committed and the club's poor disciplinary record, the Control and Disciplinary Body concluded that it would be appropriate to revoke the suspension of the punishment imposed on 18 October 2012 and to fine the club €40,000 in this case.

C.

In a letter of 26 January 2013, Fenerbahçe SK lodged an appeal with the UEFA Appeals Body and, in a separate document, requested a stay of execution.

In an order of 1 February 2013, the Appeals Body chairman rejected the request for a stay of execution.

In pleadings lodged on 1 February 2013, Fenerbahçe SK (hereinafter: the appellant) gave the reasons for its appeal. It drew the following conclusions:

- 1. Revocation of all the sanctions which are the subject of this appeal;*
- 2. In the event of rejection of our first request, revocation of the sanctions of playing behind closed doors, since concurrent application of both sanctions, i.e. fine and playing behind closed doors, is contrary to the principle of proportionality;*
- 3. In the event of rejection of our second request, the provision that "maximum 75 people from Fenerbahçe delegation, including players, may enter the stadium" be changed to read as "excluding players".*

In support of its appeal, the club argues, in substance, that by employing 1,600 police officers and 700 private security personnel, it had taken sufficient and appropriate measures. It claims that it cannot be held responsible for the behaviour of people from outside the club who act as *agents provocateurs* in order to harm Fenerbahçe SK. It also accuses the Control and Disciplinary Body of

violating the principle of proportionality and does not believe it should be punished for the negligence of one of its players (adidas logo).

D.

On 6 February 2013, UEFA, through its disciplinary inspector, filed its reply to the appeal. It concluded that the appeal should be rejected, with the costs to be paid by the appellant.

E.

At today's session, Fenerbahçe SK was represented by its lawyer, who was accompanied by the club's Vice-president. UEFA was represented by its disciplinary inspector.

The chairman informed the parties of the procedure to be followed and of the composition of the Appeals Body. He added that the debates would be recorded, in accordance with Article 31(3) of the UEFA Disciplinary Regulations (hereinafter: DR).

The parties said they were happy with the procedural arrangements and did not raise any objections.

Noting that there were no other preliminary questions, the chairman opened the evidential part of the hearing.

Since there were no requests to bring evidence other than the contents of the written pleadings, the parties were given the floor to plead, reply and rejoinder.

The arguments put forward by the parties in their written and oral pleadings are set out below, in so far as they are relevant to the decision.

Once the hearing was closed, the Appeals Body deliberated. It ruled as follows.

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 Fenerbahçe SK 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.

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.

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, 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 clubs participating in the UEFA Europa League and is expressly mentioned in paragraph 6.05 et seq. of the said competition's 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.

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).

The Regulations of the UEFA Europa League (2012/13 Season) refer to these notions concerning the responsibilities of clubs in general (para. 6.02) and of home clubs in particular (para. 6.03).

3.

a) Although it is not clearly stated in its decision, the Control and Disciplinary Body implicitly held Fenerbahçe SK responsible firstly for the conduct of its supporters and player (ignition of 37 fireworks and Adidas logo respectively) in accordance with Article 6(1) DR and paragraph 6.02 of the Europa League regulations, and, secondly, as the home club, for security-related failings in accordance with Article 6(2) DR and paragraph 6.03 of the Europa League regulations.

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). These provisions are clearly also applicable in the UEFA Europa League under the terms of paragraph 21.01 of the competition 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.

b) In the case at hand, the Appeals Body notes that the reports of the UEFA delegate and security officer respectively (see also the second sentence of Article 45(1) DR), and the video footage of the incidents are sufficient to establish, to the satisfaction of the law, that numerous very serious incidents took place before and during the match. In any case, the description of these incidents is not disputed by the appellant.

There is also no doubt that security standards were breached and that there were organisational failings relating to security. The ignition of a large number of fireworks inside the stadium proves that supporters were able to bring them in without difficulty and that they were not searched properly. The screening of supporters was also inadequate. Finally, there is no doubt that the gangways in the home sectors D and E were obstructed, as clearly described in the security officer's report.

The appellant claims, in its defence, that supporters had been manipulated in order to put Fenerbahçe SK in a difficult position. It also asks the Appeals Body to take into account local circumstances and the large number of police officers and security personnel that were on duty at the match.

If ill-intentioned spectators entered the stadium, it is precisely the home club's responsibility to ensure that they do not cause any harm. Although the number of police officers and security personnel appears adequate, it is not, in itself, sufficient to free the club from its liability. Security personnel also need to be properly trained, to be deployed in an appropriate manner, and to conduct their work in a satisfactory fashion. However, it is clear that, although a sufficient number of them were on duty, they were unable to funnel the supporters on their arrival, that additional gates therefore had to be opened, that German supporters who poured through these gates were not searched and, finally, that home supporters were able to bring a large number of fireworks into the stadium without difficulty and subsequently light them during the match.

The security personnel therefore failed to carry out their duties and the security arrangements were clearly inadequate. It should also be noted that the appellant has failed to offer any relevant argument that could release it from its liability under Article 6(2) DR.

4.

In view of the established facts described above, the Appeals Body concludes that Fenerbahçe SK supporters, among other things, ignited a large number of fireworks, an offence for which the club is liable under the terms of Article 6(1) DR. In addition, as the home club, it 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. It is therefore liable under Article 6(2) DR.

The Control and Disciplinary Body was therefore right to find the club guilty of these offences and to punish it accordingly.

5.

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, and the club's very poor disciplinary record in this area.

The Appeals Body can only agree with this analysis and conclude that Fenerbahçe SK cannot claim any mitigating circumstance. In this respect, the disciplinary measure imposed, i.e. a fine of €40,000, is clearly too lenient, in view of the punishment imposed by the same body on 18 October 2012 and the club's appalling record in this area. In addition, the first-instance body should have waited until it had decided on a punishment for the club before examining whether the conditions for revocation were met in this case.

The rules of ordinary law, particularly the principle of the right to a fair hearing, require the judicial body (in this case the Control and Disciplinary Body) to examine, if appropriate, whether the conditions for the revocation of a suspension are met, and if necessary to give the reasons for its decision even if they appear obvious.

Since the appeal has the effect of transferring jurisdiction (Art. 62(1) DR), the Appeals Body can replace the first-instance body and examine, in its place, whether or not the conditions for the revocation of the suspension are met.

6.

a) The fate of a party against which a suspended disciplinary measure is imposed depends on its conduct during the probationary period. Article 15bis(3) DR describes the only circumstances in which the punishment can be executed if the terms of probation are considered to have been violated:

If a further offence is committed during the probationary period, the competent disciplinary body, as a rule, orders the original sanction to be executed. This may be added to the disciplinary sanction imposed for the second offence.

An offence punishable under the Disciplinary Regulations must therefore have been committed during the probationary period.

The second offence does not need to be similar in nature or seriousness to the original one.

It is sufficient that the offence was committed before the end of the probationary period.

If all these conditions are met, the relevant disciplinary body, in principle, has no choice but to revoke the suspension. Article 15bis(3) DR leaves very little room for manoeuvre: if the objective and subjective conditions for the revocation are met, the suspension should, in principle, be revoked. Therefore, even if only a minor offence is committed, the relevant disciplinary body should, in principle, order the execution of the original punishment.

b) In the present case, on 18 October 2012, the Control and Disciplinary Body held Fenerbahçe SK responsible for the ignition of fireworks and throwing of objects by its supporters. It also found it guilty of failing to maintain order and security. As part of the punishment for these offences, it ordered the club to play one UEFA competition match behind closed doors, subject to a probationary period of three years.

c) The Appeals Body notes that the new offences for which the appellant must be held responsible were committed on 6 December 2012, i.e. less than four months after the incidents that took place at the match between Fenerbahçe SK and FC Spartak Moskva on 29 August 2012, and barely a

month after the club was informed, on 6 November 2012, of the punishment imposed on 18 October 2012.

The objective conditions for the revocation of the suspension are therefore met.

The Appeals Body also notes that the club accepted the punishment imposed on 18 October 2012, since it did not appeal against it. It also informed its supporters of the situation. Therefore, both the club and its supporters were informed and aware of the risk that the suspension would be revoked if further offences were committed.

The threat was quite clearly insufficient since, barely a month later, further offences were committed during the probationary period. It is thus difficult to imagine that the conduct of the club and its supporters will improve in the future.

Therefore, taking into account all the circumstances of the case and in order to banish any desire to reoffend on the part of the club and its supporters, who have failed to fully appreciate the seriousness of their actions, the Appeals Body has no option but to uphold the first-instance body's decision to revoke the suspension granted on 18 October 2012. Otherwise, the Control and Disciplinary Body's decision of 24 January 2013 would have to be considered too lenient to the point of being arbitrary and would need to be set aside, in view of the seriousness of the offences and the club's atrocious disciplinary record in this area, which undoubtedly merit a much harsher punishment than just a fine.

7.

For all the above reasons, the appeal lodged by Fenerbahçe SK is rejected and the Control and Disciplinary Body's decision of 24 January 2013 is confirmed.

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).

All the appellant's conclusions are rejected. It must therefore pay all the costs of the proceedings. The Turkish Football Federation is jointly and severally liable for the payment of the fine and the costs of the proceedings (Art. 73 DR).

Decision of 15 February 2013

The Football Association. Steven Caulker. Thomas Ince

The Football Association of Serbia. Andreja Milutinovic

(Improper conduct of players and officials. Throwing of missiles. Racist behaviour)

Circumstances of the case:

During and after the UEFA European Under-21 Championship 2013 Serbia vs. England on 16 October 2012, numerous incidents occurred.

First of all, monkey chants were performed by home supporters, objects were thrown onto the pitch and fireworks were lit and/or thrown onto the pitch during the match.

After the final whistle, while a number of English players were celebrating their qualification, home supporters began throwing objects at them. The Serbian player Nikola Ninković started the trouble by pushing the English player Danny Rose, even though there was no reason for him to be on the pitch. A Serbian official prevented Nikola Ninković from attacking the English player Danny Rose, who did not react to the provocation. Several players and officials from both teams then crowded around him. Nikola Ninković then tried to slap an English player and head-butted an English official. Several other Serbian players committed a number of reprehensible acts.

The Serbian fitness coach, Andreja Milutinovic, who was not attacked at all, was seen running around hitting, kicking and head-butting people.

The English player Steven Caulker, after seeing his team-mate Danny Rose being pushed by a Serbian player, joined the scuffles and pushed the Serbian players. In addition, the English player Thomas Ince also took part in a jostling match with a Serbian opponent.

Legal framework:

Art. 5 DR (ed. 2012) *Principles of conduct*; Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 10 (1) (e) DR (ed. 2012) *Assault*; Art. 11 (2) (b) DR (ed. 2012) *Improper conduct of the team*; Art. 11 (2) (b) DR (ed. 2012) *Throwing of objects*; Art. 11bis DR (ed. 2012) *Discrimination*

Decision:

CDB:

Decision addressed to the Serbian FA:

- The CDB suspended the fitness coach Andreja Milutinovic from all football-related activities for two years, the second of which is suspended for a probationary period of three years.
- The player Nikola Ninković was suspended for two UEFA national team competition matches.
- The Serbian Under-21 national team was ordered to play its next UEFA competition home match behind closed doors.
- The Serbian FA was fined €80,000.

Decision addressed to The FA

- The player Steven Caulker was suspended for two UEFA national team competition matches.
- The player Thomas Ince was suspended for one UEFA national team competition match.
- A warning was issued against The FA for improper conduct by its team (five or more cards).

Appeals Body:

The appeals lodged by UEFA are partially admitted as follows:

- The fitness coach Andreja Milutinovic is suspended from all football-related activities for two years.
- The player Nikola Ninković is suspended for three UEFA national team competition matches.
- The Serbian U21 team is ordered to play its next two home UEFA competition matches behind closed doors.

The appeal lodged by The FA is partially admitted as follows:

- The player Steven Caulker is issued with a warning in respect of his future conduct and the player undertakes to perform one full day of community football service according to the instructions to be given by UEFA disciplinary services.

The appeal lodged by Andreja Milutinovic is rejected.

The other decisions taken by the CDB are confirmed.

Chairman: Pedro Tomás, Spain

Members: Goetz Eilers, Germany
Michel Wuilleret, Switzerland

In fact:

A.

On the basis of the UEFA match delegate's report, video footage and written statements submitted by The Football Association (hereinafter: The FA), statements by the English players and officials, and the Football Association of Serbia (hereinafter: Serbian FA), the UEFA Control and Disciplinary Body established the following facts in its two decisions taken on 13 December 2012, which are the subject of these appeal proceedings:

- *While a number of English players were celebrating their qualification, home supporters began throwing objects at them. The Serbian player No20, Nikola Ninković, (...) started the trouble by pushing the English player No3, Danny Rose, even though there was no reason for him to be on the pitch.*

Also after the final whistle, Nikola Ninković tried to pick a fight with the English player Danny Rose (see videos "End of the game", 00:17; YouTube no. 2, 00:07; YouTube no. 5, 00:38).

A Serbian official prevented Nikola Ninković from attacking the English player Danny Rose, who did not react to the provocation. Several players and officials from both teams then crowded round him. He then tried to slap an English player and head-butted an English official.

- *The Serbian assistant coach, Predrag Katić, who was standing on the left-hand side of the tunnel entrance, kicked out at the English players and officials for no apparent reason.*
- *The Serbian player No7, Ognjen Mudrinski, kicked one of the English players at least once in the tunnel.*
- *The Serbian player No10, Goran Caušić, committed a number of reprehensible acts, namely pushing the English player Danny Rose at the start of the incidents (see video "End of the game", 00:18) and kicked an English player at the tunnel entrance (see video "End of the game", 02:06 and video "ESPN1", 02:22).*
- *The Serbian player No22, Filip Malbašić, also kicked an English player at the tunnel entrance (see video "End of the game", 02:03 and video "Serbia-England U21 clip 1", 02:18).*
- *Monkey chants were performed by home supporters.*

- *Objects were thrown onto the pitch, particularly when the English team scored their goal.*
- *Pyrotechnic devices were lit and/or thrown onto the pitch during the match.*
- *The English player No5, Steven Caulker, played an active role in the after-match fighting: having seen his team-mate Danny Rose being pushed by the Serbian player No20, he joined in the scuffles, pushing the Serbian players No20 and No9 (see video "End of the game", 00:18).*
- *The English player No10, Thomas Ince, also took part in a jostling match with a Serbian opponent. His attitude (which can be seen in the video "End of the game", 00:34) had an aggravating effect on the fighting at the tunnel entrance.*

On the basis of the above-mentioned facts, the Control and Disciplinary Body took the following decisions against the Serbian FA, The FA and their respective players and officials.

Decision addressed to the Serbian FA

1. *The fitness coach Andreja Milutinovic is suspended from all football-related activities for two years, the second of which is suspended for a probationary period of three years.*
 - *FIFA will be requested to extend this decision so as to give it a worldwide effect.*
2. *The assistant coach Predrag Katić is suspended from all football-related activities for one year, the final six months of which are suspended for a probationary period of three years.*
 - *FIFA will be requested to extend this decision so as to give it a worldwide effect.*
3. *The disciplinary proceedings opened against the player Aleksandar Pantić are dismissed.*
4. *The player Ognjen Mudrinski is suspended for three UEFA national team competition matches.*
5. *The player Goran Caušić is suspended for four UEFA national team competition matches.*
6. *The player Nikola Ninković is suspended for two UEFA national team competition matches.*
7. *The player Filip Malbašić is suspended for three UEFA national team competition matches.*
8. *The suspensions shall apply to the next UEFA national competition matches for which the players would otherwise be eligible.*
9. *The Serbian Under-21 national team is ordered to play its next UEFA competition home match behind closed doors.*
10. *The Serbian FA is fined €80,000.*

Decision addressed to The FA

1. The player Steven Caulker is suspended for two UEFA national team competition matches.
This suspension applies to the following matches:
 - England v Italy on 5 June 2013
 - England v Norway on 8 June 2013
2. The player Thomas Ince is suspended for one UEFA national team competition match.
This suspension applies to the following match:
 - England v Italy on 5 June 2013
3. The disciplinary proceedings opened against The Football Association are dismissed.
4. A warning is issued against The Football Association for improper conduct by its team (five or more cards).
5. The Football Association must inform the aforementioned players of this decision in person.

B.

These decisions were notified to The FA and the Serbian FA respectively, with copies sent to the disciplinary inspector, on 21 December 2012.

C.

On 21 December 2012, the disciplinary inspector submitted a declaration of appeal against each decision.

In his written grounds of appeal against the decision concerning the Serbian FA, dated 15 January 2013, the disciplinary inspector concluded that the Control and Disciplinary Body's decision of 13 December 2012 should be amended so as to exclude the Serbian FA from the next UEFA Under-21 national team competition for which it would otherwise be eligible, to fine it €200,000, to suspend the fitness coach Andreja Milutinovic from all football-related activities for five years, and to suspend the player Nikola Ninković for three UEFA national team competition matches. Finally, he requested that the costs of the appeal proceedings be charged to the Serbian FA jointly and severally with Milutinovic and Ninkovic.

In his written grounds of appeal against the decision concerning The FA, also dated 15 January 2013, the disciplinary inspector concluded, in substance, that the Control and Disciplinary Body's decision of 13 December 2012 should be amended so as to suspend the player Steven Caulker for the next three UEFA national team competition matches, to suspend the player Thomas Ince for the next two UEFA national team competition matches and to fine The FA €50,000. In addition, he requested that the costs of the appeal proceedings be charged jointly and severally to The FA and the players Steven Caulker and Thomas Ince.

D.

On 7 January 2013, The FA and the players Steven Caulker and Thomas Ince submitted their declaration of appeal.

In its written grounds of appeal dated 15 January 2012, The FA argued, in substance, that it and its players had been punished essentially for being victims of the extraordinary behaviour and provocation of Serbian players, officials and fans, that its players had acted to protect themselves (self-defence) and that this matter could therefore be properly dealt with via a warning, reprimand or fine. In the alternative, it argued that the punishments should be suspended given their truly exceptional nature, since the players had been attacked and assaulted without provocation. The FA added that the disciplinary inspector's appeal against the warning imposed on The FA was inadmissible under Article 49 DR. It also claimed that its players had been racially abused by the Serbian supporters.

E.

On 8 January 2013, the Serbian fitness coach Andreja Milutinovic submitted his declaration of appeal, in which he requested a stay of execution. This request was rejected in a decision taken the same day by the chairman of the Appeals Body.

On 20 January 2013, Andreja Milutinovic submitted his written grounds of appeal, which are summarised as follows. He considered that he had been punished too severely in comparison with the players punished by the Control and Disciplinary Body. He asserted that he had intervened at the end of the match in order to separate the opposing players rather than to become involved in the fighting. He asked the Appeals Body to take into consideration the fact that he had been provoked, his lack of previous infringements and the negative economic impact that the suspension would have on him and his family. He argued that the disciplinary measure was disproportionate, given that his behaviour had lasted only three minutes.

Andreja Milutinovic then pointed to the case of the SSC Napoli coach Walter Mazzarri, who had been given a three-match suspension for assault, and the Court of Arbitration for Sport's decision concerning the club Ionikos FC and its employment dispute with one of its players. To conclude, Andreja Milutinovic asked the Appeals Body to lift the disciplinary measure imposed on him by the Control and Disciplinary Body and, in the alternative, to decrease it.

F.

In its written reply to the disciplinary inspector's appeal, dated 31 January 2013, the Serbian FA admitted partial responsibility, but denied that the racist incidents before and during the match described by the English players and The FA had taken place. It blamed its supporters' conduct on an English player's unsportsmanlike and provocative gesture on the pitch. It pointed out that its competent body had already taken disciplinary measures against the fitness coach Andreja Milutinovic, the player Nikola Ninković and others involved in the incidents, who should not be punished more than once for the same offence.

G.

a) The chairman of the Appeals Body opened the session. He noted the presence of the parties and of their aforementioned 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 explained that the Appeals Body had decided, because of the close links between the three appeals, to join the proceedings and would issue a single decision for reasons of procedural economy. Finally, the chairman informed the parties that several witnesses called by the parties were present, while some would deliver their testimonies via teleconference.

b) The parties agreed with the proposed procedure and raised no objections.

c) The images provided by the parties were viewed several times.

d) The witnesses called by the parties were heard after being invited to reply honestly to the questions, to tell the truth and only relate facts that they had personally experienced. The relevant parts of their testimony and the statements of the parties are summarised in substance below and presented with regard to their connection with the different cases.

H.

a) *Andreja Milutinovic*

Martin Thomas (FA goalkeeping coach; called as a witness by the disciplinary inspector, heard via teleconference) said he had seen Andreja Milutinovic hit his colleague on the back and had run after him to ask him why he had done so, following which he had been head-butted by Andreja Milutinovic.

Andreja Milutinovic disputed this version of events, stating that his contact with Martin Thomas's colleague had been unintentional and instinctive. He added that Martin Thomas had run after him and called him a "*F... Serbian gypsy*".

Martin Thomas denied verbally abusing Andreja Milutinovic.

Andreja Milutinovic confirmed his written grounds of appeal and added that, on the eve of this match, he had been informed that his son was seriously ill with meningitis and that the doctor had told him he was in danger, which had caused him great anxiety. He confirmed that he had intended to separate players and not to create trouble but admitted hitting somebody at the tunnel entrance. He also admitted that his conduct had been inappropriate and apologised. He reminded the panel that the Serbian FA had punished him for his conduct at the end of the aforementioned match and that he had not lodged an appeal against this decision. Finally, he stressed that, since he had already been suspended by the Serbian FA, any UEFA punishment would be disproportionate as it would prevent him from exercising his profession, which was the only source of income for him and his family. Finally, he asked the panel to take into consideration all the mitigating circumstances, notably the provocation of the opposing team and his poor financial situation, and to decrease the punishment.

Hüseyin Göcek (match referee; called as a witness by the disciplinary inspector) said that he had seen the Serbian fitness coach punch the English No5 in the back and chase other English players.

b) *Nikola Ninković*

Andreja Milutinovic (called as a witness by the disciplinary inspector) confirmed that the player Nikola Ninković had run across the whole pitch in order to pick a fight with the English player Danny Rose and that Nikola Ninković was the one “who had started everything”.

The player Nikola Ninković, through his representative Zoran Lakovic (general secretary of the Serbian FA), did not deny behaving aggressively, but claimed that he had not assaulted anybody. He stated that, according to the Serbian police and the Serbian FA’s investigation, there was no evidence that he had hit anybody during the incidents that had occurred at the end of the match.

In addition, his representative stated, in substance, that Nikola Ninković (17 years old) was a very talented player. He was capable of playing for any Serbian national team and his national association had already suspended him from playing for any Serbian national team for one year (a much heavier punishment than that requested by the disciplinary inspector) in order to punish his behaviour. His club, FK Partizan, had lodged an appeal against this decision but this appeal was still pending. Moreover, the player was facing further disciplinary action from the Serbian FA and, possibly, a public procedure before the court of Kruševac, in addition to the UEFA procedure.

c) *Serbian supporters*

Marvin Sordell (player of the English Under-21 team; called as a witness by the disciplinary inspector) confirmed his written statement of 29 October 2012, in which he had declared that, during the pre-match warm-up 40 minutes prior to the kick-off, Serbian supporters had made monkey noises towards the black members of the English team on at least four separate occasions and repeated these noises during the match. The noises had been made by around 200–300 Serbian supporters in the stands opposite the tunnel. He also confirmed that he had informed the referee about these monkey chants at half-time.

Asked how he had felt after the match, he said that being treated in this way simply because of his skin colour had made him feel very angry.

Jason Steele (third-choice goalkeeper of the English U21 national team; called as a witness by the disciplinary inspector) confirmed his written statement dated 29 October 2012, in which he had written that Serbian supporters had made monkey gestures and noises whenever a black player had taken a throw-in in front of them or when there had been a break in play and black players had been near the stands. He estimated that each incident had lasted 5–20 seconds.

Hüseyin Göcek (match referee; called as a witness by the disciplinary inspector) confirmed that the English goalkeeper had complained about the bottle thrown by the Serbian supporters but did not remember seeing the object being thrown.

Asked whether the English player No9 Marvin Sordell had informed him about the monkey noises, he said he did not remember. He added that he had not noticed any racist behaviour from the crowd before, during or after the game. At the end of the match, there had been a confrontation and he had been busy trying to separate the players involved and had therefore not been in a position to notice any monkey noises.

Asked by the Serbian FA representative, the referee said that all four match officials had been on the pitch one hour before kick-off and had not noticed any monkey noises.

Danny Rose (player of the English U21 national team; called as a witness by the disciplinary inspector and heard via teleconference) confirmed his written statement of 29 October 2012, in

which he had declared that monkey noises had been made by a good number of Serbian supporters during the pre-match warm-up. He had informed the English assistant coach Steve Wigley, who had told him to try to ignore them. According to Rose, whenever he took a thrown-in, he heard a large number of Serbian supporters in the stand behind him making monkey noises towards him. He explained that he had kicked the ball away at the end of the match because he had been frustrated by the monkey noises that he had heard during the warm-up and the match.

Asked how he felt about the Serbian supporters' behaviour, he said that he had asked his manager to substitute him during the second half because he had been affected by all the monkey noises directed towards him and other black players.

When he had been walking towards the tunnel area, he had heard a large number of Serbian supporters in the stand behind the substitutes' benches making monkey noises towards him. Hearing this, he had raised a thumb towards the crowd and made a monkey gesture to confirm that he had heard the noises.

Responding to a question from the general secretary of the Serbian FA about his attitude after the goal, Danny Rose denied making any gesture that could have been interpreted as provocative towards the Serbian supporters.

Tormod Larsen (UEFA delegate; called as a witness by the disciplinary inspector) confirmed the content of his additional report dated 17 October 2012, according to which the English officials had complained to him at half-time about racist behaviour on the part of home supporters. He said he himself had heard some of the monkey noises and racist insults ("F...niggers") from some of the Serbian supporters after the final whistle.

He also reported the throwing of missiles and the use of pyrotechnic devices and confirmed that the English goalkeeper had complained to the referee about objects thrown at him during the game.

He said that all the trouble after the final whistle had been the result of the Serbian team's frustration at the fact that the English team had qualified for the final tournament in Israel.

Asked whether he had noticed the English players, in particular the No3 Rose, direct any provocative gesture at Serbian supporters, the delegate was adamant that he had not.

He also indicated where he had been sitting during the match and that he had been unable to see what had happened in the tunnel as his view had been blocked.

During the warm-up, he had been walking around the stadium and had therefore been unable to see if Serbian supporters had made monkey noises. After the final whistle, however, he had noticed a substantial number of Serbian supporters making monkey noises and he himself had been hurt by a missile thrown from the Serbian supporters' stand.

Thomas Ince (English player; as a party / witness called by The FA) confirmed his written statement dated 29 October 2012, according to which monkey noises had been made during the warm-up and during the first and second halves, especially on the left-hand side of the pitch, occupied by Danny Rose.

Steven Caulker (English player; as a party/ witness called by The FA) confirmed his written statement dated 15 January 2013, according to which monkey noises had been made during the warm-up and during the first and second halves, especially when Danny Rose had taken throw-ins.

The monkey noises had made him angry. He had reported these incidents to his manager, who had told him that they would be reported to UEFA.

Zdravko Jokić (responsible for match organisation within the FAS); called as a witness by the Serbian FA) said he had not noticed any racist chants before or during the game. Local supporters had merely responded to the provocative gesture displayed by the English player No3 when he had been leaving the pitch. Monkey noises had only been directed at the player No3, Danny Rose, and not at the other black players.

Stuart Pearce (head coach of the England U21 team; called as a witness by The FA) confirmed his written statement, which had been signed but not dated, according to which monkey noises had been made by Serbian supporters, whereas his players had behaved in a proper manner without any provocation and had been treated without respect. According to Stuart Pearce, to suspend his players Steven Caulker and Thomas Ince after what they had experienced throughout the game on the part of the Serbian supporters would send out a wrong message in the fight against racism. These players, who had reported the problems to him, had never experienced this level of racism. The assistant coach Steve Wigley had also informed him about monkey noises before the game. During the match, he himself had heard monkey noises behind him on one or two occasions.

d) *Thomas Ince and Steven Caulker*

Thomas Ince (English player; respondent / appellant) said, regarding the incident for which he had been punished by the Control and Disciplinary Body, that he had been trying to get away by pushing the Serbian goalkeeper after the Serbian player No9 had pushed him and the Serbian goalkeeper had given him a second push. The player underlined his good disciplinary record at domestic and international level. Asked by the Serbian FA representative whether he had reported monkey noises to the officials, he said that he had not.

Steven Caulker (English player; respondent / appellant) said that he had intervened to protect his team-mate Danny Rose by stopping Nikola Ninković from getting to him. He had placed his arm on Nikola Ninković's chest before being approached by Serbian players and their fitness coach and moving away. Caulker pointed out that he had never received a red card at any level during the four years of his career.

I.

Finally, the chairman gave the parties the floor in accordance with Article 60 DR. They presented and expanded on the arguments set forth in their respective written statements and maintained their original requests.

Their more detailed arguments are set out below, insofar as they are relevant to the decision.

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

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 appeals lodged by The FA and its players, by Andreja Milutinovic and by UEFA were submitted by the deadline and in the form required. They are therefore admissible 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 issue a new decision.

In accordance with legal doctrine and case law (G. PIQUEREZ, *Traité de procédure pénale suisse*, 2nd ed., 2006 p. 754/755 and quoted case law), the transfer of jurisdiction may be limited by the appellant, who may, if he wishes, only dispute certain parts of the judgment.

In the present case, the first-instance decisions have been appealed against by several appellants. As a result, they are disputed in their entirety but the conclusions of the appellants are different. Consequently, the Appeals Body will reconsider the cases in full. Due to the close links between them and for reasons of procedural economy, it will reconsider them as a whole and issue a single decision.

However, the consequences of the Appeals Body's factual and legal re-examination of each of them will be presented separately.

2.

Indeed, Article 49(1)(a) DR states that *"Appeals against decisions taken by the Control and Disciplinary Body are admissible, unless the disciplinary sanction imposed in the first instance was limited to a warning (let. a), a reprimand (let. b), an automatic one-match suspension following a dismissal (let. c), a disorderly conduct penalty under Article 32 of these regulations (let. d)."*

The FA questioned the admissibility of the appeal lodged by the disciplinary inspector on the basis that an appeal against the warning imposed on The FA by the Control and Disciplinary Body is not inadmissible under Article 49 DR. This argument is unfounded in the present case.

To the extent that, for the reasons explained below (see part 3 let. b and c below), the Appeals Body rejects UEFA's conclusions in favour of a fine of €50,000 in lieu of the warning that it has confirmed, the question raised by The FA can remain open.

3.

Having carefully in several times examined the video footage of the incident and assessed the case file, the oral and written statements and testimonies, the panel retains the following facts in relation to the disciplinary inspector's appeal against the Control and Disciplinary Body's decision regarding The FA and the players Steven Caulker and Thomas Ince.

a) Players

According to Article 10(1)(e) DR, a player is suspended for three competition matches or for a specified period for assaulting another player or another person present at the match.

Steven Caulker

The video footage of the incident confirms the statement of the player, who said he had intervened between the Serbian player No20, Nikola Ninković, and the English player No3, Danny Rose, in order to prevent any physical attack on his team-mate. Even though it is indisputable that Steven Caulker touched Nikola Ninković, this appears to have been a necessary means of separating the two players or preventing a fight. In these circumstances, the Appeals Body disagrees with the disciplinary inspector and first-instance body's interpretation that Steven Caulker assaulted the Serbian player No20. In the panel's opinion, the Serbian official who chased Steven Caulker may also have misinterpreted his actions. On the basis of its own viewing of the video footage of the incident and in the absence of any convincing evidence that he intended to commit an assault – intent being a necessary element of assault – the panel considers Steven Caulker's gesture as a punishable offence, but not one of deserving a match suspension.

Therefore, no match suspension should be imposed on Steven Caulker. On the other hand, due to his active involvement in the melee, the player Steven Caulker is issued with a warning in respect of his future conduct and the player undertakes to perform one full day of community football service.

Thomas Ince

The footage of the incident shows that Thomas Ince pushed one opponent during a scuffle, as he admitted himself. He claims that he acted in self-defence, but admits that, even if he had been pushed by an opponent first, he should not have returned the push. Indeed, it must be stressed that taking justice into one's own hands is not acceptable in football, since it is the match officials' responsibility to report any infringement of the UEFA regulations. Any other decision in this regard would give all players who were victims of unlawful acts during a match an excuse to react in the same way.

Unlike Steven Caulker, who was clearly trying to separate two players, it is clear that Thomas Ince intentionally pushed an opponent. Under these conditions, it is therefore established, to the satisfaction of the law, that he assaulted an opponent within the meaning of Article 10(1)(e) DR, as the first-instance body concluded.

Regarding the disciplinary measure to be imposed against him, the Appeals Body, in accordance with Article 17 DR, took into consideration all the circumstances of the case, notably the fact that the home team started the trouble and that the player's act was not extremely serious. In view of the above, the Appeals Body deems a one-match suspension to be the appropriate punishment in this case.

b) The FA

According to Article 11(1)(b) DR, disciplinary measures may be taken against a team, if individual disciplinary sanctions have been imposed by the referee on at least five players during the same match.

In the present case, the referee administered all in all five cards (four yellow and one red). Furthermore, English players were involved in the melee. It is thus established that the English team conducted itself in an improper manner.

However, as the Control and Disciplinary Body rightly indicated, taking into account the general context of the incidents that occurred after the match, to consider the English players and officials guilty of gross improper conduct for which The FA would be responsible under the terms of Article 11(1)(b) DR would not only be harsh but unfair. Therefore, the Appeals Body considers a warning against The FA to be the appropriate punishment in this case.

c) Consequence for the respective appeals

The disciplinary inspector concluded, on behalf of UEFA, that the decision addressed to The FA and the players Steven Caulker and Thomas Ince should be overturned, a fine be imposed on The FA, and the players Steven Caulker and Thomas Ince be suspended for three and two matches respectively.

In view of the above, UEFA's appeal regarding cases (a), (b) and (c) is rejected.

The FA and the players Steven Caulker and Thomas Ince requested that the players be acquitted and, in the alternative, that they be warned or fined, with no change to the warning imposed on The FA.

In view of the above, their appeal is partially admitted.

4.

Having examined the video footage of the incident carefully several times, and assessed the case file and the oral and written statements and testimonies, the panel retains the following facts in relation to the disciplinary inspector's appeal against the Control and Disciplinary Body's decision regarding Andreja Milutinovic, the player Nicola Ninković and the Serbian FA.

a) Andreja Milutinovic

According to Article 5(2)(j) DR, member associations and clubs, as well as their players and officials, conduct themselves according to the principle of loyalty, integrity and sportsmanship. A breach of these principles is committed by anyone who commits an act of assault.

The video footage of the disputed incident shows that Andreja Milutinovic's conduct after the match was inappropriate, as he himself admitted. As several witnesses confirmed, the fitness coach, who was not attacked at all, was seen running around hitting, kicking and head-butting people. His claim that he was only trying to separate players involved in the scuffles is unconvincing, if not rash. His declarations are muddled, contradictory and lacking in credibility. He committed several counts of assault under Article 5(j) DR, as the first-instance body admitted.

Punishment

As regards the punishment to be imposed on him in these circumstances, the Appeals Body notes that nothing, not even the illness of a son, could justify such behaviour. On the contrary, in view of his state of anxiety, Andreja Milutinovic should have avoided causing trouble, as this would pose a risk to him and his family. The argument that he was provoked by Martin Thomas is also without credibility and is not backed up by any evidence.

The fact that the Serbian FA has already punished him is irrelevant. Indeed, the UEFA disciplinary procedure is self-governing in the sense that the UEFA disciplinary bodies are the only bodies with the power to take decisions on incidents that occur within their jurisdiction. The decision taken by the Serbian FA under its own disciplinary regulations does not prevent UEFA from applying its regulations in this case. Any other decision in this regard would affect the independence of the UEFA disciplinary bodies.

Finally, the consequences of a punishment that prevents him from carrying out his profession may be harsh, but it will not prevent Andreja Milutinovic from exercising his profession outside football.

Andreja Milutinovic's conduct seriously violated the principles of conduct laid down in Article 5 DR and he must be punished accordingly in order to protect the reputation of the UEFA competitions. The Appeals Body considers that a person who behaves in such a way should have no official role in football, since he not only failed to help defuse a dangerous situation, but he even made matters worse by assaulting numerous people. There is no mitigating circumstance to be taken into consideration and the Appeals Body deems a two-year suspension from carrying out his function to be the appropriate means of convincing the fitness coach to seriously reconsider his behaviour and to show the respect that, as an official, he should promote in UEFA competitions. Furthermore, a team official has an exemplary role to play as far as the conduct of the entire team is concerned. By setting a good example, an official can actively encourage his team to behave properly. The fitness coach clearly failed to do so in this case.

Comparing two punishments imposed by the UEFA disciplinary bodies is usually a fruitless exercise. It is very difficult to base a claim on the principle of equal treatment because of differences in circumstances and the number of both objective and subjective elements that are taken into account when determining punishments, which are therefore tailored to the individual case.

In view of the above, the Appeals Body considers the two-year suspension imposed on Andreja Milutinovic by the Control and Disciplinary Body to be the appropriate punishment, but that there is no justification for suspending it for a probationary period, since the appellant has neither admitted nor acknowledged the seriousness of his misbehaviour.

Consequence for the respective appeals

In his appeal, Andreja Milutinovic requested that the punishment imposed on him be lifted and, in the alternative, decreased. In view of the above, his appeal is rejected.

In his appeal, the disciplinary inspector requested that Andreja Milutinovic be suspended for five years. In view of the above, his appeal is admitted to a very limited extent.

b) *Nikola Ninković*

According to Article 10(1)(e) DR, a player is suspended for three competition matches or for a specified period for assaulting another player or another person present at the match.

It is established that Nikola Ninković pushed the English player Danny Rose without reason and tried to attack another English player, which he was prevented from doing by a Serbian official. Witnesses also confirm that Nikola Ninković was the man who started all the scuffles that led to the other incidents. After the match, he ran all the way across the pitch to attack the English player Danny Rose. His act constitutes an assault in the sense of Article 10(1)(e) DR and the fact that he crossed the field of play to start a fight while he was a substitute constitutes an aggravating circumstance.

For the reason explained above in relation to Andreja Milutinovic, the fact that the Serbian FA has already banned the player from all Serbian national teams for one year and that his club has lodged an appeal against this decision does not affect the present decision.

Punishment

After taking into consideration all the relevant circumstances of the case, the Appeals Body considers the two-match suspension imposed by the Control and Disciplinary Body lenient, in view of the seriousness of the player's conduct at the end of the match. Therefore, the Appeals Body deems a three-match suspension to be the appropriate disciplinary measure in this case.

c) *Misbehaviour of supporters and responsibility of the Serbian FA*

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.

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, *"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"*. 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 member association or club is automatically held responsible and punished accordingly.

Indeed, Article 11bis DR states that:

"1. Anyone who insults the human dignity of a person or group of persons by whatever means, including on grounds of colour, race, religion or ethnic origin, shall incur a suspension for five matches or for a specified period (...).

2. If one or more member of an association or club's supporters engage in the behaviour described in paragraph 1, the member association or club responsible shall be fined €20,000.

3. If particular circumstances so require, the competent disciplinary body may impose additional sanctions on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, a match forfeit, the deduction of points or disqualification from the competition (...)"

In the disputed decision, the Serbian FA was punished for monkey chants (Art. 11bis DR) and the throwing of missiles by its supporters (Art. 11(2) DR)

The Serbian FA admits that monkey chants were performed by its supporters, but only at the end of the match.

However, video footage in which they are audible and various credible witness statements show that monkey noises were directed at black English players by a considerable number of Serbian supporters.

The respondent also denies that monkey chants were performed during the warm-up and on several occasions during the match. To support this argument, it claims that four match officials were on the field of play warming up but did not hear a single monkey chant.

The relevant statements of the English players Steven Caulker, Thomas Ince and Danny Rose, and of other witnesses, were coherent and measured. The players and The FA cannot have acted out of any strategic or personal motive, since they had qualified and would not face the Serbian team in the final tournament in Israel. The clear lack of any direct interest in the present procedure makes their submissions even more credible.

The UEFA delegate could also hear monkey chants and racial insults from a group of Serbian supporters. The fact that he moved from his initial position in the VIP area to near the field of play after the complaint made by the English official proves that he took the English delegation's allegation seriously.

The Serbian FA's argument that its supporters would only have responded to a provocative gesture by the English player Danny Rose must be ruled out. Indeed, it appears to the Appeals Body that, by raising his thumb and making a monkey gesture towards Serbian supporters, Danny Rose was not acting provocatively but ironically showing them that he had received their "monkey messages".

In view of the declarations and statements presented, sufficient evidence has been produced to prove that Serbian supporters repeatedly performed monkey noises and directed racist insults at black English players on several occasions during the match. Such intolerable supporter misbehaviour infringes UEFA regulations and is the responsibility of the Serbian FA, irrespective of whether it occurred before, during or after the match.

The level of racist conduct demonstrated by some of the crowd that was clearly heard in the stadium and by television viewers cannot be tolerated at a UEFA football match.

In addition, Serbian supporters threw several objects and used pyrotechnic devices during and after the match.

The Serbian FA must also be held responsible for this infringement of Article 11(2)(b) DR, under which the disciplinary measures listed in Articles 14 and 15 DR may be taken against member associations or clubs, particularly in relation to:

- the throwing of objects (letter b);
- the lighting of fireworks or any other objects (letter c).

In the present case, Serbian supporters threw missiles towards the English players, especially the goalkeeper, and used about eight pyrotechnic devices, two of which were thrown. These supporters therefore violated the above provision and the Serbian FA must be punished accordingly

d) Improper conduct of the team and responsibility of the Serbian FA

According to Article 11(1)(b) DR, *"Disciplinary measures provided for Article 14 and 15 of the present regulations may be taken against member associations or clubs if:*

a) (...);

b) a team conducts itself improperly (...)"

Since four Serbian players and two officials were found guilty of misbehaviour, it is established that the Serbian U21 national team was guilty of improper conduct. The Serbian FA must therefore also be punished for this.

Punishment

As regards the disciplinary measure against the Serbian FA for the misconduct of its team and supporters, the competent disciplinary body must 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 punishment according to the most serious offence and increases it accordingly (Article 17(1) DR).

The punishment must be mentioned in the list contained in Article 53 of the UEFA Statutes and Article 14 DR, which includes, in order of increasing severity, 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, the disciplinary bodies have considered that, for reasons of prevention, the disciplinary measure should be likely not only to punish the association or club in view of its strict liability, but also to raise the awareness of supporters and others who actually misbehaved. The playing of a match behind closed doors, banning supporters from attending one or more of their favourite team's matches, a partial or full stadium closure or the playing of matches in a third country are therefore the most appropriate measures in this regard. They have a direct impact on the supporters by preventing them from attending a match, while ensuring that the competition continues as normal.

In this respect, the exclusion of the Serbian FA requested by the disciplinary inspector does not appear appropriate, since the players involved in the incidents would not be the ones to suffer from such an exclusion, which would only punish the next generation of U21 players, who did not participate in this match. The Appeals Body also considers the requested €200,000 fine disproportionate in this case.

Article 17(4) DR states that, if the party charged has committed multiple disciplinary offences, the disciplinary body assesses the punishment according to the most serious offence and increases it accordingly.

It should be remembered that the Serbian FA has already been punished for its supporters' racial abuse, and its poor disciplinary record in relation to supporter misconduct must be taken into account.

In view of all the circumstances, i.e. the seriousness of the offences committed by Serbian supporters, officials and players, the level of racist conduct demonstrated, the fact that objects were thrown at the goalkeeper, together with the Serbian FA's poor disciplinary record in relation to supporter misconduct and racist abuse, the Appeals Body considers that the most appropriate punishment is to order the Serbian U21 national team to play its next two UEFA European Under-21 Championship matches behind closed doors, and to confirm the €80,000 fine already imposed in the disputed decision. The disciplinary inspector's appeal is admitted to this extent.

5.

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 €11,000, will be charged as follows: €7,000 to UEFA; €3,000 to The FA and its players; and €1,000 to Andreja Milutinovic, with the Serbian FA jointly liable for the collection of these costs.

Decision of 7 March 2013

Fenerbahçe SK. Raul Jose Trinidad Meireles

(Assault)

Circumstances of the case:

According to the official match report issued by the referee following the UEFA Europa League match between Bate Borisov and Fenerbahçe on 14 February 2013, the Fenerbahçe player No. 14, Trinidad Meireles Raul José, was sent off the field of play for having “kicked his opponent while the ball was not playable”.

Legal framework:

Art. 10 (1) (e) DR (ed. 2012) *Assault*; Art. 17 DR (ed. 2012) *Standard sanctions*

Decision:

The CDB’s decision is upheld and, consequently, the player Meireles is suspended for three UEFA competition matches.

Chairman ad hoc: Pedro Tomás, Spain

In fact:

A.

According to the official match report issued by the referee following the UEFA Europa League match between Bate Borisov and Fenerbahçe 14 February 2013, the Fenerbahçe player No. 14, Trinidad Meireles Raul José (hereinafter: Meireles or the player) was sent off the field of play for having “kicked his opponent while the ball was not playable”.

B.

In a decision taken on 27 February 2013 and (reasoned decision) notified on 1 March 2013, the Control and Disciplinary Body (hereinafter: the CDB), decided to suspend the player Meireles for three UEFA competition matches. The CDB considered that the action taken by the referee (sending off the player) did not prevent the Control and Disciplinary Body from taking additional action as the circumstances so warranted. Considering the act of the player an assault in the sense of Article 10(1)(e) DR, the CDB concluded that it justified additional sanction. As the player had not participated in the match Fenerbahçe SK vs FC BATE Borisov, played on 21.02.2013, he had already served one suspension. The 2 remaining suspension matches shall apply as follows: a) FC Viktoria Plzen vs Fenerbahçe SK of 07.03.2013; b) Fenerbahçe SK vs FC Viktoria Plzen of 14.03.2013.

C.

On 1 March 2013, Fenerbahçe SK and its player lodged an appeal against this decision without providing the player's written consent. It was claimed in their ground of appeal dated 5 March 2013 in substance that:

- the video of the match shows, that the act of the player was merely a foul committed to prevent the opponent's attack after losing the ball to the opponent and not an assault;
- the statement of the player exposed to this foul, who considers the red card discussible, confirms, that the position was not an at committed by assault;
- in comparison with the sanctions of the two matches of suspension pronounced against the players Ibrahimovic, Rooney and Barragan following red cards, the suspension of Raul Meireles for three matches for an unintentional act shall be contrary to the principle of proportionality.

D.

On 6 March 2013, the UEFA disciplinary inspector responded to the appeal and asked for it to be rejected as being unfounded. He also requested that the costs of the disciplinary proceedings be charged to the appellant.

E.

Their more detailed arguments are set out below, insofar as they are relevant to the decision.

After examining the case file and viewing the video footage of the incident, the chairman of the Appeals Body as a judge sitting alone considered the following:

In Law

1.

In accordance with Article 24 § 2 DR, the chairman of the Appeals body or his nominee may take a decision alone under clear factual and legal circumstances, in urgent cases, at the joint request of the parties or in the case of clearly inadmissible appeals.

According to consistent practice, only one of these conditions needs to be met. In the case in hand, the urgency of the situation is given: the next match of Fenerbahçe is fixed on 7 March 2013. In order to give the club a clear view of the player's disciplinary situation before the kick-off of the today match, it was appropriate to deal with the case urgently. The factual and legal circumstances also permit this.

Furthermore, neither the Disciplinary Inspector nor the player and his club had an objection the case dealt with by a single judge. Therefore, there are sufficient reasons for the Chairman to deal with the present case as a judge sitting alone in accordance.

The Chairman releases both the Fenerbahçe SK and its player and the Disciplinary Inspector from participation at the present hearing (Art. 56 § 2 DR).

The present case will be examined in accordance with the aforementioned procedural rules.

2.

The appeal had been lodged by Fenerbahçe and its player within the prescribed deadline and in the required form, except, that it was not accompanied by the written consent of the suspended player. Balancing the emergency of the case and the missing consent, the Chairman considered that a non-admission of the appeal for this ground would constitute an excessive formalism, as the consent of the player may be presumed and could have been verified by the authority.

The grounds of appeal had been submitted and the fee paid before the relevant deadline. The appeal was therefore admissible under the terms of Articles 49, 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 Art. 54 § 1 of the DR.

The Chairman of the Appeals Body was therefore competent to deal with the merits of the appeal.

3.

According to Article 2 of the UEFA Statutes (hereinafter: Statutes), the purpose of UEFA is to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination as to politics, gender, religion or race (par. b). By virtue of Article 7 of the Statutes, members of UEFA are duty-bound to respect the principles of loyalty, integrity and sportsmanship in accordance with the principles of fair play (par. 2), and they undertake to comply with UEFA's statutes, regulations and decisions (par. 3a). Under the terms of Article 52 of the Statutes and Article 8 of the DR, unsporting conduct, breaches of the Laws of the Game, as well as infringements of UEFA's Statutes, regulations, decisions and directives, are penalised by means of disciplinary measures.

Furthermore, the question of the misconduct of players is dealt with from a disciplinary point of view in Art. 10 § 1 of the DR, which stipulates, among others, a suspension for three competition matches or for a specified period for assaulting another player or person present at the match (let. e). According Article 17 § 2 DR, the disciplinary measures enumerated in Articles 10 and 11bis of the present regulations are standard sanctions. In particular circumstances, they can be either scaled down or increased.

4.

a) According to Article 45 DR, facts contained in match officials' reports are presumed to be accurate, unless proof of the inaccuracy of these reports is provided. This provision does not prevent the competent disciplinary body to complete or to amend afterward the facts contained these reports according to the evidence in its possession

b) In the present case, the referee has reported that the player Meireles kicked his opponent to the groin region. After having viewed the footage of the incident, it is obvious that the player Meireles kicked twice his opponent in the shin and ankle region. It does not matter whether he kicked his opponent in the groin or in the shin or in any other part of the body. Indeed, accordingly the video footage of the incident is sufficient to establish, to the satisfaction of the law, that Meireles kicked his opponent. Contrary to what his club tries to argue, this video footage does not allow to consider that the referee wrongly appreciated his gesture, which would only be a foul.

Meireles actually assaulted his opponent and the referee was right to punish him for assault in application of Articles 10 § 1, let. e DR.

Indeed, it has long been the practice of the UEFA disciplinary bodies to qualify as assault in the sense of the above provision any act committed not only intentionally and deliberately but recklessly (*dolus eventualis*), by which the opponent's physical or mental integrity is interfered with before, during or after the match. Such acts would involve contact with aggressive intent, *kicking*, punching, shaking, pushing, pinching, spitting, throwing of objects, etc.

5.

a) The qualification of the offence being confirmed, the only question to be examined is whether the Control and Disciplinary Body has abused its power of discretion by suspending the player Meireles for three UEFA competition matches.

b) Pursuant to Article 17(1) DR, the Control and Disciplinary body determines the type and extent of the disciplinary sanction according to the objective and subjective elements, under consideration of incriminating and exonerating factors; paragraph 2 of Article 17 DR making it clear that the disciplinary measures enumerated especially in Article 10 DR are standard sanctions. In particular circumstances, they can either be scaled down or increased. As a result, the Control and Disciplinary body has a large power of discretion when it comes to the fixing of a penalty.

c) In compliance with the general principles of law, the disciplinary sanction must be fixed in accordance with the circumstances, in conformity with the degree of fault and reputation of the party concerned. In addition to this repressive element, the sanction must also be directed at a preventive and educational objective.

The arguments put forward by the club are cause for concern: the way the appellant is unable or unwilling to acknowledge the violence of the conduct here in question is disconcerting, to say the least. Presenting the incident as *"a foul committed to prevent the opponent's attack after losing the ball to the opponent and not an assault"* in absolutely not in accordance with the appreciation anybody could have of the images of the incident, which show the appellant kicking twice his opponent while the ball was not playable. This act could even be seen as an attempt at aggression.

Furthermore, the appellant did not express any regrets for this gesture which could have had a serious impact on the well-being of his opponent. Even though, luckily, it had no consequence this time, as it was clearly dangerous that was likely to harm the opponent. Such conduct had to be punished accordingly.

The appellant also alleges implicitly the inequality of treatment with notably Ibrahimovic and Ronney, who were respectively punished with two-match suspension for rough play and for two-match suspension combined with one community duty for an assault.

It must be recalled that comparing two punishments imposed by the UEFA disciplinary bodies is usually a fruitless exercise. It is very difficult to base a claim on the principle of equal treatment because of differences in circumstances and the number of both objective and subjective elements that are taken into account when determining punishments, which are therefore tailored to the individual case.

d) In view of the above, the arguments put forward by Meireles are in no way to be considered as mitigating circumstances.

6.

All the elements and the circumstances of this case and the UEFA disciplinary bodies' case law therefore justify the three-match suspension imposed by the Control and Disciplinary Body, that would achieve the objectives of amending the player's behaviour and dissuading him from making the same mistake again. Consequently, the challenged decision was to be confirmed and the appeal rejected. The appeal of Meireles, which is ill-founded, must then be rejected.

7.

The costs of the proceedings, which include all expenses of the appeals procedure, should be shared among the parties at fair discretion in accordance with the outcome of the proceedings (Article 63 DR).

In the present case, it is justified to charge all the costs of this case to the appellant, whose appeal is rejected on all counts. The player, the club and the Turkish Football Federation are jointly liable for paying these costs (Art. 73 DR), which amount to €2,000.

Decision of 11 March 2013

S.S. Lazio

(Setting off and throwing of fireworks. Racist behaviour. Blocked evacuation routes and passageways. Lack of stewarding. Revocation of suspension)

Circumstances of the case:

In a decision taken on 24 January 2013, the CDB fined S.S. Lazio € 50'000 and ordered the club to play 1 UEFA competition match behind closed doors, the last measure being suspended for a probationary period of 2 years.

During the 2012/13 UEFA Europa League match between Lazio and VfL Borussia Mönchengladbach on 21 February 2013, home supporters had ignited about 33 pyrotechnic devices, the gangways in the north stand were blocked throughout the match, about 200 spectators had made the Nazi salute, the gate leading to the other side of the stand near the field of play was padlocked, and the stewards were not proactive vis-à-vis the north stand, allowing Lazio supporters to behave in contradiction with the UEFA principles of conduct.

Legal framework:

Art. 6 DR (ed. 2012) *Strict liability*; Art. 11 (2) DR (ed. 2012) *Lack of order or discipline*; Art. 11bis DR (ed. 2012) *Discrimination*; Art. 15bis (3) DR (ed. 2012) *Suspended sanction*

Decision:

The CDB's decision is upheld. Consequently, S.S. Lazio is fined €40,000 and ordered to play their next two UEFA competition matches as host club behind closed doors.

Chairman: Pedro Tomás, Spain

Members: Michael Maessen, Netherlands
Ivaylo Ivkov, Bulgaria

In fact:

A.

In a decision taken on 24 January 2013, the UEFA Control and Disciplinary Body fined S.S Lazio (hereinafter: Lazio) €50,000 and ordered the club to play one UEFA competition match behind closed doors, this last measure being suspended for a probationary period of two years.

The first-instance body had established that during the above-mentioned match, Lazio supporters had ignited one Bengal light and one firecracker. The firecracker had exploded directly next to the photographers and stewards. In addition, Lazio supporters had displayed a banner with the words "Free Palestine". Finally, Lazio supporters had shouted "Duce, Duce", raising their right hands in a so-called Nazi salute.

Since Lazio did not appeal against this decision, the disciplinary measures imposed by the Control and Disciplinary Body on 24 January 2013 entered into force and are final.

B.

In a decision taken on 27 February 2013, the Control and Disciplinary Body imposed the following sanction on Lazio:

- "1. To fine SS Lazio €40,000.*
- 2. To order SS Lazio to play its next two (2) UEFA competition matches as host club behind closed doors. This applies to the following match:*
- SS Lazio vs VfL Stuttgart, 14 March 2013.*
- The remaining match behind closed doors applies to the next UEFA competition match for which the club would qualify.*
- 3. The above fine must be paid into the bank account indicated below within 30 days of communication of this decision."*

The Control and Disciplinary Body held that, during the 2012/13 UEFA Europa League match between Lazio and VfL Borussia Mönchengladbach, home supporters had ignited about 33 pyrotechnic devices, the gangways in the north stand were blocked throughout the match, about 200 spectators had made the Nazi salute, the gate leading to the other side of the stand near the field of play was padlocked, and the stewards were not proactive vis-à-vis the north stand, allowing Lazio supporters to behave in contradiction with the UEFA principles of conduct.

Considering the seriousness and multiplicity of the offences committed and the club's poor disciplinary record, the Control and Disciplinary Body concluded that it would be appropriate to revoke the suspension of the punishment imposed on 24 January 2013 and to add one match more to be played behind closed doors, combined with a fine of €50,000 in this case.

C.

In a letter dated 1 March 2013, Lazio addressed its notice of appeal to the UEFA Appeals Body.

On 6 March 2013, the club, through its lawyer, Antonio Rigozzi, submitted the grounds of its appeal, which can be summarised, in substance, as follows:

- the club stresses that it has taken many initiatives to tackle unsavoury activities by its right wing ultras and that cooperation with the police has led to a significant number of supporter bans (DASPOs) being issued, which has significantly improved the situation;
- regarding the alleged fascist gestures, the club considers that there is no hard evidence of any "racist behaviour" in the sense of Article 11bis of the UEFA Disciplinary Regulations. In its opinion, the match report and the other evidence provided do not ascertain any racist activity. However, the club does not deny that a small number of supporters did have "their arms positioned in a way that was reminiscent of a fascist salute". This behaviour would be more in line with a potential offence under Article 11.2(e) of the UEFA Disciplinary Regulations (use of gestures of a political, offensive and provocative nature) than with Article 11bis of the UEFA Disciplinary Regulations (racist behaviour). The club also points out an inconsistency in the report regarding the gesture in question, as it refers, in the same document, first to approximately 200 and then to "more than 300" supporters;
- in the absence of an offence of the same nature, the club denies any recidivism with regard to racist behaviour on the part of its supporters and, consequently, any grounds for the Control and Disciplinary Body to lift the suspension of the previous sanction taken for racist behaviour by its supporters;
- regarding the alleged bad behaviour of supporters, the club does not deny the use of fireworks and smoke bombs, but considers this a minor offence;
- regarding the alleged insufficient stewarding and the reported lock of an emergency gate, the club argues that the locked gate identified was not an emergency exit but a necessary sector partition that must always be kept closed to avoid any move from one sector to another, except for cleaning during the week, and it points out that except for reservations about stewarding in the north stand, the turnstile stewarding was described as "competent". The 446 stewards employed for the match met the requirements of Italian law;
- regarding the financial aspect of the decision, the appellant underlines that it took about €700,000 from the match against Borussia on 21 February 2013, and it expected to earn more from the match against Stuttgart. Therefore, the decision of the Control and Disciplinary Body would cause a financial loss;
- in view of the above, and after recalling some case law and general principles regarding the aim of any disciplinary measure, the club considers the lifting of the suspension of the original ban to be disproportionate. It argues that the maximum disciplinary measure should be to extend the duration of the probationary period or to re-impose a new probationary period. Consequently, it requests that the Appeals Body issue a decision ordering the appealed decision be dropped and, instead, that any disciplinary action to be imposed against Lazio be reduced to a reprimand or fine, or, in the most

extreme case, a partial closure of the stadium, limited to the north stand, for one game, without the suspended disciplinary measure imposed on 24 January 2013 being lifted.

D.

On 8 March 2013, UEFA, through its disciplinary inspector, filed its reply to the appeal. It concluded that the appeal should be rejected, with the costs to be paid by the appellant.

E.

At today's session, Lazio was represented by its lawyer, who was accompanied by the clubs' president and general secretary. UEFA was represented by its disciplinary inspector.

The chairman informed the parties of the procedure to be followed and of the composition of the Appeals Body. He added that the debates would be recorded, in accordance with Article 31(3) of the UEFA Disciplinary Regulations (hereinafter: DR).

The parties said they were happy with the procedural arrangements and did not raise any objections.

The video footage provided by the Italian police was shown and commented by the appellant.

Noting that there were no other preliminary questions, the chairman opened the evidential part of the hearing.

Since there were no requests to bring evidence other than the contents of the written pleadings, the parties were given the floor to plead, reply and rejoinder.

The arguments put forward by the parties in their written and oral pleadings are set out below, in so far as they are relevant to the decision.

Once the hearing was closed, the Appeals Body deliberated. It ruled as follows.

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 Lazio 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.

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.

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, 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 clubs participating in the UEFA Europa League and is expressly mentioned in paragraph 6.02 of the said competition's 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 bodies have 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.

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 pp. 10–13).

The Regulations of the UEFA Europa League 2012/13 refer to these notions concerning the responsibilities of clubs in general (paragraph 6.02) and of home clubs in particular (paragraph 6.03).

3.

a) In its decision of 27 February 2013, the Control and Disciplinary Body held Lazio responsible firstly for the conduct of its supporters (Nazi salute, ignition of 33 pyrotechnic devices and throwing of objects and obstruction of evacuation routes and public passageways) in accordance with Articles 11bis, 6(1) and 11(2) DR and paragraph 6.02 of the UEFA Europa League regulations, and, secondly, as the home club, for failing to keep emergency gate unlocked.

According to Article 11bis DR, 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, shall incur a suspension of five matches or for a specified period (paragraph 1). If one or more of a member association or club's supporters engage in the behaviour described in paragraph 1, the

member association or club responsible shall be fined €20,000 (paragraph 2). If particular circumstances so require, the competent disciplinary body may impose additional disciplinary measures on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, a match forfeit, the deduction of points or disqualification from the competition (paragraph 3).

According to Art. 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 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). These provisions are clearly also applicable in the UEFA Europa League under the terms of paragraph 21.01 of the competition 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. Finally, Article 38 obliges the host club to take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstruction, which could impede the free flow of spectators.

b) According to Article 45 DR, facts contained in match officials' reports are presumed to be accurate unless proof of the inaccuracy of these reports is provided.

In the case in hand, the appellant challenged the nature of UEFA match officials' reports, firstly because they were not supported by any evidence. Secondly, there was a discrepancy as to the number of supporters involved, the security officer having indicated that 300 supporters made a fascist salute, and the delegate reporting a number of 200. Facts contained in match officials' reports, which constitute evidence in themselves, are presumed to be accurate. They do not need to be supported by other evidence. On the contrary, the charged party who contests them has to provide evidence of the inaccuracy of the content of official reports. Therefore, the argument of the appellant in this respect must be ruled out.

Regarding the different numbers of supporters involved in the reported offence, this is a mere detail, as the representative of the appellant rightly admitted during the hearing, as the issue does not lie in this minor discrepancy.

4.

It emerges from the above that the reports of the UEFA delegate and security officer respectively are sufficient to establish, to the satisfaction of the Appeals Body, that an important number of home supporters ignited a large number of fireworks and made the Nazi salute in the stadium. In addition, the gangways (stairs) in the north stand (home sector) were obstructed and a gate kept locked during the match, without any personnel with a key being on attendance there throughout the match.

The Appeals Body will now assess whether or not the appellant's arguments relating to these facts change the legal classification the UEFA Control and Disciplinary Body made in the appealed decision.

5.

a) Discriminatory behaviour by supporters

The appellant claims that neither the delegate's report nor the security officer's report expressly mention the word "racist". It must be recalled that only the UEFA disciplinary bodies have the competence to legally qualify the facts contained in match officials' reports. Therefore, the fact that neither the delegate nor the security officer used the word racism or discriminatory behaviour to qualify the Nazi salute they witnessed does not change the legal situation.

On the other hand, the appellant admitted that some of its supporters had made a fascist salute, but denied any discriminatory meaning in such a gesture. This argument is cause for concern as it constitutes a denial of the well-known discriminatory content of the Nazi ideology. It is, indeed, common knowledge that neo-Nazis promote their ideas by using such gestures to transmit messages based on the Nazi discriminatory ideas of the Aryan supremacy. The UEFA Appeals Body also took the view that Lazio's interpretation of the Nazi salute undermines the attempts by UEFA, through its Respect campaign, to encourage higher standards of conduct by supporters.

Moreover, the club's argument that only four or five of its supporters made a fascist salute does not satisfy the Appeals Body. Both the delegate and the security officer were adamant in their reports that at least 200 Lazio supporters made a Nazi salute during the above-mentioned game. This number adds to the gravity and shocking nature of the behaviour.

Since there is no alternative meaning of the Nazi salute, the UEFA Appeals Body, based on its own experience, the long-standing practice of the UEFA disciplinary bodies to qualify such gestures as discriminatory, as well as what any reasonable supporter would have understood by a Nazi salute, confirms the discriminatory nature of the Nazi salute in the sense of Article 11bis DR.

As underlined in various disciplinary decisions issued by the competent UEFA bodies, discrimination and racism are in total contradiction with the values of football, notably those of tolerance, friendship and respect. The fight against racism is a high priority for UEFA, which takes a zero tolerance policy towards discrimination or racism on the pitch and in the stands.

Therefore, even if such conduct could, as the appellant suggests, also fall under Article 11(2)(e) DR (unauthorised message), Article 11bis DR applies primarily in the present case as a *lex specialis* for conduct with a discriminatory content.

According to Article 11bis(2) DR, which is a special rule associated with the principle set forth in Article 6(1) DR, member associations and clubs are responsible for the conduct of their supporters. Such responsibility is assumed for offences committed by any person supporting the team before, during or after the match, irrespective of the own fault of the association or club in question (strict liability). Consequently, Lazio is to be held responsible for the conduct of its supporters and must be penalised accordingly. Rightly, the UEFA Control and Disciplinary Body held Lazio responsible for improper conduct by its supporters for discriminatory conduct.

b) Insufficient organisation and use of pyrotechnic devices

Lack of stewarding

Although the number of security personnel appears adequate, it is not, in itself, sufficient to free the club from its liability as a host (Article 6(2) DR). Security staff also need to be properly trained,

to be deployed in an appropriate manner, and to conduct their work in a satisfactory fashion (Article 32 of the UEFA Safety and Security Regulations, 2006 edition). As the UEFA Control and Disciplinary Body rightly underlines, stewards play a key role in UEFA's safety and security concept.

In the present case, it is clear that, although a sufficient number of stewards were on duty, they were unable to maintain order in the north stand "Curva Nord". During this game, this section ("Curva Nord") containing the perpetrators remained an uncontrolled area left to its own devices. The initiatives the club says it has taken to tackle the activities of its right wing ultras appear to have been insufficient as the host club did not manage to prevent several hundred supporters joining together again to make a Nazi salute. There was apparently not a single security person in this part of the stadium, where they were needed the most. As the host, the club is therefore responsible under Article 6(2) DR for not having sufficiently complied with its obligations under Article 32 of the UEFA Safety and Security Regulations mentioned above.

Blocked passageways and gates

According to Article 38 of the UEFA Safety and Security Regulation (2006 edition), all public passageways, corridors, stairs, doors, gates and emergency exit routes must be kept free of any obstructions which could impede the free flow of spectators. In the present case, it is established that in the north stand, passageways were blocked by local supporters, a fact that the appellant rightly does not deny.

Article 39 of the aforementioned UEFA Safety and Security Regulation requires the organiser to ensure that all gates and doors remain unlocked or attended by a security person steward who is able to open them immediately if needed. Experience shows that in case of an incident, the reaction of people under stress is to go where there is a door, no matter the purpose of the door in question. Therefore, the appellant's argument that the door in question was to remain locked to avoid supporters moving from one sector to the other does not exclude its responsibility as no security person steward was on duty at this locked door as they should have been.

Here again, Lazio is to be held responsible for this misconduct by its supporters and for its lack of organisation (Article 6(2) DR).

Use of pyrotechnic devices

According to Article 11(2) DR, the disciplinary measures listed in Articles 14 and 15 DR may be imposed on member associations, among other things for the ignition of fireworks and throwing of missiles.

In the case in hand, it was accepted and not contested that about 33 pyrotechnic devices were let off, some thrown by Lazio supporters.

In accordance with Article 11 DR, Lazio is responsible for the behaviour of its supporters. This is the concrete expression of the principle of strict liability laid down in Article 6(1) DR.

The appellant states that the visiting team's supporters (Borussia) also ignited pyrotechnic devices. The Appeals Body does not see what the appellant would like to derive from this argument. In any case, the misconduct of the visiting supporters, which was dealt with by the Control and Disciplinary Body in a separate decision, does not justify exemption from or mitigation of the

disciplinary measures to be imposed on Lazio for misbehaviour by its supporters who used pyrotechnic devices at this match.

Setting off fireworks is a serious offence in that it cannot only disrupt the orderly running of the match but also, and more importantly, endanger the physical integrity of those lighting the fireworks, other spectators, officials and, in some cases, even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden. Furthermore, throwing such a device constitutes an aggravating circumstance (Article 17 DR), given the increased risk posed.

The considerable number of fireworks used and missiles thrown created a concrete danger for spectators, players and officials. In this regard, once again, the arguments put forward during the case in hand are cause for concern. It is disconcerting, to say the least, that Lazio considers the use of pyrotechnic devices a minor offence, contrary to the clear dangerousness of the use of such devices.

6.

The appellant argues that the sanctions imposed on it by the first instance are harsh and did not respect the principle of proportionality. The Appeals Body must now determine if the sanction imposed on Lazio by the CDB were proportionate.

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 disciplinary action according to the most serious offence and increases it accordingly (paragraph 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: 1) 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); 2) 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; and, 3) 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 (Article 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) According to art.62 (1) DR the Appeals Body re-examines the case both factually and legally. Having said that it is long standing practice that 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.

c) The financial loss that the appellant put forward to support the disproportionality of the disciplinary measures imposed on it is unfounded as two matches without supporters has a temporarily economic impact on the club, which will continue to participate in the domestic championship and is still participating in current UEFA Europa League matches. Furthermore, Lazio will receive prize money from UEFA from the centralisation of the TV and marketing rights. So, the economic impact of the decision is relatively weak.

Article 6(1) DR, just like Article 11bis(1) DR, under which clubs are punished for their supporters behaviour, therefore 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. It is also a message addressed to the supporters regarding the impact of their conduct on their club.

It should be remembered that Lazio has already been punished for racial abuse by its supporters, and its poor disciplinary record for supporter misconduct cannot be ignored.

The playing of a match behind closed doors, banning supporters from attending one or more of their favourite team's matches, is therefore an appropriate measure in this regard. It has a direct impact on the supporters by preventing them from attending a match, while ensuring that the competition continues as normal. The Appeals Body is of the opinion that the decision taken by the Control and Disciplinary Body was not only appropriate given the circumstances, but also proportionate.

The Appeals Body underlines that the Control and Disciplinary Body, after having assessed the facts and evidence in its possession, took its decision within its discretionary powers, and the appellant does not satisfy the Appeals Body that the Control and Disciplinary Body exceeded or abused its discretionary powers or was not in line with UEFA jurisprudence in similar cases.

7.

Given the appellant's argument that there is no reason to lift the suspension on the decision taken by the Control and Disciplinary Body on 24 January 2013 that Lazio play one match behind closed doors, the Appeals Body considered whether or not the conditions laid down in Article 15bis DR were met for the suspended disciplinary measure to be lifted.

Since the appeal has the effect of transferring jurisdiction (Art. 62(1) DR), the Appeals Body can replace the first-instance body and examine, in its place, whether or not the conditions for the lifting of the suspension are met.

a) The fate of a party against which a suspended disciplinary measure is imposed depends on its conduct during the probationary period. Article 15bis(3) DR describes the only circumstances in which the punishment can be executed if the terms of probation are considered to have been violated:

"If a further offence is committed during the probationary period, the competent disciplinary body, as a rule, orders the original sanction to be executed. This may be added to the disciplinary sanction imposed for the second offence."

An offence punishable under the UEFA Disciplinary Regulations must therefore have been committed during the probationary period.

The second offence does not need to be similar in nature or seriousness to the original one. In the instance the offence was of similar nature.

It is sufficient that the offence was committed before the end of the probationary period.

If all these conditions are met, the relevant disciplinary body, in principle, has no choice but to revoke the suspension. Article 15bis(3) DR leaves very little room for manoeuvre: if the objective and subjective conditions for the revocation are met, the suspension should, in principle, be revoked. Therefore, even if only a minor offence is committed, the relevant disciplinary body should, in principle, order the execution of the original punishment.

b) In the present case, on 24 January 2013 (this year), the first-instance body established that during the above-mentioned match, Lazio supporters ignited one Bengal light and one firecracker. The firecracker exploded directly next to the photographers and stewards. In addition, Lazio supporters displayed a banner with the words "Free Palestine". Finally, Lazio supporters shouted "Duce, Duce", raising their right hands in a so-called Nazi salute. Consequently, the Control and Disciplinary Body fined Lazio €50,000 and ordered the club to play one UEFA competition match behind closed doors for various offences, including discriminatory behaviour on the part of supporters who made the Nazi salute. This measure was suspended for a probationary period of two years. No appeal was lodged against it, therefore it accordingly entered into force.

c) The Appeals Body notes that the new offences for which the appellant must be held responsible were committed on 21 February 2013, i.e. less than four months after the incidents that took place at the match between NK Maribor and S.S. Lazio on 6 December 2012, and barely a month and half after the club was informed, on 25 January 2013, of the punishment imposed on 24 January 2013.

The objective conditions for the lifting of the suspension are therefore met.

The Appeals Body also notes that the club accepted the punishment imposed on 24 January 2013, since it did not appeal against it. Therefore, the club and its supporters were informed and aware of the risk that the suspension would be revoked if further offences were committed.

The threat was quite clearly insufficient since, barely a month and half later, further offences, including offences for most of which it had just been sanctioned, were committed by its supporters during the probationary period. It is thus difficult to imagine that the conduct of the club and its supporters will improve in the future.

Therefore, taking into account all the circumstances of the case, and in order to banish any desire to reoffend on the part of the club and its supporters, who have failed to fully appreciate the seriousness of their actions, the Appeals Body has no option but to uphold the first-instance body's decision and to revoke the suspension granted on 24 January 2013. Otherwise, the Control and Disciplinary Body's decision of 27 February 2013 would have to be considered lenient to the point of being arbitrary and would need to be overridden, in view of the seriousness of the offences and the club's atrocious disciplinary record in this area, which undoubtedly merit a much harsher punishment than just fine or partial closure of the stadium, as the appellant requested.

8.

In the case in hand, the first-instance body took into account the seriousness and number of the incidents caused, and the club's very poor disciplinary record in this area, and lifted the suspended decision imposed on Lazio on 27 January 2013 ordering to play one match behind closed doors.

The Appeals Body can only agree with this analysis and conclude that Lazio cannot claim any mitigating circumstance.

9.

For all the above reasons, the appeal lodged by Lazio is rejected and the Control and Disciplinary Body's decision of 27 February 2013 is confirmed.

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 (Article 63 DR).

All the appellant's conclusions are rejected. It must therefore pay all the costs of the proceedings. The Italian Football Federation is jointly and severally liable for the payment of the fine and the costs of the proceedings (Article 73 DR).

Decision of 11 March 2013

Fenerbahçe SK

(Throwing of fireworks from outside the stadium)

Circumstances of the case:

According to the UEFA match delegate's report on the 2012/13 UEFA Europa League match between Fenerbahçe SK and FC BATE Borisov on 21 February 2013, which was played behind closed doors, supporters outside the stadium launched fireworks over the roof of the stadium in the 55th minute of the match. One landed on a flag, causing a small fire, another landed near the Fenerbahçe SK substitutes' bench and a third landed on the field of play, forcing the referee to stop the game for approximately one minute.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 11 (2) (b) DR (ed. 2012) *Throwing of objects*; Art. 11 (2) (c) DR (ed. 2012) *Setting off of fireworks*

Decision:

The CDB's decision is upheld. Consequently, Fenerbahçe SK is ordered to play its next home UEFA competition match behind closed doors and the club is fined €60,000. In addition, the club is excluded from participating in the next UEFA club competition for which it would otherwise qualify. This sanction is deferred for a probationary period of two years.

Chairman: Pedro Tomás, Spain,
Members: Michael Maessen, Netherlands
Ivaylo Ivkov, Bulgaria

In fact

A.

According to the UEFA match delegate's report on the 2012/13 UEFA Europa League match between Fenerbahçe SK and FC BATE Borisov on 21 February 2013, which was played behind closed doors, supporters outside the stadium launched fireworks over the roof of the stadium in the 55th minute of the match. One landed on a flag, causing a small fire, another landed near the Fenerbahçe SK substitutes' bench and a third landed on the field of play, forcing the referee to stop the game for approximately one minute.

In addition, five Fenerbahçe SK players received a yellow card during the game and another player wore a tracksuit with the Türk Telekom brand on it.

B.

In a decision of 27 February 2013, the UEFA Control and Disciplinary Body decided:

1. To order Fenerbahçe SK to play its next home UEFA competition match behind closed doors. This applies to the following match:

Fenerbahçe SK v FC Viktoria Plzeň of 14 March 2013.

2. The club is excluded from participating in the next UEFA club competition for which it would otherwise qualify. This sanction is deferred for a probationary period of two years.

3. To fine Fenerbahçe SK €60,000.

The Control and Disciplinary Body considered, in substance, the seriousness and multiplicity of the offences committed, the fact that Fenerbahçe SK was playing a UEFA match behind closed doors following a previous decision issued on 24 January 2013, and the club's disciplinary record: to date, Fenerbahçe SK has been punished 16 times for improper conduct of its supporters, and four times for improper conduct of its players.

C.

On 1 March 2013, the appellant submitted its written notice of appeal against the Control and Disciplinary Body's decision of 27 February 2013.

On 6 March 2013, Fenerbahçe SK submitted its grounds for appeal and requested that the exclusion from participating in the next UEFA club competition for which it would otherwise qualify, subject to a probationary period, be cancelled, that the order that the match Fenerbahçe SK v FC

Viktoria Plzeň on 14 March 2013 be played behind closed doors be cancelled or, in the alternative, deferred for a probationary period, and that the €60,000 fine be cancelled or, in the alternative, deferred for a probationary period.

In substance, it argues that the Control and Disciplinary Body violated the principle of proportionality and wrongly applied Article 6(1) DR because the match was played behind closed doors, i.e. without supporters present. It claims that, since the presence of supporters in the stadium is required to implement this provision, the Control and Disciplinary Body should not have applied Article 6(1) DR in this case. The appellant also argues that, even if disciplinary breaches had been committed, the provision that should have been applied was Article 6(2) rather than 6(1) DR.

According to the appellant, the people who committed these offences are not supporters as defined in the CAS award in the Feyenoord case. It quotes from the CAS award, which states that *"The behaviour of individuals and their location in the stadium and its vicinity are important criteria for determining which team or club they support"*. It argues that, in this case, the match was played without supporters present and the people who committed these offences did so a long way from the stadium, so they cannot be considered Fenerbahçe SK supporters.

The appellant also argues that such a harsh punishment would cause the economic destruction of the club. It would not affect the well-known group of troublemakers but the club, which endeavoured to take action against such groups.

D.

On 7 March 2013, UEFA submitted its reply to the appeal via its disciplinary inspector, requesting that the appeal be rejected and the costs charged accordingly.

E.

At today's hearing, the appellant was represented by its vice-president, another board member and its lawyer, and UEFA by its disciplinary inspector.

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

The parties agreed to the procedure and raised no objections.

The chairman granted a request from the appellant for video footage to be shown. The appellant pointed out some individuals in the stands at a domestic football match, who it claimed had been responsible for the incidents.

Since the facts were not disputed and no additional evidence was provided, the floor was given to the parties, who confirmed their requests and presented broadly the same arguments as those contained in their written submissions.

The more detailed arguments given by the parties in support of their pleadings are set out below, in so far as they are relevant.

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

In law

1.

The Appeals Body has jurisdiction to hear the case in question under Articles 48 and 54 DR. It will therefore examine the case in full, both factually and legally (Article 62(1) DR).

The appeal was submitted in the form and by the deadline required (Article 49 *et seq.* DR) and the Appeals Body will therefore examine its merits.

2.

As the offences relating to the improper conduct of the team (Article 11(1) DR) and the violation of the kit regulations (Article 57.02.d) UEFA Kit Regulations) are not disputed by the appellant, these offences will not be discussed here.

3.

Fenerbahçe SK disputes its responsibility for the behaviour of people outside the stadium, who it believes cannot be considered its supporters, as the match was played behind closed doors.

Under Article 52 of the UEFA Statutes and Article 8 DR, unsporting conduct, breaches of the Laws of the Game and infringements of UEFA's Statutes, regulations, decisions and directives warrant disciplinary measures.

According to Article 11(2) DR, the disciplinary measures provided for in Article 14 DR may be taken against clubs in the event of misconduct on the part of their supporters, for example if objects are thrown (letter b) or fireworks lit (letter c). In addition, Article 6(1) DR authorises UEFA to ensure that its objectives and the obligations imposed on its members are respected not only by the latter, but also by third parties for whose actions members are responsible. This article holds clubs responsible for the conduct of their supporters. This responsibility, which is triggered simply by any one of its "supporters" in the sense of this provision violating a UEFA rule or regulation, is known as "strict liability".

Under Article 11(1)(b) DR, the disciplinary measures listed in Article 14 DR may also be imposed for misconduct by a team, for example if individual disciplinary measures are taken by the referee against at least five of the team's players during a single match.

Finally, it is well established in Appeals Body case law that the match delegate's and referee's reports must be considered truthful and reliable unless they can be proved otherwise, clearly and beyond doubt (Article 45 DR).

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

4.

In this case, the Appeals Body has no reason to question the official reports, which are not disputed. These reports establish that, in the 55th minute of the match, pyrotechnic devices were launched from outside the stadium, passed over the stadium roof and landed on the ground, causing the referee to stop the game for approximately one minute. A second device landed near the Fenerbahçe SK substitutes' bench and a third on a flag, which it set on fire.

The appellant disputes the application of Article 6(1) DR. According to the appellant, the club cannot be held responsible for these offences, since the application of this provision would require the presence of supporters in the stadium and the incidents were committed by supporters outside the stadium.

This argument is unfounded. Indeed, Article 11(2) DR, which expresses the notion enshrined in Article 6(1) DR in more practical terms, states that:

*"2 The same disciplinary measures [foreseen in Articles 14 DR] may be taken against member associations or clubs in case of inappropriate behaviour on the part of their supporters, including:
(...)
the throwing of objects;
the lighting of fireworks or any other objects;
(...)"*

The aim of this provision is clearly to protect the stadium, the field of play and the safety of people inside the stadium, who are obviously also endangered if the objects thrown or fireworks lit come from outside the stadium.

The only question is whether or not the people who violated this provision outside the stadium are to be considered Fenerbahçe SK supporters, which the club denies.

The appellant argues that the people responsible for the incidents are not Fenerbahçe SK supporters in the sense of either Article 6(1) DR or CAS award 2007/A/1217 Feyenoord Rotterdam v UEFA, as the above-mentioned match was played behind closed doors, so they were not inside the stadium but approximately 700m from the stadium.

The CAS award to which the appellant refers does not support the argument that the people responsible for these incidents should not be considered its supporters. Indeed, the CAS rightly refrains from restrictively defining the word "supporter", leaving it to the disciplinary authority, as a

reasonable and objective observer, to conclude that the people in question are supporters of a particular club. The CAS therefore recognises and confirms the validity of the case-by-case analysis used by the UEFA disciplinary bodies to determine which team is supported by individuals who commit an offence.

On the basis of the appellant's pleadings and the case file, the Appeals Body will examine below whether the people responsible for the incidents described above can actually be considered Fenerbahçe SK supporters.

On the basis of the video footage shown at its request and its comments, the appellant appears to suggest that that four or six individuals seen in the stands and at the stadium gates during a domestic championship match were responsible for the incidents that occurred during the above-mentioned match.

The appellant also claims that the group's leader and members, who take part in such acts, are well known and always commit such acts in the same section of the stadium.

The appellant also points out that the people responsible for the incidents in the present case also caused trouble at the club's Euroleague basketball match, when they tried to assault the club president.

The Appeals Body notes in this regard that Fenerbahçe SK allows known troublemakers to enter the stadium during its domestic championship matches. By doing so, the club confirms and legitimates them as its supporters.

The fact that these individuals, who clearly have an affiliation with Fenerbahçe SK, were near the stadium on the occasion of the match played behind closed doors suggests that they can be considered supporters of the club, even if, as the appellant suggests, they oppose its current president.

In view of the above, the Appeals Body finds that the aforementioned violations of Article 11(2) DR were committed by Fenerbahçe SK supporters.

The Appeals Body would like to draw attention to the danger and inconvenience caused by the lighting and throwing of fireworks, as has already been discussed in various articles published by sports bodies, particularly UEFA. The Control and Disciplinary Body has explained on many occasions why such actions are strictly forbidden. In the decision in question, it provided a concise but convincing reminder. The Appeals Body agrees in full with the reasoning of the first-instance body and therefore refers back to this decision for the relevant details.

The team's misconduct and the violation of the kit regulations require no further analysis, as these points are not disputed.

In view of the UEFA officials' reports and the above-mentioned regulatory provisions, the Control and Disciplinary Body was therefore right to hold Fenerbahçe SK responsible for its players' and spectators' behaviour under the strict liability principle established in Article 6(1) DR, in conjunction with Article 11(1)(b) and 11(2)(b) and (c) DR.

5.

a) The only remaining question is whether or not the Control and Disciplinary Body abused its discretionary powers by ordering Fenerbahçe SK to play its next UEFA competition home match behind closed doors, by excluding Fenerbahçe SK from participating in the next UEFA club competition for which it would otherwise qualify, subject to a probationary period of two years, and by fining the appellant €60,000.

b) According to Article 17(1) DR, the disciplinary bodies decide on the type and extent of the disciplinary measures to be imposed based on the objective and subjective elements of the offence, taking into account any aggravating and/or mitigating circumstance. If the party charged has committed multiple disciplinary offences, the disciplinary body decides on a sanction on the basis of the most serious offence and increases it accordingly (Article 17(3) DR).

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

Article 14 DR reproduces this list, which includes a fine (letter c) of anything from €100 to €1,000,000 (paragraph 2), playing of a match behind closed doors (h), disqualification from competitions in progress and/or exclusion from future competitions (n). The disciplinary body therefore has extensive discretionary powers when it comes to imposing fines.

Nevertheless, it must take account of the fact that a repeat offence is an aggravating factor under Article 18 DR (defined as occurring if disciplinary measures are imposed within five years of a previous offence).

The disciplinary body must also respect the standard principles of ordinary law and therefore take account of the particular circumstances of the case and the seriousness of the offence. Finally, it must respect the principles of legality, equal treatment and proportionality and neither exceed nor abuse its discretionary powers.

c) The financial loss that the appellant mentions in support of its argument that the punishment imposed is disproportionate is unfounded, since the playing of one match behind closed doors has only a temporary economic impact on the club, which will continue to participate in its domestic championship and the UEFA Europa League. Furthermore, Fenerbahçe SK will receive prize money from UEFA as a result of the sale of TV and marketing rights. The economic impact of the decision is therefore relatively small.

d) In this case, the Appeals Body believes that the punishment imposed against Fenerbahçe SK by the Control and Disciplinary Body took due account of all the circumstances. The fact that supporters used such a high degree of technical skill to design a machine capable of launching pyrotechnic devices over the roof of the stadium in order to disrupt the game, endangering the physical integrity of the players and officials on the field of play in a match played behind closed doors, is a seriously aggravating factor under Article 17(2) DR. Moreover, the fact that one of these pyrotechnic devices landed near the Fenerbahçe SK substitutes' bench constitutes another aggravating circumstance.

The kit regulation infringement and the fact that the team received numerous cards mean that multiple offences were committed in the sense of Article 17(5) DR. This, along with the club's awful disciplinary record, constitutes another aggravating circumstance.

e) In such circumstances and given the case law on the matter, the Appeals Body considers the sanction imposed by the Control and Disciplinary Body in its decision of 27 February 2013 to be proportional to the seriousness of the offences committed.

6.

On the basis of the above, the appeal, which is unfounded, is rejected and the first-instance decision upheld.

The costs of proceedings, including all the expenses of the Appeals Body, are to be shared between the parties in an equitable manner, in accordance with the outcome of the proceedings (Article 63 DR) In this case, they are charged in full to Fenerbahçe SK, whose requests are all rejected. The Turkish Football Federation is jointly liable for these costs (Article 73 DR).

7.

The chairman read out the decision, which is final, subject to UEFA's statutory provisions on the Court of Arbitration for Sport (Article 66 DR). Brief grounds were given and the operative part of the decision provided to the parties in writing. The full written decision will be sent to them in due course (Articles 64 and 66 DR).

Decision of 11 March 2013

FC Rubin Kazan. Cesar Gonzalez Navas

(Rough play)

Circumstances of the case:

According to the official match report issued by the referee following the 2012/13 UEFA Europa League match between FC Rubin Kazan and Club Atlético played on 21 February 2013, the FC Rubin Kazan player Cesar Gonzalez Navas was sent off the field in the 89th minute of the game for serious foul play. He made a sliding tackle from the back, at speed, with a straight leg and his studs up.

Legal framework:

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

Decision:

CDB:

The CDB decided to suspend the player Navas for three UEFA club competition matches.

Appeals Body:

The appeal is partially admitted. Therefore, the player Navas is suspended for two UEFA competition matches.

Chairman ad hoc: Michael Maessen, Netherlands

Members: Ivaylo Ivkov, Bulgaria
Antonio Mortagua, Portugal

In fact

A.

According to the official match report issued by the referee following the 2012/13 UEFA Europa League match between FC Rubin Kazan and Club Atlético played on 21 February 2013 (0–1), the FC Rubin Kazan player No4, Cesar Gonzalez Navas (hereinafter: Navas or the player), was sent off the field in the 89th minute of the game for serious foul play. He made a sliding tackle from the back, at speed, with a straight leg and his studs up.

B.

On 27 February 2013, the UEFA Control and Disciplinary Body decided to suspend Navas for three UEFA club competition matches, with the suspension applying to the matches Levante UD v FC Rubin Kazan on 7 March 2013, FC Rubin Kazan v Levante UD on 14 March 2013 and the remaining match suspension to the next UEFA club competition match for which the player would normally be eligible. The Control and Disciplinary Body concluded that the observations made by the referee were accurate and thus considered the player's act to be rough play within the meaning of Article 10(1)(a) of the Disciplinary Regulations (DR). Taking the player's previous record into account as an aggravating circumstance within the meaning of Article 18(2) DR, (he had been sent off [two yellow cards] during the UEFA Europa League match VfL Wolfsburg v FC Rubin Kazan on 18 March 2010), the Control and Disciplinary Body held that two match suspensions should be added to the standard one-match suspension provided for in Article 10(1)(a)(1) DR.

C.

On 4 March 2013, FC Rubin Kazan and the player lodged an appeal against the decision of 27 February 2013. They requested that the three-match suspension be reduced to one-match suspension. Implicitly and in substance, they based their request on the fact that the referee of the match had misinterpreted the act of the player: late to the ball by a few seconds, the player had made a sliding tackle with no intention to tackle his opponent roughly. Consequently, he should have been shown a yellow card instead of a red.

D.

On 8 March 2013, UEFA requested, through its disciplinary inspector, that the appeal to be rejected and the costs charged accordingly.

E.

The representative of the club and its lawyer were present at today's hearing, as was the UEFA disciplinary inspector.

In a letter dated 11 March 2013, that is to say the day of the hearing, the legal representative of the player informed the Appeals Body that the player could not attend the hearing as he had played in Grozny the previous day and there was no connecting flight to Geneva. He proposed that the player be available and questioned via Skype, to which the Appeals Body and the disciplinary inspector did not object.

The video footage of the incident was shown and commented on by the appellant.

The parties raised no objections or exceptions. They were given the floor in accordance with Article 60 DR. Both parties reiterated and developed the arguments they had submitted in writing, and maintained their requests.

The parties having left the room, the Appeals Body deliberated and decided as follows:

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 the deadline and in the form required. The grounds for appeal were submitted and the appeal fee paid on time. The appeal is therefore admissible under Articles 49, 50, 52 and 53 DR.

The Appeals Body may therefore consider its merits.

2.

Under the terms of Article 52 of the UEFA Statutes and Article 8 DR, unsporting conduct, breaches of the Laws of the Game, as well as infringements of UEFA's Statutes, regulations, decisions and directives, are punishable by disciplinary measures.

Under the terms of Article 10(1)(a) DR, a player who commits rough play should be suspended for one competition matches or for a specified period. Should the circumstances so dictate, this standard punishment can be scaled down or increased (Article 17 DR).

It has long been the UEFA disciplinary bodies' practice to qualify as rough play within the meaning of Article 10(1)(a) DR any act by which the offending player tackles recklessly for the ball and, in doing so, carelessly injures or endangers the opponent. The decisive elements are, therefore, the challenge for the ball and the dangerousness of the act. The disciplinary bodies usually distinguish between "rough play" and "serious rough play".

3.

According to Article 45 DR, facts contained in match officials' reports are presumed to be accurate. Proof of the inaccuracy of these reports can, however, be provided.

In the present case, the facts reported are that the FC Rubain Kazan player No4, Navas, was sent off of the field of play in the 89th minute of the game for serious foul play. He made a sliding tackle from the back at speed, with a straight leg and his studs up.

4.

After viewing the video footage of the incident, the Appeals Body notes, however, that Navas's leg touched the opponent's leg and not his studs as reported. In this respect, the facts as officially established by the referee, on which the Control and Disciplinary Body based its decision, do not reflect what actually happened. In the opinion of the Appeals Body, proof of the inaccuracy of this aspect of the referee's report has been provided.

Nevertheless, the manner in which the player challenged for the ball was irregular.

The club claims that Navas had no intention to tackle his opponent roughly but admits that the incident was due to mistiming on his part. This demonstrates that Navas was reckless: being late in challenging for the ball, he took and accepted the risk of endangering the physical integrity of the opponent.

In these circumstances, the Appeals Body has no doubt regarding the legal qualification of the act committed by Navas, which is and remains "rough play" within the meaning of Article 10(1)(a) DR.

5.

Regarding the level of punishment to impose on the player for this offence, the Appeals Body recalls that it has been its constant practice so far to consider that the first instance body abused or exceeded its wide power of discretion only if it based its decision on untrue or erroneous elements, notably by not applying fundamental legal principles or by considering irrelevant facts or by not considering essential circumstances the evaluation of which was compelling. In other words, the Appeals Body would – as a principle – not overturn a verdict, even though it might have decided differently, as long as the challenged decision remains within the scope of this discretionary power and does not appear unreasonable.

The only remaining question is, therefore, whether the Control and Disciplinary Body abused its discretionary power by suspending the player for three UEFA competition matches.

6.

According to Article 17(1) DR, the competent disciplinary body decides on the type and extent of the disciplinary measures to be imposed based on the objective and subjective elements of the offence, taking into account any aggravating and/or mitigating circumstances.

A full list of the disciplinary measures that may be imposed on member associations and clubs is provided in Article 54 of the UEFA Statutes.

Article 15(1) DR reproduces this list, which includes suspension for a specific number of matches or for a specific or unspecific period (letter d). The disciplinary body therefore has extensive discretionary powers when it comes to imposing suspensions.

It must, nevertheless, take account of any recidivism (i.e. if disciplinary measures have to be imposed within five years of a previous offence of a similar nature), which is an aggravating circumstance according to Article 18(2) DR.

The disciplinary body must also respect the standard principles of ordinary law and, therefore, take account of the particular circumstances of the case and the seriousness of the offence. Finally, it must respect the principles of legality, equal treatment and proportionality and neither exceed nor abuse its discretionary powers.

In this case, the Appeals Body believes that by suspending the player Navas for three UEFA competition matches, the Control and Disciplinary Body did not assess the incident properly – the incident was not so serious as to be qualified as “serious rough play”, which justifies the standard punishment for “rough play” being increased.(Article 17 DR). Indeed, as explained above, after viewing the video footage of the incident, the Appeals Body is of the opinion that the act of Navas is only rough play and that there is nothing in the player’s act itself to depart from the standard punishment of a one-match suspension.

Bearing in mind, however, the previous record of the player, which makes this offense a case of recidivism (Article 18(1) and (2) DR), it appears, that a one-match suspension for the player’s dismissal and an additional match suspension for his previous red card – i.e. a two-match suspension altogether – would be in line with the principle of proportionality in the concrete circumstances.

On the basis of the above, the appeal is partially admitted and the first-instance decision modified as above.

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

In this case, €2,000 is charged jointly to the appellants, who are only partially successful in their appeal, and the remainder is charged to UEFA. The Football Federation of Russia is jointly and severally liable for the costs charged to the appellants (Article 73 DR).

Decision of 26 March 2013

Olympiacos FC

(Setting off of fireworks. Racist behaviour)

Circumstances of the case:

According to the UEFA delegate's report on the 2012/13 UEFA Champions League match between Montpellier Hérault SC and Olympiacos FC of 24 October 2012, a supporter of Olympiacos ignited one Bengal light at the 90th minute of the game and banners with SS Skull and Celtic Cross were displayed.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 11 (2) (c) DR (ed. 2012) *Lightning of fireworks*, Art. 11bis DR (ed. 2012) *Discrimination*

Decision:

CDB:

The CDB fined Olympiacos FC €30,000.

Appeals Body:

The appeal is partially admitted. Consequently, Olympiacos FC is fined €20,000.

Chairman: Pedro Tomás, Spain

Members: Goetz Eilers, Germany
Olga Zhukovska, Ukraine

In fact

A.

According to the delegate's report on the 2012/13 UEFA Champions League match between Montpellier Hérault SC and Olympiacos FC of 24 October 2012, a supporter of Olympiacos ignited one Bengal light at the 90th minute of the game and banners with SS Skull and Celtic Cross was displayed.

B.

By decision of 22 November 2012, the UEFA Control and Disciplinary Body fined Olympiacos FC €30,000 for the use of a forbidden and by nature dangerous firework and contravention of Article 11bis(1)(b) DR, as the banner displayed by its supporters contained a neo-Nazi and racist symbol.

C.

On 8 February 2013, Olympiacos FC appealed against the Control and Disciplinary Body's decision of 22 November 2013. It submitted its grounds for appeal on 17 February 2013 and requested to overturn the challenged decision and to charge the costs of the proceedings to UEFA. In substance, it underlined that *"the depiction of a human skull is not conveying a racist message and the human skull is not neither automatically identifying to the SS Skull. Celtic cross and human skull is not a racist symbols as such and in order to be received as racist symbols should be combined by other words or symbols that attribute such meaning to them"*. The appellant also underlined that it had never had the slightest incident with racism. Finally the appellant argues that the challenged decision does impose a fine of €30,000 without qualifying the exact amount for each one of the three alleged violation (lighting of one firework, the banner with Skull and that with the Celtic cross)

D.

Olympiacos FC has been punished for discriminatory behaviour by the decision of the Control and Disciplinary Body regarding the illicit and discriminatory banner displayed by its supporters on the occasion of the match Olympiacos FC vs FC Girondins de Bordeaux on 23.02.2010.

E.

On 5 March 2013, UEFA submitted its response to the appeal via its disciplinary inspector, requesting that it be rejected and the costs charged accordingly.

F.

At today's hearing, the appellant club was represented by its foreign affairs manager and UEFA by its disciplinary inspector.

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

The parties agreed to the procedure and raised no objections.

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

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

In law

1.

The Appeals Body is competent to hear the case in question under Articles 48 and 54 DR. It will therefore examine the case in full, both factually and legally (Article 62(1) DR).

The appeal was submitted in the form and by the deadline required (Article 49 et seq. DR), and the Appeals Body will therefore examine its merits.

2.

Under Article 52 of the UEFA Statutes and Article 8 DR, unsporting conduct, breaches of the Laws of the Game and infringements of the statutes, regulations, decisions and directives of UEFA warrant disciplinary measures.

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

Article 11bis DR specifies that anyone who insults the human dignity of a person or group of persons by whatever means, including on grounds of colour, race, religion or ethnic origin, will be suspended for five matches or a specified period (paragraph 1). Any member association or club whose supporters engage in such behaviour will be fined at least €20,000 (paragraph 2).

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

3.

As the use of the pyrotechnic device (Bengal light) is not disputed, it does not need to be further examined.

4.

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

b) The club appellant did not challenge the fact that Skull and Celtic cross were displayed but argues in substance, that the Celtic cross is not a discriminatory symbols, as it refers to the core of the Christian religion that of the victory of Jesus Christ over death and they convey a message of resurrection. In this particular case, club fans used one single flag designed with the club's emblem and the Skulls are associated with Gate 7 to remember the football tragedy in 1981 when after a match fans trying to get out simultaneously in order to celebrate with their team a victory but were squeezed at the gate and 21 of them died. It claims, also that if skull would be considered a racist symbol, it should be accompanied with a racist message.

The appellant's arguments do not convince. As the Control and Disciplinary Body already admitted in previous cases, the SS skull or Totenkopf, which was adopted by the Waffen SS during the Nazi period as a symbol of special SS groups, is now used by Neo-Nazi groups. Just like other runic symbols, it has been used as a means of identification by neo-Nazi groups in Europe and America. Although the Celtic cross basically has a Christian meaning, it has gained a discriminatory significance, which is generally known and recognized.

These symbols do not need being accompanied by another racist message to be considered discriminatory as they remember and represent themselves Nazi and therefore discriminatory messages according to the UEFA Disciplinary Bodies practice and the list of prohibited symbols.

The Control and Disciplinary Body was therefore right to bring Olympiacos FC to account for its supporters' conduct and penalise the club on this count.

5.

a) As a matter of course (Article 62(1) DR), it remains for the court to examine whether the Control and Disciplinary Body respected the regulations and legal principles, in particular that of proportionality, or whether it setting the fine at €30,000 is in a way excessive.

b) Under Article 11bis(2) DR, the fine for discriminatory conduct is €20,000.

According to Article 17(2) DR, the disciplinary measures in Articles 10 and 11bis DR are standard penalties. If particular circumstances so dictate, they can be either scaled down or increased. In other words, even according to the English version, the €20,000 fine can be scaled down. The Control and Disciplinary Body was therefore right to consider whether or not the objective and subjective elements justified a deviation from the standard penalty in accordance with Article 17 DR.

The club did not understand why the decision of the first instance did not display each incident with its individual fine. This argument must be ruled out, as based on Article 17(1) DR, the Control and Disciplinary Body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the case, taking account of any aggravating

and mitigating circumstances. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances (Article 17(4) DR). Based on this provision, the Control and Disciplinary Body was principally right in making a global sanction for the different offences calling for a fee.

c) Article 14 (let c) DR states, that a fine can be of anything from €100 to €1,000,000 (paragraph 2). Within the minimum fine specified in specific provisions, such as Art. 11 bis (2) DR, the disciplinary body therefore has extensive discretionary powers when it comes to imposing fines.

While determining the extend of the fee in a particular case, it must take account of the particular circumstances, of the fact that a repeat offence is an aggravating factor under Article 18 DR and respect the standard principles of ordinary law (proportionality, legality, equal treatment) and neither exceed nor abuse its discretionary power.

d) In this case, the Appeals Body believes that by imposing a €30,000 fine the Control and Disciplinary Body did not take account of all the concrete circumstances in due proportion. It notes in particular that only one firework was ignited and not thrown and that the club has made a tremendous efforts to limit the use of pyrotechnic devices to this one firework. Taking also of the club's current financial difficulties it considers proportional to limit the sanction for both offences to the minimum fine imposed for misbehaviours of supporters involving a violation of Art. 11bis(2)DR.

In other words, the Appeals Body considers a reduction of the fine imposed to €20,000 to be more in line with the proportionality principle in the particular case.

6.

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

In this case, the costs of the proceedings (€4,000 in total), will be borne in equal parts by both parties: €2,000 minus the appeal fee will be borne by the appellant, Olympiacos, and the remaining €2,000 will be borne by UEFA.

7.

The chairman read out the decision, which is final, subject to UEFA's statutory provisions on the Court of Arbitration for Sport (Article 66 DR). Brief grounds were given and the operative part of the decision provided to the parties in writing. The full written decision will be sent to them in due course (Articles 64 and 66 DR).

Decision of 26 March 2013

Paris Saint-Germain. Zlatan Ibrahimović

(Rough play)

Circumstances of the case:

According to the referee's report regarding the UEFA Champions League match between Valencia CF and Paris Saint-Germain of 12 February 2013, PSG player Zlatan Ibrahimovic was sent off the field of play in the 92nd minute due to a serious foul play.

Legal framework:

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

Decision:

CDB:

The CDB suspended the player Zlatan Ibrahimovic for two UEFA club competition matches.

Appeals Body:

The appeal is admitted. Consequently, the suspension of the player Zlatan Ibrahimovic is reduced to one UEFA club competition match.

Président: Goetz Eilers, Allemagne

Juges: Olga Zhukovska, Ukraine
Mario Galavotti, Italie

En fait :

A.

Selon le rapport de l'arbitre du match de la Ligue des Champions qui a opposé, le 12 février 2013, Valence CF au Paris Saint-Germain (ci-après : PSG), le joueur no 18 du Paris Saint-Germain, Zlatan Ibrahimovic, a été expulsé (carton rouge), à la 92^{ème} minute pour un jeu très dangereux mettant en danger l'intégrité physique de son adversaire, à savoir coup de pied à l'adversaire sans intention de jouer le ballon. Il a quitté le terrain sans protester.

B.

Par décision notifiée le 28 février 2013, l'Instance de contrôle et de discipline de l'UEFA a suspendu le joueur Zlatan Ibrahimovic pour deux matches des compétitions de l'UEFA. Après avoir visionné les images vidéo, elle a considéré, en substance, que la faute du joueur devait être qualifiée de jeu dangereux au sens de l'art. 10 al. 1 let. a chiffre 2 du règlement disciplinaire de l'UEFA (ci-après: RD). L'autorité de première instance a retenu que porter la jambe tendue sur la cheville d'un adversaire, sans aucune chance de reprendre la balle constituait un acte de jeu d'une certaine gravité, commis sans égard vis-à-vis de l'intégrité physique de l'opposant, estimant qu'Ibrahimovic avait accepté la probabilité de porter atteinte à l'intégrité de son adversaire.

C.

Le 1^{er} mars 2013, Zlatan Ibrahimovic et le PSG ont fait appel de la décision de l'Instance de contrôle et de discipline. Dans son mémoire daté du 7 mars 2013, le PSG a fait valoir pour l'essentiel et en substance que :

- l'instance de contrôle et de discipline a commis une erreur dans l'appréciation des faits : Sans contester un « jeu grossier » et une action qui « manquait de précaution en ce que le joueur s'est lancé pied en avant avec retard sur la ballon », le club fait valoir que le joueur, arrivé de face, avait une chance réelle de récupérer le ballon. Il nie également le caractère « dangereux » de l'action, estimant que le joueur Guardado a exagéré considérablement les conséquences de l'impact. Le PSG reconnaît en outre la qualification de l'acte de son joueur comme étant un jeu grossier (chiffre 1 page 3 du mémoire d'appel) et que le joueur s'est lancé un pied en avant avec retard sur le ballon ;
- comparée à d'autres sanctions (précisées spécifiquement) infligées par l'Instance de contrôle et de discipline à l'encontre d'autres joueurs depuis le début de la saison, celle infligée à M. Ibrahimovic dans le présent cas ne serait pas conforme à la jurisprudence ;

- compte tenu du fait que son joueur n'est pas en situation de récidive et que son action n'a eu aucune conséquence sportive sur le match, le club sollicite que la sanction prononcée à l'encontre de celui-ci soit diminuée et portée à un match de suspension.

D.

Dans sa réponse à l'appel du 18 mars 2013, l'UEFA, par son inspecteur disciplinaire, demande que l'appel interjeté par le joueur Zlatan Ibrahimovic et son club Paris Saint-Germain soit rejeté, que la décision de première instance soit confirmée et les frais de la procédure d'appel mis à la charge de l'appelant.

E.

Convoqué par la Fédération suédoise de football à participer à un match amical le 26 mars 2013, Ibrahimovic n'a pas été libéré pour se présenter à l'audience d'appel de ce jour.

Nonobstant son absence, l'Instance d'appel peut siéger et statuer, en application de l'art. 56 al. 3 RD, en présence de ses représentants, MM Olivier Letang et Me François Klein et de l'UEFA représentée par l'inspecteur disciplinaire Jean-Samuel Leuba.

Le Président rappelle la composition de la Cour. Il informe les parties de la procédure qu'il propose de suivre et les avise que les débats sont enregistrés (art. 31 al. 3 RD).

Les représentants du joueur requièrent le visionnage d'images vidéo relatives à différents cas, semblables à leurs yeux, qu'avaient traités les instances disciplinaires de l'UEFA. Ne l'estimant pas nécessaire, l'instance d'appel n'accède pas à leur requête.

Les parties ne soulèvent aucune objection ou exception.

La scène litigieuse est visionnée à plusieurs reprises.

Aucun autre moyen de preuve n'étant réclamé, la parole est donnée aux parties pour plaider, répliquer et dupliquer.

M. Olivier Letang commente ces images et souligne qu'Ibrahimovic avait touché le ballon avec son pied au-dessus et qu'il a effleuré son adversaire. Ibrahimovic n'avait aucune intention de violence. Il nie le fait qu'Ibrahimovic était en retard pour tacler le ballon et ne reconnaît pas que l'acte du joueur en cause soit un jeu grossier. Il s'agirait d'une maladresse due à la précipitation, sans aucune intention de violence. Selon lui, le joueur Guardado aurait dû enlever son pied en voyant quelqu'un du gabarit d'Ibrahimovic arriver sur lui. Finalement, l'avocat de l'appelant demande que le deuxième match de suspension du joueur soit assorti d'un sursis en tenant compte du fait que Zlatan Ibrahimovic a joué plus de 180 matches UEFA toutes compétitions confondues.

Les arguments développés dans les écritures et lors des plaidoiries seront repris dans les considérations de droit ci-après dans la mesure utile à la résolution du présent litige

Les débats clos, l'Instance d'appel entre en délibération. Il en ressort ce qui suit.

En droit:

1.

La compétence de l'Instance d'appel de connaître d'un appel contre une décision de l'Instance de contrôle et de discipline est donnée par l'art. 48 RD.

L'appel a été interjeté par le joueur Zlatan Ibrahimovic dans le délai et les formes prescrits et le droit d'appel a été versé dans le terme réglementaire, conformément aux art. 49, 50, 52 et 53 RD. L'Instance d'appel peut donc entrer en matière sur ses mérites.

2.

a) L'appelant conteste que le geste du joueur Ibrahimovic puisse être qualifié de "jeu dangereux".

Selon une jurisprudence et une pratique constantes des instances disciplinaires de l'UEFA, est qualifié de "jeu grossier" ou "jeu dangereux" au sens de l'article 10 al. 1 let. a ch.2. RD, le fait qu'un joueur qui veut disputer le ballon à son adversaire tacle sans précaution en acceptant par là le risque de ne pas récupérer le ballon et de blesser ou de mettre en danger l'intégrité physique de ce dernier.

La dispute du ballon et la dangerosité de l'action constituent ainsi les éléments décisifs. Il faut également que l'auteur soit en mesure de se rendre compte, lorsqu'il souhaite tenter de récupérer le ballon, qu'il fait courir un risque à son adversaire et que, malgré tout, il le prend. En droit pénal, on parle de « dol éventuel » et de « négligence consciente ».

Dit en d'autres termes, même si blesser l'adversaire n'est la plupart du temps pas l'intention du joueur dans de telles actions de jeu, l'auteur d'un jeu dangereux au sens de cette jurisprudence, a nécessairement envisagé la blessure de l'adversaire comme un résultat possible de sa tentative, sans que cela ne justifie à ses yeux qu'il y renonce. Il en accepte le risque.

Dès lors, conformément à la jurisprudence des instances disciplinaires de l'UEFA, que l'adversaire ait été blessé ou non, de tels gestes téméraires et potentiellement dangereux sont qualifiés de jeu "grossier" (rough) ou "dangereux" au sens de l'art. 10 al. 1 let. a ch. 2 RD et sanctionnés en conséquence.

b) La Loi 12 des Lois du jeu va dans le même sens en prévoyant que « Un joueur se rend coupable d'une faute grossière s'il agit avec excès d'engagement ou brutalité envers un adversaire lorsqu'ils disputent le ballon quand il est en jeu. Un tacle qui met en danger l'intégrité physique d'un adversaire doit être sanctionné comme faute grossière (...) ». Ce qui est sanctionné par la réglementation qui vise à protéger l'intégrité des joueurs est ainsi déjà la mise en danger de cette intégrité.

3.

En l'espèce, l'appelant a admis s'être "lancé le pied en avant avec retard sur le ballon" (cf. mémoire d'appel, page 3 ch. 1). Pourtant, lors de l'audience de ce jour, mais en l'absence de l'intéressé, son mandataire n'a pas hésité à soutenir le contraire, invoquant la maladresse due à la précipitation.

Aux yeux de l'Instance d'appel, les images sont suffisamment éloquentes et ne laissent aucune place au doute : l'appelant, en cherchant à récupérer le ballon alors qu'il était en retard, jambe tendue crampons en avant, a mis en danger réel l'intégrité physique de son adversaire. Que ce

dernier n'ait heureusement pas été blessé relève du hasard, voire de la bonne fortune. Il ne diminue en rien la dangerosité du geste ni la qualification de l'infraction qui ne relève nullement d'une simple maladresse s'agissant d'un joueur professionnel.

C'est donc à juste titre que l'Instance intimée a retenu, conformément à la jurisprudence, que le joueur Ibrahimovic s'est rendu coupable de jeu grossier au sens de l'art. 10 al. 1 let. a ch. 2 RD.

Au demeurant, même si l'appelant a cherché à minimiser la gravité du geste, il ne remet pas véritablement en cause l'application de l'art. 10 al. 1 let a RD, se bornant à invoquer l'existence de circonstances atténuantes qui justifieraient une sanction plus clémente.

4.

a) A teneur de l'art. 10 al. 1 let. a RD, la sanction en cas de jeu grossier ou dangereux est une suspension d'un match de compétition ou d'une durée à déterminer. Il s'agit cependant d'une sanction standard qui, en cas de circonstances particulières, peut être atténuée ou aggravée (art. 17 al. 2 RD). En effet, conformément aux règles générales du droit, la peine est fixée selon les circonstances, en fonction de la gravité de la faute et de la réputation de l'intéressé. En plus de son rôle répressif, la sanction doit également viser un but préventif et éducatif. L'autorité disciplinaire doit en outre se réserver la possibilité de réprimer toutes les fautes, des plus bénignes aux plus graves. Elle peut ainsi, en appréciant les spécificités d'un cas d'espèce, réduire ou augmenter la période ordinaire de suspension, lorsque la gravité de la faute commise, l'âge ou les bons antécédents du contrevenant commandent que l'on s'écarte de la durée normale (standard) de suspension.

b) En l'occurrence, la première instance a insisté sur la dangerosité évidente de l'acte en question, estimant qu'elle justifiait d'augmenter la sanction standard d'un match de suspension, conformément à une pratique régulière en cas de jeu très grossier. Cette analyse échappe à la critique.

Cela étant, de l'avis de l'Autorité de céans, elle n'a pas tenu suffisamment compte de l'absence d'antécédents dont peut se prévaloir l'appelant.

Certes, selon la jurisprudence du Tribunal fédéral Suisse, dont les instances disciplinaires de l'UEFA s'inspirent, l'absence d'antécédent a en principe un effet neutre dans la détermination de la quotité de la sanction à imposer et ne doit pas être considérée en soi comme une circonstance atténuante. Cependant, lorsque cette absence d'antécédent relève d'un comportement exceptionnel, elle peut être considérée comme une circonstance atténuante.

c) Dans le cas d'espèce, le joueur Ibrahimovic, âgé de 33 ans, est joueur professionnel depuis plus de 10 ans. Avant la suspension litigieuse, il n'avait fait l'objet d'aucune expulsion directe alors qu'à ce jour, il a disputé plus de 180 matches UEFA, toutes compétitions confondues. Il s'agit là, aux yeux de l'instance d'appel, d'une situation exceptionnelle à prendre en considération comme une circonstance atténuante, ce que n'a pas fait la première instance.

5.

En résumé et pour conclure, il découle des considérants qui précèdent que l'appelant s'est rendu coupable de jeu grossier au sens de l'art.10 al. 1 let. a ch. 2 et que son geste revêtait un caractère dangereux qui justifiait que l'on s'écartât de la sanction standard d'un match de suspension, conformément à la jurisprudence constante de l'UEFA. En revanche, l'autorité intimée aurait également dû tenir compte des antécédents exceptionnels dont peut se prévaloir le joueur appelant, lequel après plus de dix ans de football professionnel au niveau le plus élevé et après 180 matches de compétitions UEFA n'avait jamais, avant la rencontre litigieuse, fait l'objet d'une expulsion. Dans ces conditions, l'Instance d'appel estime justifié de ramener à un match la suspension infligée à l'appelant.

Compte tenu de ce qui précède, il n'est pas nécessaire d'examiner les autres motifs invoqués par l'appelant qui obtient entièrement satisfaction.

6.

Les frais de procédure, qui comprennent l'ensemble des dépenses de l'instance d'appel, doivent être répartis de manière équitable entre les parties selon l'issue de la procédure (art. 63 RD). Vu le sort fait à l'appel, il se justifie de mettre la totalité des frais de la présente cause à la charge de l'intimée dont les conclusions sont entièrement rejetées.

7.

Le Président informe oralement les parties de la présente décision qui est définitive. Il la motive brièvement et leur transmet le dispositif. Les considérants de l'arrêt leur seront communiqués ultérieurement (art. 64 et 66 RD).

Decision of 14 May 2013

FC Dinamo Kyiv

(Racist behaviour of supporters)

Circumstances of the case:

Based in particular on FARE reports related to the UEFA Champions League match between FC Dynamo Kyiv and Paris Saint-Germain FC on 22 November 2012 and the UEFA Europa League match between FC Dynamo Kyiv and FC Girondins de Bordeaux on 14 February 2013, disciplinary proceedings were opened against FC Dynamo Kyiv for discriminatory behaviour on the part of some of its supporters during both matches. During these matches one of the supporters displayed a banner containing the Celtic cross, considered a neo-Nazi symbol, and performed a Nazi salute.

Legal framework:

Art. 11bis DR (ed. 2012) *Discrimination*

Decision:

CDB:

The CDB ordered FC Dynamo Kyiv to play their next two UEFA club competition home matches behind closed doors, with the second match deferred for a probationary period of three years.

Appeals Body:

The appeal is partially admitted. Consequently, the decision of the CDB is amended as follows: FC Dynamo Kyiv is ordered to play its next UEFA club competition home match behind closed doors.

Chairman: Pedro Tomás, Spain

Members: Barry Bright, England
Björn Ahlberg, Sweden

In fact

A.

Conscious that it cannot fight racism in football alone, UEFA approached and signed a collaboration agreement with FARE (Football Against Racism in Europe). FARE therefore became an official UEFA partner, for which eliminating racism and discrimination in football is a priority. Chosen from among various state and private bodies dealing with this problem at European level, FARE is an umbrella group of more than 100 NGOs, fan groups, migrant and ethnic minority organisations, individuals and members of the football family, including former players and representatives of professional clubs and players' unions, with members in around 40 countries across Europe, including Ukraine.

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

FARE has been a UEFA partner for about ten years and experience has shown that it does not report incidents unless they have been directly observed by one of its appointed neutral observers at the match in question. When FARE believes that a match poses a high risk of racist behaviour, it appoints an observer to prepare a report if such behaviour occurs.

B.

Based in particular on FARE reports relating to the UEFA Champions League match between FC Dynamo Kyiv and Paris Saint-Germain FC on 22 November 2012 and the UEFA Europa League match between FC Dynamo Kyiv and FC Girondins de Bordeaux on 14 February 2013, disciplinary proceedings were opened against FC Dynamo Kyiv for discriminatory behaviour on the part of some of its supporters during both matches.

In a decision of 21 March 2013, the UEFA Control and Disciplinary Body ordered FC Dynamo Kyiv to play their next two UEFA club competition home matches behind closed doors, with the second match deferred for a probationary period of three years, holding the club responsible for its spectators' conduct at the aforementioned matches, which was discriminatory under Article 11bis(1) of the UEFA Disciplinary Regulations in so far as one of them displayed a banner containing the Celtic cross, considered a neo-Nazi symbol, and performed a Nazi salute.

C.

On 8 April 2013, FC Dynamo Kyiv informed UEFA of its intention to appeal against the Control and Disciplinary Body's decision, which had been sent on 4 April 2013.

On 16 April 2013, it submitted its appeal pleadings, in which it declared the following, in substance:

- there are no specific grounds to increase the standard punishment provided by Art. 11bis of the Disciplinary Regulations. The Control and Disciplinary Body departed from this standard measure without the existence of “particular circumstances” as required by this provision. The club considers this punishment disproportionate;
- the crowd was manipulated by several “masterminds” among the supporters, who were unaware of the meaning of the neo-Nazi symbols and the fascist connotations of their chants and gestures;
- the club did not become aware of the incident that took place during the first match against Paris Saint-Germain FC on 21 November 2012 until after the second incident, during the match against Girondins de Bordeaux on 14 February 2013. It can therefore not be blamed for failing to take appropriate measures to fight such conduct after the first incident;
- the club denied that its supporters were chanting “Sieg Heil” as it was impossible to distinguish whether they were chanting “Ziga-zaga” or “Zigger-Zagger” (imitating the sound of rattles used by English football fans);
- the club was not trying to excuse the incident but pointed out that it had not been perceived as racist by the general public;
- the application of the recidivism provision was inappropriate as the previous infringement was less serious, bearing in mind the punishment imposed in 2010. The club urged the Appeals Body to exercise common sense by considering circumstances that had been ignored by the Control and Disciplinary Body, notably:
 - the club’s sincere acknowledgement of the new problem;
 - the club’s efforts to identify the “masterminds” behind these incidents in cooperation with law enforcement agencies and to take legal action against them;
 - the fact that the incidents were not perceived as racist by the general public;
 - the fact that most of the participants in the incidents acted not only without intent to promote fascism but also without realising the possible sophisticated connotations of the chanting.

The club concluded that the challenged decision should be amended to the effect that the three-year probationary period should apply to the playing of not just one, but both matches behind closed doors.

D.

On 2 May 2013, the UEFA disciplinary inspector submitted his response to the appeal. He requested that the appeal be rejected, with the procedural costs charged to the appellant.

E.

- a) The chairman opened the appeal hearing, noting the presence of the parties and explaining the procedure to be followed (Article 60 et seq. of the Disciplinary Regulations). He also informed the parties that everything they and the Appeals Body members said would be recorded. Finally, he reminded them of the composition of the Appeals Body.
- The club representative informed the panel that he was in possession of a document addressed by the club to the deputy head of the department of Ukrainian security service in Kyiv, Mr Liashenko, that he would like to be added to the file. The club indicated in the document in question that the people responsible for the inappropriate conduct during the game *“had been prohibited to attend matches of the club at the NSC Olimpiyskiy Stadium*

and the Dinamo stadium named after V. Lobanovskiy within three years. Taking into account the above information we kindly ask you to take appropriate measures in relation to the above persons within competence of the Security Service of Ukraine".

Replying to a question from the panel, the club representative confirmed that the facts contained in the FARE report were accurate.

The panel allowed the appellant to add the document in question to the case file. The disciplinary inspector raised no objections.

No objections were raised.

- b) The images produced by the FARE observer were shown and examined.
- c) Finally, the floor was given to the parties, who, in substance, reiterated the arguments given in their written statements. They explained and maintained their requests.
The disciplinary inspector admitted, however, that the document added to the case file by the appellant during the hearing could be seen as a mitigating circumstance in favour of the appellant.
- d) The parties' arguments are set out and examined below, in so far as they are relevant.
- e) The Appeals Body concluded the hearing, deliberated and decided as follows.

In law

1.

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

The Appeals Body may therefore consider its merits.

2.

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

According to Article 2(b) of the 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.

Article 6 of the Disciplinary Regulations 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, *"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"*. 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 member association or club is automatically held responsible and punished accordingly.

Indeed, Article 11bis of the Disciplinary Regulations states that:

"1. Anyone who insults the human dignity of a person or group of persons by whatever means, including on grounds of colour, race, religion or ethnic origin, shall incur a suspension for five matches or for a specified period (...).

2. If one or more member of an association or club's supporters engage in the behaviour described in paragraph 1, the member association or club responsible shall be fined €20,000.

3. If particular circumstances so require, the competent disciplinary body may impose additional sanctions on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, a match forfeit, the deduction of points or disqualification from the competition (...)." This provision prohibits discrimination of any kind.

3.

Since the facts described in the FARE reports are not questioned, it is established that FC Dynamo Kyiv supporters displayed banners featuring a Celtic cross, the phrase "Freedom to nationalists of Pirin Blagoevgrad" (in support of arrested Bulgarian neo-Nazis), the slogan "White Club" and an Odal Rune, as well as performing Nazi salutes and chanting "Ziga-Zaga-Oi".

The UEFA disciplinary bodies not only can but must take into account reliable evidence other than the delegate's report when an infringement is reported (Article 45 of the Disciplinary Regulations). In this respect and for the reasons explained above, FARE's report on the match in question is obviously reliable and must be taken into account. It is thus established that FC Dynamo Kyiv supporters behaved in a discriminatory manner at the above-mentioned match. Indeed, by showing banners with a Celtic cross, and other runic symbols that are generally recognised as racist symbols expressing the idea that some races are inherently superior (physically, intellectually, or culturally, has to be considered as racist behaviour in the sense of Article 11 bis of the UEFA Disciplinary Regulations) these supporters sought to demonstrate their affiliation to a superior racial group. Indeed, and no matter what the club tries to argue, the Celtic cross is knowingly and generally understood as one of the most popular symbols for neo-Nazis and white supremacists. First popularised by the Ku Klux Klan, the symbol was later adopted by the National Front in England and other racists such as Don Black. It is also known as Odin's Cross. According to the UEFA Disciplinary Regulations and the long-standing practice of the UEFA disciplinary bodies, these symbols constitute an expression of racism.

4.

a) The appellant does not deny that discriminatory symbols were displayed and Nazi salutes performed by its supporters, as held by the Control and Disciplinary Body in application of Article 11bis of the Disciplinary Regulations. It argues, however, that the supporters in question were manipulated by a few "masterminds", since they were not aware that such symbols or gestures violated UEFA regulations. It considers this a mitigating circumstance.

Nevertheless, it is public knowledge that extending a right arm to at least eye level and straightening the hand so that it is parallel to the arm constitutes a Nazi salute. Nobody can seriously claim that the supporters who performed this gesture were unaware of its meaning. In any case, the misinterpretation or lack of awareness of particular regulations does not constitute an excuse in disciplinary law. Therefore, this argument must be ruled out, whatever the individual supporters thought their gestures and chants actually meant.

b) The appellant claims that the incident was not perceived by people in the stadium as offensive. This argument must also be ruled out, since Article 11bis of the Disciplinary Regulations does not require conduct to be perceived as offensive before a disciplinary measure can be imposed.

c) The appellant also challenges the fact that the Control and Disciplinary Body, in accordance with Article 18 of the Disciplinary Regulations, took into consideration a previous offence dating back to 2010. According to the club, there is no recidivism, since the previous case was less serious. In 2010, the appellant was fined because its supporters had used 18 banners containing the name of the city Darnitsa with two Celtic crosses underneath during the match between FC Dynamo Kyiv and AFC Ajax on 17 August 2010. They had also shown a banner with the AFC Ajax logo, an anti-Jewish slogan and a Celtic cross. In other words, the above-mentioned incidents that occurred during FC Dynamo Kyiv' matches against Paris Saint-Germain FC and FC Girondins de Bordeaux obviously constitute repeat offences of the same nature in the sense of Article 18 of the Disciplinary Regulations. The disciplinary measure must therefore be heavier than for the first offence. By considering the first offence that occurred during the match against AFC Ajax in 2010, the Control and Disciplinary Body complied with the provision of Article 18 of the Disciplinary Regulations and the appellant's argument in this respect must be dismissed.

d) Finally, the appellant asks for a number of mitigating circumstances to be considered, notably the club's sincere acknowledgement of the new problem. This obviously does not constitute a mitigating circumstance and does not need to be examined any further.

Considering the seriousness of the offence, none of the defendant's claims, which do not alter the legal classification of the incidents as discriminatory behaviour, can be accepted as mitigating circumstances.

5.

The Appeals Body considers that the new document provided during the hearing, which shows the efforts made by the appellant to catch and punish some of those responsible for this incident, is important and should be considered. Indeed, the action taken by the appellant to bring the perpetrators before the public authorities is appropriate and in line with the fight against such behaviour, and has to be taken into account in favour of the appellant in determining the sanction to be imposed.

It must be noted, however, that the Control and Disciplinary Body was unaware of these efforts when it took its decision. In the Appeals Body's view, this action on the part of the appellant constitutes a mitigating circumstance that justifies a reduction of the punishment imposed in the first instance, which now appears disproportionate.

Consequently, the Appeals Body amends the decision taken by the Control and Disciplinary Body on 21 March 2013 against FC Dynamo Kyiv to the effect that FC Dynamo Kyiv will play only its next UEFA club competition home match behind closed doors, with the order for the second match to be played behind closed doors, subject to a probationary period, cancelled.

The costs 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 of the Disciplinary Regulations). Based on the result of the appeal, which was partially upheld, the costs of the proceedings, amounting to €6,000, will be borne in equal parts by both parties; €3,000 less the appeals fee of €1,000 will be borne by FC Dynamo Kyiv and the rest by UEFA (Article 73 of the Disciplinary Regulations).

Decision of 14 May 2013

Olympique Lyonnais. Patrice Lair

(Improper conduct of an official)

Circumstances of the case:

Following the Women Champions League 2012/13 match FCF Juvisy Essonne vs. Olympique Lyonnais played on 21 April 2013, FCF Juvisy lodged a protest regarding the behaviour of Olympique Lyonnais coach Patrice Lair. After the third goal of his team, coach Patrice Lair made an insulting and unacceptable gesture ("bras d'honneur") towards the supporters.

Legal framework:

Art. 5 DR (ed. 2012) *Principles of conduct*

Decision:**CDB:**

The CDB suspended the coach Patrice Lair for 1 UEFA competition match.

Appeals Body:

The appeal is partially admitted. Consequently, the Appeals Body suspends Patrice Lair for two UEFA competition matches. The second match is suspended for a probationary period of three years.

Président: Pedro Tomás, Espagne

Juges: Barry Bright, Angleterre
Björn Ahlberg, Suède

A.

Le 19 avril 2013, l'Instance de contrôle et de discipline de l'UEFA a suspendu l'entraîneur de l'équipe féminine de l'Olympique Lyonnais (ci-après : Olympique Lyonnais) de ses fonctions pour un match de compétitions de clubs de l'UEFA, à savoir la rencontre de la Women Champions League 2012/13 match FCF Juvisy Essonne – Olympique Lyonnais du 21.04.2013. La décision non motivée a été envoyée à l'Olympique Lyonnais le même jour.

S'appuyant sur la plainte déposée par le FCF Juvisy, sur la prise de position de l'Olympique Lyonnais, sur la lettre manuscrite de l'entraîneur Lair au FCF Juvisy dans laquelle il reconnaît avoir fait un bras d'honneur dirigé contre les spectateurs ainsi que sur les images vidéo de l'incident, l'Instance de contrôle et de discipline a retenu que, lors de la rencontre de la Women Champions League 2012/13 a opposé, l'Olympique Lyonnais au FCF Juvisy le 21.04.2013, l'entraîneur Patrice Lair avait fait un geste injurieux et inacceptable après que son équipe a marqué le troisième but.

Elle a considéré, en substance, que l'attitude de l'entraîneur constituait une violation de la règle générale de conduite prévue à l'art. 5 DR. Cette obligation de retenue est également mentionnée à la Loi 5 des Lois du jeu qui exige des officiels prenant place dans la surface technique qu'ils se comportent de manière responsable.

B.

Le 22 avril 2013, l'Inspecteur disciplinaire de l'UEFA, agissant au nom de l'UEFA, a requis la motivation de la décision rendue par l'Instance de discipline le 19 avril 2013 à l'encontre de l'entraîneur Patrick Lair et annoncé vouloir interjeter appel contre cette décision.

La décision motivée lui a été notifiée le 25 avril 2013 et, le 29 avril 2013, il a confirmé sa déclaration d'appel du 22 avril 2013.

Conformément à l'art. 52 RD, un délai au 1^{er} mai 2013 a été imparti à l'appelant pour déposer son mémoire d'appel. L'Inspecteur disciplinaire a déposé son mémoire d'appel le 30 avril 2013. Il retient en substance que l'entraîneur en cause a eu deux comportements répréhensibles, à savoir un geste inapproprié (bras d'honneur) et des propos inappropriés (« ils ont dans le c »). Son comportement est ainsi plus grave qu'un seul geste ou une seule parole et pour ce motif déjà, la sanction d'un match de suspension apparaît arbitrairement clémente. L'on ne saurait selon lui faire preuve de clémence pour un geste et des paroles injurieuses à l'égard de supporters. Il conclut à l'admission de l'appel et, partant de la modification de la décision entreprise en ce sens que Patrice Lair est suspendu d'exercer sa fonction pour deux matches de compétition UEFA. Enfin, l'appelant demande que les frais de la procédure d'appel soient mis à la charge de Patrice Lair solidairement avec l'Olympique de Lyon.

C.

Dans son mémoire de défense du 5 mai 2013, le club requiert que soit confirmée la décision de l'Instance de contrôle et de discipline infligeant un match de suspension à l'entraîneur Patrice Lair, que soient rejetées les autres conclusions et que les frais de la procédure soient répartis équitablement.

Sans nier le geste à l'origine de la sanction de son entraîneur, le club précise en substance ce qui suit:

Deux attestations de témoins à l'appui, il fait valoir qu'après avoir subi sans réagir durant la période particulièrement tendue des prolongations les invectives et insultes de supporters situés derrière son banc de touche qui lui en voulaient de ne pas sortir la buteuse Lotta Schelin, il n'a pu s'empêcher de se retourner vers eux au moment où celle-ci a inscrit le but de la victoire, leur adressant furtivement le geste incriminé, accompagné de paroles dont la teneur n'est pas clairement établie. Le geste en cause était donc adressé aux auteurs de provocations. Au regard de la jurisprudence, dont il donne quelques exemples, le club estime qu'il n'y a pas lieu d'aggraver la sanction d'un match prononcée pour ce geste déplacé, puisqu'il n'était adressé ni à un officiel ni à des acteurs de jeu, ces deux éléments étant des circonstances ayant déjà été reconnues comme justifiant une aggravation de la sanction.

Se fondant sur les déclarations d'après match de l'entraîneur publiées dans la presse, dont il produit une coupure, le club fait encore valoir que les filles du club de Juvisy n'ont jamais été insultées et que leur club avait parfaitement connaissance de la visée du geste déplacé de Patrice Lair. Il ajoute que la rencontre s'est en dehors de ce problème disputée dans un excellent climat et sans animosité aucune entre les clubs et leurs représentants

D.

A la séance de ce jour, les images du comportement reproché à Lair sont visionnées. Finalement, la parole est donnée aux parties.

Les débats clos, l'Instance d'appel entre immédiatement en délibération. Il en ressort ce qui suit.

En droit:

1.

a) La compétence de l'Instance d'appel de connaître de l'appel contre une décision de l'Instance de contrôle et de discipline est donnée par les art. 48 et 54 RD.

2.

L'appel a été interjeté dans le délai et les formes prescrits. Il est motivé et par conséquent recevable selon les art. 49, 50, 52 et 53 RD. L'Instance d'appel peut donc entrer en matière sur ses mérites.

3.

A teneur des art. 52 des Statuts de l'UEFA et 8 RD, le comportement antisportif, les violations des Lois du Jeu et les infractions aux statuts, règlements, décisions et directives de l'UEFA sont sanctionnés par voie disciplinaire.

La lettre du club de Juvisy du 14 avril 2013 dénonçant le comportement de l'entraîneur de l'Olympique Lyonnais doit être considérée comme une plainte au sens de l'art. 42 al. 1 let f RD précité. Selon cette disposition, une procédure disciplinaire est ouverte notamment si une infraction tombant dans le champ d'application du présent règlement est dénoncée par le biais d'une communication écrite (al. 1).

4.

a) L'Instance d'appel a pris connaissance des déclarations de l'entraîneur Patrice Lair et de son conseil, qui a confirmé que le geste de Patrice Lair a été montré sur l'écran géant du stade. Elle a visionné les images du comportement litigieux et entendu l'intimé qui ne conteste pas avoir fait un bras d'honneur, qu'il adressait, aux supporters derrière lui et non à l'arbitre ou aux joueuses et officiels de l'équipe adverse. Il n'en reste pas moins, tel est l'avis de l'instance d'appel également, qu'un tel geste est contraire aux principes de conduite énoncés à l'art. 5 RD.

b) C'est en effet avec raison que l'autorité de première instance a qualifié le bras d'honneur de Patrice Lair de comportement contraire à l'esprit sportif et de conduite insultante contraire aux règles élémentaires de la bienséance au sens de l'art. 5 al. 2 let. b RD. Indépendamment de son destinataire en effet, le bras d'honneur de l'entraîneur était propre à heurter non seulement ceux à qui il était destiné, mais également tous les spectateurs et téléspectateurs, et à discréditer le football et l'UEFA en renvoyant une image grossière d'un officiel du football (art. 5 al. 2 let. d RD). C'est donc à juste titre que l'autorité de la première instance a sanctionné l'intimé Lair, conformément à l'art. 8 RD, ce qui sur le principe n'est d'ailleurs pas contesté.

c) Reste à examiner si l'autorité de première instance a abusé de son pouvoir d'appréciation en suspendant Lair d'un seul match de suspension ou si, au contraire, elle a fait preuve d'une trop grande clémence au regard de la gravité de l'infraction commise, ainsi que le soutient l'Inspecteur disciplinaire au nom de l'UEFA qui demande une aggravation de la sanction.

5.

a) L'art. 5 RD énonce de manière non exhaustive les comportements incorrects de toute personne soumise à la réglementation UEFA. La Loi 5 des Lois du jeu aussi rappelle l'obligation pour des personnes prenant place dans la surface technique de se comporter de manière responsable.

L'art. 15 RD décrit les mesures disciplinaires qui peuvent être appliquées aux personnes physiques. S'il s'avère qu'il y a eu comportement antisportif et incorrect, l'autorité disciplinaire pourra sanctionner son auteur par une mise en garde, un blâme, une amende, une suspension de matches ou de fonction pour un certain nombre de matches, pour une durée déterminée ou indéterminée, une interdiction de toute activité relative au football et, enfin, un retrait d'un titre ou d'un mérite. Ces peines peuvent être cumulées (art. 13 al. 2 RD). Enfin, conformément à l'art. 17 al. 1 RD, l'instance disciplinaire détermine le type et l'étendue des mesures disciplinaires en vertu des éléments objectifs et subjectifs de l'infraction. Elle tient compte d'éventuelles circonstances aggravantes ou atténuantes.

L'autorité de première instance jouit donc, dans le cadre bien compris de ses compétences et sous réserve de l'arbitraire, de toute la latitude que lui laisse le règlement disciplinaire pour rendre les mesures disciplinaires qui lui paraissent les mieux adaptées.

b) En l'espèce, le geste grossier de l'entraîneur Lair constitue une violation des principes de conduite que doit en premier lieu respecter le responsable d'une équipe. Il n'est pas tolérable que, sous prétexte que ses propres supporters l'ont malmené il réponde par un geste éminemment grossier dont il doit savoir qu'il ne manquera pas de faire le tour des spectateurs et téléspectateurs. Compte tenu de son rôle et du fait qu'il était nécessairement en ligne de mire de tous les médias suite au goal de son équipe, aucune circonstance ne saurait atténuer la gravité de son geste.

Même l'argument selon lequel il aurait été sans cesse l'objet attaques de la part de supporters durant de longues minutes, ne saurait constituer une circonstance atténuante. D'ailleurs, le comportement de supporters en question à l'encontre de l'entraîneur Lair ne constitue pas une circonstance pouvant limiter la gravité de son comportement. L'on est en effet en droit d'attendre d'un entraîneur, encore plus que d'un joueur, comme par exemple le joueur Balotelli, qui a fait l'objet sans réagir d'insultes racistes le dimanche 12.05.2013 lors du match AC Milan Roma, qu'il prenne sur lui et attende la fin du match pour agir dans les règles, au lieu d'attiser la tension avec des supporters qui aurait pu embraser tout le stade avec des conséquence que l'on n'ose imaginer.

c) Il est 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 joueuses/joueurs, surtout pour les plus jeunes, et pour la jeunesse intéressée au football en particulier. A cet égard, la campagne RESPECT de l'UEFA rappelle sans cesse aux personnes impliquées dans le football de respecter le jeu, les joueurs, les adversaires, les officiels et les supporters. Cette obligation demeure même si les joueurs ou supporters font, eux, preuve d'un manque de respect. En adressant aux supporters un bras d'honneur accompagné de propos qui en augmentent encore le caractère injurieux (« ils [elles] ont dans le c... ») tout en étant lui à la tête d'une des meilleures équipes féminines d'Europe est un comportement qu'il faut qualifier de gravement attentatoire aux valeurs même du football.

d) L'intimé fait référence à d'autres affaires où des instances disciplinaires de l'UEFA auraient fait preuve de plus de clémence, notamment la décision de l'Instance d'appel du 17 novembre 2000 dans laquelle l'entraîneur de Fiorentina s'était vu infliger 3 matches de suspension puis 2 en appel pour avoir insulté le corps arbitral dans le vestiaire.

A cela il faut répondre que la comparaison de deux peines rendues par les instances disciplinaires de l'UEFA est le plus souvent infructueuse. L'égalité de traitement ne peut que très difficilement être revendiquée vu les différences de circonstances, le nombre d'éléments tant objectifs que subjectifs intervenant dans la fixation de la peine et conduisant à l'individualisation de cette dernière (cf. Nicolas Queloz/Valérie Humbert in Commentaire Romand, Code pénal I, Art. 1-10 CP, Roth-Moreillon [éditeurs], ad art. 47, no 10 p. 459 et doctrine et jurisprudence citées; cf. également ATF 116 IV 292 consid. 2 p. 294). Les circonstances des deux cas comparés sont clairement différentes : dans les deux cas il y a eu un comportement injurieux, mais dans celui de l'entraîneur de Fiorentina, ce comportement était confiné au vestiaire alors que le geste de l'entraîneur Lair a été vu par tous les spectateurs et téléspectateurs du match, ce qui en augmente gravement l'impact.

La comparaison avec des sanctions prononcées antérieurement étant vaine, l'instance de céans juge inutile de poursuivre l'explicitation des différences entre les cas évoqués par l'appelant et le cas présent.

Par contre, l'on peut relever que la sanction d'un match de suspension prononcée par la première instance, apparaît clémentine par rapport à celles prononcées dans différentes autres cas contres des entraîneurs qui se sont laissés aller à dépasser les règles de la bienséance à des moments émotionnellement tendus comme il en est beaucoup dans le football. L'on peut par exemple citer le cas connu de l'entraîneur René Girard qui, à la fin du match qui opposait FC Schalke 04 à Montpellier, a fait un doigt d'honneur à l'entraîneur de l'équipe de Schalke. L'entraîneur René Girard a été suspendu de sa fonction pour deux matches de compétition de l'UEFA, le deuxième étant assorti d'un sursis de trois ans.

6.

Au vu de ce qui précède, et au regard de sa position dans l'équipe et de sa jurisprudence applicable aux officiels, l'instance d'appel estime que la mesure prononcée à l'égard de Patrice Lair est manifestement trop faible et qu'en ce qui le concerne, la première instance a abusé de son pouvoir d'appréciation au point de créer une inégalité de traitement entre officiels. Une peine de deux matches de suspension, dont un assorti du sursis (art. 15 bis RD) compte tenu des circonstances, lui paraît un minimum pour être équitable et conforme à la pratique de l'UEFA.

7.

Il ressort de l'ensemble des considérants qui précèdent que l'appel interjeté par l'UEFA par l'intermédiaire de l'Inspecteur disciplinaire est partiellement admis. Partant, la décision de l'Instance de contrôle et de discipline du 19 avril 2013 est modifiée en tant que la suspension prononcée à l'encontre de l'entraîneur est arrêtée à deux rencontres de compétition UEFA, dont une est assortie du sursis pour une période de trois ans. Il ressort du dossier que l'entraîneur en cause n'a pas exercé sa fonction d'entraîneur lors du match retour Juvisy – Olympique Lyonnais du 21.04.2013. Par conséquent, le match ferme de suspension doit être considéré comme subi et il ne reste plus à l'entraîneur en cause qu'à assumer son second match de suspension avec sursis pendant 3 ans, à compter de la communication de la décision, soit jusqu'au 14 mai 2016.

8.

Les frais de procédure, qui comprennent l'ensemble des dépenses de l'instance d'appel, doivent être répartis de manière équitable entre les parties selon l'issue de la procédure (art. 63 RD).

L'appel étant partiellement admis, il est justifié de mettre les frais de la présente cause, qui s'élèvent à € 6'000, à la charge de Patrice Lair à hauteur de € 4'000 le solde de € 2'000 étant à la charge de l'UEFA. La Fédération Française de Football répond solidairement du paiement de la part dont doit s'acquitter l'intimé (art. 73 RD).

Le présent arrêt est définitif et est exécutoire par la notification orale et la remise aux parties du dispositif, conformément aux art. 64 al. 1 et 66 RD.

Decision of 26 June 2013

VfB Stuttgart

(Setting off of fireworks. Late kick-off)

Circumstances of the case:

During the UEFA Europa League match KRC Genk vs. VfB Stuttgart on 21 February 2013, Stuttgart supporters set off 2 pyrotechnic devices. Furthermore, the start of the second half had been unduly delayed.

Legal framework:

Art. 5 DR (ed. 2012) *Improper conduct*; Art. 6 DR (ed. 2012) *Strict liability*; Art. 11 (2) (b-c) DR (ed. 2012) *Throwing of objects and lighting of fireworks*

Decision:

CDB:

The CDB fined VfB Stuttgart €22,000.

Appeals Body:

The appeal lodged by VfB Stuttgart is partially admitted. The CDB's decision is modified so that the fine is reduced to €17,000.

Chairman: Pedro Tomás, Spain

Members: Levent Biçakci, Turkey
Patricia Moyersoen, France

In fact:

A.

In a decision of 21 March 2013, the UEFA Control and Disciplinary Body fined VfB Stuttgart €22,000 following its UEFA Europa League away match against KRC Genk on 21 February 2013 (0-2).

On the basis of the reports of the UEFA officials at the match, the first-instance body held that away supporters had lit two pyrotechnic devices, and that the start of the second half had been unduly delayed.

In view of the multiplicity of the offences committed and the club's disciplinary record in this area, it considered that a fine of €22,000 was the appropriate disciplinary measure.

B.

On 6 May 2013, VfB Stuttgart appealed against the Control and Disciplinary Body's decision. It concluded, principally, that the decision should be annulled, and in the alternative, that the fine should be substantially reduced.

The appellant, in substance, submitted the following.

The one or two flares concerned had been lit before kick-off and had not affected the match itself. Security measures taken by the club since the incidents at its group stage away fixture in Copenhagen, for which the club had already been punished, had had the desired effect to the extent that, apart from these minor incidents, the VfB supporters had not misbehaved at all. Regarding the players' late return to the pitch, the appellant explained and submitted evidence to show that the players had left the dressing room on time but had returned to the dressing room corridor to have their boots cleaned at the last minute due to the terrible condition of the pitch. Neither the UEFA match delegate nor the match officials had ordered the club to stop treating the boots or to send the players onto the pitch by threatening a disciplinary punishment. The club concluded that they had recognised the need and had been happy for the boots to be treated.

VfB Stuttgart requested the hearing of its kit manager, Michael Meusch, and team manager, Ralph Herkommer, as witnesses.

C.

On 31 May 2013, UEFA, through its disciplinary inspector, lodged its reply to the appeal, which it concluded should be rejected, with the costs to be charged to the appellant.

D.

At today's hearing, VfB Stuttgart was represented by Joachim Rain, legal counsel, and Matthias Schneider, sports director, and UEFA by its disciplinary inspector Prune Rocipon.

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) of the UEFA Disciplinary Regulations.

The parties said they were happy with the procedural arrangements and raised no objections.

Since the facts were not disputed and the disciplinary inspector did not contest the poor state of the pitch, the parties decided it was unnecessary to hear the witnesses suggested by the appellant. Since no additional evidence was called, the parties were then given the floor to plead, reply and rejoinder.

The club's representative explained the arguments set out in its appeal pleadings.

The disciplinary inspector confirmed UEFA's conclusions as set out in its reply to the appeal.

Once the hearing was closed, the Appeals Body deliberated. It established the following.

In law:

1.

The UEFA Appeals Body's jurisdiction to hear an appeal against a UEFA Control and Disciplinary Body decision is established under Article 48 of the UEFA Disciplinary Regulations.

The appeal was lodged by VfB Stuttgart by the deadline and in the form required. Grounds were provided and the appeals fee was paid by the deadline. It is therefore admissible under Articles 49, 50, 52 and 53 of the Disciplinary Regulations.

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

2.

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

Article 6(1) of the Disciplinary Regulations enables UEFA to ensure the objectives laid down and the restrictions imposed on its members are respected not only by the latter but also by third parties for whom they are responsible. Under this provision, clubs are liable for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of a club. This liability, which depends solely on a UEFA regulation being infringed by such a person, is known as "strict liability".

Article 11(2) of the Disciplinary Regulations states that the disciplinary measures provided for in the Disciplinary Regulations may be taken against member associations or clubs in case of the throwing of objects and the lighting of fireworks.

As a rule, UEFA Europa League matches kick off at either 19.00 or 21.05 CET. On the basis of the draw, the UEFA administration fixes the kick-off times. Exceptions to this rule may be made by the

UEFA administration, in accordance with paragraph 12.03 of the Regulations of the UEFA Europa League 2012/13.

Under the terms of Law 7 of the Laws of the Game, the half-time interval must not exceed 15 minutes. This can only be altered by the referee or the UEFA administration, or under the rules of the competition concerned. Paragraph 12.02 of the Regulations of the UEFA Europa League 2012/13 does not derogate from this principle.

Any breach of the Regulations of the UEFA Europa League 2012/13 may be punished by UEFA in accordance with its Disciplinary Regulations (paragraph 34.03 of the Regulations of the UEFA Europa League 2012/13).

The case at hand must be examined in the light of the aforementioned regulatory provisions and principles.

3.

a) In this case, the Appeals Body has no reason to question the reports of the match delegate and security officer. Furthermore, the appellant did not seriously question the facts as reported. It is thus established to the satisfaction of the law that the start of the second half was delayed by one minute and that VfB Stuttgart supporters set off two Bengal lights during the aforementioned match.

b) As both facts constitute violations of UEFA regulations, the Control and Disciplinary Body was right to hold VfB Stuttgart responsible for these incidents in accordance with the principle of strict liability enshrined in Article 6(1) of the Disciplinary Regulations.

Consequently, the only question that the Appeals Body must address is whether its assessment of the circumstances justifies a different sanction from the one imposed by the Control and Disciplinary Body.

4.

a) Under Article 17(1) of the Disciplinary Regulations, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the 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).

The disciplinary measures that can be imposed against clubs are listed in Article 14(1) of the Disciplinary Regulations. Fines can be no less than €100 and no more than €1,000,000 (para. 2). In other words, the competent 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) of the Disciplinary Regulations. According to Article 18(1) of the Disciplinary Regulations, 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) Setting off fireworks is a serious offence in that it can not only disrupt the orderly running of the match but also, and more importantly, endanger the physical integrity of those lighting the fireworks, other spectators, officials and, in some cases, even the players on the pitch. For this reason, the use of pyrotechnic devices, regardless of their number, in stadiums is strictly forbidden.

Contrary to the appellant's opinion, it must be noted that the mere use of pyrotechnic devices is prohibited. In other words, an offence is committed whether or not people are injured, the game is disrupted or any danger is caused. Therefore, the fact that the match was not affected cannot be considered a mitigating circumstance. However, the clearly successful efforts made by the club to change its supporters' behaviour since the previous decision should, to a certain extent, limit the consequences of recidivism.

As regards the delayed kick-off, it must be remembered that any delay to kick-off can have a negative impact not only on the proper running of the fixture but also on the contractual relationship between UEFA and its numerous commercial partners. For these reasons, kick-off times must be respected. The appellant did not prove that the referee or the UEFA administration extended the half-time interval to allow its players to finish treating their boots. A sanction is therefore necessary.

However, due consideration must be given to the particular circumstances explained by the appellant, in particular the fact that the players returned to clean their boots in the presence of the UEFA delegate, who failed to mention that their actions could delay the start of the second half.

The appellant claims that the panel did not properly apply Article 17(4) of the Disciplinary Regulations. In fact, the Control and Disciplinary Body took into account the fact that two serious offences had been committed and the previous incidents (recidivism). It reached a global decision and imposed an overall sanction for both offences, as provided for in Article 17(4) of the Disciplinary Regulations.

c) Nevertheless, the Appeals Body, which re-examines the case in full in the second instance, took into consideration the aforementioned mitigating circumstances which, in its view, justify a reduction of the sanction imposed by the Control and Disciplinary Body. In order to encourage VfB Stuttgart to maintain its efforts to stop its supporters misbehaving, and given the very particular circumstances surrounding the delay to the kick-off in this case, it deemed it appropriate to reduce the overall sanction to €17,000.

5.

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 (Art. 63 of the Disciplinary Regulations).

In view of the outcome of this appeal, half the costs are charged to the appellant, whose conclusions are partially admitted, and the rest to UEFA. The German Football Association is jointly and severally liable for the fine and the procedural costs, in accordance with Article 73 of the Disciplinary Regulations.

CONTENT

Decision of 26 June 2013

VfB Stuttgart

(Displaying of a banner containing inappropriate message. Blocked passageways)

Circumstances of the case:

During UEFA Europa League match VfB Stuttgart against S.S. Lazio on 7 March 2013, public passageways were obstructed by home supporters and supporters displayed a banner containing the message "UEFA-MAFIA".

Legal framework:

Art. 6 DR (ed. 2012) *Strict liability*; Art. 11 (2) (e) DR (ed. 2012) *Use of gestures*; Art. 38 Safety and Security Regulations (ed. 2006) *Public passageways*

Decision:

The CDB's decision is upheld and VfB Stuttgart is fined €30,000.

Chairman: Pedro Tomás, Spain

Members: Levent Biçakci, Turkey
Patricia Moyersoen, France

In fact:

A.

In a decision of 21 March 2013, the UEFA Control and Disciplinary Body fined VfB Stuttgart €30,000 following its UEFA Europa League home match against S.S. Lazio on 7 March 2013 (0-2).

On the basis of the reports of the UEFA officials at the match, the first-instance body held that there had been a lack of safety and security, since public passageways had been obstructed by home supporters, and that supporters had also displayed a banner containing the message "UEFA-MAFIA".

In view of the seriousness and multiplicity of the offences committed and the club's disciplinary record, it considered that a fine of €30,000 was the appropriate disciplinary measure.

B.

On 6 May 2013, VfB Stuttgart appealed against the Control and Disciplinary Body's decision. It concluded, principally, that the decision should be annulled and a warning or reprimand issued.

It disputed the allegation that the stairways referred to in the official reports had been occupied throughout the match and noted that its ability to produce evidence to counter this allegation had been hindered by UEFA's failure to inform it of this supposed infringement until 12 March 2013, by which time it had deleted images recorded during the match, as required under the relevant German data protection law.

The club did not deny that the messages on the banners had been totally unacceptable and apologised for them. It explained that the angry messages were a response to the decision to hold the return leg in Rome behind closed doors, as a result of which German supporters, who had already booked transport and accommodation for this match, had suffered significant financial losses and been punished for the misconduct of S.S. Lazio supporters. The club added that the banners had immediately been removed following the intervention of the VfB Stuttgart security officer. It noted that the message, which it admitted was unacceptable, had been connected to sport.

Due to the circumstances, the club considered the punishment inappropriate.

C.

On 30 May 2013, UEFA, through its disciplinary inspector, lodged its reply to the appeal, which it concluded should be rejected, with the costs to be charged to the appellant.

D.

At today's hearing, VfB Stuttgart was represented by Joachim Rain, legal counsel, and Matthias Schneider, sports director, and UEFA by its disciplinary inspector Prune Rocipon.

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) of the UEFA Disciplinary Regulations.

The parties said they were happy with the procedural arrangements and raised no objections. Since the facts were not disputed, the parties decided it was unnecessary to hear the witnesses suggested by the appellant. Since no additional evidence was called, the parties were then given the floor to plead, reply and rejoinder.

The club's representative explained the arguments set out in its appeal pleadings. The disciplinary inspector confirmed UEFA's conclusions as set out in its reply to the appeal. Once the hearing was closed, the Appeals Body deliberated. It established the following.

In law:

1.

The UEFA Appeals Body's jurisdiction to hear an appeal against a UEFA Control and Disciplinary Body decision is established under Article 48 of the UEFA Disciplinary Regulations.

The appeal was lodged by VfB Stuttgart by the deadline and in the form required. Grounds were provided and the appeals fee was paid by the deadline. It is therefore admissible under Articles 49, 50, 52 and 53 of the Disciplinary Regulations.

The Appeals Body may therefore examine its merits.

2.

According to Article 52 of the UEFA Statutes and Article 8 of the Disciplinary Regulations, unsportsmanlike conduct, breaches of the Laws of the Game and infringements of the statutes, regulations, decisions and directives of UEFA are punished by means of disciplinary measures. Article 6(1) of the Disciplinary Regulations enables UEFA to ensure the objectives laid down and the restrictions imposed on its members are respected not only by the latter but also by third parties for whom they are responsible. Under this provision, clubs are liable for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of a club. This liability, which depends solely on a UEFA regulation being infringed by such a person, is known as "strict liability".

Article 11(2)(e) of the Disciplinary Regulations states that the disciplinary measures provided for in the Disciplinary Regulations may be taken against member associations or clubs in case of the transmission of any message that is not fit for a sports event, notably if it is offensive.

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

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

Any breach of the Regulations of the UEFA Europa League 2012/13 may be punished by UEFA in accordance with the Disciplinary Regulations (paragraph 34.03 of the Regulations of the UEFA Europa League 2012/13).

Finally, the principle of Article 45 of the Disciplinary Regulations, according to which the facts described in the match officials' reports should be considered trustworthy and truthful unless their inaccuracy can be clearly proven beyond any doubt, applies before the Appeals Body as well as before the Control and Disciplinary Body.

The case at hand must be examined in the light of the aforementioned regulatory provisions and principles.

3.

a) In this case, the Appeals Body has no reason to question the reports of the match delegate and security officer, who noted in particular that passageways had been obstructed by spectators during the entire match. It paid close attention to the appellant's explanation in this respect, in particular the fact that the relevant German data protection law required it to delete images recorded during matches within 24 hours unless there was a reason to store them for longer. It must, however, admit that no other convincing evidence, such as private images, has been submitted to counter the accuracy of the official reports or even cast serious doubt on the credibility of the officials who reported these facts. The officials concerned had no reason to report the obstruction of the stairs unless they had actually witnessed it themselves.

As regards the offensive banner, the club does not contest its inadmissible content or the fact that it was displayed. The photo clearly shows what was written on the banner in question.

It is therefore established to the satisfaction of the law that public passageways were obstructed and that a banner insulting UEFA was displayed during the match.

b) The Appeals Body can therefore confirm that the Control and Disciplinary Body was right to hold VfB Stuttgart responsible for the improper conduct of its supporters in accordance with the principle of strict liability enshrined in Article 6(1) of the Disciplinary Regulations and for its violation of the Safety and Security Regulations.

4.

a) Under Article 17(1) of the Disciplinary Regulations, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed according to the objective and subjective elements of the 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).

The disciplinary measures that can be imposed against clubs are listed in Article 14(1) of the Disciplinary Regulations. Fines can be no less than €100 and no more than €1,000,000 (para. 2). In other words, the competent 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) of the Disciplinary Regulations. According to Article 18(1) of the Disciplinary Regulations, 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) Allowing supporters to occupy passageways constitutes a serious breach of security regulations. There is no need to explain the tragic consequences that such laxness can have if a stand has to be evacuated quickly due to crowd trouble or an accident. The seriousness of the infringement and the way the club has tried to evade its responsibility in this respect is an aggravating circumstance.

c) Displaying a banner insulting UEFA during a UEFA competition is obviously unacceptable and likely to bring football and UEFA into disrepute. The reason given by the appellant for this angry message certainly does not constitute a mitigating circumstance. Even if a UEFA disciplinary decision has unfortunate and harsh consequences for supporters who, as individuals, are not responsible for the facts sanctioned, this does not give them the right or an excuse to insult UEFA publicly in a stadium and bring it into disrepute, since there are specific, authorised means of protesting in such situations.

d) The appellant also questions the Control and Disciplinary Body's application of Article 17(4) of the Disciplinary Regulations concerning sanctions for multiple offences, since the Control and Disciplinary Body did not specify which infringement was more serious when imposing the fine of €30,000.

The appellant claims that the Control and Disciplinary Body did not properly apply Article 17(4) of the Disciplinary Regulations. In fact, it took into account the fact that two serious offences had been committed and VfB Stuttgart's previous record (the club has been punished 3 times in the last five years for improper conduct of its supporters) and reached a global decision, imposing an overall sanction for both offences, as provided for in Article 17(4) of the Disciplinary Regulations.

e) In view of the above, the Appeals Body finds that the Control and Disciplinary Body correctly interpreted the provisions and case law applicable in this case. It took into account all the facts in fair proportion. Therefore, the Control and Disciplinary Body's decision of 21 March 2013 must be confirmed.

The appeal, which is clearly unfounded, must therefore be rejected.

5.

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 (Art. 63 of the Disciplinary Regulations).

In view of the outcome of this appeal, all the costs are charged to the appellant, whose conclusions are rejected in their entirety. The German Football Association is jointly and severally liable for the fine and the procedural costs, in accordance with Article 73 of the Disciplinary Regulations.

Decision of 26 June 2013

FC Zenit St. Petersburg

(Displaying an illicit banner)

Circumstances of the case:

During the UEFA Champions League 2012/13 match FC Zenit St. Petersburg against Málaga CF on 21 November 2012, supporters had displayed a banner containing the rune symbols used by the Nazis to distinguish a section of the "Schutzstaffel" (SS) during the second world war.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 11 (2) (e) *Use of gestures*; Art. 11bis DR (ed. 2012) *Discrimination*

Decision:

The CDB's decision is upheld and FC Zenit St. Petersburg is fined €35,000.

Chairman ad doc : Goetz Eilers, Germany

Members: Levent Biçakci, Turkey
Patricia Moyersoen, France

In fact:

A.

In its decision of 21 March 2013, having found its supporters guilty of discriminatory conduct under the terms of Article 11bis(1) of the UEFA Disciplinary Regulations at its 2012/13 UEFA Champions League match against Málaga CF on 21 November 2012, the UEFA Control and Disciplinary Body fined FC Zenit St Petersburg €35,000. The supporters concerned had displayed a banner containing the rune symbols used by the Nazis to distinguish a section of the "Schutzstaffel" (SS) during the second world war.

B.

On 6 May 2013, FC Zenit St Petersburg lodged an appeal against the Control and Disciplinary Body's decision to fine the club €35,000. It requested that the whole penalty be lifted and that the €35,000 that had already been paid be reimbursed.

In its written statement dated 13 May 2013, the club argued that the aforementioned decision had been based on the wrong premises and denied that the symbols displayed by its supporters had racist connotations. It supported this argument in substance as follows.

It claimed that Russian legislation did not prohibit the use of runes at football stadiums *per se*. Since the match had taken place in Russia, the legislation of that country should apply.

The club also underlined that *"the runes, which were previously part of Nazi symbolism, but which are currently used without any attempt to imitate Nazi insignia, are not included into the list of extremist materials [of the Russian Ministry of Justice]"*

The club claimed that the Russian Football Association did not prohibit the use of runes. FARE itself did not support an outright ban of runes, since it recognised that runes could be used for purposes that were not linked to neo-Nazism or white supremacy.

It argued that runes were not generally understood to be linked to white supremacy or neo-Nazism. For example, the Celtic cross, which was listed in the FARE booklet as a Nazi symbol, was used by the Irish Football Association, while both FC Shakhtar Donetsk and West Ham United FC use crossed hammers in their logos. In this respect, it considered that UEFA's interpretation of symbols was inconsistent.

Furthermore, the club argued that there was no evidence that the runes used at the match in question had been designed to send a discriminatory or otherwise unacceptable message, and that these runes did not resemble Nazi symbols. The club also explained the historical origin of these symbols, which were linked to northern influences. Finally, the club concluded by asking the UEFA

Appeals Body to overturn the decision and order the reimbursement of the €35,000 already paid by the club to UEFA.

C.

On 29 May 2013, UEFA, through its disciplinary inspector, submitted its response to the appeal. It argued that the appeal should be rejected and the costs of the appeal procedure charged to the appellant.

It stressed that the UEFA delegate had asked the home club's representative to have the banner removed. However, the banner had been displayed throughout the match.

D.

a) The chairman opened the appeal hearing. He informed the parties of the procedure to be followed (Articles 66 *et seq.* of the UEFA Disciplinary Regulations) and reminded them of the composition of the Appeals Body. He also informed them that everything they and the Appeals Body members said would be recorded. No objection was raised.

b) The chairman then gave the floor to the parties in accordance with Article 60 of the Disciplinary Regulations. They presented and expanded on the arguments set forth in their respective written statements and maintained their original requests.

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

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

In law:

1.

The Appeals Body has jurisdiction to hear this case under Article 34(3) of the UEFA Statutes and Article 48 of the UEFA Disciplinary Regulations.

FC Zenit St Petersburg lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeals fee paid on time. The appeal is therefore admissible under the terms of Articles 49, 50, 52 and 53 of the Disciplinary Regulations.

The Appeals Body can therefore consider the merits of the appeal.

2.

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

Symbols that commemorate the Nazi era or the supremacy of a particular race over another have no place in a football stadium.

In this respect, it is worth noting that UEFA is not alone in prohibiting fascist, Nazi or extremist symbols. Indeed, such symbols are prohibited under the legislation of some European states, e.g. Article 261bis of the Swiss Criminal Code, and under the General Policy Recommendation of the European Commission of 15 June 2004.

It is therefore clear that symbols extolling hatred, fascism or the Nazi era are prohibited at football matches held under UEFA's jurisdiction.

3.

a) Throughout the above-mentioned match, some FC Zenit St Petersburg supporters displayed a banner containing runes, despite the UEFA delegate's attempts to have it removed. It is well known that runes are associated with the "Schutzstaffel", the paramilitary organisation led by the Nazi regime.

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

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

Article 6 of the UEFA Disciplinary Regulations forms the legal basis that enables UEFA, through its disciplinary bodies, to ensure that its objectives and the obligations imposed on its members are respected not only by the latter, but also by third parties for whose actions members are responsible.

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

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

Article 11bis of the UEFA Disciplinary Regulations specifies that anyone who insults the human dignity of a person or group of persons, by whatever means, including on grounds of colour, race, religion or ethnic origin, shall incur a suspension for five matches or for a specified period

(paragraph 1). Any member association or club whose supporters engage in the behaviour described in paragraph 1 shall incur a minimum fine of €20,000 (paragraph 2).

c) The appellant claims that Russian legislation does not prohibit the use of runes at football stadiums *per se*. This argument is astounding, since it should be remembered that, as an organiser of and participant in UEFA competition matches, FC Zenit St Petersburg is not subject to Russian law alone, but must also respect all UEFA regulations.

Moreover, by entering the 2012/13 UEFA Champions League, the appellant agreed to comply with UEFA regulations, in accordance with Article 4 of the 2012/13 UEFA Champions League Regulations. The rules do not give supporters the right to display discriminatory banners or symbols.

d) The appellant also argues that the rune symbols displayed by its supporters are not generally understood to be linked to white supremacy or neo-Nazism. To illustrate this argument, the appellant refers to the Irish Football Association's symbol of a Celtic cross and West Ham United FC's use of crossed hammers in its logo.

It is true that the symbols used by the English club West Ham United FC and the Irish Football Association are similar to those prohibited. However, the context in which these symbols are displayed is decisive in determining, on a case-by-case basis, whether a disciplinary violation has been committed or not.

In one of the examples given by the appellant, the club's original crest, dating from 1899 or 1900, was composed of a crossed pair of riveting hammers, as used in the shipbuilding industry. The hammers are a link with a previous owner of the club, who was connected to the ironwork industry. In this context, the appellant claims that, due to the origin and the meaning of these hammers in the context of West Ham United FC, this therefore cannot constitute a discriminatory symbol. In other contexts, this symbol represents the hammerskins, a paramilitary network of neo-Nazi skinheads operating in many countries. The symbol of the hammerskins is two crossed hammers, which stand for the "white working man". All symbols that point to fascist, Nazi or extremist ideas or that can be associated with such regimes are not tolerated in football.

e) The appellant's arguments are clearly unfounded. As the UEFA Control and Disciplinary Body rightly concluded, the display of such symbols, like other runic symbols, was adopted by the Waffen SS during the Nazi period. Since then, they have been used as a means of identification by neo-Nazi groups in Europe and America. Under these circumstances, there is no doubt that their significance is known not only to specialists on the second world war, but to everyone, especially in Europe.

Furthermore, the appellant's argument implying that the Celtic cross is not a discriminatory symbol because it is used by the Irish Football Association is unfounded. It is true that the Celtic cross appears on the crest of the Irish FA and has been linked to the country's history since the 19th century. However, the Nazis hijacked and used the Celtic cross for something it was not meant for. In other words, they diverted its original meaning. Today, it is common knowledge that the Celtic cross is one of the most popular symbols for neo-Nazis and white supremacists. First popularised by the Ku Klux Klan, the symbol was later adopted by the National Front in England and other racist groups.

It is thus established that symbols conveying messages of hatred and discrimination were displayed by FC Zenit St Petersburg supporters, for which the club is to be held responsible (strict liability).

Likewise, UEFA does not need to prove that the runes displayed at the aforementioned match were designed to convey a discriminatory message, since its regulations prohibit discriminatory conduct of any kind (including the use of runes). Furthermore, the appellant admits that it was aware of FARE's list of prohibited symbols, in which runes were mentioned.

It must be recalled that, despite the club's denial of any link between the runes displayed by its supporters and the Nazi regime, UEFA, as the competition organiser, was harmed, since the Appeals Body members had no hesitation in considering that any reasonable supporter (or viewer, as the match was broadcast on television) who saw such a banner with runes displayed by FC Zenit St Petersburg supporters at this match would have concluded that UEFA tolerates Nazi symbols at its matches and/or that these supporters were praising Nazi and fascist regimes. The historical reason put forward by the appellant does not outweigh a football supporter's reasonable interpretation of runes displayed at a football match.

The UEFA Control and Disciplinary Body was therefore right to hold FC Zenit St Petersburg to account for its supporters' conduct and to penalise the club accordingly.

4.

a) As a matter of course (Article 6(1) of the Disciplinary Regulations), it remains for the Appeals Body to examine whether the Control and Disciplinary Body respected the regulations and legal principles, in particular that of proportionality, or whether it abused its discretionary power by setting the fine at €35,000.

b) Under Article 11bis(2) of the English version of the Disciplinary Regulations, the minimum fine for discriminatory conduct is €20,000. The French and German versions of the same regulations make no mention of the word "minimum". Under Article 78 of the Disciplinary Regulations, in the event of any conflict between different language versions of the Disciplinary Regulations, the English version prevails.

In view of the failings established and taking account of the full circumstances, the Appeals Body finds that FC Zenit St Petersburg grossly violated Article 11bis of the Disciplinary Regulations, since no fascist or Nazi signs or symbols may be displayed at UEFA matches.

The Control and Disciplinary Body was therefore right to consider whether or not the objective and subjective elements justified a deviation from the standard penalty in accordance with Article 17 of the Disciplinary Regulations.

It rightly considered the offence serious. It also noted that this was not first time the appellant had been brought to account for discriminatory conduct on the part of its supporters. Having taken all the circumstances into account, the Control and Disciplinary Body therefore increased the minimum fine of €20,000 to €35,000. Its analysis is beyond reproach and must be upheld.

To summarised the offensive and discriminatory nature of the symbol shown on the banner displayed can therefore not seriously be contested. There is no doubt whatsoever, that the content

of this banner falls under Article 11bis DR, as it is a clear praises the Nazi regime. A non-racist use of runes may be possible and bound to local or regional history but, as other symbols which are widely recognised as references to the Nazi Era and to white supremacy, they have no place in UEFA football competitions. In other words, in the context of UEFA competition, no symbol that is likely to be understood by a large number of spectators as a political opinion of a reference to extremist and discriminatory ideologies is allowed. In this respect, UEFA has a large power of appreciation in its jurisdiction and club participating in its competitions must consider and respect its practice.

5.

The costs 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 of the Disciplinary Regulations).

Based on the result of the appeal, all costs are charged to FC Zenit St Petersburg. The Russian Football Association is jointly liable for paying these costs (Article 73 of the Disciplinary Regulations).

Decision of 26 June 2013

FC Zenit St. Petersburg

(Lightning of an object. Displaying an illicit banner)

Circumstances of the case:

During UEFA Europa League 2012/13 match between FC Basel 1893 and FC Zenit St Petersburg on 7 March 2013, supporters had displayed a banner containing an Odal rune and lit a scarf.

Legal framework:

Art. 6 (1) DR (ed. 2012) *Strict liability*; Art. 11 (2) (b-c) DR (ed. 2012) *Throwing of objects and lighting of fireworks*; Art. 11bis DR (ed. 2012) *Discrimination*

Decision:

The CDB's decision is upheld and FC Zenit St. Petersburg is fined €20,000.

Chairman: Pedro Tomás, Spain,
Members: Goetz Eilers, Germany
Patricia Moyersoen, France

In fact:

A.

In its decision of 19 April 2013, having found its supporters guilty of discriminatory conduct under the terms of Article 11bis of the UEFA Disciplinary Regulations at its 2012/13 UEFA Europa League match against FC Basel 1893 on 7 March 2013, the UEFA Control and Disciplinary Body fined FC Zenit St Petersburg €20,000. The supporters concerned had displayed a banner containing an Odal rune and lit a scarf.

B.

On 24 May 2013, FC Zenit St Petersburg appealed against this decision and the fine of €20,000.

In its statement dated 30 May 2013, the club argued essentially as follows.

The display of the Odal rune at the match had not breached any law or regulation, since the context in which the rune had been used did not suggest any racist connotations. Rune symbolism without any specific reference or similarity to neo-Nazi symbols was not generally understood to be linked to neo-Nazism or white supremacy.

It was unclear whom the Control and Disciplinary Body had in mind when making such generalisations, but assuming that it was referring to the position in Europe as a whole, the club pointed out that the national legislation of at least one country, i.e. Russia, did not consider the use of runes *per se* as racist. The use of any symbol that could be confused with Nazi insignia was considered by Russian legislation as extremist activity and a list of all such materials prohibited by the Russian courts was published on the website of the Russian Ministry of Justice. However, runes, which in this case had been used without an attempt to imitate Nazi insignia, were not included in this list.

FARE and anti-racism NGOs themselves did not support an outright ban of runes regardless of the context in which they were used.

The Control and Disciplinary Body had not made reference to any Swiss law prohibiting any use of runes or provided evidence that the supporter who had displayed the banner had been brought to justice.

Compared with the case law relating to the Celtic cross depicted on the emblem of the Irish Football Association, the Control and Disciplinary Body's assertion that the prohibition of runes in the FARE manual was absolute contradicts UEFA's practice with regard to other symbols mentioned in the manual.

In the history of north-western Russia, runes had been used without any racist or otherwise unacceptable connotations. UEFA had ignored the historical background against which runes were used by FC Zenit St Petersburg fans.

Even if the club had breached Article 11bis of the Disciplinary Regulations, the Control and Disciplinary Body should have imposed a smaller fine, taking into account the mitigating circumstances of the case, i.e. the fact that the banner was only briefly displayed and was removed with the help of the club before kick-off, when the stadium was mostly empty.

In view of the above, the club requested that the UEFA Appeals Body:

1. declare FC Zenit St Petersburg liable only for a breach of Article 11(2)(c) of the Disciplinary Regulations;
2. reduce the fine of €20,000 accordingly;
3. order the reimbursement of the difference between €20,000 and the fine imposed by the UEFA Appeals Body;
4. in the alternative, if the UEFA Appeals Body finds FC Zenit St Petersburg in breach of Article 11bis of the Disciplinary Regulations, reduce the fine of €20,000 in view of the mitigating circumstances of the case.

D.

a) On 11 June 2013, UEFA, through its disciplinary inspector, submitted its response to the appeal. It argued that the appeal should be rejected and the costs of the appeal procedure charged to the appellant.

b) The disciplinary inspector's request that FC Zenit St Petersburg be fined €30,000 instead of the €20,000 fine imposed by the Control and Disciplinary Body must be considered as a cross-appeal.

E.

a) The chairman opened the appeal hearing. He informed the parties of the procedure to be followed (Articles 66 *et seq.* of the UEFA Disciplinary Regulations) and reminded them of the composition of the Appeals Body. He also informed them that everything they and the Appeals Body members said would be recorded. No objection was raised.

b) The chairman then gave the floor to the parties in accordance with Article 60 of the Disciplinary Regulations. They presented and expanded on the arguments set forth in their respective written statements and maintained their original requests.

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

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

In law

1.

The Appeals Body has jurisdiction to hear this case under Article 34(3) of the UEFA Statutes and Article 48 of the UEFA Disciplinary Regulations.

FC Zenit St Petersburg lodged its appeal by the deadline set and in the form required. The grounds for appeal were submitted and the appeals fee paid on time. The appeal is therefore admissible under the terms of Articles 49, 50, 52 and 53 of the Disciplinary Regulations.

The Appeals Body can therefore consider the merits of the appeal.

2.

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

Symbols that commemorate the Nazi era or the supremacy of a particular race over another have no place in a football stadium.

In this respect, it is worth noting that UEFA is not alone in prohibiting fascist, Nazi or extremist symbols. Indeed, such symbols are prohibited under the legislation of some European states, e.g. Article 261bis of the Swiss Criminal Code, and under the General Policy Recommendation of the Council of Europe of 25 June 2004.

It is therefore clear that symbols extolling hatred, fascism or the Nazi era are prohibited at football matches held under UEFA's jurisdiction.

3.

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

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

Article 6 of the UEFA Disciplinary Regulations forms the legal basis that enables UEFA, through its disciplinary bodies, to ensure that its objectives and the obligations imposed on its members are respected not only by the latter, but also by third parties for whose actions members are responsible.

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

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

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

4.

In the present case, some FC Zenit St Petersburg supporters displayed a banner containing Odal runes. No matter what the club tries to argue, it is well known that Odal runes are used as a reference to the Nazi philosophy. They were also used by the neo-Nazi Wiking-Jugend in Germany and, in South Africa, by the Anglo-Afrikaner Bond, the nationalist and heavily subjugated Boer minority organisation Boeremag, and the Blanke Bevrydingsbeweging. In other words, the use of Odal runes was and remains a reference to a discriminatory concept of society.

The offensive and discriminatory nature of the symbol shown on the banner displayed cannot therefore be seriously contested. There is no doubt whatsoever that the content of this banner falls under Article 11bis of the Disciplinary Regulations, as it clearly praises the Nazi regime. Non-racist use of Odal runes linked to local or regional history may be possible but, as symbols widely recognised as references to the Nazi era and white supremacy, they have no place in UEFA football competitions. In other words, in the context of a UEFA competition, no symbol that is likely to be understood by a large number of spectators as a political reference to extremist and discriminatory ideologies is allowed. In this respect, UEFA has broad discretionary powers and clubs participating in its competitions must consider and respect its practice.

5.

a) As the FC Zenit St Petersburg supporters who displayed the banner seriously violated Article 11bis of the Disciplinary Regulations, the club is responsible under the principle of strict liability explained above. Consequently, the only point on which the Appeals Body must decide is the extent of the disciplinary measure that this misconduct merits, taking due account of all the concrete circumstances.

b) It remains for the Appeals Body to examine whether the Control and Disciplinary Body respected the regulations and legal principles, in particular that of proportionality, or whether it abused its discretionary power by setting the fine at €20,000, which is the minimum fine for discriminatory conduct under Article 11bis(2) of the English version of the Disciplinary Regulations.

c) In this respect, although the appellant's arguments are mostly the same as those already submitted in the proceedings that led to the Appeals Body's decision d_25801 relating to the same club, it is worth reproducing them here:

- Russian legislation does not prohibit the use of runes at football stadiums *per se*. This argument is astounding, since it should be remembered that, as an organiser of and participant in UEFA competition matches, FC Zenit St Petersburg is not subject to Russian law alone, but must also respect all UEFA regulations. Indeed, by entering the 2012/13 UEFA Europa League, the appellant agreed to comply with UEFA regulations, in accordance with Article 4 of the Regulations of the UEFA Europa League 2012/13. This argument can obviously not be considered a mitigating circumstance.
- The Control and Disciplinary Body did not make reference to any Swiss law that would prohibit any use of runes. Under Swiss law, the right of associations to impose sanctions or disciplinary measures on players, officials, national association members or clubs does not constitute the exercise of a power delegated by the State. It is an expression of the freedom of association. Therefore, the Appeals Body does not have to examine Swiss law before punishing violations of its own rules. Nevertheless, it must be stressed that Article 261bis of the Swiss Criminal Code prohibits any symbols containing Nazi or extremist messages. This also is not a mitigating circumstance.
- A Celtic cross appears on the Irish Football Association emblem. It is true that the Celtic cross appears on the crest of the Irish Football Association and has been linked to the country's history since the 19th century. However, the Nazis hijacked and used the Celtic cross for something it was not meant for. In other words, they diverted its original meaning. Today, it is common knowledge that the Celtic cross is one of the most popular symbols for neo-Nazis and white supremacists. First popularised by the Ku Klux Klan, the symbol was later adopted by the National Front in England and other racist groups. As a consequence, UEFA can allow Irish supporters to display their very specific banner. In the present case, the runes displayed have never been linked to the club's emblem.
- The emblem was displayed for only a few minutes, which constitutes a mitigating circumstance. According to UEFA's policy of zero tolerance in its fight against discrimination and similar conduct, the act must be sanctioned, irrespective of how long it lasted. In this case, the banner was, indeed, "only" displayed for a few minutes, but the Control and Disciplinary Body has already taken this into consideration by only imposing the standard sanction laid down by Article 11bis(2) of the Disciplinary Regulations in spite of previous offences.

It must be recalled that, when a club agrees to participate in a UEFA competition, it agrees to comply with the relevant UEFA regulations (Article 4 of the Regulations of the UEFA Europa League 2012/13), whatever its domestic laws. Otherwise, UEFA would create inequality in its treatment of its members.

6.

In view of the failings established and taking account of the full circumstances, the Appeals Body finds that FC Zenit St Petersburg violated Article 11bis of the Disciplinary Regulations, since no fascist or Nazi signs or symbols may be displayed at UEFA matches.

The Control and Disciplinary Body rightly considered the offence serious and noted that this was not first time the appellant had been brought to account for discriminatory conduct on the part of its supporters. Having taken all the circumstances into account, notably the fact that the banner was quickly removed, the Control and Disciplinary Body rightly imposed the standard fine of €20,000. Its analysis is beyond reproach and must be upheld.

In view of the above, the disciplinary inspector failed to submit any relevant evidence justifying a departure from the standard sanction imposed by the Control and Disciplinary Body in the present case. Therefore, the cross-appeal lodged by the disciplinary inspector, requesting that the fine of €20,000 be increased to €30,000, is rejected.

7.

The costs 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 of the Disciplinary Regulations).

Based on the result of the appeal, all costs are charged to FC Zenit St Petersburg. The Russian Football Association is jointly liable for paying these costs (Article 73 of the Disciplinary Regulations).



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